

AGENDA REQUEST

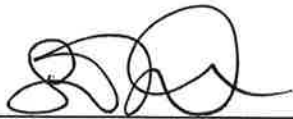
FOR: COUNCIL MEETING OF September 17, 2013

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

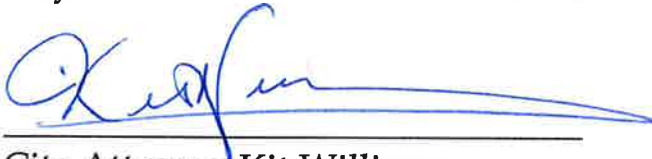
APPROVED FOR AGENDA:



City Council Member Sarah Marsh

9/4/2013

Date



City Attorney Kit Williams
(as to form)

9-3-13

Date

(left on 3rd Reading)
This ordinance was tabled to the December 3, 2013 City Council Meeting
and sent to the ordinance review Committee on the November 5, 2013 City Council Mtg.
(left on 3rd Reading)
This ordinance was tabled to the November 5, 2013 City Council mtg.
on the October 15, 2013 City Council mtg.
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.



CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff

From: Jeremy Pate, Development Services Director

Date: November 21, 2013

Subject: Building Height Amendments from Ordinance Review Committee

The Ordinance Review Committee on November 20 met to discuss an ordinance currently under consideration by the City Council to amend building height and setback regulations in the Unified Development Code. The following amendments were all recommended from the Ordinance Review Committee for the Council to consider:

- 1) Amend Section 2 of the ordinance to remove (E)(4), the requirement to obtain LEED Gold certification for buildings over 60 feet in height
- 2) Consider as a separate discussion (not as part of the whole recommendation) a requirement that a developer must meet the City's Low Impact Development ordinance instead of LEED. One example of language that might be considered is:

"The developer shall utilize Low Impact Development strategies in the project design, in accordance with the Unified Development Code §179: Low Impact Development."

- 3) Amend Section 2 of the ordinance to reword (E)(2) as follows:
"Any associated parking garage **constructed within a build-to zone** shall be screened from view at the street grade with a liner building."
- 4) Amend Section 2 of the ordinance, under (E)(3), to change the 50% residential requirement to 25%.
- 5) Amend Section 2 of the ordinance to reword (E)(3) as follows:

"A minimum of **25%** of the additional gross floor area of the building above 60 feet in height shall be dedicated to residential use, **where residential uses are permitted**. The residential area, once calculated, may be distributed anywhere throughout the building."

- 6) Amend Section 2 of the ordinance to allow a property owner to reduce side or rear setbacks to 0 feet if the adjacent property owner gives permission through an easement. Reword (C)(3) as follows:

"if the developing property owner owns the adjacent property on the common side and/or rear property line, **or negotiates an easement with the adjacent property owner to allow for said construction.**"

*As Amended by City
Council 11/05/2013*

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, AND 161.25 TO CHANGE SETBACKS AND STEPBACKS FOR ADJOINING PROPERTY AND HEIGHT LIMITATIONS FOR SEVERAL DISTRICTS AND TO AMEND § 164.11 **HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS** TO REDUCE OR ELIMINATE SETBACKS IN CERTAIN CIRCUMSTANCES, TO REQUIRE WIDER SIDEWALKS FOR BUILDINGS HIGHER THAN 36 FEET AND TO PROVIDE A BUILDING HEIGHT INCREASE FOR BUILDINGS RECEIVING LEED GOLD CERTIFICATION AND MEETING OTHER REQUIREMENTS, AND TO AMEND § 156.02 (F) TO AUTHORIZE A REQUIREMENT FOR A HEIGHT VARIANCE APPLICANT TO PROVIDE A VIEWSHED ANALYSIS OR A SUN/SHADOW STUDY

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 property owners' rights to adequate sunlight and room for air and wind should be protected; and

WHEREAS, protection of owners' property rights 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 properties to remain attractive and healthful places to live or work; and

WHEREAS, property owners 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 and other greenspace areas also need adequate sunlight that reasonable setback and stepback regulations can ensure; and

WHEREAS, side and rear setbacks should be able to be eliminated under certain circumstances; and

WHEREAS, building height limitations currently allowed by the Unified Development Code should be lowered to 60 feet unless a height increase is allowed under certain circumstances including the attainment of LEED Gold Certification; and

WHEREAS, the Planning Department should be able to require a height variance requestor to provide a viewshed analysis or sun/shadow study of the proposed project.

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 §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, and 161.25 and enacts these amendments as shown on Exhibit A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by enacting a new (C) *Side and Rear Setback*, (D) *Buildings over Thirty-Six Feet in Height* and (E) *Building Height Bonus* as shown below:

- “(C) *Side and rear setback.* Zoning districts that require a 5-foot side and/or rear setback with an accompanying building height setback 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 requirement. 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 greenscape 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 the 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.”

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby amends § 156.02 (F) *Specific Tests* by enacting a new (2) as shown below:

“(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.”

PASSED and **APPROVED** this 5th day of November, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

Exhibit "A"

As amended by City Council

11/05/2013

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	5 feet
Side, when contiguous to a residential district	10 ft.
Rear	20 ft.

(F) *Building height regulations.*

Building Height Maximum	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:	5 feet
Side or rear, when contiguous to a single-family residential district:	15 feet

(F) *Building Height Regulations.*

10-15 feet from front property line	Maximum 60 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	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
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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:	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.*

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.*

(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	5 feet	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.*

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	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.*

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	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.*

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	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.*

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

(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.



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THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

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 stepbacks 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



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DEPARTMENT CORRESPONDENCE

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24 AND 161.25 TO CHANGE SETBACKS AND STEPBACKS FOR ADJOINING PROPERTY AND HEIGHT LIMITATIONS FOR SEVERAL DISTRICTS AND TO AMEND § 164.11 **HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS** TO REDUCE OR ELIMINATE SETBACKS IN CERTAIN CIRCUMSTANCES, TO REQUIRE WIDER SIDEWALKS FOR BUILDINGS HIGHER THAN 36 FEET AND TO PROVIDE A BUILDING HEIGHT INCREASE FOR BUILDINGS RECEIVING LEED GOLD CERTIFICATION AND MEETING OTHER REQUIREMENTS, AND TO AMEND § 156.02 (F) TO AUTHORIZE A REQUIREMENT FOR A HEIGHT VARIANCE APPLICANT TO PROVIDE A VIEWSHED ANALYSIS OR A SUN/SHADOW STUDY

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 property owners' rights to adequate sunlight and room for air and wind should be protected; and

WHEREAS, protection of owners' property rights 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 properties to remain attractive and healthful places to live or work; and

WHEREAS, property owners 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 and other greenspace areas also need adequate sunlight that reasonable setback and stepback regulations can ensure; and

WHEREAS, side and rear setbacks should be able to be eliminated under certain circumstances; and

WHEREAS, building height limitations currently allowed by the Unified Development Code should be lowered to 60 feet unless a height increase is allowed under certain circumstances including the attainment of LEED Gold Certification; and

WHEREAS, the Planning Department should be able to require a height variance requestor to provide a viewshed analysis or sun/shadow study of the proposed project.

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 §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, and 161.25 and enacts these amendments as shown on Exhibit A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by enacting a new (C) *Side and Rear Setback*, (D) *Buildings over Thirty-Six Feet in Height* and (E) *Building Height Bonus* as shown below:

- “(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 requirement. 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 greenscape 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 the 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.”

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby amends § 156.02 (F) *Specific Tests* by enacting a new (2) as shown below:

- “(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.”

PASSED and APPROVED this 5th day of November, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

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.

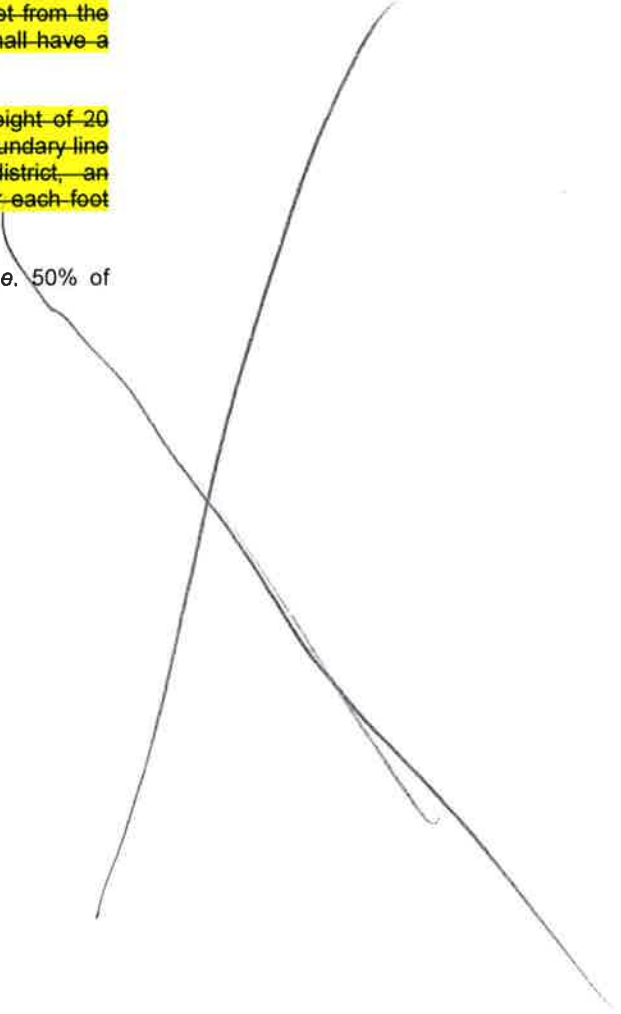
(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

(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.

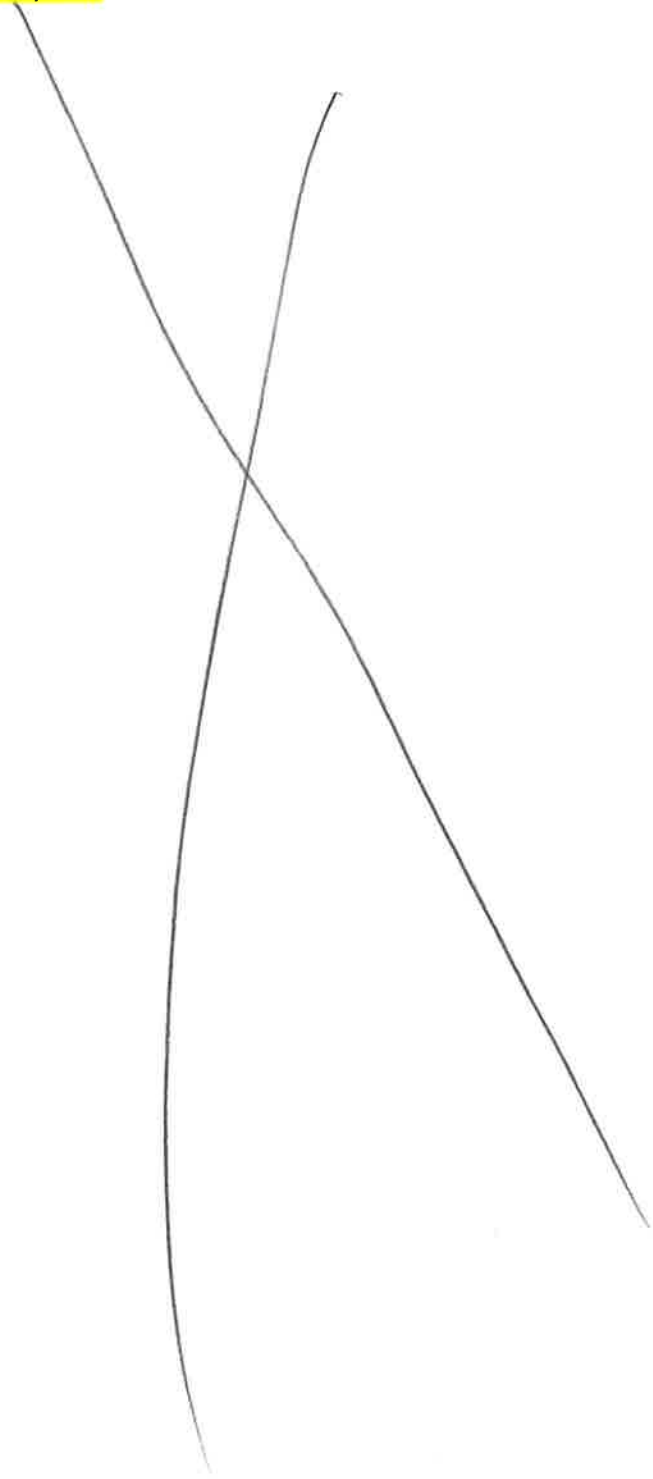
0-15 feet from front property line	Maximum 60 feet
0-15 feet from side and rear property line	Maximum 36 feet or the height of the adjacent building, whichever is greater ¹
15 feet + from all property lines	Maximum 60 feet ²
Building Height Bonus	84 feet ³

(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.

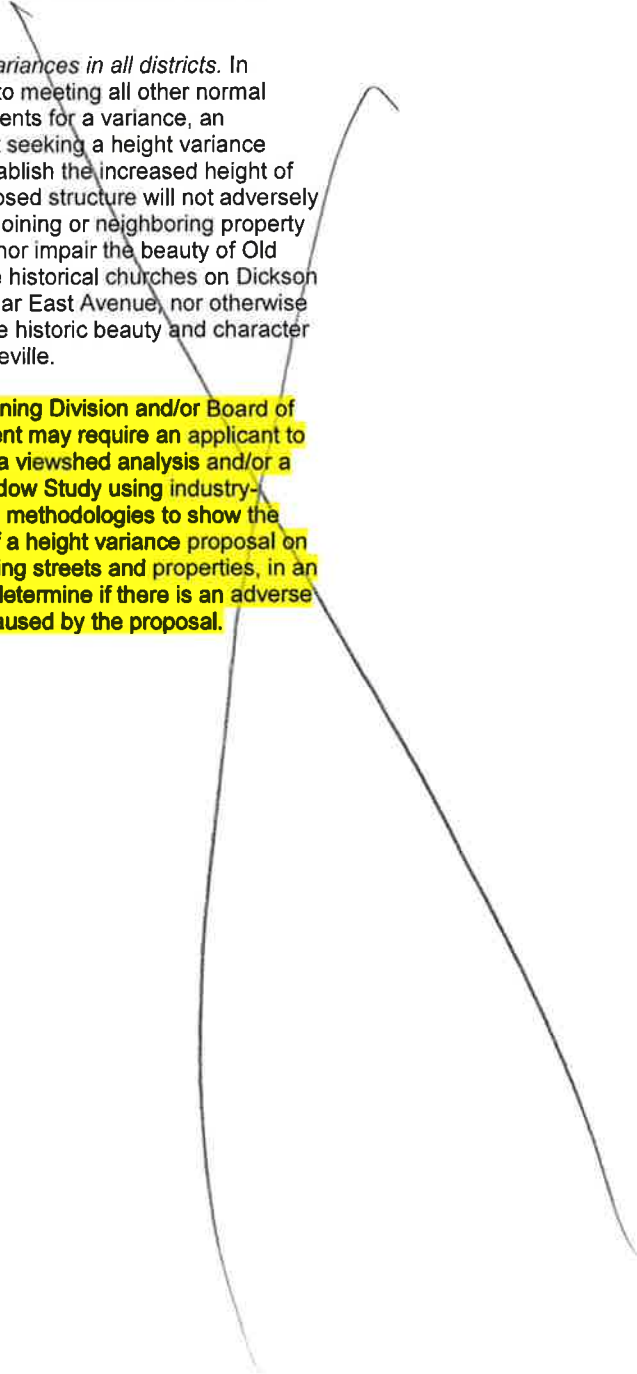
(2) Individual balconies, awnings, overhangs and other similar architectural projections 6 feet or less in depth are permitted forward of the building façade.

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.**
- 
- Hand-drawn lines and arrows connecting the two list items. A line starts from the top of item (1), goes up and left, then down and left to point at the start of item (2). Another line starts from the top of item (2), goes up and right, then down and right to point at the end of item (1). A third line starts from the top of item (2), goes up and right, then down and right to point at the end of item (1). A fourth line starts from the top of item (2), goes up and right, then down and right to point at the end of item (1).

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, AND 161.25 TO CHANGE SETBACKS AND STEPBACKS FOR ADJOINING PROPERTY AND HEIGHT LIMITATIONS FOR SEVERAL DISTRICTS AND TO AMEND § 164.11 **HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS** TO REDUCE OR ELIMINATE SETBACKS IN CERTAIN CIRCUMSTANCES, TO REQUIRE WIDER SIDEWALKS FOR BUILDINGS HIGHER THAN 36 FEET AND TO PROVIDE A BUILDING HEIGHT VARIANCE FOR BUILDINGS RECEIVING LEED GOLD CERTIFICATION AND MEETING OTHER REQUIREMENTS, AND TO AMEND § 156.02 (F) TO AUTHORIZE A REQUIREMENT FOR A HEIGHT VARIANCE APPLICANT TO PROVIDE A VIEWSHED ANALYSIS OR A SUN/SHADOW STUDY

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; and

WHEREAS, side and rear setbacks should be able to be eliminated under certain circumstances; and

WHEREAS, building height limitations currently allowed by the Unified Development Code should be lowered to 60 feet unless a height variance is allowed under certain circumstances including the attainment of LEED Gold Certification; and

WHEREAS, the Planning Department should be able to require a height variance requestor to provide a viewshed analysis or sun/shadow study of the proposed project.

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 §§ 161.16, 161.18, 161.19, 161.20, 161.21, 161.22, 161.23, 161.24, and 161.25 and enacts these amendments as shown on Exhibit A attached hereto.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by enacting a new (C) *Side and Rear Setback*, (D) *Buildings over Thirty-Six Feet in Height* and (E) *Building Height Bonus* as shown below:

- “(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 requirement. 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 greenscape 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 the building about 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.”

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby amends § 156.02 (F) *Specific Tests* by enacting a new (2) as shown below:

“(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.”

PASSED and APPROVED this 15th day of October, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

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 

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.

Current law

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 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 additional distance of one foot for each eight in excess of 20 feet.

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

- 5. Art. 5(X); Ord. No. 2414, 2-7-78; Ord. No. 2621, 4-1-80; Ord. No. 2880, 8-31-83; Ord. No. 3160, 04-1-84; Ord. No. 4100, \$2 (Ex. A), 6-15-98; Ord. No. 4178, 8-31-99; Ord. 4726, 7-19-05; Ord. No. 5079, 11-20-07; Ord. 5195, 11-6-07-06; Ord. 5312, 4-20-10; Ord. 5462, 12-6-11.

District 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:

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), 6-15-98; 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

Setback when adjoining residence

Unit 20 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 functional travel

(B) Use

Unit 1	
Unit 4	
Unit 5	
Unit 13	
Unit 14	
Unit 16	
Unit 17	
Unit 18	
Unit 19	
Unit 20	
Unit 25	
Unit 33	
Unit 34	

(2)

Unit 2	
Unit 3	
Unit 21	
Unit 28	
Unit 29	
Unit 32	
Unit 35	
Unit 36	
Unit 38	
Unit 40	
Unit 42	
Unit 43	

(C) Dens

(D) Bulk,

(E) Setba

Front	
Front, if pi	
between t	
the buildin	
Side	
Side, whe	
a residenti	
Rear	

(F) Buildi

Emailed to Aldermen 10/14/13



www.accessfayetteville.org

Departmental Correspondence



B. 1
Amend UDC Height
and Setback Regulations
Page 42 of 68

**LEGAL
DEPARTMENT**

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

**TO: Mayor Jordan
City Council**

**CC: Jeremy Pate, Development Services Director
Andrew Garner, City Planning Director**

FROM: Kit Williams, City Attorney

DATE: October 11, 2013

RE: Incentive Zoning vs. Light and Air Protection

When our office was presented with the proposed major change to the U.D.C. Zoning criteria sponsored by City Council Member Sarah Marsh that would vary setback requirements for LEED certified gold buildings, I asked Assistant City Attorney Jason Kelley to research the law about the City's power or lack of power to use this type of "incentive" zoning in Arkansas. Attached is his two page memo to me (without his attachments).

As you see, this appears to be a legally untested zoning scheme for Arkansas. The short initial proposed U.D.C. amendment I had drafted for City Council Member Sarah Marsh was narrowly focused to provide some preservation of adequate light and air for single family structures being used as residences. There is strong statutory authority for such regulation to ensure adequate light and air for homes.

“Purpose of plans.

- (a) The plans of the municipality shall be prepared in order to promote...(the) general welfare of the citizens.
- (b) The plans may provide...for:

....

(5) Adequate light and air in the use and occupancy of buildings....”

A.C.A. § 14-56-403 of Chapter 14, **Building and Zoning Regulations - Planning** of the Arkansas Code (emphasis added).

The **Building and Zoning Regulations - Planning** chapter makes no mention of “incentive” zoning. It specifically provides for a setback ordinance (A.C.A. § 14-56-418 **Setback ordinance**). For many decades the Board of Adjustment which is required to be established by A.C.A. § 14-56-416 **Zoning ordinance**, has been empowered and decided all zoning setback variance requests. This appears to be required by that state statute, and the only appeal from the Board of Adjustment’s decision is to Circuit Court.

The City Council may not overrule the Board of Adjustment’s decision. The City Council may not even be statutorily allowed to erode the Board of Adjustment’s statutory power to grant setback or height variances by incorporating a “may be permitted” setback or height variance for certain situations described in the proposed § 164.11 (c). The ordinance is unclear who “may” permit such variances. I assume it must be the Board of Adjustments.

Probably the only entity authorized to grant such setback and height variances is the Board of Adjustments which already has the statutory right to grant variances to prevent “undue hardship” and “protect adjacent

property.” A.C.A. § 14-56-416 (2). However, since having a LEED Certified Gold building is unrelated to air and light protection of adjoining structures, I doubt it could condition any height variance by trying to require LEED Certification.

Another problem with this proposal is that the state enabling statute requires that “(t)he regulations imposed within each district or zone shall be uniform throughout the district or zone.” A.C.A. § 14-56-416 (a)(3)(E)(ii). This incentive zoning proposal would vary the imposed regulations within the zoning district if the building was rated high enough by an outside corporation. I doubt whether our zoning regulations can be varied by U.S. Green Building Council, Inc. without violating this state required uniformity rule.

An opponent of this ordinance could also argue allowing an outside corporation (the U.S. Green Building Council) to determine whether or not to issue the required LEED Gold Certificate (which is required “within 180 days of issuance a Certificate of Occupancy”) is an **unconstitutional delegation of legislative and/or administrative power to an outside corporation**. I also wonder what would the City do if this Green Building Council refuses to issue a LEED Gold Certificate? Must the builder remove the top floors of the building? If the City tried to force such action, I would guarantee a court challenge to this ordinance.

There are certainly ways to improve and clarify the initial setback/stepback protection for single family homes that I initially and quickly drafted for City Council Member Sarah Marsh. Community Services Director Jeremy Pate has great experience and expertise in this area and his recommendations should carry a lot of weight. However, before the City Council considers the significant changes to **over ten pages** of the Unified Development Code now being proposed, I believe that the proposals should go to the Planning Commission for its consideration and suggestions. This is a much more detailed, complex, comprehensive, and substantial proposal than the **single paragraph** I drafted initially. I believe the currently proposed city-wide zoning changes and complex over sixty foot building height regulations need much more study and Planning Commission input before they would be ready for your consideration.

14-56-416. Zoning ordinance.

(a)(1) Following adoption and filing of the land use plan, the commission may prepare for submission to the legislative body a recommended zoning ordinance for the entire area of the municipality.

(2) The ordinance shall consist of both a map and a text.

(3)(A) The ordinance may regulate the location, height, bulk, number of stories, and size of buildings; open space; lot coverage; density and distribution of population; and the uses of land, buildings, and structures.

(B) The ordinance may require off-street parking and loading.

(C) The ordinance may provide for districts, of compatible uses, for large scale unified development, for elimination of uses not in conformance with provisions of the ordinance, and for such other matters as are necessary to the health, safety, and general welfare of the municipality.

(D) The ordinance shall include provisions for administration and enforcement.

(E)(i) The ordinance shall designate districts or zones of such shape, size, or characteristics as deemed advisable.

(ii) The regulations imposed within each district or zone shall be uniform throughout the district or zone.

(b)(1) The ordinance shall provide for a board of zoning adjustment, which may either be composed of at least three (3) members, or the commission as a whole may sit as the board of zoning adjustment.

(2) The board shall have the following functions:

(A) Hear appeals from the decision of the administrative officers in respect to the enforcement and application of the ordinance, and may affirm or reverse, in whole or in part, the decision of the administrative officer;

(B)(i)(a) Hear requests for variances from the literal provisions of the zoning ordinance in instances where strict enforcement of the ordinance would cause undue hardship due to circumstances unique to the individual property under consideration, and grant such variances only when it is demonstrated that such action will be in keeping with the spirit and intent of the provisions of the ordinance.

(b) The board shall not permit, as a variance, any use in a zone that is not permitted under the ordinance.

(c) The board may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

(ii) Decisions of the board in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

(3)(A) The board shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum and procedure, and keep a public record of all findings and decisions.

(B) Each session of the board shall be a public meeting with public notice of the meeting and business to be carried on published in a newspaper of general circulation in the city, at least one (1) time seven (7) days prior to the meeting.

To: Kit Williams, City Attorney
From: Jason Kelley, Asst. City Attorney 
Re: Incentive Zoning/Incorporating LEED standards into UDC
Date: October 9, 2013

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

The amendments to be offered to the proposed setback, stepback ordinance consist, in part, of the incorporation of certain LEED certifications as prerequisites to increased building height allowances. This is a form of incentive zoning that, to my knowledge, has not been attempted in the State of Arkansas.

As background, incentive zoning is a method whereby a property developer is allowed to develop in a way that is not permitted in exchange for certain public benefits that are otherwise not required. According to a summary from the American Planning Association, incentive zoning:

allows a city to leverage variations in existing zoning standards and obtain public goods. For example, a developer may provide schools, parks, open space, plazas, low-income housing, or money, in exchange for greater flexibility in required building setbacks, floor heights, lot area, parking requirements, number of dwellings, and other minimum standards. The incentives vary by location, but governments usually calculate the incentives to balance the public advantage with developer's costs and gains.

American Planning Association, Property Topics and Concepts, <http://www.planning.org/divisions/planningandlaw/propertytopics.htm> (last visited Oct. 9, 2013). It is certainly possible that the provision of energy efficient/environmentally sustainable development could be one of the "public goods" envisioned in an incentive zoning program.

The use of incentive zoning is not without controversy. In addition to policy-related objections, legal writers have raised potential issues, particularly relating to applying LEED standards as an incentive in an incentive zoning program. One objection is that LEED standards are privately developed and controlled by the U.S. Green Building Council (USGBC), a private non-profit corporation. LEED standards change. These changes are not subject to any voting or public approval process. Delegating this authority to a private entity could be a violation of the constitution. One potential remedy for this concern would be to "set" the LEED standard as of the date of adoption of the local ordinance. This would not permit future changes (as determined by USGBC) to be included in City requirements without further adoption/amendment by the City Council.

Concerns also arise related to the *Nollan* “substantial nexus” analysis. It has been stated:

There is some logical and legal support for applying *Nollan*’s nexus test to incentive zoning provisions. The *Nollan* Court stated that the evident constitutional propriety of an exaction disappears “if the condition substituted for the prohibition utterly fails to further the end advanced as justification for the prohibition. When that nexus is eliminated, the situation becomes the same as if California law forbade shouting fire in a crowded theater, but granted dispensations to those willing to contribute \$100 to the State Treasury.” Courts have long applied such a nexus test to the grant of variances and special exceptions. It may well be that the public amenities or exactions that may be constitutionally secured through incentive zoning bonuses are no greater than those that could be involuntarily secured through mandated development conditions.

3 Arden H. Rathkopf & Daren A. Rathkopf, *Rathkopf’s The Law of Zoning and Planning* § 52:7.

Here, the proposal is to limit the height and “nearness” of a building to adjoining residential property. However, if a developer builds to a specified LEED standard, the building would be allowed to intrude upon the residential neighbor’s space, air and light. It is difficult to argue a nexus between these two competing interests (the interest in environmental/energy efficient construction and the interest in preserving space, air and light for residential property owners). Stated another way, the energy efficiency or environmental sustainability of a building does not ameliorate the harmful effects the placement of that building near a residence may cause. Likewise, a larger building built to a LEED standard may use more energy than a smaller building on the same site, whether or not the smaller building was built to a LEED standard. More size means more materials are used in construction and more utilities are used during occupancy. These issues may cause a court to find an insufficient “nexus” to support the constitutionality of the regulation.

I have attached an assortment of articles and research touching on these issues. This is a brand new area, and there is simply not that much law on the topic.

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.

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 setback 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

Smith, Sondra

From: Dan Coody <dcoody@swbell.net>
Sent: Monday, October 28, 2013 3:00 PM
To: Smith, Sondra
Subject: Re: Proposed setback changes

Thanks, Sondra. -- Dan

Sent from my iPhone

On Oct 28, 2013, at 2:58 PM, "Smith, Sondra" <:ssmith@fayetteville-ar.gov> wrote:

>

>

> -----Original Message-----

> From: Deborah coody [mailto:dcoody@swbell.net]

> Sent: Monday, October 28, 2013 10:17 AM

> To: Charles Coody; Smith, Sondra

> Subject: Proposed setback changes

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>>>> Being a strong proponent of both alternative energy and urban planning, I am asking you to consider a few points concerning the proposed 5' setback requirement. We all know this ordinance was generated to stop the multistory development on Block Ave, but this ordinance really hurts the little guy. Small entrepreneurs strengthen the fabric of our community and this impacts them all. It also damages the future town form.

>>>>

>>>> 1. The Dover/Kohl downtown and city-wide master plan cost us all a ton of money, took the input of over 1,000 citizens, and required a couple of years to implement. This ordinance is in direct conflict with the plan's principals. Public input and investment should not be dismissed easily, and negative consequences should not be accepted without serious consideration.

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>>>> 2. When residential property and commercial property abut, perhaps a solar and air access ordinance should be considered (there are many studies [easy Google search] that examine impacts of solar access ordinances). But when commercial properties with long-established zero lot line regulations abut, this ordinance has far-reaching consequences.

>>

>>>> For example, Fayetteville's plan calls for more urban density in downtown and along College Ave. making walkability, public transportation, bike friendliness, and infrastructure costs improve. It reduces travel time and the burning of fossil fuels, and makes small commercial ventures more viable. Reducing the available commercial land for small residential projects and businesses downtown promotes sprawl.

>>>>

>>>> Do not think that a mere 5' setback is insignificant. On a common downtown commercial 50'x120' lot the new requirement reduces the habitable area by over 23%. Now multiply that times the number of small

commercial properties throughout town and consider the acreage that cannot fulfill the City Master Plan while reducing the viability of small, innovative projects.

>>>>

>>>> 3. This ordinance does very little for solar access. One could build the Taipei Tower and, unless the earth's axis changes, it will never produce one molecule of shade on its southern neighbor. On the northern side it is unlikely that the 5' setback would make a system more feasible than with the existing zero lot line code. At the same time this ordinance does nothing to protect from future development those who DO install solar systems.

>>>>

>>>> 4. The idea that trees would do well and not do damage to walls and foundations in a narrow, shaded strip between buildings is unrealistic. I'm not sure what activities may occur in these 5' spaces, but growing trees will not be one of them.

>>>>

>>>> 5. The ordinance is ambiguous. After asking three City people, "does 'adjacent' mean that two buildings line up with each other? How far apart must they be before they are no longer considered 'adjacent'? Can a person build a small apartment or business close to the lot line if it is 'adjacent' to the back parking lot of other buildings?", no one had clear answers.

>>>>

>>>> 6. If this ordinance were in place at the time, would it be possible to build the iconic streets of Fayetteville such as Dickson, Block, Center, the Square, etc.?

>>> 7. If light and solar power are truly the driving force, it would be much better, and easier, to change our codes to require solar orientation for residential subdivisions and commercial development. If energy efficiency and quality of life are the goals, it would be better to adopt the 2012 Energy Code for all new construction. Until then, let's address specific problems with appropriate, limited solutions and keep the Fayetteville Master Plan intact.

>>>

>>> Thank you for your consideration.

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>>> Dan Coody

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>>>> Sent from my iPad

Smith, Sondra

From: Deborah coody <dcoody@swbell.net>
Sent: Monday, October 28, 2013 11:41 AM
To: Charles Coody; Smith, Sondra
Cc: Williams, Kit; sclark@fayettevillear.com
Subject: Proposed solution

Sondra, could you please forward this note to the admin, council and planning commission? -- Thanks.

> -----

> The problem:

> Someone has an existing structure that warrants protection from neighboring new development. The new development, and everyone else in town, has to modify plans and lose ability to use some of their (expensive) property to resolve issues pertaining to that single structure.

>

> At some point, after the neighboring new development gets built, the owner of the original, existing property that was the catalyst for these new rules changes their mind, sells, moves, etc. That land, sooner or later, eventually and inevitably, will change hands. The new owner then razes the original structure to redevelop the land to match the new development next door, making all the previous gyrations, and the damage to the City's master plan, and preservation efforts for that special property for nothing.

>

> Possible solution:

> The owner of the original property that warrants protection does not need to impact all other commercial properties in town. There could be a new zoning class, say a Fayetteville Heritage zoning, that will preserve that property in perpetuity by deed restriction, just as deed restrictions are required for accessory dwelling units.

> The surrounding property owners would know what the rules are before they begin plans for redevelopment next to a Heritage zoning, and the original property that warranted that protection stays protected in perpetuity.

The financial impact is limited to the immediate situation, the Master Plan stays intact, other commercial properties are still able to fulfill their potential, and a historic structure can be preserved.

I hope something like this proposal can be considered. Thank you.

Dan Coody

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> Sent from my iPad

Branson, Lisa

From: Art Hobson <ahobson@uark.edu>
Sent: Saturday, November 02, 2013 3:06 PM
To: Rhonda Adams; Adella Gray; Mark Kinion; City_Clerk; citycouncil@mathewpetty.org;
City_Clerk; City_Clerk; Justin Tennant; Mayor
Cc: Marie Riley
Subject: Sarah Marsh's proposals

Dear Mayor Jordan and City Councilors:

I've supported Sarah Marsh's ideas in the past, but I must oppose her recent suggestions, especially the proposed setback requirements. I participated in the lengthy, well-attended, and open public discussions of Fayetteville planning issues that led to the 2004 Downtown Master Plan and the 2006 City Plan 2025. A similar process in 2011 led to the City Plan 2030. All three of these plans are well thought out, and consistent with each other. A major emphasis of all of them is to reduce sprawl by increasing density. Setback requirements are inconsistent with reducing sprawl, as are building height limitations that are set too low. There's no need for setback requirements of any kind, and in fact downtown buildings should be required to come right up to the sidewalks.

I do agree with an overall height limit. But three stories is too low. Five stories or so would achieve the densities we need to support a healthy city that encourages walking, bicycling, and public transit. I see no reason to "step back" the upper sections of taller (i.e. five story) buildings.

We should stick with the good plans laid in 2004, 2006, and 2011. Any changes should support the principles of those plans, rather than backing away from them.

Sincerely,

Art Hobson

Emeritus Professor of Physics, U Arkansas, Fayetteville.

See my liberal-arts physics textbook and other stuff at <http://physics.uark.edu/hobson/>.

re: Proposed Building Heights & Set Back Regulations

Dear Members of the Fayetteville City Council;

I have been both a proud participant in the growth and development of downtown Fayetteville as well as a consumer of its many offerings for over 30 years. My commitment to maintaining the fabric of Fayetteville has been demonstrated by virtue of my being an investor and developer in almost two dozen downtown historical renovations (which include the Fayetteville Train Depot, The Three Sisters, The Bakery Building and the Ozark Theater Building), and by acting as a current commissioner of the Dickson Street Improvement District and past officer and board member of the Downtown Dickson Enhancement Project (DDEP).

I wish to voice my objection to the proposed ordinance changes with respect to building heights and setbacks championed by Alderman Marsh. My objections couldn't have been more aptly put than those offered by the editorial staff of the Northwest Arkansas Times on Friday November 1, 2013. Investment in our community often involves tremendous resources in time and capital. Investors like to know what the rules are before making such a commitment. And predictability is imperative.

When a governing body, in response to the concerns of a few, arbitrarily changes the rules in contravention to established entitlements and an adopted master plan it scares the investment community and sends the wrong signal. To try and put it simply, imagine that you are fortunate enough to plan to build your own home but need to save some money first. Yet you've found the perfect lot. You buy it (investing a sizeable amount of your savings) and begin planning your dream home. Then the regulating authority passes a new ordinance which states that, due to the nature of surrounding development, the land you bought can only be used for agricultural purposes. Now all you can do with your huge investment is grow tomatoes. Would you have paid the same for the lot if you thought this would happen before hand? Such is the case for many who have made a commitment to invest downtown and still are working to build that dream.

Respectfully Submitted,
Greg House