

Memorandum



CITY OF DALLAS

DATE October 5, 2018

TO Honorable Members of the Public Safety and Criminal Justice Committee

SUBJECT **Request to Initiate a Compliance Date for a Nonconforming Use**

On Monday, October 8, 2018, you will be briefed on the Request to Initiate a Compliance Date for a Nonconforming Use in discussion of a resolution requesting the Board of Adjustment to authorize compliance proceedings for Jim's Car Wash. Located at 2702 Martin Luther King Jr. Boulevard, Dallas, Texas.

The briefing materials are attached for your review. Please contact me if you have any questions or need additional information.

A handwritten signature in cursive script that reads "Jon Fortune".

Jon Fortune
Assistant City Manager

cc: T.C. Broadnax, City Manager
Chris Caso, City Attorney (I)
Carol A. Smith, City Auditor (I)
Biliera Johnson, City Secretary
Preston Robinson, Administrative Judge
Kimberly Bizer Tolbert, Chief of Staff to the City Manager

Majed A. Al-Ghafry, Assistant City Manager
Joey Zapata, Assistant City Manager
Nadia Chandler Hardy, Assistant City Manager and Chief Resilience Officer
M. Elizabeth Reich, Chief Financial Officer
Directors and Assistant Directors

Request to Initiate a Compliance Date for a Nonconforming Use

**Public Safety and Criminal Justice
Committee**

October 8, 2018

**Kris Sweckard, Director
Sustainable Development &
Construction
City of Dallas**



Presentation Overview

- Background
- Initiation
- First public hearing
- Factors the Board of Adjustment considers
- Outcome of first public hearing
- Second public hearing
- Discontinuation of use
- Upcoming initiation consideration

Background

- The Board of Adjustment (BDA) is a fifteen-member citizen board divided into three, five-member panels appointed by the City Council to hear and take appropriate action on variances and exceptions to Development Code regulations, consider appeals to decisions of the Building Official, and consider termination of nonconforming uses.
- Nonconforming use means a use that does not conform to the current use regulations of Dallas Development Code, but was lawfully established and has been in regular use since that time.
- Compliance regulations for nonconforming uses allow that nonconforming uses be eliminated, having due regard for the property rights of the persons affected, the public welfare, and the character of the surrounding area.
- Chapter 51A addresses discontinuance of a nonconforming use whereby the owner's actual investment in the structure prior to the time that the use became nonconforming can be amortized in setting the compliance date.

Initiation

- City Council, via a five member signed memo, may request that the Board of Adjustment consider establishing a compliance date for a nonconforming use.
- Any person who resides or owns real property in the city and pays the \$1,000 application fee may also make the same request.

First Public Hearing

- Board of Adjustment (BDA) holds a public hearing to determine whether continued operation of the nonconforming use will have an adverse effect on nearby properties.
- Both sides are given limited time.
 - Property owner of nonconforming use attempts to prove no adverse effect on nearby properties.
 - Applicant(s) and, if desired, neighbors and other interested parties attempt to prove adverse effect on nearby properties.

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Factors BDA Considers

- (i) The character of the surrounding neighborhood.
- (ii) The degree of incompatibility of the use with the zoning district in which it is located.
- (iii) The manner in which the use is being conducted.
- (iv) The hours of operation of the use.
- (v) The extent to which continued operation of the use may threaten public health or safety.
- (vi) The environmental impacts of the use's operation, including but not limited to the impacts of noise, glare, dust, and odor.
- (vii) The extent to which public disturbances may be created or perpetuated by continued operation of the use.
- (viii) The extent to which traffic or parking problems may be created or perpetuated by continued operation of the use.
- (ix) Any other factors relevant to the issue of whether continued operation of the use will adversely affect nearby properties.

Evidence of Adverse Effect

- Types of evidence to prove adverse effect may include:
 - Police records
 - Code Compliance records
 - Testimony of neighbors
 - Regulatory actions against the use
 - Secondary effects of the use on nearby properties such as property values, neighborhood decay, loss of business, etc.

Outcome of First Public Hearing

- If no adverse effect is found, the case is over and the nonconforming use retains its nonconforming rights and may continue operations.
- If adverse effect is found, the case moves to the second public hearing.
 - BDA requests records from the property owner regarding investment in the property.

Second Public Hearing

- The compliance date for the nonconforming use is based on the owner's actual investment in the use before the time that the use became nonconforming and can be amortized within a definite time period.
- Setting the compliance date considers the owners anticipated recovery of investment.

Discontinuation of Use

- The use must cease operations on the date set by BDA.
 - Revocation of Certificate of Occupancy
 - Criminal prosecution
 - Civil lawsuit
- The owner may seek a zoning change to make the use conforming to continue operation.

Upcoming Initiation Consideration

- On October 24, 2018, Council will consider initiating a request for the Board of Adjustment to consider determining a compliance date for a nonconforming use at 2702 Martin Luther King, Jr. Boulevard.

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