

## AGENDA REQUEST

**FOR: COUNCIL MEETING OF September 17, 2013**

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**FROM:**  
**CITY COUNCIL MEMBER SARAH MARSH**

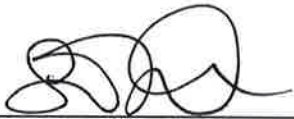
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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

An ordinance to amend § 164.11 **Height and Setback Regulations; Exceptions** to enhance livability through appropriate transitions in building scale and to protect access to air and sunlight and to enact an emergency clause

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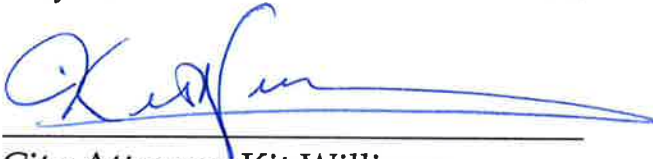
**APPROVED FOR AGENDA:**



City Council Member Sarah Marsh

9/4/2013

Date



City Attorney Kit Williams  
(as to form)

9-3-13

Date

*This Ordinance was left on the 1<sup>st</sup> Reading at the 9/17/13 Council*



Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: Mayor Jordan  
City Council

CC: Don Marr, Chief of Staff  
Jeremy Pate, Development Services Director  
Andrew Garner, Senior Planner-Current Planning

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal line extending to the right.

DATE: August 28, 2013

RE: Preservation of homeowners' rights to sunlight and air

City Council Member Sarah Marsh has asked me to draft an amendment to § 164.11 **Height or Setback Regulations; Exceptions** within the **Supplementary Zoning Regulations** Chapter of the Unified Development Code to help preserve and protect historic homes and the historic nature of the Downtown and Entertainment areas of Fayetteville.

As many remember, the Downtown Master Plan recognized and sought to protect the livability of the single family homes within the Downtown Master Plan. The Mayor and City Council have sought to ensure the mixed use and walkable nature of the Downtown and Entertainment District by fostering the preservation of the many historic single family homes still used as residences. Unfortunately, the zero side setback and immediate 84 foot height of the building's wall which is permitted in Main Street Center threatens the livability of adjoining single family homes in our downtown area.

In order that homeowners be ensured sufficient sunlight and air for their homes to be livable and for homeowners to utilize solar energy, a minimum side and rear setback from new large and tall multifamily, commercial and mixed use buildings should be required. Preserving some sunlight is also necessary to protect existing trees and other plants to preserve the historic residential landscape within a more urban architectural setting.

I suggest a minimum side and rear setback of 15 feet which is not dissimilar to setbacks in traditional residential zoning districts and currently required in the Community Services Zoning District (copy attached). I further suggest an initial building height limitation of 30 feet at this setback location which is what is currently required in Residential Multifamily Districts (RMF-6, RMF-12, RMF-18 and RMF-24) for an additional 15 foot stepback (copy attached). At thirty (30) feet from the single family residence's property line, the new multifamily and commercial construction in Main Street Center and Urban Thoroughfare could jump to 84 feet and in Downtown General and Community Services could go up to its maximum of 56 feet.

Without such modest setback and stepback requirements, a developer could build an 84 foot wall for his building on the single family home's property line. A Downtown and Entertainment District homeowner who wanted to live in their home could find herself or himself surrounded by 84 foot high walls on both side property lines and on the rear property line. The home would then be stuck within a 84 foot deep cave without adequate sunlight for solar energy, trees and plants. Indeed, this walled in and almost constantly shaded house would be thrust into an unhealthy environment of mold and mildew.

These modest setbacks and stepbacks would at least provide some sunlight and air protection for existing homeowners without substantial loss of density for the developers. When these homes were built and zoned residential, they had substantial sunlight protection not only from setbacks, but because an adjoining house could only occupy less than half of the lot's area. There are no such protections in Main Street/Center, Downtown Core, or Downtown General. This ordinance would reinstate some sunlight protection and give the homeowner some protection from the 84 foot deep cave.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE TO AMEND § 164.11 HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS TO ENHANCE LIVABILITY THROUGH APPROPRIATE TRANSITIONS IN BUILDING SCALE AND TO PROTECT ACCESS TO AIR AND SUNLIGHT AND TO ENACT AN EMERGENCY CLAUSE**

**WHEREAS**, appropriate transitions in building scale enhance livability and architectural cohesion in mixed-use areas, helping to enrich our built environment by promoting the compatibility of new development with historic structures; and

**WHEREAS**, Fayetteville homeowners' rights to adequate sunlight and room for air and wind should be protected; and

**WHEREAS**, preservation of the many homeowners' single family residences used as homes in the Downtown Master Plan District and other areas with inadequate setback protection from large and tall buildings require that minimum side and rear setbacks and upper story stepbacks be enacted to ensure adequate sunlight, wind and air for these homes to remain attractive and healthful places to live; and

**WHEREAS**, residential homeowners who wish to install solar panels or passive solar heat collectors, etc. must have enough protected access to sunlight for these ecological and green technology products to work effectively; and

**WHEREAS**, trees and other plants within the yards of homes also need adequate sunlight that reasonable setback and stepback regulations can ensure.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by amending its title to be: "**Height of Setback Regulations; Exceptions and Home Protection Requirements**" and by enacting a new (C) *Home Protection Requirements* as shown below:

“(C) *Home Protection Requirements.*

Regardless of any other setback or build-to zone regulations, new multifamily, commercial, or mixed use construction which adjoins or abuts a single family home being used as a residence must at a minimum be set back from the side or rear adjoining property line at least fifteen (15) feet. The maximum height of the new building from the fifteen foot setback shall be thirty (30) feet for an additional fifteen (15) foot stepback from the residence’s property line. These setback and stepback requirements are minimums so that, if larger setbacks or stepbacks are required by other zoning laws, the larger setback/stepbacks are controlling.”

Section 2. Emergency Clause. That the City Council of the City of Fayetteville, Arkansas hereby determines that preservation of access and right to sunlight and adequate room for air and wind are vital necessities for houses used for residential purposes and that large multifamily, commercial, or mixed use development projects planned or proposed to be built with zero setbacks next to existing homes threaten the peace, health and safety of Fayetteville citizens such that it is necessary for the public peace, health and safety that this ordinance shall become effective without delay.

**PASSED** and **APPROVED** this 17<sup>th</sup> day of September, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN, Mayor**

By: \_\_\_\_\_  
**SONDRA E. SMITH, City Clerk/Treasurer**

Fayetteville Code of Ordinances

following the sale. Any such signs not so removed the following day, or located in public rights-of-way may be removed by city staff and for any such sign removed a collection fee shall be imposed.

(Code 1991, §160.103; Ord. No. 3970, § 3, 5-7-96; Ord. No. 4100, §2 (Ex. A), 6-16-98)

Cross-reference(s)--Signs, Ch. 174.

**164.11 Height or Setback Regulations; Exceptions**

(A) The height limitations contained in the Zoning Regulation, Chapter 161, do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.

(B) *Side Setbacks.* In zoning districts that permit two, three or other multi-family residential uses, side setbacks may be varied to permit common walls between single family attached / townhouse dwellings, subject to all applicable building and fire codes and the following standards:

(1) The total number of dwelling units on the lot, prior to being subdivided into single family attached / townhouse lots, shall conform to the minimum bulk and area requirements of the underlying zoning district.

(2) The townhouse development shall conform to the zoning district density, exterior setback requirements, height regulations and all other applicable city ordinances.

(3) There shall be a minimum lot width of 18 feet for each dwelling unit.

(4) There shall be no minimum lot area requirement unless otherwise specified by the underlying zoning district.

Add  
(C) →

(Code 1965, App. A., Art. 8(6); Ord. No 1747, 6-29-70; Ord. No. 2555, 8-21-79; Code 1991, §160.113; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. 5225, 3-3-09; Ord. 5327, 6-1-10)

**164.12 Nonconforming Structures, Uses And Lots**

It is the intent of this section to regulate nonconforming structures, uses or lots that are created when zoning designations or regulations are created or changed such than an existing lawfully established structure, use, or lot no longer conforms

to the regulations of the Unified Development Code. It is also the intent of this section to permit nonconformities to continue as they exist presently and to guide future uses and development to be consistent with the City's planning policy and regulations.

(A) *Nonconforming structures.*

(1) Nonconforming structures are permitted to exist for continued and creative reuse to contribute to the surrounding character, diversity, and services in the neighborhood until such structures are removed.

(2) Repairs to nonconforming structures or portions thereof are permitted, so long as the nonconforming portion of the structure is not enlarged in volume, area or footprint.

(3) Reconstruction of nonconforming structures or portions thereof amounting to less than 50% of the existing square feet are permitted so long as the nonconforming portion of the structure is not enlarged in volume, area or footprint.

(4) Voluntary removal, damage or destruction of a nonconforming structure or portion thereof amounting to 50% or more of the existing square feet shall require either complete removal of the structure or its reconstruction in conformance with existing regulations.

(5) Involuntary damage to or destruction of a nonconforming structure (from fire, winds or other calamity) shall permit the owner to rebuild, reconstruct or restore the structure on the same footprint of the original structure plus any addition or expansion that is allowed by the underlying zoning district. Such reconstruction is permitted as long as it begins within 18 months of the loss and complies with all other applicable zoning, development and building codes.

(6) For nonconforming structures located in a zoning district utilizing conventional building setbacks, building additions/expansions are permitted so long as the addition is in compliance with all current setbacks, building area and building height requirements of the underlying zoning district, along with all other applicable zoning and development ordinances.

(7) For nonconforming structures located in zoning districts utilizing build-to zones and requirements for a minimum buildable street frontage, all new construction that increases the existing building(s) footprint or volume of habitable space by 50% or more shall

Manufactured home park	3 acres
Lot within a manufactured home park	4,200 sq. ft.
Townhouse: Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.
Single-family	6,000 sq. ft.
Two-family	7,000 sq. ft.
Three or more	9,000 sq. ft.
Fraternity or Sorority	2 acres
Professional offices	1 acre

(3) Land area per dwelling unit.

Manufactured Home	3,000 sq. ft.
Apartments: No bedrooms	1,700 sq. ft.
One bedroom	1,700 sq. ft.
Two or more bedrooms	2,000 sq. ft.
Fraternity or Sorority	1,000 sq. ft. per resident

(E) Setback requirements.

Front	Side	Rear
A build-to zone that is located between the front property line and a line 25 feet from the front property line.	8 ft.	25 ft.

Cross reference(s) --Variances, Ch. 156.

(F) Building height regulations.

Building Height Maximum	30/45 ft.*
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\*A building or a portion of a building that is located between 0 and 10 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 30 feet. Buildings or portions of the building set back greater than 10 feet from the master street plan right-of-way shall have a maximum height of 45 feet.

Any building which exceeds the height of 20 feet shall be set back from any side boundary line of an adjacent single family district, an additional distance of one foot for each foot of height in excess of 20 feet.

(G) Building area. None.

(H) Minimum buildable street frontage. 50% of the lot width.

(Ord. No. 4325, 7-3-01; Ord. 5028, 6-19-07; Ord. 5224, 3-3-09; Ord. 5262, 8-4-09; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

### 161.14 District RMF-24, Residential Multi-Family – Twenty-Four Units Per Acre

(A) Purpose. The RMF-24 Multi-family Residential District is designed to permit and encourage the developing of a variety of dwelling types in suitable environments in a variety of densities.

(B) Uses.

(1) Permitted uses.

Unit 1	City-wide uses by right
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 26	Multi-family dwellings

(2) Conditional uses.

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 11	Manufactured home park
Unit 12	Limited business
Unit 25	Professional offices
Unit 24	Home occupations
Unit 36	Wireless communications facilities

(C) Density.

Units per acre	24 or less
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(D) Bulk and area regulations.

(1) Lot width minimum.

Manufactured home park	100 ft.
Lot within a Manufactured home park	50 ft.
Single-family	60 ft.
Two-family	60 ft.
Three or more	90 ft.
Professional offices	100 ft.

(2) Lot area minimum.

Manufactured home park	3 acres
Lot within a mobile home park	4,200 sq. ft.
Townhouses: Development	10,000 sq. ft.
Individual lot	2,500 sq. ft.

any use of an adjacent single family residential lot in excess of 20 feet.

On any lot, the area occupied by buildings shall not exceed 60% of the total lot area.

- 5. App. 8, Art. 5(x); Ord. No. 2414, 2-7-78; Ord. No. 2621, 4-1-80; Ord. No. 2622, 4-1-80; Ord. No. 2623, 4-1-80; Ord. No. 2624, 4-1-80; Ord. No. 2625, 4-1-80; Ord. No. 2626, 4-1-80; Ord. No. 2627, 4-1-80; Ord. No. 2628, 4-1-80; Ord. No. 2629, 4-1-80; Ord. No. 2630, 4-1-80; Ord. No. 2631, 4-1-80; Ord. No. 2632, 4-1-80; Ord. No. 2633, 4-1-80; Ord. No. 2634, 4-1-80; Ord. No. 2635, 4-1-80; Ord. No. 2636, 4-1-80; Ord. No. 2637, 4-1-80; Ord. No. 2638, 4-1-80; Ord. No. 2639, 4-1-80; Ord. No. 2640, 4-1-80; Ord. No. 2641, 4-1-80; Ord. No. 2642, 4-1-80; Ord. No. 2643, 4-1-80; Ord. No. 2644, 4-1-80; Ord. No. 2645, 4-1-80; Ord. No. 2646, 4-1-80; Ord. No. 2647, 4-1-80; Ord. No. 2648, 4-1-80; Ord. No. 2649, 4-1-80; Ord. No. 2650, 4-1-80; Ord. No. 2651, 4-1-80; Ord. No. 2652, 4-1-80; Ord. No. 2653, 4-1-80; Ord. No. 2654, 4-1-80; Ord. No. 2655, 4-1-80; Ord. No. 2656, 4-1-80; Ord. No. 2657, 4-1-80; Ord. No. 2658, 4-1-80; Ord. No. 2659, 4-1-80; Ord. No. 2660, 4-1-80; Ord. No. 2661, 4-1-80; Ord. No. 2662, 4-1-80; Ord. No. 2663, 4-1-80; Ord. No. 2664, 4-1-80; Ord. No. 2665, 4-1-80; Ord. No. 2666, 4-1-80; Ord. No. 2667, 4-1-80; Ord. No. 2668, 4-1-80; Ord. No. 2669, 4-1-80; Ord. No. 2670, 4-1-80; Ord. No. 2671, 4-1-80; Ord. No. 2672, 4-1-80; Ord. No. 2673, 4-1-80; Ord. No. 2674, 4-1-80; Ord. No. 2675, 4-1-80; Ord. No. 2676, 4-1-80; Ord. No. 2677, 4-1-80; Ord. No. 2678, 8-31-99; Ord. 4726, 7-19-05; Ord. 5079, 11-20-07; Ord. 5195, 11-6-07; Ord. 5312, 4-20-10; Ord. 5462, 12-6-10; Ord. 5592, 06-18-13)

**Tract C-1, Neighborhood**

The Neighborhood Commercial District is primarily to provide convenience and personal services for persons living in adjoining residential areas.

Permitted uses:

City-wide uses by right
Government Facilities
Eating places*
Neighborhood shopping
Gasoline service stations and drive-in/drive through restaurants
Offices, studios, and related services

Additional uses:

City-wide uses by conditional use permit
Public protection and utility facilities
Cultural and recreational facilities
Shopping goods
Liquor stores
Outdoor music establishments*
Wireless communications facilities*
Sidewalk Cafes
Clean technologies

Other:

Area regulations: None.  
Signage regulations:

between the right-of-way and the building	
Side	None
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) Building height regulations.

Building Height Maximum	56 ft.*
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\*Any building which exceeds the height of 20 feet shall be setback from any boundary line of any residential district a distance of one foot for each foot of height in excess of 20 feet.

(G) Building area. On any lot the area occupied by all buildings shall not exceed 40% of the total area of such lot.

(Code 1965, App. A., Art. 5(V); Ord. No. 2603, 2-19-80; Ord. No. 1747, 6-29-70; Code 1991, §160.035; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4178, 8-31-99; Ord. 5028, 6-19-07; Ord. 5195, 11-6-08; Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

**161.19 Community Services**

(A) Purpose. The Community Services district is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas and is intended to provide for adaptable mixed use centers located along commercial corridors that connect denser development nodes. There is a mixture of residential and commercial uses in a traditional urban form with buildings addressing the street. For the purposes of Chapter 96: Noise Control, the Community Services district is a commercial zone. The intent of this zoning district is to provide standards that enable development to be approved administratively.

(B) Uses:

(1) Permitted uses:

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 8	Single-family dwellings
Unit 9	Two-family dwellings
Unit 10	Three-family dwellings
Unit 13	Eating places
Unit 15	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 24	Home occupations

Set back  
when adjoining  
residence →

Unit 2b | Multi-family dwellings

Note: Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(2) Conditional uses:

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation, trades and services
Unit 19	Commercial recreation, small sites
Unit 28	Center for collecting recyclable materials
Unit 34	Liquor stores
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) Density. None

(D) Bulk and area regulations.

(1) Lot width minimum.

Dwelling	18 ft.
All others	None

(2) Lot area minimum. None

(E) Setback regulations.

Front:		A build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side and rear:	None	
Side or rear, when contiguous to a single-family residential district:	15 feet	

(F) Building Height Regulations.

Building Height Maximum	56 ft.
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(G) Minimum buildable street frontage: 50% of the lot width.

(Ord. 5312, 4-20-10; Ord. 5339, 8-3-10; Ord. 5462, 12-6-11; Ord. 5592, 06-18-13)

**161.20 District C-2, Thoroughfare Commercial**

(A) Purpose is to provide convenience and personal services for persons living in adjoining residential areas.

(B) Use:

Unit 1	City-wide uses by right
Unit 4	Government facilities
Unit 5	Single-family dwellings
Unit 13	Two-family dwellings
Unit 14	Three-family dwellings
Unit 16	Eating places
Unit 17	Neighborhood Shopping goods
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Home occupations
Unit 20	Wireless communication facilities*
Unit 25	Sidewalk Cafes
Unit 33	Clean technologies
Unit 34	Home occupations

(2)

Unit 2	City-wide uses by right
Unit 3	Government facilities
Unit 21	Single-family dwellings
Unit 28	Two-family dwellings
Unit 29	Three-family dwellings
Unit 32	Eating places
Unit 35	Neighborhood Shopping goods
Unit 36	Gasoline service stations and drive-in/drive through restaurants
Unit 38	Home occupations
Unit 40	Wireless communication facilities*
Unit 42	Sidewalk Cafes
Unit 43	Clean technologies

(C) Dens

(D) Bulk,

(E) Setb

Front		Front, if provided, shall be between the building and the rear of the building.
Side		Side, when adjacent to a residential lot.
Rear		Rear, when adjacent to a residential lot.

(F) Buildi