

ORDINANCE NO. 2004-02

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF SEALY, TEXAS, BY ADDING THERETO A NEW CHAPTER 29, DESIGNATING A CERTAIN AREA WITHIN THE CITY LIMITS OF THE CITY OF SEALY, TEXAS, AS THE "DOWNTOWN DISTRICT; ESTABLISHING LAND USE STANDARDS AND REGULATIONS FOR THE DOWNTOWN DISTRICT; PROVIDING FOR REVIEW AND APPROVAL OF BUILDING PLANS WITHIN THE DOWNTOWN DISTRICT; PROVIDING PROCEDURES FOR CHANGES TO DISTRICT BOUNDARIES AND REGULATIONS; ESTABLISHING PROCEDURES FOR APPEALS AND REVIEW BY A ZONING BOARD OF ADJUSTMENT; PROVIDING A PENALTY OF AN AMOUNT NOT TO EXCEED \$2,000 FOR EACH DAY OF VIOLATION OF ANY PROVISION HEREOF; AND PROVIDING FOR SEVERABILITY.

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WHEREAS, Chapter 211 of the Texas Local Government Code provides that cities may adopt regulations for designated places and areas of historical, cultural, or architectural importance and significance; and

WHEREAS, the City Council has determined that the old downtown area of the City, generally described as the area within and bordered by the Union Pacific Railroad Right-of-Way, W. Front Street, Fifth Street, and State Highway 36, is an area of historical, cultural, and architectural importance and significance to the City and its environs; and

WHEREAS, City Council, property owners, the business community, and other citizens of the City are interested in the revitalization and preservation of the old downtown area; and

WHEREAS, the City's Planning and Zoning Commission and City Council have held public hearings regarding adoption of regulations for such area; and

WHEREAS, the Planning and Zoning Commission, following its public hearing, has recommended that these regulations be adopted, and that the old downtown area of the City be designated as the "Downtown District"; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SEALY, TEXAS:

Section 1. The Code of Ordinances of the City of Sealy, Texas (the "Sealy City Code"), is hereby amended by adding thereto a new Chapter 29, to read as follows:

“CHAPTER 29**DOWNTOWN PRESERVATION DISTRICT.****Sec. 29-1. General purpose and description.**

(a) The Downtown District (DD) includes the original business district of the City of Sealy, and these regulations are intended to preserve the physical characteristics of the area and promote the safety, welfare, convenience, and enjoyment of the general public, including visitors and tourists to the City. These regulations are further designed to protect and enhance the historic downtown area and protect and enhance a pleasing environment that improves the quality of life, promotes the beautification of the area, and encourages business development and retention. The DD is further established to ensure that use of public areas and signage is clear and appropriate to prevent needless clutter; provide for unified and orderly development within the area; and promote and aid economic growth.

(b) The establishment of the DD does not limit the uses to which the property within the District may be put; however, this Section will regulate and control the aesthetic elements of the area and facades of buildings and public areas. The regulations contained herein do not, unless specifically stated, negate or excuse compliance with any other regulation within this or other City ordinances. In the event of conflict between the requirements of this Section and another provisions of this Ordinance or other City ordinance, the more stringent requirement shall apply.

Sec. 29-2. Boundaries. The area designated as DD includes the eight (8) City blocks within the old town site of the City of Sealy, which are bordered by the centerlines of the Union Pacific Railroad right-of-way, West Front Street, Fifth Street, and State Highway 36, such area being further defined by a heavy solid line and designation on the official City map attached hereto as Exhibit “A” and made a part hereof.

Sec. 29-3. Use regulations. The purpose of the DD is to allow a mix of land uses that are compatible and complementary with one another, and which are conducive to the revitalization of the area. Certain uses have been determined to be wholly incompatible with the goals of the District, and are therefore specifically prohibited.

(a) Permitted Uses. Establishments which fall within the following general categories shall be permitted by right:

1. Residential; single-family residence, duplex, multi-family dwellings, accessory residential uses, and home occupations incidental to a permitted residential use;
2. Retail sales and service establishments, including the following categories:
 - a. retail food establishments, such as bakery or specialized food goods, restaurants, cafes; private clubs, including establishments that serve alcohol;
 - b. specialty sales stores such as jewelry stores, stationary stores, antique stores, craft or art stores,
 - c. General merchandise stores for personal or household consumption, such as furniture stores, drug stores, department stores;
 - d. Retail service establishments, providing services or entertainment, such as banks, real estate, finance, legal, medical, and other professional offices, barber shops, beauty parlors, locksmiths, photography studios, tailor shops, and watch repair; and
 - e. Auditoriums, theaters, museums, and galleries

(b) Prohibited Uses. The following uses are specifically prohibited in the DD, and shall not be allowed:

1. the storage or sale of hazardous chemicals;
2. auto repair stores, tire stores, automobile or vehicle sales establishments;
3. sexually oriented businesses or adult entertainment facility;
4. day care facility for any age group;
5. manufacturing facilities of any type, whether the manufacturing process consists of the mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the manufacturing of products, and the blending of materials;
6. storage facilities, including storage warehouses or indoor storage facilities, for the storage of personal, household or business items, except storage facilities accessory and incidental to a use permitted by paragraph (a) of this Section;
7. funeral homes and mortuaries;
8. hotels and motels;
9. laundry facilities;
10. outdoor commercial swimming pool; and
11. veterinarian offices, including kennels, boarding facilities, animal hospitals, shelters, or pet day care facilities.

(c) Nonconforming Uses. There may exist uses of land or buildings, structures, characteristics of use or land which were lawfully begun prior to the date of adoption of this Ordinance, but which do not meet the requirements of this Ordinance. Such uses may be continued subject to the provisions of this Section. A nonconforming status under the provisions of this Section shall exist when a use of land, building or structure that does not conform to the regulations prescribed for the DD, but was in existence and lawfully constructed, located or operating on the effective date of this Ordinance, or amendments hereto, and has since been in regular and continuous use.

1. Repair and Maintenance. Normal maintenance and incidental repair may be performed on a complying structure that contains a nonconforming use or on a nonconforming structure. This Section shall not be construed to prevent the strengthening or restoration to a safe condition of a structure in accordance with an order of the Building Official who declares a structure to be unsafe and orders its restoration to a safe condition.

2. Abandonment.

a. A nonconforming use of land or of a structure in the DD that is discontinued or remains vacant for a period of six (6) consecutive months shall be presumed to be abandoned and shall not thereafter be reestablished or resumed. Any subsequent use or occupancy of the structure or land must conform to the regulations for the DD.

b. Overcoming presumption of abandonment. The presumption of abandonment may be rebutted upon showing, to the satisfaction of the Building Official, that during such period the owner of the land or structure has been:

(1) Maintaining the land and structure in accordance with the building code and did not intend to discontinue the use;

(2) Actively and continuously marketing the land or structure for sale or lease for that particular nonconforming use; or

(3) Engaged in other activities that would affirmatively prove there was not intent to abandon.

c. Calculation of period of abandonment. Any period of such discontinuance caused by government action, fire or natural calamities and without any contributing fault by

the nonconforming user shall not be considered in calculating the length of discontinuance pursuant to this Section.

3. Movement, alteration and enlargement. No nonconforming use may be moved, enlarged or altered and no nonconforming use of land may occupy additional land, except as follows:

a. Enlargement. A nonconforming use may not be enlarged, expanded or extended to occupy all or a part of another structure or land that it did not occupy on the effective date of this Ordinance. However, a nonconforming use may be extended within the same structure, provided no structural alteration is proposed or made for the purpose of the extension. The enlargement, expansion or extension of a nonconforming residential use shall be excepted from this limitation, provided that the enlargement, expansion or extension does not exceed fifty percent (50%) of its appraised value as it existed prior to the enlargement, expansion or extension; it was not destroyed to the extent of fifty percent (50%) or more; and, it complies with all other applicable ordinances and regulations of the City.

b. Exterior or interior remodeling or improvements to structure. Exterior or interior remodeling or improvements to a structure containing a nonconforming use shall be allowed, provided there is no expansion of the nonconforming use.

c. Relocation of structure. A structure containing a nonconforming use may not be relocated to another site within the DD unless the use conforms to the regulations of the DD.

d. Destruction of structure with nonconforming use. If a structure that contains a nonconforming use is destroyed to the extent of fifty percent (50%) or more of its appraised value by fire or natural calamity or is voluntarily razed or is required by law to be razed, the nonconforming use shall not be resumed. The determination of the extent of damage or destruction under this subsection shall be based on the ratio of the estimated cost of restoring the structure to its condition before the damage or destruction to the estimated cost of duplicating the entire structure as it existed prior to the damage or destruction.

4. A nonconforming structure may not be moved, enlarged or altered, except in the manner provided in this Section or unless required by law.

a. Repair, maintenance, alteration and enlargement. Any nonconforming structure may be repaired, maintained, altered or enlarged; provided, however, that no such repair, maintenance, alteration or enlargement shall either create any new noncompliance or increase the degree of the existing noncompliance of all or any part of such structure.

b. Moving. A nonconforming structure shall not be moved in whole or in part, for any distance whatsoever, to any other location on the same or other lot within the DD unless the entire structure shall thereafter conform to the regulations of the DD.

c. Damage or partial destruction. If a nonconforming structure is damaged or destroyed by fire or natural calamity to the extent of less than fifty percent (50%) of its appraised value, the structure may be restored if restoration is started within six (6) months and diligently pursued to completion. Any delay in starting such restoration that is caused by government action or natural calamities and without contributing fault by the owner shall be deducted in calculating the starting date of restoration.

5.e. Nonconforming Lots of Record. Notwithstanding the minimum requirements for lot size within the DD, structures may be constructed, built, moved onto, expanded, reconstructed, occupied, or used on a nonconforming lot of record that existed prior to the effective date of this Ordinance, or any amendment hereto, provided all such structures shall comply with all other applicable ordinances of the City.

Sec. 29-4. Area regulations. The minimum lot area shall be 2,500 square feet. The minimum lot width shall be twenty-five feet (25'), except on corner lots, the minimum width shall be thirty-five feet (35'). The minimum lot depth shall be one hundred feet (100').

Sec. 29-5. Parking regulations. Parking for all uses shall conform to the standards set forth in Chapter 28 of the Sealy City Code.

Sec. 29-6. Height regulations. The height of buildings and structures shall not exceed three (3) stories or thirty-five feet (35').

Sec. 29-7. Setbacks and coverage regulations. Front and side yard setback requirements are zero feet (0'). Rear yard setbacks shall be twenty feet (20').

Sec. 29-8. Sign regulations. Signs shall be permitted within the DD according to the sign regulations of the City of Sealy; provided, however, the following additional restrictions shall apply:

(a) The collective area of all window signs posted in, upon, or within three feet (3') of any window surface may not exceed thirty percent (30%) of the total window area of any one floor of a building, or thirty percent (30%) of the front window area of any individual occupant of a building. For purposes of this Section, "window signs" shall mean any paper, plastic, neon, or painted display affixed to the inside or outside of the window surface;

(b) Signs shall not contain moving parts, nor shall a sign itself move;

(c) Signs may not be electrically lit from within;

(d) Signs may be allowed along the drop flaps of awnings; and

(e) Permanent banners are prohibited. Temporary banners may be used for a period not exceeding ten (10) days; provided, however, temporary banners may not be used more than thirty (30) days within any one (1) calendar year.

Sec. 29-9. Screening. The following activities, when located at front and side areas of a main structure on a site, shall be screened to a height sufficient to prevent the view of such use at ground level:

(a) All outside storage;

(b) Industrial activities;

(c) Off-street loading areas;

(d) Refuse storage areas, dumpsters, and all related activities;
and

(e) Air conditioning and heating equipment;

Sec. 29-10. Architectural elements.

(a) New development or construction within the DD must have front and side facades constructed of wood, brick, masonry, stone, stucco, or glass. Architectural metal accents, such as copper or bronze, may be used to accent structural elements. No metal buildings shall be permitted, unless such structures are faced with wood, brick, masonry, or stucco.

(b) Existing structures. Every reasonable effort shall be made to adapt a property in a manner that requires minimal alteration of the any distinctive architectural features or characteristics of a structure.

(c) The design of walls and other structures located on the same site, including those used for screening, as set forth in paragraph 1 hereof, shall be constructed of the same or similar materials as the main building on the lot.

(d) Provided, however, with regard to subparagraphs 2. and 3. above, an applicant may present to the Planning and Zoning Commission and Council, on a site plan, specifications that include elevation drawings and proposed alternative materials, which meet or exceed the appearance and durability requirements above.

(e) Sidewalk furniture and landscape planters are encouraged within this District, in accordance with the following standards:

1. An applicant must apply for a permit for the placement of sidewalk furniture or landscape planters, on a form prepared by the City's Building Official, which form shall include a description and specifications of the furniture or planter to be placed on a sidewalk, and a drawing or other description sufficient to identify where the item will be located. The Building Official, or other designated public official, shall review all such permit applications to ensure that the standards of this Section are met, and that public safety will not be impaired. The number and location of furniture and planters may be limited, to assure that public safety is not compromised.

2. The placement on a City sidewalk of permanently installed furniture designed for temporary use by pedestrians, or landscaping planters, shall be allowed within this District, provided a minimum of five feet (5') of clearance is maintained on the sidewalk at all times.

3. Benches and planters shall be constructed of wood, iron, cement, or similar material, shall be designed so as not to

stain the sidewalk, and shall be maintained in good condition by the property owner or tenant who:

- a. places the bench or planter at that location; or
- b. operates the business establishment in front of which the bench or planter is placed.

4. Any and all landscape trees, shrubs, plants, or flowers planted in any landscape planter, pot, or basket, as provided under this paragraph 5, shall be properly maintained by the property owner or tenant who:

- a. places the planter at that location; or
- b. operates the business establishment in front of which the planter is placed.

5. No advertising of any kind shall be allowed upon any bench or planter.

6. Outside displays of store merchandise shall not be allowed.

Sec. 29-11. Review of building plans.

(a) No person shall perform any construction on vacant land, perform reconstruction or alteration of any existing building within the DD, or make any material change in the exterior elements of an existing structure that will be visible from a public right-of-way, without first making application to the Building Official, as required by this Section.

(b) Criteria for review. In considering an application for a building permit, the following guidelines shall be considered:

1. Construction of improvements on a vacant lot or land. Where construction is proposed on a vacant lot or land within the DD, every reasonable effort shall be made to protect and preserve architectural resources affected by, or adjacent to, any new construction. New construction should be similar in size, scale, and design to the structures adjacent to such lot or land.

2. Existing structures.

a. Every reasonable effort shall be made to renovate existing structures in a manner that requires minimal alteration of any distinguishing architectural feature or element. The destruction, removal, or alteration of any historic material or distinctive architectural features should be avoided when possible.

b. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any new construction.

c. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical or architectural elements, and such design is compatible with the size, color, material, and character of the existing structure, if any, and adjacent structures.

d. Wherever possible, additions or alterations to existing buildings or structures shall be performed in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.

(c) No building permit shall be issued for construction of a new structure, or for a significant addition or alteration to an existing structure, within the DD until the Planning and Zoning Commission reviews and recommends the approval thereof. All other applications for building permits within the DD for construction, not considered to be for new construction or a significant addition or alteration to an existing structure, shall be approved by the Building Official. Any required review and approval by the Commission is in addition to and not in lieu of any building permit that may be required by any other City ordinance. The Building Official shall deny any application for a building permit for a structure or site that requires, but does not have, approval by the Planning and Zoning Commission.

Sec. 29-12. Process for application.

(a) Prior to the commencement of any work requiring review of plans for a building permit, the owner shall file an application for such permit with the City's Building Official. Such application shall contain:

1. the name, address, telephone number of the applicant and a detailed description of the proposed work;
2. the location and a photograph of the property;
3. the proposed use or uses to be located on the property, including all parking and accessory structures;
4. elevation drawings, photographs, or illustrations of the proposed changes or new construction, including placement of the building, parking, and all related accessory structures or functions;
5. samples of materials to be used;
6. if the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination (if any), and a plan showing the sign's location on the property; and
7. any other information that the Building Official or the Planning and Zoning Commission may deem necessary in order to complete their review of an application.

(b) The Planning and Zoning Commission review of an application shall be at a regularly scheduled meeting, within forty-five (45) days of the date the application is received, at which time an opportunity will be provided for the applicant to be heard. The Planning and Zoning Commission shall then approve, deny, or approve with modifications, the permit within fifteen (15) days after the meeting at which such review was conducted, provided, however, both review and action may occur at the same meeting. In the event the Commission does not act within sixty (60) days of the receipt of the application, the Building Official may review and, if determined to be appropriate under the above criteria, may grant the permit or require revisions to bring the project into compliance.

(c) All decisions of the Planning and Zoning Commission shall be in writing and shall state its findings pertaining to approval, denial, or modification of the application. A copy of such decision shall be personally given or mailed to the applicant. Additional copies shall be filed as part of the public record on that property and distributed to appropriate City departments.

(d) Appeals from decisions made by the Building Official, under the criteria established in Section 29-11 hereof, may be made to the Planning and Zoning Commission. Appeals from decisions of the

Planning and Zoning Commission may be made only to the City Council. Requests for appeals must be submitted to the City Secretary within ten (10) days of the decision being appealed, and may be made by any aggrieved person.

Sec. 29-13. Changes in District boundaries.

(a) City Council may, from time to time by ordinance, amend, supplement, or otherwise change by ordinance the boundaries of the DD or the regulations herein established. Changes may be made only in accordance with the procedures of this Section and Chapter 211, Texas Local Government Code.

(b) Before taking action on any proposed amendment, supplement, or other change, the City Council shall submit the proposed revision to the Planning and Zoning Commission for its recommendation and report.

(c) The Planning and Zoning Commission shall make a preliminary report and hold a public hearing thereon before submitting its final report to City Council. Written notice of such public hearing before the Commission shall be sent to owners of real property lying within two hundred (200) feet of the property proposed to be added to or removed from the DD, and such notice to be given not less than ten (10) days before the date set for hearing to all such owners, as such ownership appears on the last approved City tax rolls. Such notice may be served by depositing the same in the regular United States mail, properly addressed and postage prepaid.

(d) After receipt of the final report from the Planning and Zoning Commission, a public hearing shall be held by the City Council before adoption of any ordinance amending, supplementing, or changing the boundaries of the District or the regulations herein. Notice of such hearing shall be given by publication one (1) time in a newspaper of general circulation within the City, stating the time and place of such hearing, which time shall not be less than fifteen (15) days prior to the date of publication.

Sec. 29-14. Zoning Board of Adjustment.

(a) The Zoning Board of Adjustment shall have the authority to:

1. exercise the appropriate power, authority, duties, and procedures pursuant to the laws of the State of Texas, and applicable ordinances of the City;

2. hear and decide upon an alleged error in any order, requirement, decision, or determination by the Building Official in the enforcement of these regulations, except as provided in subparagraph 8 of paragraph N hereof; and

3. authorize variances from these regulations, except as provided in subparagraph 8 or paragraph N hereof, where it is determined that the granting of a variance will not be contrary to the public interest when, owing to special conditions, a literal enforcement of the provisions of these regulations will result in an unnecessary hardship, and so that the spirit of these regulations shall be observed and substantial justice done.

(b) Any person may appeal a decision of the Building Official to the Zoning Board of Adjustment, as provided by State law. Such appeal shall be filed, in writing, with the City Secretary not later than thirty (30) days after the date a decision is made by the Building Official. If such person or persons fails to file such petition within such thirty-day period, the decision of the Building Official shall become final and binding.

(c) Variances.

1. The Zoning Board of Adjustment shall not grant a variance unless it shall, in each case, make specific written findings, based directly upon the particular evidence presented to it, which support written conclusions that:

a. the granting of a variance is necessary to secure appropriate development of a parcel of land that differs from other parcels within the District by being of such restricted area, shape, or slope that it cannot be appropriately developed without modification;

b. the granting of a variance will not be materially detrimental or injurious to other property or improvements within the neighborhood in which the subject property is located, nor impair an adequate supply of light or air to adjacent property, substantially increase congestion on public streets, increase the danger of fire, endanger the public health, safety, and well-being, or substantially diminish or impair property values within the neighborhood; and

c. the variance desired will not be contrary to the general purpose and intent of these regulations.

2. The Zoning Board of Adjustment may establish reasonable stipulations of approval or modification to a plan proposed with a variance, in order to minimize the impact of the variance on surrounding property, preserve the character of the area, or protect property within the area.

(d) Appeal of a decision by the Zoning Board of Adjustment. Any person may appeal a decision by the Zoning Board of Adjustment to a court of competent jurisdiction. Such appeal shall be filed with the Court not later than ten (10) days after the filing of the Board's decision with the City Secretary. If such person or persons fail to file such petition within such ten-day period, then the decision of the Board shall become final and binding.

(e) Effect of filing an appeal. The filing of a notice of an appeal shall stay any proceeding in furtherance of the action appealed from, unless the Building Official rendering such decision, determination, or interpretation certifies, in writing, to the Zoning Board of Adjustment and the applicant, that a stay poses an imminent peril to life or property, in which case the appeal will not stay further proceedings. The Board may review such certification and grant or deny a stay on the proceedings.

(f) The Zoning Board of Adjustment may reverse, affirm, or modify the decision, determination, or interpretation appealed from and, in so modifying such decision, determination, or interpretation, the Board shall be deemed to have all the powers of the officer from whom the appeal is taken, including the power to impose reasonable conditions to be complied with by the applicant.

(g) All decisions made by the Zoning Board of Adjustment shall be provided in writing to the applicant and shall include the following, at a minimum: the action taken by the Board, any correction or compliance that is necessary to bring the project into conformance, the subsequent procedures or steps that may or shall be taken, and the location, time, and date for taking such subsequent procedures or steps.

(h) The Zoning Board of Adjustment shall not have the authority to consider a variance from, or appeal of, a decision made by the Building Official or the Planning and Zoning Commission in the application of the criteria established in paragraph K hereof.

Sec. 29-15. Penalty. Any person who shall violate any provision of this Chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in an amount not to exceed \$2,000. Each day of violation shall constitute a separate offense."

Section 2. In the event any clause phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Sealy, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, whether there be one or more parts.

PASSED AND APPROVED on first reading this 9th day of June 2004.

PASSED, APPROVED, and ADOPTED on second and final reading this 14th day of July 2004.

Betty Reinbeck
Mayor

ATTEST:

Krisha Langton
City Secretary