

Senate Bill 929 Update



City of Dallas

**City Council Briefing
January 15, 2025**

Yu “Emily” Liu, FAICP, Director
Dr. Andreea Udrea, AICP, Deputy Director
Planning and Development Department

Overview



- I. Purpose
- II. Background
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 - B. SB 929 Requirements
 - C. Potential SB 929 Impacts
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Purpose



1. Make Council aware of the new requirements of Texas Senate Bill 929 (SB 929) related to nonconforming uses, the notification process, the process for amortization (compliance requirement), and the potential impacts of those new requirements.
2. Propose amendments to Chapter 51A of the Dallas Development Code to bring the City into compliance with SB 929.



What is a nonconforming use?



A nonconforming use is a land use that was **legal when it started but is now prohibited** or only allowed **by a Specific Use Permit (SUP)** due to changes in zoning regulations. This occurs when the following happens:

- 1. Lawful Establishment:** A land use was established in compliance with all applicable zoning regulations, building codes, and other relevant laws when it began operation, AND
- 2. Zoning Change:** After it was lawfully established, a subsequent change in zoning regulations prohibits or requires an SUP for the existing land use. This could involve either a rezoning of the area (map change) or an amendment to the development code (text change) that prohibits or requires a Specific Use Permit (SUP) for the particular use.

****Greater setbacks, design standards, or other regulatory changes do not make a nonconforming use; Only a change to prohibit or require an SUP in the zoning regulations does.****



Nonconforming Use Rights Cease When:



1. The use **ceases operation** for a consecutive **six-month** period.
 - The Board of Adjustment can reinstate rights if it is determined it was not intentionally abandoned.
2. It **becomes a conforming** use (changes zoning designation, obtains an SUP, changes to a use that is allowed, etc.).
3. It is **intentionally** destroyed by the owner or the owner's agent.
4. The Board of Adjustment **establishes a compliance date**.
 - SB 929 **only changes #4**.
 - Simply becoming nonconforming does **not** require a payout or Board of Adjustment compliance proceedings.



Current Compliance Hearing Process



- A request to establish a compliance date **may be initiated by City Council or by any person who resides or owns real property in the City.**
- Board of Adjustment holds a two-part hearing:
 - The **first hearing** determines if continued operation of the nonconforming use will have an **adverse effect on nearby properties.**
 - If the Board finds that continued operation of the use will have an adverse effect, it holds a **second hearing to determine an amortization period** where the owner's actual investment in the use before the time the use became nonconforming can be amortized within a definite period.
- The nonconforming use must **cease operations by the compliance date** determined by the Board.



New SB 929 Compliance Hearing Process



- SB 929 is **silent as to who may initiate** a request to establish a compliance date.
- Board of Adjustment **holds a hearing to determine** if continued operation of the **nonconforming use will have an adverse effect on nearby properties.**
- There is no second hearing if the Board finds that continued operation of the use will have an adverse effect. Instead, the owner/lessee of the nonconforming use has the option of either:
 1. Receiving payment from the City in an amount equal to:
 - costs directly attributable to ceasing the nonconforming use, including expenses related to demolition, relocation, termination of a lease, or discharge of a mortgage; **and** the diminution in the market value of the property, or
 2. Continuing to operate the nonconforming use until the owner recovers the payment amount (as calculated above) through the continued business activities.
- The owner/lessee may **appeal the amount** calculated above to the Board.
- The **nonconforming use must cease once payment is received** or the business has recovered the amount through continued business activities.



New SB 929 Notice Requirements



When a zoning change (map or text) *could* result in the creation of a nonconforming use, the following statement must be mailed to each property owner **and** occupant that may become nonconforming.

The notice must be sent before the first City Plan Commission (CPC) **and** City Council hearings, and must contain this statement in bold 14-point type font:

"THE CITY OF DALLAS IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY."



Sample Notice



To the property owner and occupants at this address:

The City of Dallas has identified that the current use in operation at this address may become a nonconforming use if the City of Dallas rezones your property. Your property is currently the subject of an authorized hearing, which will allow the City Council to consider rezoning your property to another zoning district. The new zoning district may not necessarily make your current use a nonconforming use. A *nonconforming use* means a use that does not conform to the use regulations of the Dallas Development Code but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

The exact wording, all caps, font size, and bold in the box below are **required by state law**.

THE CITY OF DALLAS IS HOLDING A HEARING THAT WILL DETERMINE WHETHER YOU MAY LOSE THE RIGHT TO CONTINUE USING YOUR PROPERTY FOR ITS CURRENT USE. PLEASE READ THIS NOTICE CAREFULLY.



To the property owner and occupants at this address:

The City of Dallas has identified that the current use in operation at this address may become a nonconforming use if the City of Dallas rezones your property. Your property is currently the subject of an authorized hearing, which will allow the City Council to consider rezoning your property to another zoning district. The new zoning district may not necessarily make your current use a nonconforming use. A *nonconforming use* means a use that does not conform to the use regulations of the Dallas Development Code but was lawfully established under the regulations in force at the beginning of operation and has been in regular use since that time.

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If City Council approves the proposed amendments, it **does not** require you to stop operating, and it **does not** prohibit you from selling your business. A nonconforming use may continue and renovate, remodel, or repair a structure housing a nonconforming use if the work does not enlarge the nonconforming use. Additionally, the board of adjustment may **allow the enlargement** of a nonconforming use when certain criteria are met¹.

The right to operate a nonconforming use **ceases** when any of these occur:

1. The use is discontinued for six months or more,
2. The use changes to a conforming use,
3. The structure housing the use is destroyed by the **intentional** act of the owner or his agent, or
4. Council authorizes payment of market value for the property and the board of adjustment holds a public hearing and decides to the use must cease; if this happens, signs will be posted on the property, additional notices are mailed, and an opportunity to testify will occur.

For additional information on this request, please contact Olga Torres Holyoak in the Planning and Urban Design Department at Olga.torresholyoak@dallas.gov. Si desea información en español, por favor llame a Lilita Lopez al (214) 670-4209.

¹ See Section 51A-4.704(b)(5) of the Dallas Development Code for more information.



Potential SB 929 Impacts



1. If a nonconforming use that goes through the Board of Adjustment process to set a compliance date chooses the payout option, the amount can be significant, and the City would be obligated to pay.
2. After receiving compensation, the property owner retains ownership and the ability to operate as allowed by the zoning regulations and all other regulations.
3. As a result, SB 929 has significantly limited a municipality's authority to **terminate nonconforming uses**.
4. All other police powers related to enforcement and code compliance remain.



Proposed Code Amendment



To comply with the requirements of SB 929, the following amendments are proposed to Chapter 51A of the Dallas Development Code:

1. Additional notice requirement at CPC and City Council hearings when a rezoning case or code amendment may result in the creation of a nonconforming use.
2. Changes to the requirements for Board of Adjustment hearings to establish compliance.



Actions to Date



- SB 929 passed and became effective in 2023.
- On November 14, 2023, the Zoning Ordinance Advisory Committee (ZOAC) recommended the proposed Code amendment move forward to CPC after a previous discussion on October 3, 2023.
- On August 22, 2024, CPC recommended approval of the proposal (briefed on February 15, 2024, and held under advisement on May 16 and July 25, 2024).
- On November 12, 2024, the proposed Code amendment was briefed by memorandum to the Quality of Life, Arts, and Culture Committee and was recommended to be presented and briefed to the full City Council.



Next Steps



Staff will place the proposed Code amendments on the January 22nd voting agenda for consideration by the City Council.



Questions?



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Appendix





Does the City maintain a list of the currently non-conforming properties?

The City does not have a list of nonconforming properties. Since there are variables that can cause the loss of nonconforming rights (closure for 6+ months, voluntary demolition, or becoming a conforming use), determining whether historical uses still retain nonconforming rights is not established until point-in-time research and investigation is performed.





Does the City have any recourse against nuisance properties?

Yes, the City still maintains its police powers. SB 929 does not diminish a municipality's authority to revoke a Certificate of Occupancy (CO), use police powers, or other enforcement activities, but it has created a significant barrier from revoking nonconforming rights to a land use.



Compliance Hearing Data



- Overall, 18 applications have been received by the Board of Adjustment since 2005.
- **9** (50%) applications were approved:
 - **4** were to set a compliance date for hotel or motel uses (2006-2008).
 - The remaining **5** cases were to set compliance dates for
 - an alcoholic beverage establishment (2010)
 - manufactured home park (2011)
 - outside sales (2012)
 - animal slaughtering (2012)
 - car wash (2019)



Compliance Hearing Data



- Council originated the most recent 6 cases (2016-2021) but **only one** was approved. The remaining 5 of those were denied by the board or withdrawn.
- The most recent application that was not initiated by Council was in 2015, and it was denied by the board.



How do other cities manage Compliance Hearings?



CITY	BDA PROCEDURE	COUNCIL AUTHORIZE	RESIDENT APPLICATION
Houston	no	n/a	n/a
San Antonio	yes	yes	no
Austin	no	n/a	n/a
Fort Worth	no	n/a	n/a
El Paso	no	n/a	n/a
Mesquite	yes	yes	yes
Garland	yes	must be a city official	no
Arlington	yes	yes	no
Irving	no	n/a	n/a
Denton	yes	yes	no
Carrollton	no	n/a	n/a
Plano	no	n/a	n/a
Frisco	yes	yes	no
Richardson	no	n/a	n/a
Grand Prairie	yes	yes	yes
Lewisville	yes	yes	no

BDA Procedure: Is there a Board of Adjustment process to establish a compliance date?

Council Authorize: Can City Council or a city official initiate an application for a compliance date/ amortization?

Resident Application: Can a resident initiate an application for a compliance date/ amortization?

