

ORDINANCE NO. 2171

AN ORDINANCE OF THE CITY OF DUNCANVILLE, TEXAS, AMENDING THE CODE OF ORDINANCES BY AMENDING APPENDIX A, ZONING, ARTICLE XII-L, SECTION 4 TO PROVIDE FOR ALTERNATIVE COMPLIANCE STANDARDS AND PROCEDURES FOR NONCONFORMING STRUCTURES IN THE "DOWNTOWN DUNCANVILLE DISTRICT (DD)"; PROVIDING SEVERABILITY, REPEALING AND SAVINGS CLAUSES; PROVIDING A PENALTY OF A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000) FOR EACH AND EVERY OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Duncanville, Texas ("City Council"), has investigated and determined that it will be advantageous and beneficial to the City of Duncanville, Texas ("Duncanville" or "City") and its citizens to establish rules and regulations regarding alternative compliance for nonconforming structures in the Downtown Duncanville District (DD) as set forth below; and

WHEREAS, the City has adopted and published a "Main Street Vision" to guide the transformation of downtown Duncanville into a more vibrant area and to drive economic activity; and

WHEREAS, the Main Street Vision includes redeveloping disparate businesses and buildings into a cohesive and interconnected series of businesses and residences along Main Street; and

WHEREAS, there is a concentration of nonconforming buildings in downtown Duncanville due, in part, to the age and design of the buildings under outdated regulations and some may have limited space or ability to create a conforming structure or the nonconformance may be appropriate for downtown; and

WHEREAS, the Downtown Duncanville District (DD) was enacted as a zoning classification by Ordinance No. 2055, which was codified in the Code of Ordinances as Article XII-L in Appendix A, Zoning; and

WHEREAS, due to the unique conditions existing in the Downtown Duncanville District (DD), the City Council finds it is appropriate to establish procedures and standards for alternative compliance by nonconforming structures; and

WHEREAS, the Planning and Zoning Commission of the City and the City Council, in compliance with the laws of the State of Texas and the ordinances of the City, have given requisite notice by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all property owners generally and to all persons interested and situated in the affected area and in the vicinity thereof, and in the exercise of its legislative discretion have concluded that the Comprehensive Zoning Ordinance of the City should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DUNCANVILLE, TEXAS:

SECTION 1. Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2. Amendment to Appendix A, Zoning, Article XII-L, Downtown Duncanville District (DD), Section 4, General District Standards. The Code of Ordinances, Appendix A, Zoning, Article XII-L, Downtown Duncanville District (DD), Section 4, General District Standards is hereby amended to amend subsection (1), Non-conforming uses and buildings, and add subsection (6), Alternative compliance, as follows:

(1) Nonconforming uses and buildings: Nonconforming uses shall be governed by Article XVI of the Comprehensive Zoning Ordinance, as amended. Regardless of transfer of ownership, existing buildings that do not conform to the provisions of this District may continue in use as they are until the building is reconstructed or substantially modified such that the collective reconstructions or modifications to the building exterior or building façade within any five (5) year period are valued at more than either \$50,000 or a total of fifty (50) % of the assessed value of the structure in the most recently certified tax rolls, whichever is greater. In addition, for all improvements over either \$50,000 or 50% of the assessed value the structure, any changes to nonconforming buildings that do not comply with *Section 6, Development Standards* shall only be allowed if alternative compliance is approved in accordance with this *Section 4, subsection (6), Alternative Compliance.*

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(6) Alternative Compliance: Alternative Compliance is a method for the Planning and Zoning Commission to approve alternative methods of compliance for nonconforming structures in the Downtown Duncanville District (DD) based on predetermined Alternative Compliance standards that may be suitable for this District in select scenarios of land development, reconstruction or modifications. The purpose of Alternative Compliance is to provide a method to allow for nonconforming structures to remain nonconforming after reconstruction or substantial

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modification if it is in agreement with the Downtown Duncanville District Main Street Master Plan, the Main Street Vision, this District and other policies/regulations that may be adopted by the City Council.

- (A) Applicability: Requests for Alternative Compliance are only suitable for nonconforming buildings (not nonconforming uses) zoned Downtown Duncanville District (DD) and the applicant seeks approval for reconstruction or substantial modifications to the building exterior or building façade of a nonconforming building where the collective reconstructions or modifications within any five (5) year period are valued at more than either \$50,000 or a total of fifty (50) % of the assessed value of the structure in the most recently certified tax rolls, whichever is greater.
- (B) Review and approval criteria: (i) the Alternative Compliance requested shall be in agreement with and promote the concepts from the Downtown Duncanville District Main Street Master Plan; (ii) the Alternative Compliance requested shall promote the concepts of the form based zoning within the Downtown Duncanville District (DD); (iii) the Alternative Compliance requested shall be in agreement with and promote the concept of orienting buildings in a manner that enhances the pedestrian environment; (iv) consideration shall be given to the impact of the Alternative Compliance requested on parking areas, vehicle circulation, building layout, connectivity to surrounding streets and sidewalks; (v) consideration shall be given to whether the Alternative Compliance requested adversely affects or potentially adversely affects nearby property; and (vi) the applicant shall demonstrate the structural and engineering obstacles and difficulties with making the building conforming.
- (C) Approval process:
 - i. Applications for approval of Alternative Compliance shall be submitted to the City and shall specify in detail: (i) the Alternative Compliance sought from the requirements that would otherwise make the building conforming; (ii) describe in detail the structural and engineering obstacles and difficulties with making the building conforming; and (iii) all other information determined by staff to be needed to properly consider the request.
 - ii. Alternative Compliance applications shall be considered by the Planning and Zoning Commission after review by the Development Review Committee. To hear and take action on an application for Alternative Compliance the Planning and Zoning Commission shall hold a public hearing at least ten (10) days after publishing notice one time in the official publication of the city, stating the time and place of such hearing, and after providing written notice at least ten (10) days before the hearing date to each owner, as indicated on the most recently approved municipal tax roll, of real property within 200 feet of the property on which the Alternative Compliance is requested to be considered.
- (D) Appeal process: The applicant may appeal a decision of the Planning and Zoning Commission denying the application by submitting written notice of appeal to the Director of Public Works as follows:

- i. The applicant must submit said written notice of appeal no later than thirty (30) calendar days from the date of such decision by the Planning and Zoning Commission.
- ii. Following receipt of a proper written notice of appeal from the applicant, the City Council shall consider the appeal at one of its next two regular meetings for which there is time to post an agenda and publish notice. To hear and take action on a notice of appeal the City Council shall hold a public hearing at least fifteen (15) days after publishing notice one time in the official publication of the city, stating the time and place of such hearing, and after providing written notice at least fifteen (15) days before the hearing date to each owner, as indicated on the most recently approved municipal tax roll, of real property within 200 feet of the property on which the Alternative Compliance is requested to be considered.
- iii. The City Council may affirm, modify or reverse the decision of the Planning and Zoning Commission. If the City Council upholds the decision of the Planning and Zoning Commission, the applicant may not apply for Alternative Compliance for the same building for twelve (12) months from the date of the City Council's decision.

SECTION 3. Savings/Repealing Clause. Duncanville's Zoning Ordinance, Appendix A, Code of Ordinances and Ordinance No. 2055 shall remain in full force and effect, save and except as amended by this or any other ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

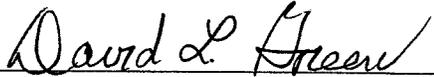
SECTION 4. Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional, illegal or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Duncanville hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 5. Penalty Provision. Any person, firm, corporation or entity violating this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00). Each occurrence in violation of this Ordinance Amending DD Zoning to Allow Alternative Compliance for Nonconforming Structures -- Page 4 of 5

Ordinance and/or each day the violation continues shall constitute a separate and distinct offense. The penal provisions imposed under this Ordinance shall not preclude Duncanville from filing suit to enjoin the violation nor shall it preclude Duncanville from taking such other lawful action as is necessary to prevent or remedy any violation. Duncanville retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6. Effective Date. This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and Charter in such cases require.

DULY ADOPTED by the City Council of the City of Duncanville, Texas on the 11th day of January, 2012.



David L. Green, Mayor

ATTEST:



Lisa Palomba, City Secretary

Date of Publication in the Official Newspaper:

January 20th, 2012