

AGENDA REQUEST

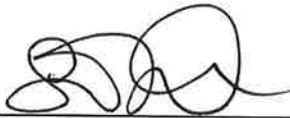
FOR: COUNCIL MEETING OF September 17, 2013

FROM:
CITY COUNCIL MEMBER SARAH MARSH

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

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 2nd Reading at the 10/1/13 CC mtg.
This Ordinance was left on the 1st Reading at the 9/17/13 CC mtg.



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 setbacks 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 17th 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.

(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

Add
(C) →

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 a 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.

step back →

any other building within the same lot, the area occupied by buildings shall not exceed 60% of the total area of the lot.

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(M); 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 25 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. Any combination of above uses is permitted upon any lot within this zone. Conditional uses shall need approval when combined with pre-approved uses.

(B) Use

Unit 1	City-wide uses by conditional use permit
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	Home occupations
Unit 25	Home occupations
Unit 33	Home occupations
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	Home occupations
Unit 42	Home occupations
Unit 43	Home occupations

(C) Density

(D) Bulk

(E) Setback

Front	Build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Front, if public	Build-to zone that is located between 10 feet and a line 25 feet from the front property line.
Side	None
Side, when contiguous to a residential district	15 feet
Rear	None

(F) Building Height Regulations:

Building Height Maximum	56 ft.
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DRAFT v.4

Building Height Amendment - General Description

There is no longer a single family use associated with the side or rear setback and building height amendment proposal, based on the current reasons stated for instituting these regulations, which are to provide transition in building scale to promote compatibility of new development and existing structures, to protect rights to sunlight and room for air and wind, to mitigate harmful effects such as mold and allow for trees and plants to grow, and to allow for solar access for alternative energy purposes. All of these same concerns, it could be argued, apply to office, commercial and other uses in addition to single family homes.

Amend Ch. 161, Zoning Regulations

Setback

All of the following zoning districts with 0-foot side and rear setbacks are proposed to be amended to add a minimum 5-foot side and rear setback. There are a few exceptions to this rule, chiefly 1) if there is no building developed adjacent to the property being developed; 2) if an adjacent building is already within 5 feet of the common property line; and 3) if the same property owner owns the adjacent property on the common boundary line.

C-1 – Neighborhood Commercial
CS - Community Services
C-2 - Thoroughfare Commercial
UT - Urban Thoroughfare
C-3 – Central Commercial
DC – Downtown Core
MSC – Main Street Center
DG – Downtown General

Building Height

At the 5-foot setback from side and rear property lines (or between 0 and 5 feet, if the conditions allow for it), the maximum height is the height of the structure on the adjacent property or 36 feet, whichever is greater. This permits standard 12-foot floor to floor height dimensions utilized in commercial construction. Once the maximum height is achieved, there is a required additional 10-foot setback, for a total setback of 15 feet. This essentially creates an initial maximum height between 5-15 feet from the side/rear property line.

Past the 15-foot setback line, a building may go up to 60 feet in height, again based on 12-foot floor to floor heights that would allow 5 stories. Balconies, awnings, overhangs and other similar architectural features that protrude from the building façade are permitted to a depth of 6 feet into the side and rear setback zones.

The maximum height in all of these above zones is amended to 60 feet, with a caveat. For zones that reference heights above 60 feet, there are supplementary requirements that must be met. In each zone that permits this, there is a reference to §164.11 for the supplementary standards.

Amend Ch. 164.11 Height Regulations; Exceptions

This proposal attempts to regulate building height above the maximum 56 feet, requiring certain additional standards to be met. They include wider sidewalks based on the height of the building, creation of a 30-foot setback above 60 feet from all property lines, the provision of mixed-use,

requirement to build to LEED Gold, requirement to cover a parking garage with a liner building at street level, and some architectural embellishment when the side of a building is adjacent to a residence.

Amend Ch. 156.02 (F) Variances, Specific tests

A statement has been added that the Planning Division or Board of Adjustment may require the applicant to provide a visual impact analysis and/or a sun/shadow study, as needed, to determine if there is an adverse impact on neighboring properties, if there is a variance requested.

161.16 Neighborhood Services

(A) *Purpose.* The Neighborhood Services district is designed to serve as a mixed use area of low intensity. Neighborhood Services promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control, the Neighborhood Services district is a residential zone.

(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 12	Limited Business
Unit 24	Home occupations
Unit 41	Accessory dwelling units

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
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk cafes

(C) *Density.*

Units per acre	10 or less
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(D) *Bulk and Area*

(1) *Lot width minimum*

Single-family	35 feet
Two-family	70 feet
Three or more	90 feet
All other uses	None

(2) *Lot area minimum.*

Single-family	4,000 sq. ft.
Two-family or more	3,000 sq. ft. of lot area per dwelling unit
All other permitted and conditional uses	None

(E) *Setback regulations*

Front:	A build-to zone that is located between 10 and 25 feet from the front property line.
Side	5 feet
Rear	15 feet

(F) *Building height regulations.*

Building Height Maximum	45 ft.
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*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any single family 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 60% of the total area of the lot.

161.18 District C-1, Neighborhood Commercial

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services

(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 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None 5 feet
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 60ft.*
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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.

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
Unit 25	Offices, studios and related services
Unit 26	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 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56 60 ft.
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A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

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

161.20 District C-2, Thoroughfare Commercial

(A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 25	Offices, studios, and related services
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor store

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 32	Sexually oriented business
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None-5 feet
Side, when contiguous to a residential district	15 ft.
Rear	20 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	60/75 ft.*
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The maximum building height is 60 feet. Building height may be permitted up to 75 feet, pursuant to §164.11 Height or Setback Regulations and Exceptions.

*Any building which exceeds the height of 20 feet shall be set back from a 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 60% of the total area of such lot.

161.21 Urban Thoroughfare

(A) *Purpose.* The Urban Thoroughfare District is designed to provide goods and services for persons living in the surrounding communities. This district encourages a concentration of commercial and mixed use development that enhances function and appearance along major thoroughfares. Automobile-oriented development is prevalent within this district and a wide range of commercial uses is permitted. For the purposes of Chapter 96: Noise Control, the Urban Thoroughfare 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 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor store
Unit 41	Accessory 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 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 33	Adult live entertainment club or bar
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 38	Mini-storage units

Unit 40	Sidewalk cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) Lot width minimum

Single-family dwelling	18 feet
All other dwellings	None
Non-residential	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 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 10 and 15 ft. from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

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

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

161.22 District C-3, Central Commercial

(A) *Purpose.* The Central Commercial District is designed to accommodate the commercial and related uses commonly found in the central business district, or regional shopping centers which provide a wide range of retail and personal service uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 18	Gasoline service stations & drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 44	Cottage Housing Development

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 17	Transportation trades and services
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None

(E) *Setback regulations.*

	Central Business District	Shopping Center
Front	5 ft.	25 ft.
Front, if parking is allowed between the right-of-way and the	50 ft.	50 ft.

building		
Side	None 5 feet	None
Side, when contiguous to a residential district	10 ft.	25 ft.
Rear, without easement or alley	15 ft.	25 ft.
Rear, from center line of a public alley	10 ft.	10 ft.
All property lines	30 ft. for buildings over 60 ft. in height*	30 ft. for buildings over 60 ft. in height*

(F) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 60 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.23 Downtown Core

(A) *Purpose.* Development is most intense, and land use is densest in this zone. The downtown core is designed to accommodate the commercial, office, governmental, and related uses commonly found in the central downtown area which provides a wide range of retail, financial, professional office, and governmental office uses. For the purposes of Chapter 96: Noise Control, the Downtown Core district is a commercial zone.

(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 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

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 29	Dance Halls
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.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
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Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Minimum buildable street frontage.* 80% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56-60/ 168 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56-60 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 168 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 168 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.24 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the *Main Street/Center*. The *Center* is more spatially compact and is more likely to have some attached buildings than *Downtown General* or *Neighborhood Conservation*. Multi-story buildings in the *Center* are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the *Main Street/Center*. The *Center* is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(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 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

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 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
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 (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for buildings over 60 ft. in height*

(F) *Minimum buildable street frontage.* 75% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 60/84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 60 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

The maximum building height is 60 feet. Building height may be permitted up to 84

feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

161.25 Downtown General

(A) *Purpose.* *Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center*. *Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation*. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the *Downtown General* district is a residential zone.

(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 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	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 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 60 ft.*
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A new building or portion of a building that is located between 5 and 15 feet from the side and rear property line shall have a maximum height of 36 feet or the height of the adjacent building, whichever is greater. This measurement shall be calculated parallel to each side and rear property line.

A new building or portion of a building that is constructed greater than 15 feet from the side or rear property line shall have a maximum height of 60 feet. Balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the side and rear building façade.

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, stair towers, elevator shafts 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.
- (C) *Side and rear setback.* All developments within zoning districts that require a 5-foot side and rear setback and an accompanying building height stepback may be permitted to reduce the side and/or rear setback to 0 feet in the following instances:
- (1) if there is no principal structure on the property directly adjacent to the common side and/or rear property line;
 - (2) if a principal structure that is adjacent to the common side and/or rear property line is already within 5 feet of said property line; or
 - (3) if the developing property owner owns the adjacent property on the common side and/or rear property line.
- (D) Any building over 36 feet in height utilizing urban streetscapes shall provide for a minimum 10-foot wide sidewalk adjacent to all streets on which a sidewalk is required to be replaced or constructed due to the development proposed.
- (E) The maximum building height for new construction in all zones in the city is 60 feet. For zones that refer to a higher building height potential than 60 feet, the following supplemental standards must be met for any building between 60 feet and the maximum height of the underlying zoning district to be considered for approval:
- (1) A minimum 12-foot wide sidewalk for projects utilizing urban streetscapes shall be constructed adjacent to all streets on which a sidewalk is required to be replaced or constructed.
 - (2) Any associated parking garage shall be screened from view at the street grade with a liner building.
 - (3) A mixture of commercial and residential uses shall be incorporated into any building that is permitted to be over 56 feet in height.
 - (4) Developers of buildings over 56 feet in height shall submit performance models and other applicable information, prior to obtaining a building permit, to indicate compliance with achieving USGBC LEED Gold or equivalent building standards. All projects shall show effort to achieve the Development Density and Community Connectivity credit, or equivalent.
 - (5) Any side of a building immediately adjoining a principal structure on an adjacent lot shall utilize materials, colors and other architectural features to provide relief, scale, and transition to the wall, similar to the front façade.

156.02 (F) Specific tests

(F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:

- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.
- (2) The Planning Division and/or Board of Adjustment may require an applicant to produce a viewshed analysis and/or a Sun/Shadow Study using industry-accepted methodologies to show the impact of a height variance proposal on neighboring streets and properties, in an effort to determine if there is an adverse impact caused by the proposal.

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff

From: Jeremy Pate, Development Services Director

Date: October 04, 2013

Subject: Building Height Amendments

BACKGROUND

Council member Sarah Marsh has proposed building height amendments for the City Council to consider. The original ordinance created a 15-foot setback from all single family residences, with a series of building height setbacks to allow for light and air into adjacent residential properties. After significant discussion with Council members Marsh and Matthew Petty, as well as local architects, downtown property owners, downtown residents and members of the development community over the past few weeks, a significantly different proposal has been drafted by Ms. Marsh and is submitted for Council consideration. A rough draft of this proposal was distributed at the previous Council meeting; this draft has been refined with input from various stakeholders and is attached.

PROPOSAL

There is no longer a single family use associated with the side or rear setback and building height amendment proposal, based on the current reasons stated for instituting these regulations, which are to provide transition in building scale to promote compatibility of new development and existing structures, to protect rights to sunlight and room for air and wind, to mitigate harmful effects such as mold and allow for trees and plants to grow, and to allow for solar access for alternative energy purposes. All of these same concerns, it could be argued, apply to office, commercial and other uses in addition to single family homes.

Amend Ch. 161, Zoning Regulations

Setback

All of the following zoning districts with 0-foot side and rear setbacks are proposed to be amended to add a minimum 5-foot side and rear setback. There are a few exceptions to this rule, chiefly 1) if there is no building developed adjacent to the property being developed; 2) if an adjacent building is already within 5 feet of the common property line; and 3) if the same property owner owns the adjacent property on the common boundary line.

C-1 – Neighborhood Commercial
CS - Community Services
C-2 - Thoroughfare Commercial
UT - Urban Thoroughfare

C-3 – Central Commercial
DC – Downtown Core
MSC – Main Street Center
DG – Downtown General

Building Height

At the 5-foot setback from side and rear property lines (or between 0 and 5 feet, if the conditions allow for it), the maximum height is the height of the structure on the adjacent property or 36 feet, whichever is greater. This permits standard 12-foot floor to floor height dimensions utilized in commercial construction. Once the maximum height is achieved, there is a required additional 10-foot setback, for a total setback of 15 feet. This essentially creates an initial maximum height between 5-15 feet from the side/rear property line.

Past the 15-foot setback line, a building may go up to 60 feet in height, again based on typical 12-foot floor to floor heights, which would allow 5 (or 6 smaller) stories. Individual balconies, awnings, overhangs and other similar architectural features that protrude from the building façade are permitted to a depth of 6 feet into setback zones.

The maximum height in all of these above zones is amended to 60 feet. However, a height bonus system has been created; for zones that reference heights above 60 feet, there are supplementary requirements that must be met. In each zone that permits this, there is a reference to §164.11 for the supplementary standards.

Amend Ch. 164.11 Height Regulations; Exceptions

This proposal attempts to regulate building height above the maximum 60 feet, requiring certain additional standards to be met. They include wider sidewalks based on the height of the building, creation of a 30-foot setback above 60 feet from all property lines, the requirement for residential uses, LEED Gold building standards, requirement to cover a parking garage with a liner building at street level, and some architectural embellishment when the side of a building is adjacent to another building.

Amend Ch. 156.02 (F) Variances, Specific tests

A statement has been added that the Planning Division or Board of Adjustment may require the applicant to provide a visual impact analysis and/or a sun/shadow study, as needed, to determine if there is an adverse impact on neighboring properties, if there is a variance requested

DRAFT v.6

10/04/2013

Insert Ordinance here (Kit)

161.16 Neighborhood Services

(A) *Purpose.* The Neighborhood Services district is designed to serve as a mixed use area of low intensity. Neighborhood Services promotes a walkable, pedestrian-oriented neighborhood development form with sustainable and complementary neighborhood businesses that are compatible in scale, aesthetics, and use with surrounding land uses. For the purpose of Chapter 96: Noise Control, the Neighborhood Services district is a residential zone.

(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 12	Limited Business
Unit 24	Home occupations
Unit 41	Accessory dwelling units

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
Unit 3	Public protection and utility facilities
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping goods
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios and related services
Unit 26	Multi-family dwellings
Unit 36	Wireless communication facilities*
Unit 40	Sidewalk cafes

(C) *Density.*

Units per acre	10 or less
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(D) *Bulk and Area*

(1) *Lot width minimum*

Single-family	35 feet
Two-family	70 feet
Three or more	90 feet
All other uses	None

(2) *Lot area minimum.*

Single-family	4,000 sq. ft.
Two-family or more	3,000 sq. ft. of lot area per dwelling unit
All other permitted and conditional uses	None

(E) *Setback regulations*

Front:	A build-to zone that is located between 10 and 25 feet from the front property line.
Side	5 feet
Rear	15 feet

(F) *Building height regulations.*

Building Height Maximum	45 ft.*
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*Any building which exceeds the height of 20 feet shall be set back from a boundary line of any single family 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 60% of the total area of the lot.

161.18 District C-1, Neighborhood Commercial

foot for each foot of height in excess of 20 feet.

(A) *Purpose.* The Neighborhood Commercial District is designed primarily to provide convenience goods and personal services for persons living in the surrounding residential areas.

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

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 5	Government Facilities
Unit 13	Eating places
Unit 15	Neighborhood shopping
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 25	Offices, studios, and related services

(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 16	Shopping goods
Unit 34	Liquor stores
Unit 35	Outdoor music establishments*
Unit 36	Wireless communications facilities*
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None 5 feet
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	56 60ft.*
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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

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
Unit 25	Offices, studios and related services
Unit 26	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 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

Building Height Maximum	56-60ft.*
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10-15 feet from front property line	Maximum 36 feet
0-15 feet from side and rear property line	Maximum 36 ft. or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

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

161.20 District C-2, Thoroughfare Commercial

(A) *Purpose.* The Thoroughfare Commercial District is designed especially to encourage the functional grouping of these commercial enterprises catering primarily to highway travelers.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government Facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 20	Commercial recreation, large sites
Unit 25	Offices, studios, and related services
Unit 33	Adult live entertainment club or bar
Unit 34	Liquor store

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 32	Sexually oriented business
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 38	Mini-storage units
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None.

(D) *Bulk and area regulations.* None.

(E) *Setback regulations.*

Front	15 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.
Side	None-5 feet
Side, when contiguous to a residential district	15 ft.
Rear	20 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	60/75 ft.*
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*Any building which exceeds the height of 20 feet shall be set back from a 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 60% of the total area of such lot.

161.21 Urban Thoroughfare

(A) *Purpose.* The Urban Thoroughfare District is designed to provide goods and services for persons living in the surrounding communities. This district encourages a concentration of commercial and mixed use development that enhances function and appearance along major thoroughfares. Automobile-oriented development is prevalent within this district and a wide range of commercial uses is permitted. For the purposes of Chapter 96: Noise Control, the Urban Thoroughfare 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 14	Hotel, motel and amusement services
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 18	Gasoline service stations and drive-in/drive through restaurants
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor store
Unit 41	Accessory 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 20	Commercial recreation, large sites
Unit 21	Warehousing and wholesale
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
Unit 33	Adult live entertainment club or bar
Unit 35	Outdoor music establishments
Unit 36	Wireless communication facilities
Unit 38	Mini-storage units

Unit 40	Sidewalk cafes
Unit 42	Clean technologies
Unit 43	Animal boarding and training

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) Lot width minimum

Single-family dwelling	18 feet
All other dwellings	None
Non-residential	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 5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	56-60/84 ft.*
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10-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

~~*A building or a portion of a building that is located between 10 and 15 ft. from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right-of-way shall have a maximum height of 84 feet.~~

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

- (G) *Minimum buildable street frontage.* 50% of the lot width.

161.22 District C-3, Central Commercial

(A) *Purpose.* The Central Commercial District is designed to accommodate the commercial and related uses commonly found in the central business district, or regional shopping centers which provide a wide range of retail and personal service uses.

(B) *Uses.*

(1) *Permitted uses.*

Unit 1	City-wide uses by right
Unit 4	Cultural and recreational facilities
Unit 5	Government facilities
Unit 13	Eating places
Unit 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 18	Gasoline service stations & drive-in restaurants
Unit 19	Commercial recreation, small sites
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores
Unit 44	Cottage Housing Development

(2) *Conditional uses.*

Unit 2	City-wide uses by conditional use permit
Unit 3	Public protection and utility facilities
Unit 17	Transportation trades and services
Unit 28	Center for collecting recyclable materials
Unit 29	Dance Halls
Unit 35	Outdoor music establishments
Unit 36	Wireless communications facilities
Unit 40	Sidewalk Cafes
Unit 42	Clean technologies

(C) *Density.* None.

(D) *Bulk and area regulations.* None

(E) *Setback regulations.*

	Central Business District	Shopping Center
Front	5 ft.	25 ft.
Front, if parking is allowed between the right-of-way and the building	50 ft.	50 ft.
Side	None 5 feet	None 5 feet

Side, when contiguous to a residential district	10 ft.	25 ft.
Rear, without easement or alley	15 ft.	25 ft.
Rear, from center line of a public alley	10 ft.	10 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height	30 ft. for portions of a building over 60 ft. in height

(F) *Building height regulations.*

Building Height Maximum	56 /84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right-of-way line shall have a maximum height of 84 feet.

5-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.23 Downtown Core

(A) *Purpose.* Development is most intense, and land use is densest in this zone. The downtown core is designed to accommodate the commercial, office, governmental, and related uses commonly found in the central downtown area which provides a wide range of retail, financial, professional office, and governmental office uses. For the purposes of Chapter 96: Noise Control, the Downtown Core district is a commercial zone.

(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 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

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 29	Dance Halls
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.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
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Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Minimum buildable street frontage.* 80% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 / 168 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or portion of a building that is located greater than 15 feet from the master street plan right of way shall have a maximum height of 168 feet.

0-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	168 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 168 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions.*

161.24 Main Street/Center

(A) *Purpose.* A greater range of uses is expected and encouraged in the *Main Street/Center*. The *Center* is more spatially compact and is more likely to have some attached buildings than *Downtown General* or *Neighborhood Conservation*. Multi-story buildings in the *Center* are well-suited to accommodate a mix of uses, such as apartments or offices above shops. Lofts, live/work units, and buildings designed for changing uses over time are appropriate for the *Main Street/Center*. The *Center* is within walking distance of the surrounding, primarily residential areas. For the purposes of Chapter 96: Noise Control, the Main Street/Center district is a commercial zone.

(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 14	Hotel, motel, and amusement facilities
Unit 16	Shopping goods
Unit 17	Transportation trades and services
Unit 19	Commercial recreation, small sites
Unit 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	Multi-family dwellings
Unit 34	Liquor stores

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 18	Gasoline service stations and drive-in/drive through restaurants
Unit 28	Center for collecting recyclable materials
Unit 29	Dance halls
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 (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.
All property lines	30 ft. for portions of a building over 60 ft. in height

(F) *Minimum buildable street frontage.* 75% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 /84 ft.*
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*A building or a portion of a building that is located between 0 and 15 feet from the front property line or any master street plan right-of-way line shall have a maximum height of 56 feet. A building or a portion of a building that is located greater than 15 feet from the master street plan right of way line shall have a maximum height of 84 feet.

0-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6

feet or less in depth are permitted forward of the building façade.

(3) Building height may be permitted up to 84 feet, pursuant to §164.11 *Height or Setback Regulations and Exceptions*.

161.25 Downtown General

(A) *Purpose.* *Downtown General* is a flexible zone, and it is not limited to the concentrated mix of uses found in the *Downtown Core* or *Main Street / Center*. *Downtown General* includes properties in the neighborhood that are not categorized as identifiable centers, yet are more intense in use than *Neighborhood Conservation*. There is a mixture of single-family homes, rowhouses, apartments, and live/work units. Activities include a flexible and dynamic range of uses, from public open spaces to less intense residential development and businesses. For the purposes of Chapter 96: Noise Control, the *Downtown General* district is a residential zone.

(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 24	Home occupations
Unit 25	Offices, studios, and related services
Unit 26	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 36	Wireless communication facilities
Unit 40	Sidewalk Cafes

(C) *Density.* None

(D) *Bulk and area regulations.*

(1) *Lot width minimum.*

Dwelling (all unit types)	18 ft.
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(2) *Lot area minimum.* None.

(E) *Setback regulations.*

Front	A build-to zone that is located between the front property line and a line 25 ft. from the front property line.
Side	None 5 feet
Rear	5 ft.
Rear, from center line of an alley	12 ft.

(F) *Minimum buildable street frontage.* 50% of lot width.

(G) *Building height regulations.*

Building Height Maximum	56 ft.*
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0-15 feet from front property line	Maximum 36 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²

(1) The height of an adjacent building may only be utilized for this calculation if it is located on the common side or rear property line being developed.

(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

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, stair towers, elevator shafts or other appurtenances usually required to be placed above the roof level and not intended for human occupancy.
- (B) **Interior 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.
- (C) **Side and rear setback.** Zoning districts that require a 5-foot side and/or rear setback with an accompanying building height stepback may be permitted to reduce the side and/or rear setback to 0 feet if one or more of the following circumstances exist:
- (1) if there is no principal structure on the property directly adjacent to the common side and/or rear property line;
 - (2) if a principal structure that is adjacent to the common side and/or rear property line is already within 5 feet of said property line; or
 - (3) if the developing property owner owns the adjacent property on the common side and/or rear property line.
- (D) Any building over 36 feet in height utilizing urban streetscapes shall provide for a minimum 10-foot wide sidewalk adjacent to all streets on which a sidewalk is required to be replaced or constructed due to the development proposed.
- (E) **Building Height Bonus.** A building height bonus may be granted, subject to the following requirements. These standards apply to all buildings within a development site.
- (1) A minimum 12-foot wide sidewalk for projects utilizing urban streetscapes shall be constructed adjacent to all streets on which a sidewalk is required to be replaced or constructed. More extensive tree planting areas may be required to help mitigate for loss of greenspace and addition of impervious surface.
 - (2) Any associated parking garage shall be screened from view at the street grade with a liner building.
 - (3) A minimum of 50% of the additional gross floor area of a building above 60 feet in height shall be dedicated to residential use. The residential area, once calculated, may be distributed anywhere throughout the building.
 - (4) Prior to obtaining a building permit, the developer shall submit an energy model and LEED checklist (or approved equivalent) for all buildings in the development indicating which credits are intended to be pursued to achieve USGBC LEED Gold (or approved equivalent) building standards. Proof of LEED Gold certification (or approved equivalent) shall be submitted to the city within 180 days of issuance of a Certificate of Occupancy. All projects shall show effort to achieve the Development Density and Community Connectivity credit, or equivalent.
 - (5) Any side of a building immediately adjoining a principal structure on an adjacent lot shall utilize materials, colors and other architectural features similar to the front façade.

156.02 (F) Specific tests

(F) *Specific Tests.* The Board of Adjustment shall apply specific tests for the following variance requests:

- (1) *Height variances in all districts.* In addition to meeting all other normal requirements for a variance, an applicant seeking a height variance must establish the increased height of the proposed structure will not adversely affect adjoining or neighboring property owners, nor impair the beauty of Old Main, the historical churches on Dickson Street near East Avenue, nor otherwise impair the historic beauty and character of Fayetteville.
- (2) The Planning Division and/or Board of Adjustment may require an applicant to produce a viewshed analysis and/or a Sun/Shadow Study using industry-accepted methodologies to show the impact of a height variance proposal on neighboring streets and properties, in an effort to determine if there is an adverse impact caused by the proposal.