

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT [\[1\]](#)

[Sec. 29-1. - General purpose and description.](#)

[Sec. 29-2. - Boundaries.](#)

[Sec. 29-3. - Use regulations.](#)

[Sec. 29-4. - Area regulations.](#)

[Sec. 29-5. - Parking regulations.](#)

[Sec. 29-6. - Height regulations.](#)

[Sec. 29-7. - Setbacks and coverage regulations.](#)

[Sec. 29-8. - Sign regulations.](#)

[Sec. 29-9. - Screening.](#)

[Sec. 29-10. - Architectural elements.](#)

[Sec. 29-10.1. - Architectural elements—Residential.](#)

[Sec. 29-11. - Review of building plans.](#)

[Sec. 29-12. - Process for application.](#)

[Sec. 29-13. - Changes in district boundaries.](#)

[Sec. 29-14. - Planning commission.](#)

[Sec. 29-15. - Penalty.](#)

Sec. 29-1. - General purpose and description.

- (a) The downtown district (DD) includes the original business district of the city, 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 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 other provisions of this chapter or other city ordinance, the more stringent requirement shall apply.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-2. - Boundaries.

The area designated as DD includes the eight 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

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

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.

(Ord. No. 2012-04, § 1, 7-10-2012)

Editor's note—

Exhibit A is not set out at length herein, but is on file and available for inspection in the office of the city secretary.

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.

- (1) *Permitted uses.* Establishments which fall within the following general categories shall be permitted by right:
 - a. Residential; single-family residence, duplex, multifamily dwellings on the second and third levels of the structure, accessory residential uses, and home occupations incidental to a permitted residential use;
 - b. Retail sales and service establishments, including the following categories:
 1. Retail food establishments, such as bakery or specialized food goods, restaurants, cafes, private clubs, including establishments that serve alcohol;
 2. Specialty sales stores such as jewelry stores, stationary stores, antique stores, craft or art stores;
 3. General merchandise stores for personal or household consumption, such as furniture stores, drug stores, department stores;
 4. 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;
 5. Auditoriums, theaters, museums, and galleries;
 6. Bed and Breakfast establishments, hotels and motels; and
 7. Wineries and breweries.
- (2) *Prohibited uses.* The following uses are specifically prohibited in the DD, and shall not be allowed:
 - a. The storage or sale of hazardous chemicals;
 - b. Auto repair stores, tire stores, automobile or vehicle sales establishments;
 - c. Sexually oriented businesses or adult entertainment facility;
 - d. Day care facility for any age group;
 - e. 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;

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- f. 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 subsection (1) of this section and occupies the same lot of the permitted use;
 - g. Funeral homes and mortuaries;
 - h. Laundry facilities;
 - i. Veterinarian offices, including kennels, boarding facilities, animal hospitals, shelters, or pet day care facilities.
- (3) *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 chapter, but which do not meet the requirements of this chapter. 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 chapter, or amendments hereto, and has since been in regular and continuous use.
- a. *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.
 - b. *Abandonment.*
 - 1. A nonconforming use of land or of a structure in the DD that is discontinued or remains vacant for a period of six 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.
 - 2. 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:
 - i. Maintaining the land and structure in accordance with the building code and did not intend to discontinue the use;
 - ii. Actively and continuously marketing the land or structure for sale or lease for that particular nonconforming use; or
 - iii. Engaged in other activities that would affirmatively prove there was not intent to abandon.
 - 3. 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.
 - c. *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:
 - 1. *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 chapter. 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 50 percent of its appraised value as it existed prior to the

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

enlargement, expansion or extension; it was not destroyed to the extent of 50 percent or more; and, it complies with all other applicable ordinances and regulations of the city.

2. *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.
 3. *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.
 4. *Destruction of structure with nonconforming use.* If a structure that contains a nonconforming use is destroyed to the extent of 50 percent 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.
- d. *[Moving, enlarging or altering of structure.]* A nonconforming structure may not be moved, enlarged or altered, except in the manner provided in this section or unless required by law.
1. *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.
 2. *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.
 3. *Damage or partial destruction.* If a nonconforming structure is damaged or destroyed by fire or natural calamity to the extent of less than 50 percent of its appraised value, the structure may be restored if restoration is started within six 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.
- 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 chapter, or any amendment hereto, provided all such structures shall comply with all other applicable ordinances of the city.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-4. - Area regulations.

The minimum lot area shall be 2,500 square feet. The minimum lot width shall be 25 feet, except on corner lots, the minimum width shall be 35 feet. The minimum lot depth shall be 100 feet.

(Ord. No. 2012-04, § 1, 7-10-2012)

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

Sec. 29-5. - Parking regulations.

Parking for all uses within the Downtown District is exempt from the standards set forth in [chapter 28](#) of the Sealy City Code.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-6. - Height regulations.

The height of buildings and structures shall not exceed three stories or 35 feet. The minimum height for all new structures on a corner lot is 20 feet.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-7. - Setbacks and coverage regulations.

Front and interior side yard setback requirements are zero feet, however, the front building line for infill construction may not extrude or intrude the original front building line of the existing structures on the same block. Rear yard setbacks shall be 20 feet, however may lineup with adjacent structures on that same block.

The width of the new construction shall fill the entire empty space between buildings. Narrow unusable spaces between buildings must be cleared of all debris and closed off with like building materials of the surrounding structures or a permanently affixed locking gate consisting of black iron fencing complimenting the style of the architectural elements of the building.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-8. - Sign regulations.

Signs shall be permitted within the DD according to the sign regulations of the city; provided, however, the following additional restrictions shall apply:

- (1) The collective area of all window signs posted in, upon, or within three feet of any window surface may not exceed 30 percent of the total window area of any one floor of a building, or 30 percent 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;
- (2) Signs shall not contain moving parts, nor shall a sign itself move;
- (3) Signs may be electrically lit from within;
- (4) Neon signs are allowed;
- (5) Signs may be allowed along the drop flaps of awnings; and
- (6) Permanent banners are prohibited. Temporary banners may be used for a period not exceeding ten days; provided, however, temporary banners may not be used more than 30 days within any one calendar year;
- (7) Wall signs are permitted for each business within the Downtown District with an allowable total sign area of one and one-half square feet for each linear foot of the building frontage. The wall sign shall not project more than 3 feet above the roof line and must be located on the portion of the building at the site where the goods or services are offered. Colors of all signs must be pre-approved by the City of Sealy.

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- (8) For individual tenants or businesses the total surface square footage of projecting signs (signs attached to the building at one end only) should not exceed 12 square feet. Only one face of a flat or double-faced sign should be included in the computation of sign area.
- (9) All sign colors must conform to the approved color palate for the downtown district.
- (10) Permanent, freestanding signs including pole signs are prohibited in the downtown district.
- (11) Notwithstanding any other provision of this section, a new tenant in the downtown district may place a temporary sign on the premises of said development for a period not to exceed the first 60 days of tenant's conducting business in such development.
- (12) Flags with a maximum size of three feet by five feet are permitted which are seasonal (pertaining to the current season as designated on a U.S. calendar), promotional, or spirit flags supportive of Sealy schools. All flags must be in good condition at all times.
- (13) A-frame signs are permitted on sidewalks, however a minimum of five feet of clearance is to be maintained on the sidewalk at all times.
- (14) The size of signs that identify a business, building or complex may be reduced or may exceed the size limitations by no more than 15 percent contained in this section if it is determined by the city planning department that the visual impact of the signs are or are not compatible with the signage of other buildings within the downtown district and are not in proportion to the size and design of the building.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-9. - Screening.

The following activities, shall not be located at front areas of any structure on a site but may be located at the rear or side of a structure:

- (1) Off-street cargo loading areas.
- (2) Air conditioning and heating equipment.
- (3) All outside storage.
- (4) Industrial activities.
- (5) Refuse storage areas, dumpsters, and all related activities other than small city-provided waste receptacles along the sidewalks.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-10. - Architectural elements.

- (a) New development, construction, or renovations of structures within the DD must have front and side primary facades constructed of wood, hardiplank, brick, masonry, stone, stucco (except highly textures and coarse), glass or EIFS (exterior insulated finishing system). No metal buildings shall be permitted, unless such structures are faced with wood, hardiplank, brick, masonry, or stucco (except highly textures and coarse) or EIFS (exterior insulated finishing system).
 - (1) *Permitted materials for accent and trim:*
 - a. Any of the recommended primary materials listed above.
 - b. Pre-cast masonry (for trim, cornice, or parapet cap only).
 - c. Ceramic tile.

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- d. Terra cotta.
 - e. Decorative stamped or pressed metal paneling.
 - f. Architectural metal accents, such as copper or bronze.
- (2) *Prohibited materials.* The following list contains a description of materials that are uncharacteristic and unsympathetic with the existing architecture found in downtown Sealy, and shall not be allowed for use in new construction or in the alteration or remodeling of existing buildings:
- Prohibited materials for primary facade, accent, and trim.
- a. CMU (concrete masonry units), such as cinder blocks and precast concrete paneling.
 - b. Oversized brick and mortar at a scale not found on other downtown buildings.
 - c. Unfinished, painted or stained composite wood, such as plywood.
 - d. Wood siding or paneling in a diagonal or vertical pattern.
 - e. Imitation wood, composite, vinyl, or aluminum siding.
 - f. Metal finishes, such as corrugated, embossed, expanded, or standing seam metal.
 - g. Mirrored, metalized, reflective, or opaque glass, glass block.
 - h. Highly textured and coarse stucco.
- (3) *Consistency of facades.* Sealy's Downtown District currently maintains a 25-foot facade width rhythm. This practice is encouraged and may be accomplished by using the following options every 25 feet:
- a. Columns.
 - b. Pilasters.
 - c. Changing material.
 - d. Patterns/colors.
 - e. Facade portions.
- (4) *Colors.* Colors shall be chosen from the approved historical color palate and should complement the neighboring buildings; and:
- a. Select a color scheme that will visually link the building to its past as well as its neighbors;
 - b. Consider colors that are compatible with the building's predominant materials;
 - c. Consider the building as a whole as well as details that need emphasis. Use a single color on similar elements such as window frames to show that they are all part of the same facade;
 - d. Reserve brighter colors for small accents to emphasize entrances and highlight special ornamentation;
 - e. No two adjacent buildings should be painted the same shade of color;
 - f. If the applicant wishes to use a color not on the palette, a sample should be included with the application for approval.
- (5) *Consistent facade features.* Consistent traditional facade features allow for patterns and visual alignments that enhance the overall character of the downtown. These features should be aligned with neighboring buildings in both height and dimension. These features include:

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- a. Kick plate below the front windows.
 - b. First floor display windows.
 - c. Vertical window patterns and shapes; window sills on second floor.
 - d. Angled entrances and recessed central entrances.
 - e. Transom and parapet caps or cornices.
- (6) *Windows.*
- a. First floor, storefront windows shall be evenly distributed at pedestrian level across the length of the facade.
 - b. The first floor of any downtown commercial building should be primarily transparent; 50 percent to 75 percent of a ground floor facade facing a public street shall be made of transparent materials.
 - c. Windows are required along the sides of buildings which are visible from roadways or parking areas.
 - d. Use windows similar to the original windows.
 - e. Exterior renovation of any structure requires the re-opening, revealing, preservation and maintenance of existing second story windows including clerestory features.
 - f. New construction including clerestory windows shall be placed in harmony and aligned with the surrounding building facades.
 - g. New multi-level developments must include second and third story windows which match the surrounding window lines and styles; compose of at least 25 percent to 40 percent of the upper story facades are not mirrored glass or darkly tinted.
- (7) *Awnings.*
- a. Awnings should be designed to fit the storefront opening and to emphasize the building's proportions.
 - b. Awnings should not obscure or damage important architectural details.
 - c. Awnings should align horizontally with neighbor's awnings.
 - d. There shall be minimum clearance of eight feet between the lowest point of projection of the awning and sidewalk or public right-of-way immediately below.
 - e. All awnings, canopies and projecting overhangs shall be affixed or fastened to buildings by supports in such a manner as not to be dangerous or harmful to the users of the sidewalks or streets.
 - f. No awning, canopy or projecting overhang shall be used for a support for any sign or advertising.
 - g. Colors used for the awnings should be chosen from the approved color palette and complement the entire building facade color scheme and may be used in combination with complimentary stripes.
 - h. Different colored awnings are encouraged for adjacent businesses, to help in differentiating the businesses and tenants.
- (8) *Murals.* Murals painted on a wall surface may be permitted upon approval by the city to ensure:
- a. The artwork complements the design of the building in color, shape, and location on the building; and

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- b. Material is durable and resistant to graffiti and weather.
- (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 (a) hereof, shall be constructed of the same or similar materials as the main building on the lot.
- (d) Provided, however, with regard to subparagraphs (b) and (c) above, an applicant may present to the planning 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 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 subsection (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.
- (f) Screening walls may also be constructed of landscaping to a height sufficient to prevent the view of such use at ground level.
- (g) Outside displays of store merchandise shall be allowed for a maximum of seven consecutive days, not to exceed a total of 21 days per year. A minimum of five feet of clearance is to be maintained on the sidewalk at all times.

(Ord. No. 2012-04, § 1, 7-10-2012)

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

Sec. 29-10.1. - Architectural elements—Residential.

- (a) *[Plans.]* All plans for new construction, exterior renovations or demolition must be submitted to the city for approval. New Construction or redevelopment of individual residential lots shall be consistent with historical homes in Sealy or the residential architectural styles that are predefined in the downtown district. Original building materials should be kept where possible and replicated if needed. Additions and minor alterations to houses shall respect and adhere to the existing architectural style. A major alteration of the facade of a noncontributing structure should adopt historical references and architecture compatible with contributing structures. New development, construction, or renovations of structures, within the DD must contain these primary materials on all sides: wood, Hardi-plank, brick, masonry, stone, stucco, or glass. No metal buildings shall be permitted. No portable, pre-manufactured, mobile or temporary structures shall be permitted.
- (1) *Permitted materials for accent and trim.*
- a. Any of the recommended primary materials listed above.
 - b. Pre-cast masonry (for trim only).
 - c. Architectural metal accents, such as copper or bronze.
 - d. Hardi-plank.
- (2) *General prohibited materials.* The following list contains a description of materials that are uncharacteristic and unsympathetic with the existing architecture found in downtown Sealy, and shall not be allowed for use in new construction or in the alteration or remodeling of existing structures:
- a. Prohibited materials for primary facade, accent, and trim.
 - b. CMU (concrete masonry units), such as cinder blocks and precast concrete paneling.
 - c. Oversized brick and mortar at a scale not found on other downtown residences.
 - d. Unfinished, painted or stained composite wood, such as plywood.
 - e. Wood siding or paneling in a diagonal or vertical pattern.
 - f. Composite, vinyl, or aluminum siding.
 - g. Metal finishes, such as corrugated, embossed, expanded, or standing seam metal.
(However, standing seam metal roofs are allowed).
 - h. Mirrored, metalized, reflective, or glass block.
 - i. Highly textured and coarse stucco.
 - j. EIFS (exterior insulated finishing system).
- (b) *Porches and balconies.*
- (1) Front porches and porch features that are in good condition or repairable and are in character with the architectural style of the building shall be retained and repaired to match original materials, size and configuration to maximum extent possible.
 - (2) Replacement of existing porch with design or materials not in character with the architectural style and period is prohibited.
 - (3) Porches not visible from right-of-way can be screened. No architectural elements shall be damaged or removed.

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- (4) Porches visible from right-of-way shall only be enclosed with glass or screen and require approval by the city. Screened enclosures shall be reviewed on a case by case review to determine consistency with historic architectural style of home.
- (c) *Garages and accessory structures.*
 - (1) Garages are to be detached and recessed behind the home. However, a preexisting attached garage can be rebuilt if justified by the circumstances.
 - (2) Single-wide garage doors are preferred to a double-wide door, if visible to the street.
 - (3) Accessory structures are to be located in conformance with the setback regulations and respect building separation as applicable.
 - (4) Prefabricated accessory storage structures shall not exceed one hundred (100) square feet.
 - (5) Accessory structures shall not exceed height of main structure.
- (d) *Fences and walls.* Accepted type of fencing on single-family residential lots include wood, PVC, white picket and wrought-iron. Chain-link fences whether vinyl coated or not are prohibited. Any replacement of existing chain-link fence shall use a recommended style fence material. Split-rail fence is not allowed. Fences in the front yards are not allowed.
- (e) *Colors of residence and accessory structures.*
 - (1) Colors shall be chosen from the approved historical color chart and should complement the neighboring buildings.
 - (2) Select a color scheme that will visually link the building to its past as well as its neighbors.
 - (3) Consider colors that are compatible with the building's predominant materials.
 - (4) Consider the building as a whole as well as details that need emphasis.
 - (5) In general, use a single color on similar elements such as window frames to show that they are all part of the same façade.
 - (6) Reserve brighter colors for small accents to emphasize entrances and highlight special ornamentation.
 - (7) No two adjacent buildings should be painted the same shade of color.
 - (8) If the applicant wishes to use a color not on the palette, a sample should be included with the application.
 - (9) Brick, stone or other materials intended to be naturally unpainted shall remain unpainted, unless the material has been painted before. Restoration to the original, unpainted condition is encouraged.
 - (10) Painted areas must be maintained.
 - (11) Painted areas must have a consistent finish.
- (f) *Setbacks and coverage regulations.* Front and side yard setback requirements are zero feet. Rear yard setbacks shall be 20 feet. All front and side building lines should be consistent with adjacent structures on that block. The front line of infill buildings cannot extrude or intrude the original front line of the neighborhood.
- (g) *Lot maintenance.* All lots, yards, driveways, and spaces between buildings must be cleared of all debris and kept mowed and edged regularly. Landscaping should be kept trimmed to allow for pedestrian and vehicle traffic along all right-of-ways. No debris should be visible from any right-of-way.
- (h) *Windows.*

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- (1) Strong horizontal window patterns are not permitted.
 - (2) Windows are required along the sides of buildings which are visible from roadways or parking areas.
 - (3) Use windows similar to the original windows.
 - (4) Different window light pattern is not permitted.
 - (5) Consistent window trim should be used throughout the structure.
 - (6) Exterior renovation of any structure requires the re-opening, revealing, preservation and maintenance of existing second story windows including clerestory features.
 - (7) New multi-level developments must include second and third story windows which compose of at least 25 percent to 40 percent of the upper story facade.
 - (8) Are not mirrored glass.
- (i) *Murals*. No murals are permitted on any residential structure or lot.
- (j) *Screening*. The following items shall not be located at front areas of any structure on a site but may be located at the rear or side of a structure and screened to a height sufficient to prevent the view of such use at ground level:
- (1) Air conditioning and heating equipment.
 - (2) All outside storage.
 - (3) Refuse storage areas and all related activities.
 - (4) Screening walls may be constructed of same or similar materials as the main building on the lot or of landscaping to a height sufficient to prevent the view of such use at ground level.

(Ord. No. 2012-04, § 1, 7-10-2012)

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

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

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 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 commission.

(Ord. No. 2012-04, § 1, 7-10-2012)

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 commission may deem necessary in order to complete their review of an application.
- (b) The planning commission review of an application shall be at a regularly scheduled meeting, within 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 commission shall then approve, deny, or approve with modifications, the permit within 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 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 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.

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- (d) Appeals from decisions made by the building official, under the criteria established in [section 29-11](#) hereof, may be made to the planning commission. Appeals from decisions of the planning commission may be made only to the city council. Requests for appeals must be submitted to the city secretary within ten days of the decision being appealed, and may be made by any aggrieved person.

(Ord. No. 2012-04, § 1, 7-10-2012)

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 commission for its recommendation and report.
- (c) The planning 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 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 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 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 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 15 days prior to the date of publication.

(Ord. No. 2012-04, § 1, 7-10-2012)

Sec. 29-14. - Planning commission.

- (a) The planning commission shall have the authority to:
- (1) Exercise the appropriate power, authority, duties, and procedures pursuant to the laws of the state, 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 (h) of [section 29-14](#) hereof; and
 - (3) Authorize variances from these regulations, except as provided in subparagraph (h) or [section 29-14](#) 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 planning commission, as provided by state law. Such appeal shall be filed, in writing, with the city secretary not later than 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 30-day period, the decision of the building official shall become final and binding.
- (c) Variances.

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

- (1) The planning commission 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 planning commission 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 planning commission. Any person may appeal a decision by the planning commission to a court of competent jurisdiction. Such appeal shall be filed with the court not later than ten 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 planning commission 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 planning commission 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 planning commission 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 planning commission shall not have the authority to consider a variance from, or appeal of, a decision made by the building official or the planning commission in the application of the criteria established in [section 29-11](#) hereof.

(Ord. No. 2012-04, § 1, 7-10-2012)

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 \$2,000.00. Each day of violation shall constitute a separate offense.

(Ord. No. 2012-04, § 1, 7-10-2012)

PART II - CODE OF ORDINANCES

Chapter 29 - DOWNTOWN PRESERVATION DISTRICT

FOOTNOTE(S):

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Editor's note— Section 1 of Ord. No. 2012-04, adopted July 10, 2012, repealed the former ch. 29, §§ 29-1—29-15, and enacted a new ch. 29 as set out herein. The former ch. 29 pertained to similar subject matter and derived from Ord. No. 2004-02, § 1, adopted July 14, 2004. ([Back](#))