Fort Smith
Unified Development Ordinance

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27-101 Purpose and Objectives

The Unified Development Ordinance is enacted to promote the orderly growth and expansion of Fort Smith, Arkansas (City). These regulations provide for the orderly development of subdivisions, expansion of infrastructure and public services, and divide the city into several zoning districts. Within these zoning districts, the Unified Development Ordinance (UDO or “these regulations”) prescribes the character, area, bulk, location and use of buildings and land. These regulations are designed to achieve the following objectives:

(1) To stabilize and conserve property values.

(2) To protect streets, schools and utilities from overloading by limiting population density.

(3) To provide locations for each land use which are properly related to traffic, utilities and other land uses.

(4) To separate conflicting types of traffic by requiring the proper relation of land uses.

(5) To reduce or eliminate congestion by providing adequate off-street parking and loading spaces.

(6) To improve quality of life and aesthetics by providing adequate light, air and open space.

These regulations are justifiable only insofar as they promote the health, safety, convenience, or general welfare of the community as a whole.

27-102 Title and Effective Date

These regulations shall be known and cited as the City of Fort Smith, Arkansas Unified Development Ordinance (hereinafter known as "the UDO" and cited herein as either UDO or "these regulations"). It has been adopted pursuant to Ordinance No. ____, on _____ , which is the effective date of these regulations.

27-103 Authority

This chapter and the regulations herein set forth are adopted under the authority of A.C.A. tit. 14, ch. 56, subch. 4 [§ 14-56-401 et seq.].

27-104 Jurisdiction

A. The Unified Development Ordinance applies to all lands within the corporate limits of Fort Smith, Arkansas, as the same now or hereafter are set.

B. Portions of these regulations, as specifically identified herein, are applicable to all lands within the City of Fort Smith's extraterritorial jurisdiction and planning area.

C. These regulations are not applicable to land and development owned and operated by the City of Fort Smith.

27-105 Annexed Area

Territory annexed to the City after adoption of this chapter shall be governed by the following regulations.

A. All applications for annexation shall be accompanied by a rezoning application and Master Land Use Plan Amendment application.

B. All new land uses shall conform to those permitted in the Residential Estate zoning district unless a permit granting permission for another use is obtained under the same procedure set forth in subsection (A) above.

C. A development plan may be required with the annexation, rezoning, and Master Land Use Amendment application.

D. A building permit will not be issued on any annexed property until the property has received the appropriate zoning classification.

27-106 Interpretation

The provisions of the Unified Development Ordinance shall be held to be minimum requirements to meet the intent expressed in Section 27-101. Where the provisions of these regulations impose greater restrictions than those of any other ordinance or regulation, the provisions of these regulations shall prevail. Where the provisions of any other ordinance or local regulation impose greater restrictions than those of these regulations, the provisions of such other ordinance or local regulation shall prevail. When referring to these regulations, the following rules of interpretation shall be applied, except when the context clearly requires otherwise:

A. The particular shall control the general.

B. In the case of any difference of meaning or implication between the text of this chapter and any chart, graph, illustration or table, the text shall control.

C. The words "shall" “will” and “must” are always mandatory and are not discretionary. The word "may" and “should” are permissive and discretionary.

D. Words used in the present tense include the future tense; words in future tense include the present tense; words in the singular number include the plural number, and words in the plural number include the singular number.

E. The words "building" and "structure" shall be construed as though followed by the words, "or a portion thereof."

F. The word "lot" includes the words, "parcel," "plot" or "tract," but does not include leased lands.

G. The word "occupied" shall be construed as though followed by the words, "or intended, arranged, or designed to be occupied."

H. The word "City" means the area of jurisdiction of the City of Fort Smith, Arkansas.

I. All public officials, bodies and agencies to which reference is made are those of the City of Fort Smith, Arkansas.

J. All yards required by this chapter shall be open and unobstructed by structures from the lowest level of the lot to the sky except as specifically regulated herein.

K. Unless otherwise specified, number of days will be calendar days.

27-107 Consistency with Comprehensive Plan

A. The UDO is intended to be used as a tool for implementing the goals, objectives and policies of the Fort Smith Comprehensive Plan. Any amendments to the UDO or actions taken pursuant to the UDO shall be consistent with the Comprehensive Plan.

B. Text amendments to the UDO are consistent with the Comprehensive Plan if such amendments comply with the goals and policies stated in the Plan, as it may be amended from time to time. An amendment to the zoning map is consistent with the Comprehensive Plan provided the map amendment is consistent with the Master Land Use Plan, as it may be amended from time to time.

27-108 Coordination with Other Regulations

A. The use of buildings and land within the City shall be subject to all other regulations as well as the UDO, whether or not such other provisions are specifically referenced in the UDO. References to other regulations or provisions of the UDO are for the convenience of the reader. The lack of a cross reference shall not be construed as an indication that other regulations do not apply.

B. In interpreting and applying the provisions of the UDO, they shall be construed to be the minimum requirements necessary for the promotion of public health, safety or the general welfare. Minimum values are not intended to be target values. Whenever the UDO imposes more restrictive standards than are required pursuant to any other state or local regulation, the UDO shall govern.

27-109 Relationship to Private Restrictions

A. The provisions of the UDO are not intended to affect any deed restriction, covenant, easement, or any other private agreement or restriction on the use of land.

B. Where the provisions of the UDO are more restrictive or impose higher standards than any private restriction, the requirements of the UDO shall control.

C. Where the provisions of any private restriction are more restrictive or impose higher standards than the provisions of the UDO, such private restriction shall control if properly enforced by a person having the legal right to enforce such restrictions.

D. Private restrictions shall not be enforced by the City.

27-110 Transitional Provisions

A. **Previously Existing Regulations**. Those regulations in effect immediately prior to the effective date of this UDO shall be referred to as the "previously existing regulations".

B. **Administrative Permits**. All permits issued by an administrative official or body, or a legislative body acting in an administrative capacity, prior to the effective date of this UDO shall be valid provided a building permit is issued within one (1) year from the date of approval and construction begins consistent with the terms and conditions of the building permit and proceeds to completion in a timely manner. Applications for administrative permits submitted after the effective date of this UDO shall be reviewed and evaluated pursuant to the requirements of this UDO.

C. **Subdivision.**

1. Complete applications for preliminary plat(s) submitted prior to the effective date of this UDO shall be processed under the previously existing regulations.
2. Incomplete applications for preliminary plat(s) submitted prior to the effective date of this UDO that are not re-submitted in a complete form until after the effective date of this UDO shall be processed pursuant to this UDO.
3. All applications for subdivision approvals submitted after the effective date of this UDO shall be reviewed pursuant to these regulations.
4. Preliminary or final plat applications, approved under the previously existing regulations, which are allowed to lapse or expire shall be subject to reapplication under this UDO.

D. **Zoning**

1. Existing uses may continue either in compliance with these regulations or as legal non-conforming uses subject to the requirements of Section 27-118.
2. Existing lots that do not comply with the requirements of these regulations may be developed pursuant to the requirements of Section 27-118.
3. Applications for proposed new uses submitted after the effective date of this UDO shall be considered pursuant to these regulations.

E. **Special Permits**. The Director shall monitor all outstanding special and/or conditional use permits issued under the previously existing regulations. Prior to the expiration of a special or conditional use permit, the permit holder may apply for an extension of the use pursuant to the terms of this UDO.

F. **Nonconforming Situations**. All nonconforming situations and uses shall be governed by Section 27-118 of this UDO.

G. **Violations.** Any violation of previous zoning or subdivision regulations will continue to be a violation under this UDO and be subject to penalties and enforcement under this UDO unless the use, development or activity complies, in its entirety, with the provisions of this Ordinance.

H. **Vesting.** Any person claiming a vested right under the previously existing regulations shall make application in accordance with Section 27-339 of this UDO.

27-111 Completion of Existing Buildings

A. Nothing herein contained shall require any changes in the plans, construction, or designated use of a building actually under construction at the time of adoption of these regulations.

B. Nothing herein contained shall require any changes in plans, construction or designated use of a building for which a building permit has been issued within sixty (60) days prior to the adoption of these regulations, provided construction is started on such building within sixty (60) days after the effective date of this UDO. Any re-application for an expired approval must meet the standards of this UDO in effect at the time of the re-application.

27-112 Application of Regulations During Local Emergency

The City of Fort Smith shall have the authority to waive certain standards of the UDO during local emergencies declared by Federal, State or local officials. Such emergencies may include natural disasters, wildfires that cover an area in excess of one acre in an urbanized area of the City, geological disasters, or similar widespread destruction and distress.

27-113 Fee Schedule

A. Reasonable fees sufficient to cover the costs of administration, inspection, sign posting, publication of notice, and similar matters may be charged to applicants for permits, approvals, or any type of application established in this UDO.

B. Fees shall be established by the Fort Smith Board of Directors by ordinance and may be amended as necessary to cover the costs of the development and application process.

27-114 Severability

It is the intent of the Fort Smith Board of Directors that the provisions of the UDO shall be severable. If any provision is declared invalid by a court of competent jurisdiction, it is hereby declared to be the legislative intent that:

A. The effect of such decision shall be limited to that provision or provisions which are expressly stated in the decision to be invalid; and

B. The judicial decision shall not affect, impair, or nullify this UDO as a whole or any other part thereof, but the rest of the UDO shall continue in full force and effect.

27-115 Administration

The provisions of this chapter shall be administered by the Director of Planning and Zoning. References to the Director shall mean the Director of Planning and Zoning. Any action or decision assigned to the Director by these regulations may be undertaken by the Director's designated appointee.

27-116 Board of Zoning Adjustment

A Board of Zoning Adjustment shall be composed of the entire Planning Commission, a majority of whom shall constitute a quorum for all action of such board of zoning adjustment.

Cross references: Boards, commissions, etc., § 2-231 et seq.

State law references: Zoning Board of Adjustment, A.C.A. § 14-56-416(b).

27-117 Violations, Penalties

A. The lot, yard area, parking or loading space and open space required by this chapter for a particular building or use shall not be diminished and shall not be included as a part of the required lot, open space or yard areas of any other

building or use. If the lot, open space, yard areas, parking or loading space required by this chapter for a particular building or use are diminished below the minimum required by this chapter, the continued existence of such building or use shall be deemed a violation of this chapter.

B. The use of any land or structure or the erection or maintaining of any structure in violation of the provisions of this chapter shall be deemed a violation of this chapter.

C. In the event of a violation of the provisions of said subparagraph A or subparagraph B, notice in writing shall be served upon the owner and any occupant of the premises determined to be responsible for the violation, which writing shall state the nature of the alleged violation and direct that the violation be discontinued within a reasonable period of time. If the alleged violation be not discontinued, corrected or removed within a reasonable period of time after such notice, the owner or occupant served with said notice shall be served with a final notice in writing warning that unless the violation be abated within fifteen (15) days from the date of service of such final notice, the served owner or occupant, together with any person aiding or abetting the violation, shall be subject to the civil and criminal penalties provided in this chapter.

D. Any person or entity violating the provisions of this chapter shall be subject to the penalties set forth in Section 1-9 of the Fort Smith Code of Ordinances upon conviction.

E. Each day during which the violation charged in the notice shall continue after expiration of the time stated in the final notice shall be deemed a separate offense.

F. Additionally, the Board of Directors may initiate an action in a court of competent jurisdiction for the purpose of restraining or abating any violation of this chapter.

27-118 Nonconformities

27-118-1 Nonconforming Use of Land

A. A nonconforming use of land may be continued unless such use is abandoned, provided that this provision shall not be construed to approve continuation of an activity constituting a nuisance or any activity prohibited by statute or ordinance applicable to the use.

B. A nonconforming use of land shall not be enlarged or extended, either by the addition of other real property to the use area or by the intensification of the use on the utilized real property.

C. A nonconforming use of land may be changed to a use permitted in the same classification in which the original use is listed. However, if the original use is listed in multiple zoning district classifications, then the nonconforming use of land may only be changed to a use permitted in the most restrictive zoning district classification in which the original use is listed.

D. A nonconforming use of land once abandoned or changed to a conforming use cannot be changed to a nonconforming use.

E. A nonconforming use of land which has ceased for a continuous period of more than one (1) year shall be deemed abandoned (see definition of abandonment).

27-118-2 Nonconforming Use of Structures

A. A nonconforming use of a structure may be continued unless such use of the structure is abandoned, provided that this provision shall not be construed to approve continuation of an activity constituting a nuisance or any activity prohibited by statute or ordinance applicable to the use.

B. A structure housing a nonconforming use shall not be enlarged or extended, either by an addition to or an alteration of the structure. Permits for existing single family dwellings located in commercial and industrial zoning districts are allowed for non-livable spaces, such as decks, garages, patios, storage buildings, or carports and livable areas not to exceed 25% of the current gross square footage of the principal structure as long as the construction is within the bulk and area requirements of the residential zone which most nearly corresponds to the minimum lot dimensions.

C. A nonconforming use of a structure may be changed to a use permitted in the same classification in which the original use is listed. However, if the original use is listed in multiple zoning district classifications, then the nonconforming use of a structure may only be changed to a use permitted in the most restrictive zoning district classification in which the original use is listed.

D. A nonconforming use of a structure once abandoned or changed to a conforming use cannot be changed to a nonconforming use.

E. A nonconforming use of a structure which shall cease for a continuous period of more than one (1) year shall be deemed abandoned (see definition of abandonment).

F. A structure housing a nonconforming use that is destroyed or damaged to the extent that the cost of repair is more than fifty (50) percent of the value of the structure after repair shall not be replaced unless all of the following conditions are met:

1. A conditional use application is presented to the Planning Commission in accordance with section 27-332 of this chapter;

2. The conditional use is approved by the planning commission;

3. Construction is completed within one (1) year from the date of the loss; the determination of "cost of repair" shall be based on the anticipated cost of a repair performed by a contractor in the ordinary course of the construction industry, and the determination of the "value of the structure after repair" shall not include real property value. Both determinations shall be made by the Director;

4. The structure shall be adapted for the same use as the previous structure; and

5. The structure as built shall not exceed the bulk and area characteristics of the previous structure;

6. Provided, a maximum time extension not to exceed sixty (60) calendar days may be granted upon written application of the owner to the Director, provided substantial progress has been made to repair the structure.

27-118-3 Nonconforming Structure

A. A nonconforming structure may continue until destroyed or damaged.

B. A nonconforming structure that is destroyed or damaged to the extent that the cost of repair is more than fifty (50) percent of the value of the structure after repair shall not be rebuilt unless all of the following conditions are met:

1. A conditional use application is presented to the Planning Commission in accordance with section 27-332 of this chapter;

2. The conditional use is approved by the Planning Commission;

3. Construction is completed within one (1) year from the date of the loss; the determination of "cost of repair" shall be based on the anticipated cost of

repair performed by a contractor in the ordinary course of the construction industry, and the determination of the "value of the structure after repair" shall not include real property value. Both determinations shall be made by the Director;

4. It shall be adapted for the same use as the previous structure or a permitted use in the zoning district in which it is located;

5. The structure as built shall not exceed the bulk and area characteristics of the previous structure or the bulk and area regulations set forth for the zoning district in which it is located;

6. Provided, a maximum time extension not to exceed sixty (60) calendar days may be granted upon written application of the owner to the director of planning, provided substantial progress has been made to repair the structure.

C. A nonconforming structure may be remodeled and/or enlarged within the limits of the bulk and area regulations of the zoning district in which it is located, provided such remodeling and/or enlarging does not increase any existing zoning violations.

D. A nonconforming structure shall be maintained in a structurally safe condition, and any nonconforming structure not maintained in a structurally safe condition shall be deemed to be dilapidated. A dilapidated nonconforming structure may no longer be used as such and shall be subject to the enforcement provisions of other city ordinances and codes.

27-200 General Definitions

27-201 General Definitions

Words in the text or tables of this chapter shall be interpreted in accordance with the provisions set forth in this section. Where words have not been defined, the standard dictionary definition shall prevail. In any case, the director of planning, or designated agent, shall have the right to interpret the definition of the word.

Abandonment

shall mean the cessation of a nonconforming use of structure or the cessation of a nonconforming use of land. The ceasing shall be deemed to be established by the failure to obtain or renew an occupation registration for a period of at least one (1) calendar year or the termination of city utility services for at least one (1) calendar year or the ceasing of a nonconforming use due to a felony conviction of the owner or the authorized representative of the owner and which felony conviction is related to the subject use. Ceasing may also be established by a written statement of intention to abandon the use by the owner or the owner's representative.

Abstract services

see professional services

Accessory building, structure, or use

shall mean a building, structure, or use which:
(1) Is incidental and subordinate to and serves a principal building or principal use;
(2) Is subordinate in area, extent, or purpose to the principal building or principal use served;
(3) Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use; and
(4) Is located on the same site as the principal building or principal use.

Accessory residential dwelling unit

shall mean an independent dwelling unit which is subordinate and incidental to an attached principal commercial use located on the same lot.

Accessory residential use

an office-like use where the occupant engages in no activities that would require contact with customers or the general public except by phone, mail or electronically; where no persons are employed by the applicant at the resident’s address; and where an office is needed solely for the purposes of sending and receiving mail and telephone calls, using a personal computer, and for maintaining records.

Acid manufacturing

see manufacturing heavy.

Accounting, tax, bookkeeping, payroll

see professional services

Addition,

as applied to a building or structure, shall mean any construction which increases the area or the height of any portion of the building or structure.

Administrative plat approval

shall mean the approval and recording of a plat, at the direction of the director, following a review by City staff and consensus determination that the plat meets the provisions outlined in these regulations. Administrative approval requires the signature of the director.

Advertising and media agencies

shall mean a service business dedicated to creating, planning and handling advertising (and sometimes other forms of promotion) for its clients.

Affordable Housing

Units with sales prices targeted to low-and moderate-income households, as defined by the U.S. Department of Housing and Urban Development (HUD). Such sales prices shall be those endorsed annually by the City of Fort Smith Planning and Community Development office based on the then- current HUD area-wide income limits and identified local need.

Agricultural equipment and supplies (sales & service)

shall mean a use primarily engaged in the sale or rental of farm tools and implements. This definition includes the sale of large implements such as tractors and combines and accessory uses such as farm machinery repair and feed sales.

Agricultural products processing

shall mean a facility which involves the operation(s) of processing, preparing or packaging agricultural products which are not grown on the site.

Airport

shall mean a tract of leveled land where aircraft can take off and land, usually equipped with hard-surfaces landing strips, a control tower, hangers, aircraft maintenance and refueling facilities, and accommodations for passengers and cargo.

Alley

shall mean a permanent public right-of-way which provides a secondary means of access to the rear or side of properties which otherwise have primary access to an abutting street.

Alterations,

as applied to a building or structure, shall mean any change or modification in construction occupancy and use which does not include an addition to the building or structure.

Amateur radio tower
see tower.

Amusement center (indoor)
shall mean an amusement enterprise offering entertainment to the general public for a fee or charge wherein all activity takes place indoors. Such facilities include video game arcades and pool halls.

Amusement center (outdoor)
shall mean a facility offering entertainment, primarily to the general public for a fee where any portion of the activity takes place in the open. Such facilities include but not limited to golf driving ranges, archery ranges, miniature golf courses and the like.

Amusement /theme park
an outdoor facility, which may include structures and buildings, where there are various devices for entertainment, including rides, booths for the conduct of games or sale of items, and buildings for shows and entertainment.

Animal and pet services (indoor)
shall mean establishments that provide animal and pet care services (except veterinary), such as boarding, grooming, sitting, and training.

Animal and pet services (outdoor)
shall mean establishments that provide animal and pet care services (except veterinary), such as outside runs, boarding or training.

Animal food processing
the preparing, processing, or canning and packaging of foods prepared to be consumed by pets and animals.

Animal shelter
shall mean a public or private facility, including outside runs for enclosure of animals, for stray or unlicensed pets.

Animal slaughtering and processing
shall mean a facility for the slaughtering and/or processing of animals into human food and the refining of their byproducts.

Antique shop
shall mean an establishment offering for sale within a building articles such as glass, china, furniture or similar furnishings and decorations which have value and significance as a result of age, design or sentiment.

Appliance repair- large

shall mean a facility for the repair, service and resale of televisions, refrigerators, freezers, stoves and similar items. (no outside storage)

Appliance repair- small

shall mean a shop for the repair of household and home equipment, such as electrical appliances, lawnmowers, tools and similar items (no outside storage).

Architectural, engineering

see professional services.

Art Dealer

shall mean an establishment primarily engaged in retailing original and limited edition art works. Included are establishments primarily engaged in displaying works of art for retail sale in art galleries.

Art gallery

shall mean a building used for the exhibiting or selling of works of art such as paintings and sculptures.

Art studio

shall mean work space for artists or artisans, including individuals practicing one of the fine arts or skilled in an applied art or craft and including the accessory sale of art produced on the premises.

Articulation

shall mean architectural shapes or surfaces having joints or segments which subdivide the area or elements and which add scale and rhythm to an otherwise plain surface.

Arts and craft shop

shall mean any business establishment that sells articles of artistic quality or effect or handmade workmanship.

Asphalt or concrete batching plant (permanent)

shall mean a facility for the storage and mixing of materials for concrete or for asphaltic surfacing, in which facilities are established on a permanent basis as a service industry.

Assisted living

these services are provided by board-and-care establishments, such as adult foster care homes and adult care group homes. These facilities may be low-income and federally subsidized housing or non-subsidized housing facilities.

ATV sales and service

see auto dealer.

Authorized agent

shall mean an architect, attorney, builder, developer or other person or persons legally

empowered to act on behalf of other persons.

Auto (rental and leasing)
shall mean an area or structure for storing or displaying cars, trucks, trailers, RVs and recreational goods, which are offered for rent for a fee.

Auto auction
shall mean a facility for the sale of automobiles to the highest bidder.

Auto and vehicle dealer
shall mean a facility for display, service and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, excluding heavy equipment.

Auto and vehicle dealer (indoors)
shall mean a climate controlled facility used for the display and sales of used or new automobiles, motorcycles, recreation vehicles, and travel trailers, but not including heavy equipment. All sales, service, storage and display areas shall be indoors. Service and storage areas shall cumulatively be incidental and subordinate to the primary use of sales and display.

Auto and vehicle impoundment or holding yard (no salvage)
shall mean a parcel of land or a building that is used for the impoundment of vehicles and storage of inoperable vehicles usually awaiting insurance adjustment or transport to a repair shop and where vehicles are kept for a period not to exceed sixty (60) days.

Auto and vehicle towing (wrecker)
shall mean the operating of a truck for the towing of inoperable motor vehicles.

Auto body and paint shop
shall mean a facility which provides collision repair services, including body frame straightening, replacement of damaged parts, or painting.

Auto detailing service
shall mean a facility for the cleaning, washing, waxing and polishing of motor vehicles including steam cleaning.

Auto glass, muffler and seatcover shop
shall mean an automotive service establishment specializing in assembly, fitting and installation of glass, seatcovers or mufflers in automobiles as a primary activity.

Auto insurance claims office
shall mean a branch office of a major auto insurance agency in which a liability adjuster assists in damage claims and adjustments to vehicles.

Auto manufacturing
see manufacturing, medium

Auto parts and accessory sales
shall mean a facility having auto parts, accessories and tools for sale (no repairing).

Auto quick lube
shall mean facilities which perform routine servicing of motor vehicles, including the replacement of elements and fluids which are expected to be routinely replaced on a frequent basis (such as engine oil and other lubrication; brake, transmission and power steering fluids; and air filters) generally while customers wait.

Auto repair
shall mean a facility for motor vehicle maintenance, service, and engine repair (not including painting or body and frame work).

Auto repair or assembly (salvage parts)
shall mean a facility which performs auto body, painting and engine repair and/or which assembles operable vehicles from salvage parts and components.

Auto salvage yard
see salvage yard.

Automatic teller machine (ATM)
shall mean an automated device that performs banking or financial functions (deposits, withdraws, fund transfers) at a location remote from the controlling financial institution.

Average Daily Trips (ADT)
ADT is determined in accordance with the Institute of Transportation Engineers, *Trip Generation* (7th ed. 2003), which is incorporated by reference.

Bail bonds office
financial establishment proving legal assistance for a fee in posting bonds to release customers from a detention facility.

Bait and tackle shop
shall mean retail sales of fishing supplies and general outdoor items to include live bait, tackle, camping supplies and food items.

Bakery and confectionary shop (neighborhood)
shall mean a place for preparing, cooking, baking, and selling of products on the premises.

Bakery (commercial and industrial)
see food and beverage processing.

Bank, credit union or savings institution
shall mean a completely enclosed facility, the primary use of which is the custody, loan, exchange or issue of money, the extension of credit and the transmission of funds.

Barge or ship manufacturing
see manufacturing, heavy

Bar or tavern

an establishment, also known as bars, taverns, or drinking places, primarily prepare and serve alcoholic beverages for immediate consumption. These establishments may also provide limited food and entertainment (primarily music) services.

Barber shop

shall mean a facility where haircuts, hairdressing, shaving, trimming beards, facials, manicures or related services are performed.

Bed and breakfast inn

shall mean residential structures where short term (maximum of seven (7) consecutive days) lodging rooms and meals are provided. The owner shall live on the premises.

Beer garden

shall mean a tavern, private club or similar establishment having outdoor dining or drinking area or music (live or recorded).

Beer, wine and liquor store

shall mean a facility for the retail sale of beer, wine or liquor not for on premise consumption.

Bicycle sales and service

this class comprises establishments retailing new or used bicycles in combination with repair services and selling replacement parts and accessories.

Bikeway plan

shall mean the official bikeway plan and bikeway plan map of the city.

Bingo parlor

shall mean any building or part thereof utilized for the playing of "bingo" for money and prizes as defined and controlled under state regulations. This shall not be construed to include the use of structures or parts thereof for the playing of "bingo" for prizes only as a function of church, charitable or other nonprofit organizations.

Block

shall mean a parcel of land, intended for urban purposes, which has definite boundaries formed by being surrounded by such features as public streets, highways, railroad rights-of-way, public walks, parks or green strips, rural land or drainage channels or combinations thereof.

Board of zoning adjustment

An appointed body, whose responsibility is to hear appeals from decisions of the staff and to consider requests for variances from applicable zoning requirements in cases of demonstrated unnecessary hardship or practical difficulty. Also referred to as BZA.

Board of directors
shall mean the governing and legislative body of the City of Fort Smith, Arkansas.

Boat manufacturing
see manufacturing, light

Boat or marine craft dealer
shall mean a facility for display, service and sales of used or new boats or marine craft.

Bookstore
shall mean a facility for the retail sale of items such as books, newspapers, magazines, music, videos, stationery, pens, and ink.

Botanical gardens
a public or private facility for the demonstration and observation of the cultivation of flowers, fruits, vegetables, or ornamental plants.

Bottling company
see food and beverage processing.

Bowling alley
an establishment that devotes more than 50 percent of its gross floor area to bowling lanes, equipment, and playing area.

Brewery
a building or place that produces beer, or a business involved in the production of beer. Breweries can take up multiple city blocks, or be a collection of equipment in a homebrewer's kitchen. The diversity of size in breweries is matched by the diversity of processes, degrees of automation, and kinds of beer produced in breweries. Typically a brewery is divided into distinct sections, with each section reserved for one part of the brewing process.

Bridal shop
shall mean a facility for the retail sale and/or rental of formal wedding apparel and for accessory items such as lingerie, floral arrangements and invitations and for studio photography and registration services.

Buildable area
shall mean the space remaining for construction on a lot after the reserved area requirements (yards, setback, easements, etc.) have been met.

Building
shall mean a combination of materials to form a construction that is safe and stable, and designed to be built for the support, enclosure, shelter, or protection of persons, animals, chattel or property of any kind. The term "building" shall be construed as if followed by the words "or portion thereof."

Building, attached,

shall mean a building which shares a continuous and permanent wall or roof with an adjacent building.

***Building, detached**,*
shall mean a building having no wall, roof, floor or other structural element in common with another building.

Building, facade,
shall mean a face of a building.

Building line* or *setback line
shall mean a line beyond which a building shall not extend. The location of the building line shall be determined by the zoning district in which the subdivision is located. In most cases, the Building Line and Setback Line are the same thing.

Building materials salvage yard
see salvage yard

Building official
shall mean the officer or other designated authority charged with the administration and enforcement of the construction codes of the City of Fort Smith.

Building, portable,
shall mean a temporary building that does not have a foundation and is transportable and is not used as a residential structure.

***Building, principal**,*
shall mean a building in which is conducted the main or principal use of the lot on which such building is situated.

Bulk petroleum storage
storage tanks and accessory buildings used for dispensing of flammable or combustible liquids or gases into smaller containers or for use in industrial processes and distributed to the process by closed-circuit piping.

Bulk storage of highly flammable materials
shall mean a facility for the storage of chemicals, gases or liquids which are or could be caused to ignite or explode.

Business park
shall mean a single site, lot, tract or subdivision containing two (2) or more separate professional and/or commercial uses in separate buildings.

Bus station and terminal
shall mean a facility on a common carrier line for bus docking, freight storage and passenger loading and unloading. This shall not be construed to include passenger shelters which may be located on a local bus route.

Bus, truck sales and service

shall mean a use that sells and services buses and large trucks normally used for commercial purposes such as tandem axle and tractor trailers.

Business support services

an establishment intended for the conduct or service or administration by a commercial enterprise, or offices for the conduct of professional or business service.

Cabinet and woodwork shop

shall mean a shop for the repair or creation of cabinets, individual items of furniture, and wooden home furnishings on a custom basis. This shall not be construed as a factory, planing mill or similar woodworking plant.

Cameras, photographic supplies and services

shall mean businesses which retail and repair cameras, photographic equipment, film processing, and supplies. They also provide repair services and film developing.

Camps, camping and related establishments

shall mean an area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational equipment, and which is primarily used for recreational purposes and retains an open air or natural character.

Car wash (full-service)

shall mean a facility for the washing and cleaning of motor vehicles utilizing production line methods with conveyors, sprayers, blowers or other mechanical devices, and which employs hand labor.

Car wash (self service)

shall mean a facility for washing and steam cleaning passenger automobiles (including self-service operation), operating either as a separate facility or in conjunction with another use.

Carnival or circus

shall mean a traveling or transportable group or aggregation of rides, shows, games, or concessions of any combination thereof.

Carpet and upholstery cleaning

services customers at individual home or business locations in carpet and upholstery cleaning.

Carport

a permanent roofed structure open on at least two sides, designed for or occupied by private passenger vehicles.

Casino gaming business

shall mean an establishment engaging in the gaming business which utilizes any

game played with cards, dice, equipment, or any mechanical, electromechanical, or electronic device, or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, blackjack, poker, keno, baccarat, roulette, craps, slot machine, video poker or any other gaming, percentage game or any other similar game or device.

Catering service

shall mean a facility that provides the service and the supply of food to be consumed off the premises.

Cemetery, crematorium, or mausoleum

shall mean a place for internment of human or pet remains or cremated remains, including a burial park for earth internments, a mausoleum for vault or crypt internments, a columbarium for cinerary interments, or a combination thereof.

Cemetery, pet

see pet cemetery

Certificate of occupancy

shall mean official certification that a premises conforms to provisions of this chapter and may be used or occupied.

Check cashing service

shall mean any establishment that provides to the customer an amount of money that is equal to the face value of the check or the amount specified in the written authorization for an electronic transfer of money, less any fee charged for the transaction, and where there is an agreement not to cash the check or execute an electronic transfer of money for a specified period of time. This term does not include a retail seller engaged primarily in the business of selling consumer goods, including consumables, to retail buyers that cash checks, issue money orders, or money transfers for a minimum flat fee as a service that is incidental to its main purpose or business.

Chemicals, plastics, and rubber industry

shall mean industries that process and transform organic and inorganic raw materials, plastics and rubber, and form products by chemical processes.

Child and youth services (office)

these establishments offer services such as adoption, foster care, drug prevention services, and life-skills training.

Child day care

child day care establishments primarily care for infants and preschool children and often offer pre-kindergarten education programs. Some provide care services for older children.

Cigar, cigarette* or *tobacco store
shall mean a place where cigars, cigarettes, pipe tobacco and related items are sold at retail.

City
shall mean the City of Fort Smith, Arkansas.

City administrator
shall mean the chief administrative officer of the City of Fort Smith, Arkansas.

Classroom
a room in which teaching or learning takes place and which can be found in all kinds of educational institutions.

Cleaner, dry cleaning, laundry (pick-up and drop-off)
shall mean a custom cleaning shop with drop-off service for the cleaning and pressing of garments.

Clothing and personal items
shall mean a facility for the custom making of apparel and millinery not involving a factory.

Clothing manufacturing
shall mean operations involving cutting, sewing, forming and packing of garments and similar items, including millinery and clothing accessories.

Clothing store
shall mean a retail facility for selling male and/or female apparel.

Coal mining
this category comprises establishments that: (1) mine bituminous coal, anthracite, and lignite; (2) develop coal mine sites; and (3) beneficiate (i.e., prepare) coal (e.g., by cleaning, washing, screening, and sizing coal).

Collection agency
a business engaged in the collecting or receiving of payment for others on any account, bill, or other indebtedness.

College, university* or *seminary
shall mean an academic institution of higher learning, accredited or recognized by the state, offering a program or series of programs of academic study or an institution of training of candidates for the priesthood, ministry or rabbinate.

Commercial communication tower
see tower.

Commercial grower
shall mean the growing of crops and plants for commercial sale to nurseries, home improvement centers, and other large volume buyers.

Commercial, industrial machinery, and equipment (rental and leasing)
shall mean a business which rents or leases heavy equipment used for construction, mining, or forestry, earthmoving equipment, well-drilling machinery and equipment, or cranes.

Commercial, industrial machinery, and equipment (sales and service)
shall mean a business which sales or services heavy equipment used for construction, mining, or forestry, earthmoving equipment, well-drilling machinery and equipment, or cranes.

Commercial laundry
shall mean an establishment for providing dry cleaning and/or laundry service to smaller shops or pick-up stations, or to industry and commercial enterprises.

Common useable open space
shall mean that portion of land or area of water or combination of land and water within the site designated for a development and designed and intended for the use and enjoyment of the residences and owners of the development, and easily accessible to all the residences. Common open space may contain such complimentary structures and improvements as are necessary and appropriate for the benefit and enjoyment of the residences and owners of the development, but shall not include parking lots, streets and other areas designed primarily for other than common recreational or open space use. All improvements must be approved by the Planning Commission at the time of the approval of the development.

Community food services
these establishments collect, prepare, and deliver food for the needy. They distribute clothing and bedding, run collections for food donations, and provide meals at fixed or mobile locations. Examples are food banks, meal delivery programs, and soup kitchens.

Community health and welfare clinic
shall mean a community service facility where social, recreational, welfare, health or child care assistance is provided by a public, quasi-public, tax-exempt or church agency.

Community recreation center
shall mean public or private recreational facility that includes community meeting rooms, and opportunity for other indoor activities to serve a neighborhood or area of the city. These facilities are not commercial operations but are normally owned and operated by the city or a neighborhood organization.

Community residential facility
shall mean a community based facility licensed by the state or sponsored by an agency or organization certified by the state that provides room and board, personal care, habilitation services and supervision in a multiple-family environment for sixteen (16) or more handicapped persons. The community residential facility site development plan

shall comply with the following conditions in addition to the standard building permit requirements:
(1) The facility shall have direct primary access to a street classified as a collector or arterial on the city's master street plan.
(2) The facility shall provide approved screening from adjacent residences.
(3) The facility's structure shall be similar in appearance to other typical single-family or multiple-family residences in the neighborhood.
(4) The facility shall include landscaping and the lot amenities (decor) shall be similar to the adjacent residential lots.
NOTE:
1. The following uses including, but not limited to, nursing homes, boarding and rooming houses, rescue missions, orphanages, fraternities, sororities and halfway houses shall not be considered group homes or community residential facilities.
2. A community residential facility for the handicapped shall not house handicapped persons whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. It shall be the responsibility of the agency operating the group home to approve all applications for residents to assure compliance with this requirement.

Comprehensive plan
shall mean the plan developed by the City for the purpose of bringing about an orderly, coordinated, and physical development of the City.

Computer and software shop
shall mean a facility for the sale, repair and service of computers, software, and their parts and accessories.

Concept Plan
shall mean a site or survey plan which is general in nature and which depicts the intended lot configuration and street layout of a proposed subdivision.

Conditional use
shall mean uses that can be approved in a zone where they are specifically listed as conditional uses and are subject to special conditions as determined by the planning commission as outlined in Chapter 27-332.

Congregate living
shall mean these establishments that serve meals in what may be low-income and federally subsidized housing or non-subsidized housing facilities.

Consistent
shall mean where an improvement, design feature, infrastructure, or similar element (“improvement”) is required by the Unified Development Ordinance to be “consistent” with a document that is referenced in these regulations (“standard specifications”), the improvement must be provided where required by the standard specifications and must conform to the standards provided in the standard specifications.

Consulting services-
see professional services

Consumer rental center

shall mean business establishments that rent household-type goods. Rental items include but not limited to: home health equipment; consumer electronics equipment, such as televisions, stereos, and refrigerators; furniture; and party supplies.

Container storage

cargo packed in a large (typically eight feet by eight feet by 20 feet) trunk-like box, and loaded, stored, and unloaded as a unit.

Contractor's office

shall mean a room or group of rooms used for conducting business affairs but may not include structures or open storage yards for supplies and operating equipment.

Contractor's shop and storage yard

shall mean a facility for general contractors, including buildings and open storage yards for supplies and operating equipment, but not constituting a junk or salvage yard.

Convenience store (with gasoline sales)

shall mean a facility associated with the sale of petroleum products that also offers for sale pre-packaged food, food items and consumer goods, primarily for self-service by the consumer.

Convent* or *monastery

shall mean dwelling units of a religious order or congregation for persons under religious vows.

Convention/event center

shall mean facility designed for conventions, conferences, seminars, product displays, recreation activities, and entertainment functions, along with accessory functions including but not limited to temporary outdoor displays, food and beverage preparation and parking garages.

Cosmetics, Beauty Supplies, and Perfume Stores

retail establishments known as a cosmetic or perfume store or beauty supply shops primarily engaged in retailing cosmetics, perfumes, toiletries, and personal grooming products.

Country club

shall mean an area containing a clubhouse and recreation facilities restricted to the use of specific membership and which may contain a golf course, tennis court, swimming pool, dining room, social facilities and similar recreation and service facilities.

Courier and messenger services

shall mean establishments that provide air, surface, or combined courier delivery services of parcels and messages within or between metropolitan areas or urban

centers. These establishments may form a network including local, and point-to-point pick up and delivery.

Credit and finance establishment
shall mean public or private establishments which extend credit or lend funds.

Crematory
see cemetery.

Criminal justice facility
shall mean a facility used primarily for conducting the affairs of the criminal justice system, including federal, state, county, and municipal courts, public safety departments and detention facilities, together with incidental storage and maintenance of necessary vehicles.

Cul-de-sac
shall mean a street with only one outlet having a radius for the safe and convenient reversal of traffic movements.

Customer service area
shall mean an area set aside in any retail or commercial establishment where customers may receive special service or where customers may wait while service is being performed on automobiles, appliances, or other customer-owned products.

Dairies
see food and beverage processing.

Dance hall/ night club
shall mean an establishment whose primary activity is the provision of facilities for dancing and live entertainment or amplified music.

Data processing facility
shall mean an establishment primarily involved in the compiling, storage, and maintenance of documents, records, and other types of information in digital form utilizing a mainframe computer. This term does not include general business offices, computer-related sales establishments, and business or personal services.

Daycare center
shall mean a facility operated for the purpose of providing care, protection and guidance for12 or more individuals during only part of a 24-hour day. This term includes nursery schools, preschools, day care centers for individuals, and other similar uses but excludes public and private educational facilities or any facility offering care to individuals for a full 24-hour period.

Daycare home, twelve (12) or less,
shall mean a care service, licensed by the state, in a private home which cares for a limited number of people who are apart from their own family or relative during a part of the day.

Dedication

shall mean the transfer of property by the owner.

Delivery service

shall mean establishments primarily engaged in undertaking the transportation of goods and people for compensation, and which may in turn make use of other transportation establishments in effecting delivery.

Density

shall mean the number of dwellings or principle buildings or uses permitted per net acre of land.

Density bonus

shall mean the allocation of development rights that allow a parcel to accommodate additional square footage or additional residential units beyond the maximum for which the parcel is zoned in exchange for the provision or preservation of an amenity at the same site or at another location.

Department store, warehouse club, or superstore

Shall mean a retail or wholesale development that typically requires high parking to building ratios and has a regional sales market. Regional retail/wholesale sales can include but are not limited to membership warehouse clubs that emphasize bulk sales, discount stores, and department stores.

Detached Residential

shall mean a standard single-family residential structure not attached to any other structure such as another dwelling unit or non-residential use.

Detention facility

shall mean a jail or other institutional facility used to confine and provide treatment or rehabilitation to violators of criminal laws, including facilities for persons who are participating in supervised work-release programs, whether such facilities provide confinement for all of each 24 hour period or only a portion thereof; but not including temporary holding facilities that are accessory to a police station.

Developer

shall mean the owner (or his authorized agent for such purposes) of land proposed to be subdivided or developed.

Development

the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance; and any use or extension of land.

Development plan

shall mean a type of plan that becomes part of the zoning for a property. The plan depicts site characteristics and development information and provides guidance for site plans.

Diagnostic laboratory testing facility

a facility offering diagnostic or pathological testing and analysis of blood, blood fluids, pathological specimens, DNA sampling and analysis, and any other diagnostic test generally recognized in the healthcare industry.

Director

shall mean the Director of the Fort Smith Department of Planning and Zoning. Where appropriate, Director may also include the Director's designated assistant or deputy.

Doctor office and clinics

a building used exclusively by physicians, dentists, and similar personnel for the treatment and examination of patients solely on an outpatient basis, no overnight patients shall be kept on the premises.

Dolls, toys, games, and musical instrument manufacturing

see manufacturing light.

Domestic violence shelter

shall mean a temporary shelter for individuals affected by domestic violence. Such use shall be operated by a public or non-profit entity and may provide temporary lodging, counseling, day care, and support services.

Dormitory, sorority, or fraternity

shall mean a residence hall providing sleeping rooms with or without eating facilities.

Drive-in theater

shall mean a facility developed in the open and arranged so that patrons may view and hear a motion picture on a screen or a performance on a stage while seated in their automobiles or outside seating.

Drive through window service

a building opening, including windows, doors, or mechanical devices, through which occupants of a motor vehicle receive or obtain a product or service.

Driving range

shall mean an area equipped with distance markers, clubs, balls, and tees for practicing golf drives and putting, and which may include a snack-bar and pro-shop, but excludes miniature golf courses.

Duplex

shall mean a building on a single lot that has two attached independent dwelling units.

Durable goods

establishments in the durable goods subcategory sell or arrange the purchase or sale of capital or durable goods to other businesses. These establishments wholesale products,

such as motor vehicles, furniture, construction materials, machinery and equipment (including household-type appliances), metals and minerals (except petroleum), sporting goods, toys and hobby goods, recyclable materials, and parts. Durable goods generally have life expectancy of at least three years.

Dwelling

shall mean a building that contains one or more dwelling units used, intended, or designed to be rented, leased, let or hired out to be occupied for living purposes.

Dwelling unit

Shall mean a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

Easement

shall mean a right-of-way or parcel of land specified or set aside for a specific use, normally used for access, utilities, and other public or private usage, given by the owner of land to another party, and kept free from buildings or structures.

Electric power plant

shall mean establishments that provide electric power generation, transmission, control, and distribution. Establishments include facilities that convert other forms of energy into electrical energy, electric power transmission and control systems (including lines and transformer stations), and distribution systems (i.e., lines, poles, meters, and wiring).

Electrical equipment, appliance, and components manufacturing

shall mean establishments manufacture computers, computer peripherals, communications equipment, audio equipment, lighting equipment, batteries, motors, and other products that generate, distribute and use electrical power. Included are manufactures of components for the above products and manufacturers of small and major household appliances.

Electrical, plumbing, heat & air conditioning

A place of business primarily engaged in selling and/or distributing electrical, plumbing and HVAC products to suppliers and contractors with limited retail to the general consumer.

Electronics and appliances (new)

see furniture and home furnishings (new)

Electronics and appliances (used)

see furniture and home furnishings (used)

Elevation

shall mean a drawing showing the vertical, exterior elements of a building as a direct projection to a vertical plane.

Emergency & Relief Services

shall mean an establishment primarily engaged in providing food, shelter, clothing, medical relief, resettlement, and counseling to victims of domestic or international disasters or conflicts (wars). Emergency relief may be needed following a natural disaster such as an earthquake, fire, drought, tornado, famine, hurricane, flood, mudslide, or a man-made disaster such as hazardous material containment, nuclear or biological threats or acts of terrorism.

Emergency response station

the conduct of safety and emergency services, such as, but not limited to, emergency medical and ambulance service.

Employment agency

shall mean an agency that helps find jobs for persons seeking employment or assists employers in finding persons to fill positions that are open.

Employment agency (day labor)

shall mean an agency that helps find jobs for normally unskilled labor on a daily basis.

Engine repair (all types)

shall mean a facility for motor vehicle repair.

Engineering department

shall mean the department of the City of Fort Smith responsible for civil engineering functions.

Equestrian facilities

shall mean horse, donkey, and mule facilities including horse ranches, boarding stables, riding schools and academies, and horse exhibition facilities. This land use includes barns, stables, corrals, and paddocks accessory and incidental to the above uses.

Equipment, rental, service stores

shall mean an establishment displaying and offering for rent equipment for domestic maintenance and improvement including cleaners, mowers, ladders, tillers, cement mixers, wheelbarrows, paint spraying equipment and similar items.

Erect (signs)

shall mean to construct, build, raise, assemble, place, affix, attach, create, paint, draw or in any other way bring into being or establish a sign. The term Aerect@ shall not mean a change in the advertising message or customary maintenance and repair.

Explosives manufacturing

see manufacturing heavy.

Extermination and pest control

establishments that exterminate and control mosquitoes, rodents, termites, and other insects and pests.

Facade

shall mean a vertical exterior face or elevation of a building.

Facilities support services

these establishments provide operating staff for support services within a client's facilities. They typically provide a combination of services, such as janitorial, maintenance, trash disposal, security, mail reception, and laundry services.

Fairground/ rodeo ground

an area wherein buildings, structures, and land are used for agricultural related offices, animal shows and judging, carnivals, circuses, community meetings, recreational uses, concerts, food booths and stands, games, rides, rodeos, sales and auctions, storage, and theaters, excluding racetracks and motorized contests of speed.

Family

for purposes of this chapter, shall mean either:

(1) One (1) or more persons occupying a single dwelling unit provided that all members are related by blood, marriage or adoption and may include domestic employees housed on the premises; or

(2) Not more than eight (8) handicapped persons living together as an independent housekeeping unit plus necessary supervisory personnel.

Family support services

shall mean hotline centers, suicide crisis centers, or self-help organizations that provide counseling, support, and education.

Farmer's market

shall mean a temporary or occasional outdoor retail sales of farm produce from vehicles or temporary stands.

Feed store

shall mean a facility for sale of grain, prepared feed and forage for pets, livestock and fowl, but not involving the grinding, mixing or commercial compounding of such items.

Ferry boat facility

shall mean a facility for waterborne transportation (e.g., commuter ferries, water taxis, hovercraft) or short term excursions (e.g., charter boats, mini-cruises, sight-seeing, gambling, dining, and entertainment on the water) including but not limited to : passenger terminals and berthing areas, storage, employee or passenger parking, administrative functions, ship servicing area, layover berths, fueling stations, and other boat or passenger services.

Fine art and performance education (art, drama, speech, dance, music or similar skills)
shall mean a place for the instructing, coaching or counseling of personal skills of the arts.

Fire and rescue station
a building used to house fire equipment, firefighters, and emergency medical services.

Firearms range
shall mean a facility designed and constructed for the practice and teaching of marksmanship with hand guns, rifles and shotguns and operated by a public agency or a quasi-public or private corporation approved by the city.

Fitness Studio
shall mean a place or building where passive or active exercises and related activities are performed for the purpose of physical fitness, improved circulation or flexibility, and/or weight control. The activities shall be conducted entirely within an enclosed building. Examples include martial arts, yoga, dance or similar activities but does not include spectator events.

Flea market (indoor)
shall mean a commercial activity conducted, inside a building, with individual spaces for rent to individual sellers for the sale of new or used merchandise. No outdoor storage or display.

Flea market (outdoor)
shall mean a commercial activity conducted outside with individual spaces for rent to individual sellers for the sale of new or used merchandise.

Flood or flooding
shall mean a general and temporary condition of partial or complete inundation of normally dry land areas from:
(1) The overflow of inland or tidal waters;
(2) The unusual and rapid accumulation or runoff of surface waters from any source.
a temporary rise in stream level that results in water covering areas not ordinarily covered by water.

Flood insurance rate map (FIRM)
shall mean an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Floodway (regulatory floodway)
shall mean the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floor area ratio (FAR)

Floor area ratio is measured as the gross floor area of all buildings on a lot or parcel divided by the lot area.

Floor, paint, wall covering, and window treatment store

shall mean a facility for the display and sales of paint, carpeting, rugs, tile, vinyl, wallpaper and/or window treatments and the equipment and supplies for the hand application and maintenance of those things.

Florist shop

shall mean a facility for the retail sales of cut or uncut flowers and ornamental plants and accessory items.

Food and beverage processing

the preparation, processing, or canning and packaging of food and beverage products. Examples of activities included are bakeries***,*** dairies, and bottling companies.

Food distribution center

provides for the bulk transportation and distribution of food service products to large public or private institutions such as schools or offices.

Foot-Candle

a unit of light quantity or density where the foot is the unit of measure. One (1) foot-candle equals one lumen (light) per square foot of area. Foot-candles are a measure of the lighting levels for sites.

Foundry* or *metal-works facility

shall mean a facility for the melting, smelting, molding or otherwise processing or manufacturing of metallic minerals or metal stock.

Fourplex

shall mean a building on a single lot that has four attached independent dwelling units.

Frontage

shall mean the distance along a property line which is also the right-of-way line of a dedicated public street.

Full-cutoff luminaire

a luminarie light distribution where zero candela intensity occurs at an angle of 90 degrees above nadir, and at all greater angles from nadir. Full-cutoff luminaires employ light sensors to turn lighting on and off when needed.

Fully-shielded lights

outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test report.

Fund, Trust, or Other Financial Establishments

shall mean establishments which pool fund and trust assets on behalf of their shareholders. They act as principals or brokers in buying or selling financial contracts and provide related investment services, such as portfolio management; investment advice; and trust, fiduciary, and custody services.

Funeral home or mortuary

shall mean a building used for the preparation of the deceased for burial and display of the deceased and rituals connected therewith before burial or cremation.

Furniture or home furnishing (manufacturing)

see manufacturing medium.

Furniture or home furnishing (new)

shall mean a retail facility for displaying and selling new furniture, household appliances, and lawn furniture.

Furniture or home furnishing (used)

shall mean a retail facility for displaying and selling used furniture, household appliances, and lawn furniture.

Furniture repair store and upholstery shop

shall mean a facility for repairing and reupholstering furniture. The use of specialized equipment is included.

Gable

shall mean the entire triangular end of a wall, above the level of the eaves, that conforms to the slope of the roof to which it abuts.

Garage or estate sale

shall mean offering for sale, on a residential premises, of household furnishings, clothing, appliances and related items belonging to the resident of the premises.

Gasoline service station

shall mean an establishment designed and constructed for the primary function of selling at retail motor vehicle fuels and lubricants and may include as a secondary function the sale and installation of tires, accessories, antifreeze and light automotive repair and maintenance.

Gift shop

Retail stores where items such as art, antiques, jewelry, books and notions are sold.

Glare

light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

Glass sales and service

shall mean a business which provides commercial glass and glazing for building storefronts, windows, doors, curtain walls, showcases and skylights.

Golf course

shall mean a golf course, privately or publicly owned but opened to the public for a fee and operated as a commercial venture.

Governing authority

shall mean City of Fort Smith.

Government office

shall mean a building or structure that includes office(s) used by a governmental agency to provide a governmental service to the public.

Grain storage and processing

shall mean a facility for the storage or mixing or grinding of grains or other prepared foods to be used as food for pets, livestock or fowl.

Grandfathered luminaires

luminaires not conforming to this code that were in place at the time this code was voted into effect.

Graphic, industrial, interior design

see professional services

Greenhouse (sales)

shall mean an area or structure for the growing, display and sale, at retail, of plants, flowers, trees and other plant materials and the supplies for maintaining plant material.

Grocery store or supermarket

shall mean an establishment where food and associated items are kept, displayed and sold at retail.

Group homes

For purposes of this chapter, two (2) categories of group homes shall be recognized (NOTE: A group home shall not house handicapped persons whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. It shall be the responsibility of the agency operating the group home to approve all applications for residents to assure compliance with this requirement.):

(1) ***Family group home*** shall mean a community based home licensed by the state or sponsored by an agency or organization certified by the state that may provide room and board, personal care, habilitation services and supervision in a single-family environment for not more than eight (8) handicapped persons.

(2) ***Neighborhood group home*** shall mean a community based home licensed by the state or sponsored by an agency or organization certified by the state that may provide room and board, personal care, habilitation services and supervision in a multiple-family environment for more than eight (8) but less than sixteen (16) handicapped persons.

Gross acreage

shall mean total acreage of the proposed development including areas designated for internal streets, common areas and other public facilities.

Gross floor area

shall mean the total area of all floors of a building measured to the outside surfaces of exterior walls and including halls, stairways, elevator shafts, attached garages, enclosed porches and balconies. Synonymous with the term "floor area."

Gross leasable area

shall mean the total area of any building or facility available for leasing to another party. In many cases this area is identical to gross floor area. In other circumstances, such as is the case with pedestrian malls, the area does not include pedestrian walkways, parking spaces and other public use areas.

Guest house

shall mean an attached or detached building that provides living quarters for guests or persons employed to provide domestic services to the occupants of the principal residence and (a) is clearly subordinate and incidental to the principal residence on the same building site; and (b) is not rented or leased, for any compensation, direct or indirect, other than the providing of domestic services.

Gymnasium

see health club

Half street

streets with half the required width of the required right-of-way on the bounding edge of a tract being subdivided. This term excludes marginal access full-width streets and frontage roads along arterial streets and limited access major streets.

Handicapped persons

shall mean those so defined in the Fair Housing Amendments Act of 1988, and shall include persons with a physical or mental impairment which substantially limits one (1) or more of such person's major life activities, or who has a record of having such an impairment, or who is being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance.

Handicraft, ceramic, sculpture or similar art workshop

shall mean a facility to individually create objects such as leather goods, jewelry, oven-fired, nonmetallic mineral products or carved three (3) dimensional works of art, including sale of such items at retail, not to be construed as a factory.

Hardware store

shall mean a facility of 30,000 or fewer square feet gross floor area primarily engaged in the retail sale of various basic hardware items such as tools, builder’s hardware, plumbing and electrical supplies, paint and glass, household appliances, lawn and garden supplies, etc.

Hardware store (neighborhood)

shall mean a retail facility consisting of a single main structure located at the edge of residential areas which exists for the purposes of selling tools, utensils, screws, nails, lawn and garden supplies and similar hardware items; with outside storage prohibited, and display areas limited to private walk areas in front of and adjacent to the main store structure.

Hazardous Waste treatment and disposal

A facility licensed by the appropriate Federal and State agencies to treat, store, or dispose of hazardous waste.

Health club

an establishment that provides exercise facilities such as running, jogging, aerobics, weight lifting, court sports, and swimming, as well as locker rooms, showers, massage rooms, saunas and related accessory uses.

Height,

(building or other structure) shall mean the vertical distance from the average ground level abutting a building or structure to the highest permanent part of the building or structure. The following structures shall be excluded from the definition: Chimneys, cooling towers, elevator bulkheads, mechanical rooms, tanks, water towers, residential television receiving antennas, church spires, and parapet walls not exceeding three (3) feet in height.

Height of luminaire

shall mean the height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

Heliport

shall mean a landing facility for rotary winged aircraft.

Historical or archaeological institution

shall mean research repository for historic or archaeological resource inventory documents and related historic and materials.

Hobby shop

shall mean a facility for the retail sale of hobby supplies such as model kits, art equipment and materials.

Home improvement center

Shall mean a facility of more than 30,000 square feet gross floor area, engaged in the retail sale of various basic hardware lines, such as tools, lumbers, builders hardware, household appliances, garden supplies, etc.

Homeless shelter

shall mean a facility providing temporary housing to indigent, needy, homeless, or transient persons; may also provide ancillary services such as counseling, life-skills classes, and vocational training, etc.

Homeowners association recreational center

shall mean private recreational facilities and/or clubhouses which are designed and constructed as part of a subdivision development and which are intended for the specific use of members of a homeowners association.

Home occupation

shall mean an occupation carried on in a residential dwelling and/or related accessory building as an incidental, subordinate and accessory activity to the primary use of the premises.

Horse track

shall mean a circular, elliptical, rectangular, oblong, or similarly shaped endless accessory structure either enclosed or outside, usually constructed of earch, used for the exercise and/or training of horses and/or driver and riders on a farm.

Hospice residential care facility

a freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in a group residential setting.

Hospital

shall mean a building or part thereof, used for medical, psychiatric, obstetrical, or surgical care, on a twenty-four-hour basis, of four (4) or more patients.

Hotel* or *motel

shall mean a commercial establishment offering lodging to travelers and often having restaurants, meeting rooms, stores, etc., that are available to the general public.

Illuminance

shall mean the quantity of light arriving at a surface divided by the area of the light surface, measured in foot-candles. Horizontal illuminance applies to a horizontal surface: vertical illuminance applies to a vertical surface. Average illuminance is the level of illuminance over an entire illuminated target area. Maximum illuminance is the highest level of illuminance on any point within the entire area: minimum illuminance is the lowest level of illuminance on any point within the target area.

Incinerator

shall mean an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down solid waste.

Infill Development

Residential infill is the development of residential dwelling units on 30 or less vacant, under-utilized or redeveloped lots totaling 5 acres or less in size which are surrounded by or in close proximity to areas that are substantially or fully developed.

Infrastructure

shall include utilities, sanitary sewer systems, water systems, storm drainage systems and streets.

Insurance office

shall mean establishments primarily engaged in acting as agents (i.e., brokers) in selling annuities and insurance policies.

Interior decorator service

shall mean an office or studio for the design, selection and coordination of paint, wall coverings, fabrics, floor coverings, window treatments, furniture and fixtures for architectural interiors.

Investigation and security services

establishments in this subcategory provide one or more of the following: (1) investigation and detective services; (2) guard and patrol services; (3) the picking up and delivering of money or valuable items with protection while in transit; (4) the selling of security systems, such as burglar and fire alarms and locking devices, along with installation, repair, or monitoring; and (5) remote monitoring of electronic security alarm systems.

Investment banking, securities and brokerages

shall mean establishments primarily engaged in underwriting, originating, and/or maintaining markets for issues of securities.

Janitorial services

shall mean establishments that clean building interiors, interiors of transportation equipment (e.g., aircraft, rail cars, ships), or windows.

Jewelry and silverware manufacturing

see manufacturing light.

Jewelry store

shall mean a facility which retails watches, rings, bracelets, necklaces and similar items.

Kennels

shall mean an arrangement of buildings and/or pens for the care, breeding and raising of dogs and cats and involving facilities for five (5) or more dogs or cats.

Laboratory, manufacturing*,*

shall mean operations involving the compounding of products such as perfumes, pharmaceuticals and the development and assembly of instruments and similar items.

Laboratory, medical research*,*

shall mean a facility for performing scientific tests, analysis or experimental studies.

Laboratory, research

shall mean a facility for scientific laboratory research in technology-intensive fields. Examples include biotechnology, pharmaceuticals, genetics, plastics, polymers, resins, coatings, fibers, fabrics, films, heat transfer, and radiation research facilities.

Landscape contractor

shall mean a business principally engaged in the decorative and functional alteration, planting, and maintenance of grounds. Such a business may engage in the installation and construction of underground improvements but only to the extent that such improvements (e.g., drainage facilities) are accessory to the principal business and are necessary to support or sustain the landscaped surface of the ground.

Laundry and cleaning facilities (self-service)

shall mean a facility where patrons wash, dry, and/or iron clothing or fabrics in machines operated by the patrons.

Laundry, cleaner

shall mean an establishment that provides dry cleaning and/or laundry service on the premise.

Laundry, commercial/industrial

shall mean an establishment used for cleaning fabrics, textiles, wearing apparel, or articles of any sort of volatile solvents.

Laundry, cleaner (drop-off station)

shall mean an establishment or business maintained for the pickup and delivery of dry cleaning and/or laundry without the maintenance or operation of any laundry or dry-cleaning equipment or machinery on the premises.

Lawn and garden supplies-

see hardware store

Leather and allied products

leather and allied product manufacturers: a). transform hides into leather by tanning or curing; b). Fabricate leather into products for final consumption; and c). Manufacture similar products from leather substitutes, such as rubber, plastics, or textiles. Rubber footwear, textile luggage, and plastic purses are some examples of products made from leather substitutes.

Legal services

see professional services.

Library or public arts complex

shall mean an establishment for the loan or display of books or objects of art or science which is sponsored by a private, public or quasi-public agency in which the institution is open and available to the general public.

Licensee

shall mean any person licensed to operate and maintain a mobile home park within the city.

Light fabrication and assembly process
shall mean manufacture and assembly of previously prepared materials such as food, drugs, cosmetics, cellophane, canvas, cloth, felt, fur, glass, leather, paints, paper or plastic.

Light trespass
the shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Limousine service
shall mean a business that offers the public motor vehicles for carrying or transportation of passengers between airports and points within the city for a fixed charge or fee, or offering a vehicle with driver for transportation of passengers at an hourly rate.

Lithographic shop* or *commercial printer
shall mean an establishment involving the printing and publishing of books, magazines, newspapers, posters and similar graphic material in volume.

Livestock auction
shall mean barns, pens and sheds for the temporary holding and sale of livestock.

Loading space (off-street)
shall mean an unobstructed, hard-surfaced area no part of which is located in any street or public right-of-way and the principal use of which is for the standing, loading or unloading of trucks and trailers.

Local freight and furniture moving (no storage)
shall mean establishments that provide local general freight trucking, usually within a metropolitan area which may cross state lines. They handle a wide variety of commodities, generally pelletized and transported in a container or van trailer. Most trips are same-day return.

Locksmith
shall mean an establishment primarily engaged in the repair and sale of locks and keys.

Lodge* or *fraternal organization
shall mean a private, nonprofit organization whose primary purpose is to promote the fellowship of its members which may conduct business associated with philanthropy or civic awareness.

Long distance freight and furniture moving (and storage)
shall mean long distance freight trucking establishments that provide long-distance general freight trucking, usually between metropolitan areas which may cross North American country borders. They handle a wide variety of commodities, generally

pelletized and transported in a container or van trailer. Included are establishments operating as truckload (TL) or less than truckload (LTL) carriers.

Lot

shall mean a parcel of land intended to be occupied by principal buildings or uses and accessory buildings or uses customarily intended to go with them, including such open spaces as are required by this chapter, and having frontage on a dedicated public street. A lot as defined herein may consist of one (1) or more platted lots, or tract or tracts conveyed or parts thereof.

Lot area

shall mean the total horizontal area included within the lot.

Lot, corner,

shall mean a lot that has frontage on intersecting public streets.

Lot coverage

shall mean the maximum percentage of a lot which may be covered by structures.

Lot depth

shall mean the mean horizontal distance between the front lot line and rear lot line, or the distance between the midpoint of the front lot line and the midpoint of the rear lot line.

Lot, double frontage,

shall mean a lot having frontage on two (2) nonintersecting public streets.

Lot, flag,

Shall mean a lot that has access to a public right-of-way by means of a narrow strip of land.

Lot, interior,

shall mean a lot other than a corner lot.

Lot line

shall mean any boundary line of a lot.

Lot line, front,

shall mean the property boundary line that runs common with and adjacent to any street frontage or right-of-way separating such lot from such street or right-of-way. In the case of a double frontage lot or a corner lot, each line separating such lot from the street shall be considered a front lot line unless previously defined by platting.

Lot line, rear,

shall mean that property boundary line which is generally parallel to and most distant from the front lot line of the lot.

Lot line, side,

shall mean any boundary of a lot which is not a front lot line or a rear lot line.

Lot width (nonresidential)
shall mean the width of a lot as measured at the front lot line.

Lot width (residential)
shall mean the width of a lot as measured at the minimum front setback line, parallel to the front lot line.

Lumber yard and building materials
shall mean a facility which principal business is storing and selling cut lumber and associated accessory building materials primarily to contractors.

Luminaire
shall mean a complete lighting system, and includes a lamp or lamps and a fixture.

Machine, sheet medal, or welding shop
shall mean shops where lathes, presses, grinders, shapers, and other wood- and metal-working machines are used as blacksmith, tinsmith, welding, and sheet metal shops.

Mail services
shall mean a commercial business which conducts the retail sale of stationery products, provides packaging and mail services (both U.S. Postal and private service), and provides mailboxes for lease.

Major alterations
shall mean any change to the exterior surfaces of a building or part thereof, including but not limited to renovation, rehabilitation, reconstruction, restoration, replacement, or rearrangement of structural parts or elements, or any change that affects the plan configuration of walls, spaces, or bulk of a building.

Mall or shopping center
shall mean a facility with five or more stores for retail goods and services, which are structurally designed in an integrated fashion around or along both sides of a promenade, walkway, concourse, or courtyard. Primary individual store entrances front onto this promenade. This may include offices and satellite or unattached structures that are served by the mall road network. This definition applies only to a facility in which 85 percent or more of the gross floor area is accessed from enclosed promenades, walkways, concourses, or courtyards.

Manufactured home
shall mean a dwelling unit constructed in a factory in accordance with the federal manufactured home construction and safety standards promulgated by the United States Department of Housing and Urban Development under the authority of 42 U.S.C. 5401 et seq. As it existed on January 1, 1976.

Manufactured home and mobile home sales and service facility

shall mean a facility for the sale and service of mobile homes, manufactured homes, and travel trailers.

Manufacturing, heavy

the manufacture or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of their manufacturing process.

Manufacturing, light

the processing or fabrication of certain materials or products where no process involved will produce noise, vibration, air pollution, fire hazard, or noxious emission which will disturb or endanger neighboring properties.

Manufacturing, medium

shall mean the manufacturing of products from processed or unprocessed raw materials, where the finished product is noncombustible and nonexplosive. This manufacturing may produce noise, vibrations, illumination, or particulate that is perceptible to adjacent land users, but is not offensive or obnoxious. Odors produced on-site shall not have a negative effect on other businesses or properties in the area. This use shall include any packaging of the product being manufactured on-site. Examples include but are not limited to the production of the following: glass products made from manufactured glass; clay and pottery products; food and beverages; candy and other confectionery products; computer hardware; products made from rubber, plastic, or resin; converted paper and cardboard products; fabricated metal products made from semifinished metals.

Marina

shall mean a use of land involved in the operation of a marina including structures and activities normally integral to the operation of a marina, such as fueling, servicing, pumping-out, chartering, launching, and dry-storage of boats and boating equipment.

Master concept plan

shall mean a site or survey plan which is general in nature and which depicts the intended lot configuration and street layout of a proposed subdivision or development.

Master street plan

shall mean the official master street plan of the City of Fort Smith.

Mausoleum

see cemetery

Maximum seating capacity

shall mean the capacity of a room in terms of the number of persons that may be seated in chairs or at work stations in that room when the chairs or work stations are placed according to building or fire codes or according to acceptable architectural practice.

Medical and diagnostic laboratories

shall mean laboratories that provide analytic or diagnostic services, and other services, such as medical imaging, and forensics.

Medical appliance services
shall mean a medical supplier who provides orthopedic appliances and prosthetic appliances.

Medical laboratory,
shall mean a facility for testing and analyzing problems of public or private health.

Medical/pharmaceutical
see manufacturing, light

Mental health hospital
shall mean a health station, retreat, or an institution for the recuperation and treatment of persons suffering from physical or mental disorders.

Metallic mining
shall mean industries that develop mine sites and mine metallic minerals, and establishments that dress and beneficiate ore, such as by crushing, grinding, washing, drying, sintering, concentrating, calcining, and leaching. Beneficiating may be performed at mills operated with the mines, or at mills operated separately.

Microbrewery/microwinery/microdistillery
shall mean a small craft brewery which seeks the support of informed beer consumers. It is limited to a maximum gross floor area of 10,000 square feet for the manufacturing portion of the facility and to production less than 15,000 barrels of alcoholic beverages per year. It may serve alcoholic beverages for sampling on the premises and may also have wholesale and resale for sales of alcoholic beverages produced on the premises.

Miniature golf course
shall mean a theme-oriented recreational facility, typically comprised of nine or 18 putting greens, each with a “cup” or “hole,” where patrons in groups of one to four pay a fee to move in consecutive order from the first hole to the last.

Mini-storage warehouse
shall mean a complex of small storage units which are rented or leased and which are arranged to be individually accessible to the lessee or renter.

Mobile food services
shall mean a food service establishment that is a vehicle-mounted food service establishment designed to be readily movable.

Mobile home
shall mean any vehicle or similar portable structure having been constructed with wheels, whether or not such wheels have been removed, and having no foundation other than wheels, jacks or skirtings and so designed or constructed as to permit

occupancy for dwelling or sleeping purposes. A mobile home shall further mean a dwelling unit constructed in a factory before the enactment of the federal manufactured home construction and safety standards promulgated by the United States Department of Housing and Urban Development under the authority of 42 U.S.C. 5401et seq. As it existed on January 1, 1976.

Mobile home lot space

shall mean a plot of ground (lot) within a mobile home park designed for the accommodation of one (1) mobile home.

Mobile home park

shall mean a parcel of land that has been planned and improved for the placement of two or more mobile homes for rental purposes for non-transient use.

Mobile home subdivision

shall mean an area designed and platted for the permanent parking of mobile homes in a predetermined arrangement with parking spaces available for lease or sale to mobile home owners. The facility must provide water, sewer and electric utilities and streets and may provide playgrounds and public use areas.

Modular housing

a dwelling unit constructed on-site in accordance with the [state or municipal] code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

Monopole

see tower.

Monument manufacturing

shall mean a manufacturing process which involves the fabrication, carving/lettering and etching of monument signs or memorials.

Monument sales

shall mean a company which sells upright monuments, statues, lawn decorations, gravestone plaques or mausoleum containers, monument signs, benches, and birdbaths to be used in cemeteries as memorials for the deceased, as monument signs to identify businesses or subdivisions, or for residential use in lawn of gardens.

Monument

shall mean a physical structure which marks the location of a corner or other survey point.

Motion pictures and sound recording studios

shall mean establishments that produce and distribute motion pictures and sound recordings.

Motor freight terminals

shall mean a facility for freight loading and freight storage.

Motor vehicle
shall mean any self propelled vehicle designed primarily for the transportation of persons or goods along public streets or alleys or other public ways.

Motorcycle sales and service
see auto and vehicle dealer

Movie theater (indoor)
shall mean a building including a stage or screen for the projection of motion pictures to the public.

Moving and storage
shall mean a facility for warehousing, transferring or keeping of goods.

Moving company
shall mean a company that moves the possessions of a family or business from one site to another.

Multifamily (apartments or condominiums)
a building on a single lot that has three or more attached independent dwelling units.

Multifamily development
a single lot that has three or more independent dwelling units.

Multistoried parking structure
shall mean a parking structure which is designed to accommodate vehicular parking spaces that are fully or partially enclosed or located on the deck surface of a building. This definition includes parking garages and deck parking.

Museum
shall mean a building having public significance by reason of its architecture or former use or occupancy or a building serving as a repository for a collection of natural, scientific, or literary curiosities or objects of interest, or works of art, and arranged, intended, and designed to be used by members of the public for viewing, with or without an admission charge, and which may include as an accessory use the sale of goods to the public as gifts or for their own use.

Mutual access easement
shall mean a permit or license (easement) from the owner of a tract of real property authorizing the use of a described portion or all of the owned tract of real property for ingress and egress to one or more other tracts of real property (dominant estates) for the mutual benefit of the dominant estates individually or collectively. A mutual access easement in favor of public utility companies shall authorize mutual access and ingress to described public utility facilities in favor of the public utility companies individually or collectively.

Neighborhood store
shall mean a commercial establishment primarily engaged in the provision of frequently or recurrently needed goods for household supplies and hardware. Neighborhood stores shall not include fuel pumps or the selling of fuel for motor vehicles.

New construction

shall mean the construction of a new building or structure that did not previously exist. This includes buildings constructed on sites where a building or structure was previously demolished.

Newspaper printing plant

a commercial printing operation involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including but not limited to offset printing, lithography, web offset, flexographic, and screen process printing.

Nonconforming

shall mean that which does not meet the requirements of this chapter but which has been in continuous existence for at least seven (7) years.

Nonconforming building

shall mean any building or structure lawfully existing on the effective date of this ordinance, as amended, which does not comply with all of the regulations of this chapter governing parking or bulk and area requirements for the zone in which such building or structure is located.

Nonconforming sign

shall mean any sign which does not meet the requirements of this division.

Nonconforming structure

is a structure which is nonconforming with reference to the bulk and area requirements of the zoning district within which it is located.

Nonconforming use

shall mean a building, structure or use of land lawfully occupied at the time of the effective date of this chapter or amendment thereto, or which was subsequently annexed to the city which does not conform to the use regulations for the zone in which it is situated.

Nonconforming use of land

is a use of real property which does not conform to the permitted uses in the zoning district within which the real property is located and which does not involve the utilization of a structure or as to which the utilization of a structure is incidental.

Nonconforming use of structure

is a nonconforming use with reference to permitted uses of the zoning district within which it is located and which utilizes a structure.

Nondurable goods

establishments that sell or arrange the purchase or sale of nondurable goods to other businesses. These establishments wholesale products, such as paper products, chemicals, drugs, textiles, apparel, footwear, groceries, farm products, petroleum products, alcoholic beverages, books, magazines, newspapers, flowers, and tobacco products. Nondurable goods generally have a life expectancy of less than three years.

Nonmetallic manufacturing and mining

shall mean establishments that transform, mine, dredge and quarry nonmetallic minerals, such as sand, gravel, stone, clay, and refractory materials. Included are

establishments that manufacture bricks, concrete blocks, refractory's, glass, cement, concrete, lime, gypsum, abrasives, cut stone, and mineral wool.

Nonprofit organization

shall mean any person(s), partnership, association, corporation, or other group whose activities are conducted for unselfish, civic, or humanitarian motives, or for the benefit of others, and not limited to, patriotic, philanthropic, social service, welfare, benevolent, educational, civic, fraternal, cultural, charitable, scientific, historical, athletic, or medical activities.

Nuclear power plant

shall mean this comprises establishments operating nuclear electric power generation facilities. These facilities use nuclear power to produce electric energy. Electric energy produced in these establishments is provided to electric power transmission systems or to electric power distribution systems.

Nursery school

shall mean an institution intended primarily for the daytime care of children of preschool age. Even though some instruction may be offered in connection with such care, the institution shall not be considered a "school" within the meaning of this chapter.

Nursing home

shall mean a home for the aged or infirm in which three or more persons not of the immediate family are received, kept, or provided with food and shelter, or care for compensation; but not including hospitals, clinics, or similar institutions devoted primarily to the diagnostics and treatment of the sick or injured.

Occupancy

shall mean the use or intended use of land, buildings or structures by proprietors or tenants.

Off-Premise Sign (Outdoor advertising sign)

shall mean a sign which directs the attention of the general public to a business, product, service, or activity not usually conducted upon the premises where such sign is located.

Office and administrative services

shall mean establishments that a). Provide day-to-day office administrative services, such as financial planning, billing, record keeping, personnel employment, and logistics; b). Hold securities (or other equity interests) of companies in order to own a controlling interest or influence management decisions; c). Oversee and administer the establishments of a company often by providing strategic or organizational planning.

Office, corporate

shall mean an establishment primarily engaged in providing internal office administration services as opposed to customer service in a single building or a campus setting; for example, the headquarters, regional offices or the administrative offices for a corporation. Generally the majority of the traffic generated from corporate offices comes from employees and not the general public.

Office, general*,*

shall mean a place for the regular transaction of business but not to include retail sales, transfer of manufactured goods or storage of commodities.

Office supplies

shall mean establishments that manufacture office supplies with the exception of paper. Examples of products made by these establishments are pens, pencils, felt tip markers, crayons, chalk, pencil sharpeners, staplers, hand operated stamp, modeling clay, inked ribbons.

Office supply store

establishments or places of business engaged in the sale, rental, or repair of office equipment, supplies, and materials.

Oil and gas field equipment, sales and rental yard,

shall mean an open area devoted to the storage of large oil field equipment and the offering of same for sale or rent.

On-premise sign

shall mean a sign which directs the attention of the general public to a business, product, service or activity which is conducted upon the premises where such sign is located.

Open space

shall mean an area included in any side, rear or front yard or any unoccupied space on a lot that is open and unobstructed to the sky except as provided by this chapter.

Optical shop

shall mean a facility for a dealer in optical items for correcting vision.

Orphanage

shall mean an institution for the care and protection of children without parents or homeless children.

Outdoor lighting

shall mean the night-time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

Outdoor temporary sales

shall mean open sales lots established for temporary periods of sale of seasonal commodities. Sales outdoor, temporary, shall be subject to a permit issued by the Director for a specific period of time, not to exceed 120 days.

Owner

shall mean any person, firm, corporation, or other legal entity having title or legally recognized interest in the land or property.

Packaging and distribution center

shall mean a use where goods are received and/or stored for delivery to the consumer at remote locations

Paper and printing materials

shall mean businesses which manufacture paper and offer printing-related products. Paper manufacturers make pulp, paper, or converted paper products (e.g. paper bags). Printing establishments print products (e.g. newspapers, books, periodicals,

and greeting cards) and perform support activities, such as bookbinding, plate making services, and data imaging.

Parapet
shall mean a false front or wall extension above the roof line.

Parent parcel
shall mean the original lot.

Park or playground
any public or private land available for recreational, educational, cultural, or aesthetic use.

Parking garage
shall mean an area or structure devoted to the parking or storage of motor vehicles.

Parking lot
shall mean a parking area for motor vehicles where there is no gross building area below the parking area and no gross building area or roof above it. Area occupied by small, permanent buildings, such as booths used by parking attendants, is not parking area. Temporary vending carts are not gross building area.

Parking lot, commercial,
shall mean an area devoted to the parking or storage of motor vehicles for a fee.

Parking lot, off site,
shall mean off-site parking spaces which are not located on the same lot or tract occupied by the main use, but which are within three hundred (300) feet of such lot or tract.

Parking space, off-street,
shall mean a space for the parking of a motor vehicle within a parking lot and having a permanent means of access to a street right-of-way or publicly dedicated alley without requiring passage through another parking space.

Pawn shop
shall mean a facility for loaning money on the security of personal property; unclaimed property may be sold on the premises.

Pawn shop (no outside storage)
shall mean a facility for loaning money on the security of personal property; unclaimed property may be sold on the premises; however, outside display or storage of unclaimed property or other inventory is expressly prohibited.

Performance theater (indoor or outdoor)
shall mean a facility that includes a stage for presenting live theatrical performances to the public.

Perimeter landscaping
shall mean landscaping provided along the street and exterior boundaries of a site.

Perimeter street
shall mean any street to which the parcel of land to be subdivided or developed abuts on only one (1) side.

Pet cemetery

shall mean a parcel of land, buildings, and/or structures used for the interring of animal remains.

Pet shop

shall mean a facility for the display and sale of small animals, dogs, cats, fish and birds without involving commercial boarding or treating of any animal, fish or bird.

Pet supply store

shall mean stores which retail pets, pet foods, and other pet supplies.

Petroleum and coal products

shall mean businesses which manufacture petroleum and coal products by transforming crude petroleum and coal into usable products. The dominant process is petroleum refinement: the separation of crude petroleum into component products through techniques such as cracking and distillation.

Petroleum distribution facility

shall mean a facility for the storage of fuels or other volatile products and for their distribution to retail sales facilities or other bulk purchasers, regardless of ownership.

Pharmaceutical manufacturing

see manufacturing, light.

Pharmacy or drug store

shall mean a facility for preparing, preserving, compounding and dispensing of drugs and medicines.

Photocopy shop

a facility for the reproduction and copying of printed material or drawings. This does not include sign shops, printing establishments, or similar large-scale operations.

Photography studio

shall mean a facility for taking and processing photographs, not a bulk processing plant.

Pipeline transportation

establishments in pipeline transportation use transmission pipelines to transport products, such as crude oil, natural gas, refined petroleum products, and slurry.

Pistol Range (indoor)

shall mean an indoor facility designed and constructed for the practice and teaching of marksmanship with handguns.

Planned zoning district

shall mean a zoning district that allows for comprehensively planned developments for either single use or mixed use and permits development and zoning review as a simultaneous process.

Planning commission

shall mean the Planning Commission of the City of Fort Smith, Arkansas.

Plat, final

shall mean a map, plan or record of a subdivision or development suitable for filing of record delineating lot lines, easements and right-of-way widths and locations with necessary affidavits, dedications and acceptances as required in these regulations.

Plat, preliminary

shall mean maps and other drawings of a proposed subdivision or land development that show the existing character of the land and the preliminary development plan including the expected location of streets, water and sanitary sewer lines, drainage and other proposed facilities.

Plumbing, electrical, air-conditioning, sewer line, and heating shops

see contractor's shop.

Police station

shall mean protection centers operated by a governmental agency, including administrative offices, storage of equipment, temporary detention facilities, and the open or enclosed parking of patrol vehicles; excluding, however, correctional institutions.

Police substation (no incarceration)

shall mean a subordinate or subsidiary station; a police station serving a particular area.

Pool hall

shall mean a principal use billiard facility open to the general public, and which could sell and serve beverages and/or drinks on the premises.

Port facility

A facility for the docking, loading or unloading of ships, barges, or boats that primarily transport goods. Ports often include warehousing of goods awaiting transport.

Portable sign

shall mean a business sign that does not exceed forty (40) square feet in area, can be moved from place to place and is not permanently affixed to the ground or to a building (excluding real estate and construction signs). Any sign that is over forty (40) square feet shall, for purposes of this ordinance, be considered a business sign or an outdoor advertising sign.

Portable Storage Units

shall mean transportable units designed and used primarily for temporary storage of building materials, household goods, personal items and other materials for use on a limited basis.

Preschool

a school for children primarily between the ages of three and five, providing preparation for elementary school.

Primary and secondary school

a public, private, or parochial school offering instruction at the elementary, junior high, or high school level (K-12) in the branches of learning and study required to be taught in schools within the state.

Principal use

shall mean the use which fulfills the primary function of an establishment, institution, household and other entity.

Print shop

A facility for the custom reproduction of written or graphic materials on a custom order basis for individuals or businesses.

Printing (commercial/industrial)

shall mean a commercial printing operation involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including but not limited to offset printing, lithography, web offset, flexographic and screen process printing.

Private Access Easement

shall mean any private easement for the purpose of ingress and egress that is not dedicated to the public and that is owned by the underlying owners of land over which it crosses.

Private club

shall mean a facility where food, beverage, entertainment and meeting space is provided to specific membership only.

Private street

shall mean any right-of-way or area set aside to provide vehicular access within a development that is not dedicated or intended to be dedicated to the city and that is not maintained by the city.

Professional Services

A business, primarily conducted in an office, which offers any service to the public by a licensed professional such as physicians, massage, occupational, or physical therapists, counselors, architects, engineers, lawyers, accountants, etc.

Property management services

shall mean business establishments that manage real property for others.

Public shop or yard of local, state or federal agency

shall mean a facility such as office buildings, maintenance yards and shops required by branches of local, state or federal agencies for service to an area, such as highway department yard, city service center, experiment station, municipal or county jail or courts.

Public notice

shall mean in reference to a legal ad or public notice: Meaning a newspaper of general circulation within the City of Fort Smith, Arkansas.

Queuing space

shall mean a temporary waiting area for motor vehicles obtaining a service or other activity.

Race track

shall mean a facility consisting of a paved or unpaved roadway used primarily for the sport of racing animals or machines. A racetrack may include seating, concession areas, suites, and parking facilities, but does not include accessory offices, residences, or retail facilities.

Radio, television or microwave broadcasting tower
see tower.

Rail transportation
shall mean the occupation and use of land, buildings, and structures for purposes directly connected with rail transportation of articles, goods, and passengers, including such facilities as tracks, sidings, signal devices and structures, shops and yards for maintenance and storage of rail machinery, loading platforms, and passenger and freight terminals.

Real estate agency
see professional services

Reconstruction
shall mean the repair or replacement of a building or structure that has been damaged or destroyed.

Rectory
shall mean a residential building designated by a church to be used by the clergy of that church. A rectory is often located on or adjacent to the primary church property but such location is not required. The rectory may include such facilities as counseling rooms and private meeting rooms as well as general residential facilities but these uses are secondary to the primary use as a residential structure.

Recycling center
a facility where recyclable materials, such as newspapers, magazines, books, and other paper products, glass, metal cans, and other products are recycled, reprocessed, and treated in order to return such products to a condition where they may be reused.

Recycling collection station
shall mean a use that serves a neighborhood drop off point for temporary storage of recyclable materials.

Refinery
shall mean an industrial plant that uses mechanical and chemical means to purify a substance, such as petroleum, chemicals, or sugar, or to convert it to a form that is more useful.

Religious Institution
shall mean a building used for public worship by a congregation, excluding buildings used exclusively for residential, educational, recreational or other uses not normally associated with worship. Includes churches, chapels, cathedrals, mosques, synagogues, temples, and similar designations.

Research and development services
a service that engages in research, or research and development, of innovative ideas in technology-intensive fields.

Restaurant
shall mean an establishment serving food or beverage to the general public in specific, designated dining areas where food is not served to persons by means of a drive-through window.

Restaurant (with drive-in service)

shall mean an establishment designed and constructed to serve food for consumption on the premises in an automobile, which establishment may or may not have on the premises a dining room or service counter.

Restaurant (with drive-through service)

shall mean an establishment serving food to the general public having designated dining areas as well as a drive-through service window.

Restaurant (with outdoor dining)

shall mean an establishment serving food to the general public having a designated dining area as well as a porch, deck, or other area of land used for seated dining only which is not within the interior building walls of a restaurant or eatery that may include music.

Retirement housing

these establishments offer minimal convenience services but focus on attracting elderly residents so as to provide a social support system among the residents.

Rhythm (architecture)

shall mean any kind of movement characterized by the regular occurrence of elements, lines, shapes, and forms.

Right-Of-Way, Public,

shall mean an area of land deeded, reserved by plat, or otherwise accepted and maintained by the City, the county or the state for public use.

Rooming or boarding house

shall mean a building other than a hotel or motel, arranged and used for the lodging, with or without meals, for compensation of more than three (3) persons exclusive of the operating person or family, pursuant to previous arrangements.

Row house

shall mean two or more attached dwelling units located on separate lots that are separated by fire walls at a common property line.

Salon/spa services

shall mean establishments that provide health and beauty treatments for customers such as massage, aroma therapy, exercise facilities, steam/sauna facilities, hair salons.

Salvage yard

shall mean any establishment maintained, used or operated for the storing, keeping, dismantling, salvaging, buying or selling of:

(1) Scraps or discarded pieces of metal, paper, cloth, tires, building materials, glass and other materials.

(2) Inoperable, wrecked, scrapped, ruined or discarded automobiles, automobile parts, machinery or appliances.

Sand, gravel, stone or earth sale and storage facility

shall mean a facility for storing and marketing sand, gravel, stone and earth.

Sanitary landfill (public or private)

shall mean a site for the accumulation and disposal of refuse or other discarded materials. This use shall not be construed to be a junk or salvage yard.

Sawmill

shall mean a facility having power driven machinery for the purpose of sawing logs and including accessory facilities for the drying and storage of wood materials or by-products.

Scale

shall mean the relative size, dimension, degree or proportion of parts of a building to one another or group of buildings.

School, business professional,

shall mean a business organized to operate for a profit and offering instruction and training in a service or art such as secretarial school, barber college, beauty school or commercial art school, but not including trade schools.

School, public or private,

shall mean a school under the sponsorship of a public or religious agency having a curriculum generally equivalent to a public elementary or secondary school, but not including trade or commercial schools.

School, trade or technical,

shall mean a business organized to operate for a profit and offering instruction and training in a trade such as welding, electrical, plumbing, truck driving, machinery operation and similar trades.

Screen fence

shall mean an opaque manmade barrier constructed to provide separation, privacy and/or visual separation between one (1) ownership and another, regardless of whether the fence is constructed on a property line. An opaque screen or opaque screening fence, shall not be constructed, in whole or part, of corrugated metal, sheet iron, chain link stripping or salvaged vehicle or machinery parts. (See Ordinance 6-95)

Seasonal Use

shall mean a specific type of temporary use that reoccurs each year for a definite period of time and which occupies the same location and configuration.

Senior citizens center

shall mean a community facility for the organization and provision of a broad spectrum of services, which shall include provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

Setback

the minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

Sexually oriented business

see section 14-141 of the Fort Smith Municipal Code.

Sewing machine store (sales and service)

a business establishment engaged in the business of selling and repairing sewing machines.

Shoe repair shop

shall mean a facility for repair or reconditioning of footgear, handbags and other leather articles such as shoes, boots, sandals, wallets, purses and other similar products.

Sign

shall mean a structure or device designed or intended to convey information to the public in written, pictorial or three dimensional form. Signs erected by the state highway department, county road department or the city street department are not subject to the regulations.

Sign area

shall mean the entire area within a single continuous perimeter enclosing the outer dimensions of the actual message or copy area. It does not include customary extensions or embellishments, nor any structural elements outside the limits of such display surface and not forming an integral part of the display. For double-face or V-type sign structures, only one (1) display face shall be counted in computing the actual sign area. The sign area permitted on any piece of property refers to the permitted combined total area of all signs on that property.

Sign (back-to-back)

shall mean a structure with two (2) parallel and directly opposite signs with their faces oriented in opposite directions and spaced no more than three (3) feet apart.

Sign (bench)

shall mean a sign located on any part of and contained within the perimeter of the bench or seat.

Sign (bus shelter)

shall mean a sign located on any part of and contained within the perimeter walls of the shelter.

Sign (business)

shall mean a sign which directs the attention of the general public to a business, product, service or activity which is conducted upon the premises where such sign is located.

Sign (electronic message center/digital)

shall mean a sign that utilizes computer-generated messages or some other electronic means of changing copy. These signs include displays using incandescent lamps, LEDs, LCDs, or a flipper matrix.

Sign (flashing)

shall mean a sign, the illumination of which is not constant in intensity when in use; except that illuminated signs which indicate the time, date, temperature and other public service information shall not be considered to be flashing signs.

Sign (v-type)

shall mean a structure of two (2) signs in the shape of the letter "V" when viewed from above and with their faces oriented in opposite directions.

Single family

shall mean a building designed for the occupancy by one family

Single family detached

Shall mean a dwelling unit on a single lot containing one dwelling unit that is not attached to another dwelling unit.

Site

shall mean a single holding which consists of a lot, tract, parcel or acreage not divided in any manner by a public right-of-way including a street or alley but not including easements.

Site plan

shall mean a drawing, to scale, that illustrates the development of a property including, but not limited to, property lines, streets and street rights-of-way, building foot-prints, driveways, loading areas, parking, utilities, easements, signs and landscaping.

Site plan (certified)

shall mean a site plan containing a written statement regarding accuracy or conformity to specified standards and bearing the seal or stamp of the professional engineer or architect under whose supervision the site plan was prepared. A survey, from a licensed professional surveyor, that incorporates all of the requirements of a site plan is acceptable for existing developments and when no site improvements are being proposed.

Site plan review

shall mean the process whereby the planning commission and the city staff review the site plans and maps of a developer to assure that they meet the purposes and standards of this chapter.

Skating rink

shall mean an establishment that provides facilities for participant skating.

Sloped parapets

shall mean angled false front or wall extension above the roof line.

Small engine repair

shall mean establishments that provide maintenance and repair of low-power internal combustion engines pr electric engines. Equipment repaired includes but not limited to chain saws, string trimmers, leaf blowers, snow blowers, lawn mowers, wood chippers, and go-karts.

Social assistance, welfare, and charitable services

shall mean establishments that provide social assistance services directly to individuals. They do not offer residential or accommodation services.

Solid waste collection

shall mean establishments that (1) collect or haul hazardous waste, nonhazardous waste, or recyclable materials within a local area; and (2) operate hazardous or nonhazardous waste transfer stations. Waste collection establishments may be responsible for the identification, treatment, packaging, and labeling of wastes for the purposes of transport.

Specialty Food Market

Shall mean establishments primarily engaged in the provision of frequently or recurrently needed goods for household consumption, such as prepackaged food and beverages and limited household supplies and hardware. These shall not

include fuel pumps or the selling of fuel for motor vehicles. Typical uses include neighborhood markets and country stores.

Specialty Manufacturing

shall mean specialty manufacturers with or without a retail front or other special manufacturers with minimal impacts to adjoining properties, including noise, traffic, lighting, odors, and hours of operation. Products are primarily assembled by hand. The uses are limited by size to a maximum of 4,000 s.f. of gross floor area and shall be operated only within a fully enclosed structure.

Sports complex or athletic field

shall mean a large open or enclosed space used for games or major events which may be surrounded by tiers of seats for spectators.

Sporting goods stores

shall mean establishments primarily engaged in the retailing of new sporting goods, including bicycles and bicycle parts, camping equipment, fishing and hunting equipment, exercise and fitness equipment, athletic uniforms, athletic apparel for men, women and children, specialty sports footwear and other sporting goods, equipment and accessories.

Stable, private*,*

shall mean a private accessory building for quartering horses.

Stockyard

shall mean services involving the temporary keeping of livestock for slaughter, market, or shipping.

Stormwater retention basin* or *pumping station

shall mean a reservoir, lake, pond or area designated for temporary storage of surface water during periods of heavy run-off together with any pumping facilities, tanks, gates or similar structures related to drainage operations.

Story

shall mean that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

Street

shall mean a public maintained right-of-way, other than an alley, which affords a primary means of access to property.

Street frontage

shall mean the distance along a property line that is also the right-of-way line of a public street. It is measured between side lot lines along the front lot line.

Street, limited access

a street which allows only indirect access to abutting properties primarily by distributing traffic to intersecting lesser volume streets or some other means as needed to allow for efficient local circulation.

Street, standard

shall mean any existing street whose right-of-way meets the design requirements of the Master Street Plan or the minimum street standards, whichever is greater.

Structural alterations

shall mean any external or internal change in either the supporting members of a building such as a bearing wall, column, beam or girder or in the dimension or configuration of the roof or exterior wall.

Structure

shall mean a combination of material to form a construction that is safe and stable. The term structure shall be construed as if followed by the words "or part thereof."

Studio of the arts, private,

shall mean a working place for one engaged in artistic painting, sculpture, or other individual artistic endeavor.

Subdivider

shall mean any person who has an interest in the land and causes it, directly or indirectly, to be divided into a subdivision.

Subdivision (incorporated: inside the city limits)

shall mean the division of or the assimilation of one (1) or more parcels of land into two (2) or more parcels resulting in the need for access and utilities. "Subdivision" also includes the development of land resulting in the need for access to lots and parcels, the need to provide or extend utilities, the need to improve adjacent infrastructure due to insufficient existing capacity and the added demand resulting from proposed development.

Subdivision (unincorporated: outside the city limits and within the planning area)

shall mean the division of or the assimilation of one (1) or more parcels of land into two (2) or more parcels when any one (1) of the resulting contiguous parcels in the ownership is reduced to less than five (5) acres.

Substance abuse treatment facility

shall mean a facility for the purposes of temporary or long-term inpatient treatment of victims of alcohol or drug use or addiction.

Substandard street

shall mean any existing street whose right-of-way does not meet the designated requirements of the master street plan or the minimum street standards, whichever is greater.

Substantial progress

shall mean the obtaining of a building permit and the actual completion of at least fifty (50) percent of the repairs authorized by the permit.

Swimming pool

shall mean a water related recreational facility designed and intended for access by the public. Pools that are part of a country club, health club, hotels and motels or similar uses are accessory to the principal use.

Swimming pool sales and supplies store (without storage yard)

shall mean a facility for display and retail sales of swimming pools, related supplies and service.

Swimming pools, public

shall mean any swimming pool other than a private swimming pool, including publicly and privately owned pools open to the general public and pools owned and operated in conjunction with membership organizations, motels, hotels, and other similar uses.

Tailor shop

shall mean a shop to alter, repair, fabricate or fashion garments.

Tanning salons

shall mean any business that uses artificial lighting systems to produce a tan on an individual's body.

Tanning, slaughtering, rendering of animals or fowl plants

shall mean a facility in which the tanning, rendering, slaughtering or butchering of animals is conducted. This use must be completely enclosed, except for live animal holding pens which shall meet all setback requirements.

Tattoo/body piercing parlor

shall mean an establishment whose principal business activity, either in terms of operations or as held out to the public, is the practice of one or more of the following: (1) Placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration.

Taxicab service

shall mean a service that offers transportation in passenger automobiles and vans to persons including those who are handicapped in return for remuneration. The business may include facilities for servicing, repairing, and fueling the taxicabs or vans.

Taxidermy shop

shall mean a facility for preparing, stuffing and mounting the skins of animals, birds or fish.

Telecommunications and broadcasting studio

shall mean a facility for broadcasting live or prerecorded programs by radio or television or recording of records, tapes, videotapes or other recording media. Such facility may perform activities necessary for recording, programming and receiving of radio and television signals. Such facility shall not engage in mass production.

Telemarketer/call center

Shall mean a central office place where agents or operators man banks of telephones to either make outgoing, or field incoming, telephone calls for a large company or organization.

Temporary Use

a use of land that is short term in nature and that does not involve the erection of a permanent structure or other permanent commitment of the land.

Textiles

establishments that transform natural or synthetic fiber into products (such as yarn or fabric) to be further manufactured into textile products;

Thrift store

shall mean an establishment primarily engaged in the sale of used clothing and/or household goods. This classification does not include antique shops.

Tire retreading

See Manufacturing Heavy

Tire sales

shall mean a facility where the principal business is the sale or installation of new, used, or retreaded tires and tubes.

Tobacco manufacturing

shall mean establishments that are either: redry and stem tobacco; or that manufacture cigarettes, cigars, or other tobacco products.

Tobacco retailers

shall mean a tobacco retailer whose business exclusively or primarily involves the sale of tobacco products and related goods.

Tower

Amateur radio tower

a freestanding building-mounted structure, including any base, tower or pole, antenna, and appurtenances, intended for airway communication purposes by a person holding a valid amateur radio license issued by the Federal Communications Commission

Commercial communication tower

shall mean a structure that supports telecommunications antenna operated for a commercial purpose.

Monopole

shall mean a freestanding structure designed to support a wireless telecommunications antenna(e) or antenna platform(s), and consisting of a single vertical pole driven into the ground and/or attached to a foundation.

Radio, television, microwave, and broadcasting

shall mean structures supporting antenna for transmitting or receiving any portion of the radio spectrum, but excluding noncommercial antenna installations for home use of radio or television.

Toy store

these establishments sell games (including electronic), toys, dolls, and musical instruments.

Tract, unplatted

shall mean property that is the subject of a development or subdivision application or, a property contiguous to a street or right-of-way.

Traditional neighborhood development

a development that exhibits several of the following characteristics: alleys, streets laid out like in a grid system, buildings oriented to the street, pedestrian-orientation, compatible and mixed land uses.

Transitional dwelling

shall mean a residential facility where persons are aided in the readjustment to society following a period of imprisonment or institutionalized treatment.

Travel arrangement and reservation services

shall mean establishments that promote or sell travel, tour, or accommodation services, such as providing maps and information, locating convention sites, arranging reservations, organizing group tours, etc.

Triplex

shall mean a building on a single lot that has three attached independent dwelling units.

Truck or tractor sales and service facility

shall mean a facility for the sale and repair of trucks, tractors, or similar motorized vehicles.

Truck stop/ travel plaza

shall mean an establishment engaged primarily in the fueling, servicing, repair, or parking of tractor trucks, semi's or similar heavy commercial vehicles, including the sale of accessories and equipment for such vehicles. A truck stop may also include overnight accommodations, showers, or restaurant facilities primarily for use of truck crews.

Unified development ordinance

shall mean the land development document that includes subdivision, site planning, land use and zoning controls.

Use

shall mean a purpose to which land, structures or buildings are committed.

Utility department

shall mean the department of the City of Fort Smith assigned to the duties of public water and sewer design, installation and maintenance.

Utility shop, storage yard or building

shall mean a building and/or land used by a utility for the storage of poles, pipes, equipment, and materials for maintenance and administration of the utility services.

Utility substation

shall mean a station which is subsidiary to a central station and at which a utility from the central station is converted or passed on to another area.

Variance

shall mean a relaxation of a restriction of this chapter, granted by the board of zoning adjustment, where by reason of exceptional narrowness, shallowness, shape, topography or other extraordinary or exceptional situations, conditions or circumstance of a particular property, the literal enforcement of the code restriction, would result in unnecessary hardship.

Vehicle Storage Yard

shall mean the keeping outside of one or more motor vehicles (except inoperable vehicles), boats, trailers, or unoccupied recreational vehicles for more than 72 consecutive hours. The term "vehicle storage yard" does not include "auto impoundment/salvage yard."

Vending

shall mean a service for the maintaining and supplying of vending machines for candy and other small foodstuffs, novelties, pamphlets and cigarettes but not including beverages.

Vested rights

shall mean the right to undertake and complete the development and use of property. A right that has been established and cannot be revoked by subsequent conditions or changes in law without due process.

Veterinary clinics (no outdoor kennels)

shall mean businesses with licensed practitioners of veterinary medicine, dentistry, or surgery for animals; also included are businesses that provide testing services for licensed veterinary practitioners.

Veterinary clinic (with outdoor kennels)

shall mean in addition to indoor clinics, also provides outside pens or kennels for larger animals.

Video, music, and software (rental and leasing)

shall mean an establishment primarily engaged in the retail rental or lease of video tapes, films, CD-ROMS, laser discs, electronic games, cassettes, or other electronic media. Sales of film, video tapes, laser discs, CD-ROMS, and electronic merchandise associated with VCRs, video cameras, and electronic games are permitted accessory uses.

Vocational rehabilitation

shall mean establishments that provide job counseling, job training, and other vocational services.

Warehouse

use engaged in storage, wholesale, and distribution of manufactured products, supplies, and equipment, excluding bulk storage of materials that are flammable or explosive or that present hazards or conditions commonly recognized as offensive.

Wastewater treatment plant

shall mean a facility for the systematic collection and treatment and dispersal of water and wastewater materials.

Wedding Chapel

shall mean a facility which is made available to be rented principally for wedding ceremonies and may include a chapel, dressing rooms, offices, reception facilities and gardens.

Weight loss centers

shall mean diet or nutrition center designed to assist persons in weight control through a combination of diet and exercise. Centers offer a combination of counseling, nutrition, and exercise measures to assist customers with weight loss and control.

Wood products manufacturing plant

shall mean a facility which cuts, trims, planes or otherwise finishes wood products on an industrial scale.

Xeriscape

shall mean a method of landscaping which maximizes the conservation of water by utilizing low water usage plants and an efficient watering system.

Yard

shall mean an open space other than a court, on the lot of which a building is situated and which is not obstructed from a point twelve (12) inches above the general ground level of the graded lot to the sky, except as provided by this chapter.

Yard, front,

shall mean the required area of open space extending across the full width of the lot, the depth of which shall be the least distance between the front lot line and the nearest point of the exterior face of any building or structure.

Yard, rear*,*

shall mean the required area of open space extending across the full width of the lot, the depth of which shall be the least distance between the rear lot line and the nearest point of the exterior face of any building or structure.

Yard, side,

shall mean the required area of open space between any building or structure and side lot line, extending from the front yard to the rear yard, the width of which shall be the least distance between the side lot line and the nearest point of the exterior face of any building or structure.

Zero lot line dwelling unit

shall mean a detached single family unit distinguished by the location of only one side exterior wall on a side property line. A building constructed with both side exterior walls on the property lines is a row house.

Zone or zoning district

shall mean a section of the city designated in this chapter in which requirements for the use of land and buildings and development standards are prescribed.

Zone boundaries

shall mean that boundary line which separates unlike zoning districts.

Zoo

shall mean a facility housing and displaying live animals, reptiles and birds.

27-300

Development Review and Approval Processes

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I. General Requirements

27-301 General Requirements

27-301-1 Applicability.

The policies and regulations apply to land use and development. Any person proposing a land use change or new development shall comply with the procedures of this Chapter. Table 27-301.1 (Application Procedures) summarizes the application types, required meetings, acting bodies and public notices involved in the development review process between the applicants and the City. The application procedure is covered in more detail in later sections of this chapter. For procedures regarding neighborhood meeting waivers, refer to Section 27-304 and Section 27-337-5 (zoning variance).

Table 27-301.1—Application Procedures

Actions:
R = Review/Recommendation D = Decision A = Appeal • Required
❖= at the discretion of the Director ■ = as described in section

Acting Bodies:
Staff = Planning and Zoning Department
PC = Planning Commission
BD = Board of Directors
BZA = Board of Zoning Adjustment

Application Type	Preapp Conf.	Neigh-borhood Meeting	Acting Body				Notices		
			Staff	PC	BD	BZA	Pub.	Mail	Sign
Accessory Residential Use (324)			D	A					
Permits for New Construction, Major Alterations (325)			D						
Certificate of Occupancy (326)			D						
Comp. Plan/Master Land Use Map Amendment (328)	●	●	R	R	D		●	■	■
Rezoning – Planned (329)	●	●	R	R	D		●	●	●
Rezoning – Conventional (330)	●	●	R	R	D		●	●	●
Development Plan Review (331)	●	❖	D	A					
Conditional Use Permit (332)	●	●	R	D	A		●	●	●
Subdivision – Major (333)	❖		R	D	A				

Subdivision – Minor (334)			D	A					
Commercial Subdivision (335)	●		R	D	A				
Written Interpretations (336)			D	A	A				
Appeals (337)						D		●	
Zoning Variance (337)	●	●	R			D		●	
Subdivision Variance (516)	●	❖	R	D	A				
Home Occupations (338)	●		R	D	A			●	●
Vested Rights (339)	●		R	D	A		●		
Text Amendment (340)			R	R	D		●		
Planned Zoning District	●	●	R	D	A				

27 301-2

The board of directors may supplement, change, or amend the zoning map and the zoning regulations in the manner prescribed by A.C.A. SS 14-56-423.

27-302 Pre-Application Conference

27-302-1 When Required

A pre-application conference with the Planning and Zoning Department is required for certain development applications, as identified in Table 27-301.1 (Application Procedures) and indicated by the individual application type sections below. The purpose of the meeting is to:

A. Review the requirements of the Unified Development Ordinance;
B. Review the requirements of the Fort Smith Comprehensive Plan;
C. Discuss the nature and design of the proposed development; and
D. Discuss the development application review and approval process.

27-302-2 Timing

The pre-application conference shall be held at least ten (10) days before the submission date unless otherwise specified by the Director. Applications must be submitted within six months of the conference date or a new conference shall be required.

27-302-3 Additional Parties

As necessary, the Planning and Zoning Department may include representatives of other departments or agencies at the pre-application conference.

27-303 Application Requirements

27-303-1 Materials

Current development application with submittal requirement instructions is available from the Planning and Zoning Department. Most applications are also available on the City website. All materials submitted in support of a development application become part of the public record and are generally not returned to the applicant(s).

27-303-2 Technical Studies

The Director may require applicants to prepare additional technical studies in support of their applications for rezoning, planned rezoning or special use permits. The cost of the study shall be the applicant's responsibility. If the applicant disagrees with the Director's decision to provide additional technical studies, it may be appealed to the Planning Commission for a final decision. No further action shall be taken to process the development application until the Planning Commission makes a final determination on the appeal.

27-303-3 Deadlines

The Planning and Zoning Department has a list of submission and revision deadlines for the various development applications available at their office. This list is also available on-line at the City's website. Failure to submit a complete or revised application on or before the deadline shall result in the City not placing the application on the scheduled Planning Commission agenda.

27-303-4 Completeness

Within three (3) business days of submittal by the applicant, a member of the Planning Staff shall review the development application to ensure that it is complete.

A. **When Complete**. An application is complete when all of the items required by the UDO and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., comprehensive plan amendment) are submitted with the appropriate fees to the Planning and Zoning Department.

B. **Return of Incomplete Applications**. Incomplete applications shall be returned to the applicant with a written description of the missing information, defects, or other problems. The Director shall take no further action on incomplete applications. Appeals of this determination are made to the Planning Commission, which is the final decision-making body. No further action shall be taken to process the application until after the Planning Commission's determination. Applications that have been returned to an applicant for revisions

shall not be processed until such revisions have been determined to be complete by the Director.

C. **Processing Complete Applications**. The applicant will be notified that the application is complete and processed in accordance with this Chapter.

D. **Failure to Act.** If the Director fails to act within three (3) business days, the application shall be deemed complete.

E. **Revisions Following Determination**. Following a determination of completeness, any further revisions to the application by the applicant without the approval of the Director, or modifications which are contrary to the directions of the Planning Commission or Board of Directors shall void the determination of completeness and trigger a new three (3) day review period. All processing of the application shall stop until a new, complete application has been filed.

F. **Determination Not Substantive**. A determination of completeness shall not constitute a determination of compliance with the substantive provisions of the UDO.

27-303-5 Fee Schedule

Application fees shall be set in an amount to recover the costs of processing, publicizing, and reviewing development applications. The Board of Directors shall set the fee schedule, which shall be included as an appendix to this Code. The Board may periodically review and modify the fee schedule based on the costs changes associated with the development application.

27-304 Neighborhood Meeting

27-304-1 When Required

A neighborhood meeting is required for certain development applications, as identified in Table 27-301.1 (Application Procedures) and indicated in the individual application type sections below. When not required, applicants are encouraged by the Board of Directors, Planning Commission and Planning Staff to meet with property owners who may be affected by the proposed development.

The Director may waive the requirement for a neighborhood meeting for rezoning, master land use plan amendments, and conditional use applications based on the following criteria:

1. The project will have minimal impact on surrounding properties.
2. The project will have minimal impact on the neighborhood.

When a neighborhood meeting is waived by the Director, the applicant shall mail letters to property owners within 300 feet of the project site in lieu of a neighborhood meeting. At a minimum, the letter shall include the project description, a drawing or map of the project, and contact information. A copy of the letter shall be submitted to the planning department and a written summary of any responses from property owners.

The requirement for the neighborhood meeting will not be waived for a non-residential or multifamily project that is proposed next to single family zoned or developed property

27-304-2 Neighborhood Identification

Generally, the neighborhood shall include all parcels located within 300 feet of the boundaries of the parcel proposed for development, and any homeowners association, neighborhood association or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel.

27-304-3 Meeting Arrangements

The applicant shall be responsible for providing a meeting location and conducting the meeting at a time and place reasonable to the residents of the neighborhood. Written notice of the location and time of the meeting shall be provided by the applicant to the Planning and Zoning Department and residents of the area defined as the neighborhood at least seven (7) days prior to the meeting. The neighborhood meeting should be held at least six (6) days prior to the planning commission voting meeting.

27-304-4 Meeting Content

At the meeting, the applicant shall present a full and accurate description of the proposed development plans, describe projected impacts of development, describe plans to mitigate or off-set impacts, and facilitate a discussion of neighborhood questions and comments. The Planning Staff shall attend the meeting, but shall not be responsible for organizing the meeting or presenting information about the project.

27-304-5 Meeting Report

Following the neighborhood meeting, the applicant shall provide the Planning and Zoning Department with a mailing list of the people who attended the meeting and a written summary of the discussion and comments. All documents and materials which detail the proceedings of the neighborhood meeting shall become part of the public record for the development application and should be submitted to the Planning and Zoning Department

27-305 Planning Staff Review

27-305-1 Review by Other Departments and Agencies

The Planning Staff may forward copies of the application to various local, state and/or federal departments or agencies and public or private utilities or franchises for their review and comment. The Director may ask the reviewers to respond in writing or attend a technical review meeting for the application with the Planning Staff.

27-305-2 Planning Staff Review

The Planning Staff shall review the application and any supporting documentation/information, to prepare for a meeting with the applicant and representatives of other agencies or departments, as described above. After reviewing the information, Planning Staff shall prepare a report summarizing the information for the reviewing bodies and provide a recommendation for action and any proposed conditions. The applicant or other interested parties may obtain a copy of the Planning Staff Report from the Planning and Zoning Department at least two (2) days prior to the public hearing date.

27-305-3 Development Review Committee

The Director may convene a Development Review Committee meeting to review development applications at any time during the processing of an application. The Development Review Committee may include representatives of the various City departments and agencies, committees or boards, or public or private utilities or franchises.

27-306 Withdrawal of Application

27-306-1 Withdrawal After Determination of Completion

An application may be withdrawn at any time prior to the publication or distribution of a public notice. However, the withdrawal of an application after the determination of completeness has been finished shall result in the forfeiture of the application fees.

27-306-2 Withdrawal When No Notice is Required

If no notice for a public hearing is required, the applicant should give notice of the withdrawal to the Director at the earliest possible time. This allows the Director to notify other applicants of an agenda change.

27-306-3 Withdrawal When Notice is Required

If notice has been provided and a public hearing is required, the body conducting the hearing shall decide whether or not to approve the withdrawal request and may still decide to act on the application.

27-307 Continuation of Application

27-307-1 Applicant Request

An applicant may request up to one continuation of action on any application before the publication of notice date for the application. Further requests for continuation may result in the application being removed from future agendas subject to public re-notification at the applicant's expense.

27-307-2 Following Notice

If public notice has been provided and a public hearing is required, the body conducting the public hearing shall decide whether or not to approve the request for continuation and may instead act on the application.

27-307-3 Director Request

If the Planning and Zoning Department or other departments/agencies, upon review, have determined the application to be incomplete or to contain insufficient information the application shall be continued for further review and consideration by the Director. The Director shall provide notice of this determination to the applicant before the publication of notice for the application.

27-307-4 Fees

Continuation of an application following a determination of completeness shall result in the forfeiture of the application fees.

27-308 Public Notification

27-308-1 Purpose

Public hearings and notices provide the opportunity for citizen input into decisions that may affect the community. Public participation helps to ensure that the decisions made reflect the considerations of the community interest at large and allow the applicant and other interested parties the opportunity to be heard.

27-308-2 Published Notice

Unless otherwise specified, all publication notices for public hearings required by this Chapter shall be published one (1) time in a newspaper of general circulation in the City.

A. **Contents**. All notices for items to be heard by the Planning Commission or Board of Directors shall provide the date, time and place of the hearing, the purpose of the hearing, the name of the applicant and identification of the subject property. If the hearing is for a rezoning application, the notice shall provide a general statement regarding the purpose of the application.

B. **Timing.** All notice for items to be heard by the Planning Commission or Board of Directors shall be published at least fifteen (15) days prior to the date of the hearing.

C. **Information.** The Director may request the applicant to provide information as necessary for the notices.

27-308-3 Mailed Notice

When notices to surrounding property owners are required for consideration of an application, they shall be prepared as follows to provide an opportunity to all interested parties, including all registered neighborhood or homeowners associations, to be heard.

A. **Mailing Area**. The Planning and Zoning Department shall be responsible for mailing notices to all affected property owners as follows:

1. For applications that are to be reviewed by the Planning Commission and Board of Directors, the applicant shall provide the names and addresses of all persons listed on the current tax assessment rolls who are landowners within 300 feet of the petitioned property. This information shall be provided either electronically or typed on mailing labels.

2. For all the applications which are to be reviewed by the Board of Zoning Adjustment, the applicant shall provide the names and addresses of all adjacent or contiguous property owners to the petitioned property, including property across streets and intersections. This information shall be provided either electronically or typed on mailing labels.

B. **Timing.** The mailed notices for the public hearings before the Planning Commission and/or Board of Directors shall be postmarked at least seven days prior to the hearing date. The mailed notices for the public hearings or other reviews before the Board of Zoning Adjustment shall be postmarked at least seven (7) days prior to the date of the hearing.

C. **Content**. Mailed notices shall specify the date, time and place of the hearing and include a general description and sketch map of the proposal. It shall also include a location map of the subject property and a statement explaining that the public may be heard at the public hearing.

D. **Newspaper Clippings**. Newspaper clippings of the publication notices shall not be used for the mailing notice requirements.

E. Invalidation. When the notice has been properly addressed and deposited in the mail, failure to receive it shall not invalidate after action.

27-308-4 Posted Notice

When required by this Chapter, the Planning and Zoning Department shall post the appropriate signs on the subject property giving notice of the pending application.

A. The sign(s) shall be shall be posted at least ten (10) days prior to the public hearing.

B. The sign(s) shall inform the public of the date and place of the hearing. When the application is for a rezoning case the sign shall identify the current and proposed zoning classification.

C. Any person removing or tampering with the signs posted pursuant to the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to the penalties set forth in Section 1-9 of the Fort Smith Code of Ordinances. A statement to this effect shall be displayed on the required signs.

27-308-5 Substantial Compliance

Public notification shall be determined to be complete when there is substantial compliance with the requirements of this Section. Minor technical deviations in the language of the published, mailed or posted sign notices should not invalidate the notice when notice has been given. When there is a question that is raised at a public hearing regarding the adequacy of the posted notice, the body conducting the hearing shall make a formal finding as to whether there was substantial compliance with the length of the notice requirement and for specifying the time, date and place of a hearing and the general location of the property.

27-308-6 Notification of Appeal or Withdrawal

Whenever an appeal is made from a final decision, or whenever the Board of Directors determines to withdraw a development permit which was obtained following a public hearing, a mailed notice of the appeal or withdrawal shall be prepared and made in the same manner as the original mailing. If no public hearing was held prior to obtaining the development permit, the mailed notice of the withdrawal shall be given to the holder of the permit only.

27-308-7 Costs of Notice

All actual costs incurred by the City of Fort Smith in preparing and publishing the notice required by UDO shall be paid by the applicant as part of the application fee established by the Board of Directors.

27-309 Public Hearing Procedures

27-309-1 Purpose

The purpose of a public hearing is to allow the applicant and all other interested parties a reasonable and fair opportunity to express their views and opinions, present evidence relevant to the application, and to rebut evidence presented by others.

27-309-2 Rules of Procedure

The Board of Directors and Planning Commission may adopt rules of procedure for public hearings.

27-310 Decision Making

27-310-1 Action

Acting bodies shall hold regularly scheduled public hearings to receive and review public input on those items required by this Code. Decisions and/or recommendations should be rendered in a timely manner, based upon the specific requirements of the UDO and the following considerations:

A. How well the development application/proposal conforms to the Unified Development Ordinance, Comprehensive Plan, and other adopted plans, design guidelines and adopted policies;

B. The recommendations of Planning Staff and other recommending bodies;

C. The Input of reviewing agencies and departments;

D. Public comment and testimony received at the hearing; and

E. The effects of the proposal on the neighborhood, area, and community-at-large.

27-310-2 Authority to Amend Development Approvals

After review of the application, pertinent information or documents, and information made part of the public record, the recommending and decision-making bodies may make changes or amendments to the applications which are deemed necessary to assure compliance with the general or specific standards expressed in these or other applicable regulations. The Director shall include a copy of the amendments with the records of decision.

27-310-3 Authority to Continue an Application

A reviewing body may continue/table an application as necessary. The continuation must provide instructions as to what information is necessary to complete the review

and when the application shall be re-scheduled on the reviewing body's agenda for re-consideration.

A. Continued applications must include an information request and timeframe.

B. Once the requested information is provided, the application is placed on next agenda.

C. An applicant may request one extension for the same period of time as the initial continuation.

D. If the applicant does not provide the requested information in the specified timeframe, the application shall be considered withdrawn.

27-311 Scope of Action

27-311-1 Scope

The reviewing body may take action on the applications**,** as long as it is consistent with the notice given. Actions taken may include the approval of the application, amendment to the application, or denial of the application. In addition to other relevant amendments, the reviewing body may consider amendments that reduce the density or intensity of the original application, reduce the impact of the development, or reduce the amount of land involved from that indicated in the notices of the hearing. The reviewing body may not permit a greater amount of development, a more intensive land use, a larger area of land than what was indicated in the original application, or allow a greater variance than what was indicated in the notice.

27-312 Post-Decision Proceedings

27-312-1 Appeal

Any person acting on behalf of the City of Fort Smith, (including any officer, agency or department of the City) or any private interest which disagrees with a final decision on a development case may request an appeal in accordance with the UDO.

27-312-2 Amendments and Revisions to the Development Approval

A. **Minor Revisions**. The Director may approve minor revisions to the conditions of approval for: (1) Development Plans, (2) Site Plans, (3) Subdivision Plats, (4) Conditional Use Permits, (5) Sign Permits and Plans, and (6) Landscape Plans. Minor revisions must be authorized in writing by the Director and may be appealed by the applicant to the Planning Commission. Minor revisions that may be authorized are limited to those that are necessary in light of technical considerations discovered after the decision on the development application has

been made, and which do not substantively change the character of the development approval. In the case of appeals there shall be no further actions taken to process the application. Permits which were issued shall be held pending the Planning Commission's determination of the appeal(s).

B. Original Decision-Maker. If the Director determines that a requested revision is not minor, or for revisions to rezoning applications, Master Land Use Plan changes, or variances, approval of the revision by the original final decision-maker is required in accordance with the procedures established for the original consideration of the application.

C. Recommendation. In making a determination about whether to undertake a minor revision, the Director may seek a recommendation from any board/commission involved in the application process.

27-313 Validity

27-313-1 Time of Expiration

Unless otherwise specifically provided for in the Unified Development Ordinance all development applications (except rezoning), plans, and permits found in violation of the UDO requirements shall automatically expire. All activities related to the application, plan, or permit shall immediately cease operations. Such development applications, plans, and permits shall be deemed in violation of the UDO when:

A. Failure to Satisfy Requirement of Approval. The applicant fails to satisfy any requirement or amendment that was imposed as part of the original or revised approval of the development application, or that was made pursuant to the terms of any development agreement application, within the time limits established by the approval; or

B. Failure to Diligently Pursue. The applicant fails to diligently pursue the project by not seeking further development application(s), permits or approvals as permitted by this Chapter or other applicable codes and/or ordinances, or by not commencing construction if that is the next step in the project. If no time limit for the satisfaction of conditions is specified in the original or revised approval the expiration date shall be set at one (1) year from the date of approval.

27-313-2 Extension Procedures

Unless otherwise limited or prohibited by Arkansas Law or the UDO, the Director may extend the expiration date of a development permit approval one (1) time for a period not to exceed one (1) year from the date of the original decision granting the approval, provided the application for extension is made in writing during the original period of validity. If the Director denies the extension request it may be appealed by the applicant

to the Planning Commission. Additional extensions may be made by the final approving body if they find that the requirements imposed at the time of the approval have not changed.

27-313-3 Expired Development Plan

Where a development plan submitted in conjunction with a rezoning or other application request has expired, the zoning classification shall remain as is unless changed through a public hearing process by the City. A new development plan must be approved pursuant to Section 27-331 before processing any further permits or approvals for the site.

27-314 Revocation of Development Permit Approval

27-314-1 Duties of the Director

If the Director determines that there are grounds for revocation of the development permit approval (as identified in Section 27-314-2), the Director shall notify the applicant and/or permit holder and set a hearing date before the Board of Directors or the Planning Commission who made the final decision on the application. If the decision was made by the Director, the hearing shall be conducted by the Planning Commission. If the Board of Directors was the original decision-maker, it may refer the matter to the Planning Commission for a recommendation prior to the hearing.

27-314-2 Reasonable Grounds

The following may be considered reasonable grounds for permit revocation:

A. The applicant fails to meet the required conditions of approval.

B. The land use associated with the development has caused unforeseen negative or adverse impacts on adjacent or surrounding land uses and property owners.

E. The use has placed an unreasonable burden on public facilities and services.

F. Unusual conditions, trends, or needs have arisen since the permit was issued.

27-314-3 Notice and Public Hearing

Notice of the revocation hearing shall be given in the same manner as required for the original application. A public hearing shall be conducted in accordance with the procedures of this Chapter.

27-314-4 Decision and Notice

Within fourteen (14) calendar days after the conclusion of the hearing, the decision-maker shall render a decision to either revoke, allow the applicant to retain, or

reconsider the development permit approval. The City shall notify the permit/approval holder and any other person who has filed a written request for such notice of the decision.

27-314-5 Effect and Appeals

A decision to revoke a development permit approval shall be final when the decision is rendered, unless it is appealed. After the effective date of the withdrawal any activities continuing pursuant to such development permit approval shall be deemed to be in violation of the UDO.

II. Administrative Permits and Certificates

27-324 Accessory Residential Uses

27-324-1 Purpose

A. Purpose. To grant the Planning and Zoning Department the authority to permit citizens in all residential zones to operate an accessory residential use in accordance with the criteria set forth in this section. It is further the intent of this section to regulate the operation of the accessory residential use so that the neighborhood shall be unaware of its existence.

27-324-2 Business License

An individual with an approved business license from the City shall not be required to obtain an accessory residential use permit in order to conduct the business from his or her residence as long as the practice is within the criteria of 27-324-6 of this section.

27-324-3 Applicant

An accessory residential use permit may be sought only by the home owner or tenant of the address for which the permit is sought.

27-324-4 Pre-Application Conference

A pre-application conference pursuant to Section 27-302 is recommended.

27-324-5 Submission Requirements

The Director shall prepare an application form specifying the information to be submitted in support of an accessory residential use permit application. This shall include, at a minimum:

A. Request. Request for a written description of the use.

B. **Space**. Requirement of a calculation of the amount of space to be occupied by the use.

C. **Fee**. Application Fee established by the Board of Directors.

D. **Affidavit**. Affidavit from the applicant that the proposed use meets each of the approval criteria established in Section 27-324-6 and that the applicant gives the City permission to withdraw the permit should a valid neighborhood complaint be received which identifies actions that violate the terms of the Accessory Residential Use approval. Withdrawal shall take place pursuant to Section 27-314.

G. **License.** Copy of a valid business license issued by the City of Fort Smith.

27-324-6 Application and Review Procedure

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. **Review.** Complete applications shall be reviewed by the Director. If the Director determines that the application meets the requirements of the UDO (including the provisions of Subsection 27-324-6 C, below) the application shall be approved.

C. **Criteria.** Applicants for an accessory residential use shall meet all of the following requirements:

1. The activity shall be contained in an area no greater than thirty (30) percent of the total heated living space of the residential structure, and there shall be no alteration to the residential structure and no separate outside entrance for the business area of the residential structure.

2. Only resident members of the household shall operate the activity.

3. No inventory of materials or supplies other than normal office, art, craft or photography supplies shall be stored at this location. Storage shall be limited to that which can be kept in the heated living space.

4. No customers shall be served in person at this location.

5. The address shall not be used for any advertising.

6. No signs shall be used.

7. No business vehicle larger than a pickup truck shall be housed at the residence. All exterior storage of cargo, equipment or other material shall be shielded from view at all times when such vehicle is located on a residential lot. No trailer shall be permitted.

D. Appeal. If the Director denies an application for an accessory residential use, the denial may be appealed to the Planning Commission. The Planning Commission shall hear appeals from the decision of the Director in respect to the approval of applications as defined in this section. Any such decision may be appealed by any person having an interest therein by the filing of a written notice of appeal with the City Clerk before 5:00 p.m. on the tenth calendar day following the date of the decision of the Director. A fee in the amount established by Board of Directors shall be required at the time any appeal is filed in respect to an accessory residential use application ruling of the Director.

27-324-7 Conditions for Approval

When an accessory residential use application is approved, the Planning and Zoning Department is allowing the applicant the privilege of engaging in a specific designated activity at a specific residential address. An approved accessory residential use cannot be moved, transferred, or relocated to another address, or remain at the address where it was approved if a new owner occupies the property. If the owner to which the permit was issued moved, the approval does not transfer nor remain at the residence with the new owner, the approval is considered void. The applicant acknowledges the Planning and Zoning Department will revoke the accessory residential use permit should a reasonable complaint be received.

27-324-8 Revoking of Permit

When one (1) verifiable complaint is received on the applicant or location for which the permit approval was issued, or when a violation of any of the criteria set forth in section 27-324 is confirmed, the accessory residential use may be revoked pursuant to Section 27-314.

27-325 Permits for New Construction and Major Alterations

27-325-1 When Building Permits are Issued

Building permits for new construction and major alterations, redevelopments, and renovations of existing structures shall be issued only after the application has been approved by meeting the requirements of this chapter.

27-325-2 Development Plan

If the proposed structure is new, involves a change in the outside dimensions of the existing structures, or requires additional coverage of the lot then an approved development plan shall be submitted with the building permit application.

27-326 Certificate of Occupancy

27-326-1 New or Modified Structure

When a building permit has been issued in connection with the construction, alteration, or improvement of a structure, the Building Official, during final inspection shall determine whether the structure complies with the provisions of the UDO and Chapter six (6) of the Fort Smith Municipal Code. If the Building Inspector determines that the structure is in compliance, a building certificate of occupancy shall be issued to the owner.

27-326-2 Existing Structure

In the case of existing structures, a certificate of compliance shall be requested by the builder, developer or other company representative. If the inspection reveals that the land use and structure complies with the requirements of this chapter, a certificate shall be issued identifying the structure and the land use. The certificate shall be evidence of compliance with this chapter as long as the structure remains unaltered and its use remains unchanged. A fee shall be charged for the Certificate of Occupancy to cover the expense of investigation. The fee amount shall be established by the Board of Directors

27-327 Temporary Use Permits

27-327-1 Special Temporary Use Permits (non-retail)

The Director may grant a special temporary use permit (non-retail) for religious revivals, temporary recreational facilities, temporary medical facilities, temporary classroom facilities (for public or private institutions) and similar uses that do not involve retail or food or beverage sales activities. This is provided that the uses shall comply with parking, signs, sanitation requirements, etc. for the area and shall not constitute a nuisance for adjacent neighboring or nearby properties. Temporary use permits shall be granted for a period not to exceed sixty (60) days, and are renewable for sixty-day periods thereafter. Permits for periods in excess of one hundred twenty (120) days, (one (1) initial period plus one (1) renewal permit), must be reviewed and approved by the Planning Commission.

27-327-2 Temporary Offices

A. *Temporary Construction Office.* Buildings that are used as temporary office space for construction projects shall not be required to obtain a special temporary use permit when a building permit has already been issued for the overall project. The temporary construction office shall be allowed to remain on the site for the duration of the project. Such office shall be located on the project site and must not constitute a nuisance for adjacent property owners. The city building official shall establish special criteria for the location and setup of these temporary construction offices.

B. *Temporary Real Estate Office.* A temporary real estate office for use in the development of a new residential subdivision may be established in a house and operated within the subdivision from the date of the first construction permit issued in the subdivision and until ninety-five percent (95%) of the lots are sold. The temporary real estate office shall not be utilized for any construction activities, the storage of construction equipment or materials, and all vehicle parking shall be limited to the driveway constructed for the house. A time extension may be granted by the Board of Zoning Adjustment.

27-327-3 Special Temporary Use Permits (Retail)

The Director may grant a special temporary use permit (retail) for requests to utilize a trailer or other mobile structures for the preparation and sale of merchandise under the following criteria:

A. Short Term Subject to the Following:

1. The Director may grant a special temporary use retail permit not to exceed thirty (30) days to those who want to use trailers for the preparation and sale of merchandise. The permit is renewable for one (1) additional thirty (30) day period upon review and approval by the City Planning Commission.

2. The special temporary permit may be issued in any Commercial-2, Commercial-3, Commercial-4, Commercial-5 or Industrial-1 zones. The permitted uses must conform to the setback and signage requirements of the districts in which they are located.

3. Such permits are subject to a fee established by the Board of Directors.

4. Permit requests for the same facilities on the same site or within five hundred (500) feet of the same site shall not be considered by the Director for at least ninety (90) days from the expiration of the original permit.

B. Seasonal (120 Day Permit) Subject to the Following:

1. The Director may grant a special temporary use Permit (retail) to utilize a trailer or other mobile structures for sale of merchandise on a seasonal basis.

2. The period of use may not exceed one hundred twenty (120) days. Seasonal shall mean and refer to merchandise which are customarily sold during a specific season of the year and not sold on general, customary basis during the remainder of the year. An example of seasonal merchandise would include “fire wood” or “Christmas trees” sold during the winter season.

3. The special temporary uses may be located in Commercial-2, Commercial-3, Commercial-4, Commercial-5 or Industrial-1. The permitted uses must conform to the setback and signage requirements of the districts in which they are located.

4. Such permits are subject to a fee established by the Board of Directors and may not be renewed or extended beyond a one hundred twenty (120) day period.

5. Permit requests for the same facilities on the same site or within five hundred (500) feet of the same site shall not be considered by the Director for at least ninety (90) days from the expiration of the original permit.

27-327-4 Nonconforming Retail Trailers and Mobile Structures

Any temporary or seasonal retail trailers or other mobile retail structures that have been in existence and which have been legally operating at the time of this requirement can continue to operate for the previously approved timeframe as long as this regulation is not misconstrued as the approval to continue an activity which operates illegally, constitutes a nuisance, or involves a land use or activity which is prohibited by statute or ordinance. The structure must have a valid special temporary use permit and/or a valid retail business license for the specific site on which it is located. Should the retail trailer or mobile structure be removed from the site for thirty (30) or more consecutive calendar days, it shall be considered a nonconforming mobile retail structure shall not be allowed to operate at that location again.

27-327-5 Sidewalk Vending

A. Definitions.

For purposes of this article, the following definitions shall apply:

Central Business District shall mean the following:

Parts of Sections 4, 5, 8, 9, 16, and 17, Township 8 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows:
All of the following parts of the Fitzgerald Addition to the City of Fort Smith: Blocks: A, B, K, 1, 2, 3, 7, 8, 9, 10, 58A, 62, and 65; and the East Half of Blocks: 66, 67, 68; and the West Half of Blocks: C, D, E, F, 50, 61 and 94.
All of the following parts to the Original City of Fort Smith: Blocks: A, 1, 2, 3, 4, 7, 8, 9, 10, 15, 16, 17, 18, 23, 24, 25, 26, 29, 30, 48, 49, 50 and 51.
All of the following parts to the Reserve Addition of the City of Fort Smith: Blocks: 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 512, 513, 514, 515, 516, 517, 518A, 519, 521, 522, 523, 524, 525, 526, 529, 530, 531, 532, 533, 536, 541, 542, 543, 544, 545, 546, 547, 548, 561, 562, 563, 564, 565 and 566; and the East Half of Blocks 549, 560, 567.
All of the following additions to the City of Fort Smith: Sparks Regional Medical Center Lots 1 and 2, Southside Garrison Avenue Addition, Corrected Stuart Daniels Addition, Shipley Addition 1, Kremer's Addition and ARS Addition Lots 2 and 3.
All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the West side of Towson Avenue between Dodson Avenue and South "D" Street.
All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the South side of South "D" Street between Wheeler Avenue and Towson Avenue.
All properties contiguous (to the extent of the initial platted lot or, if not platted, legal ownership contiguous to the street Right-of-Way) to the North side of North "B" Street between Clayton Expressway and North 11th Street.
Also,
A Tract of Land between the Eastern Bank of Maximum Recession of the Arkansas River and the East Right-of-Way line of Clayton Expressway running from the South Right-of-Way line of Garrison Avenue Northeasterly to a line 1950 feet more or less, South of and parallel to the North line of Section 5, Township 8 North, Range 32 West, Sebastian County, Arkansas.

Stand shall mean any table, showcase, rack, pushcart, wagon or other wheeled vehicle or device which is hand pushed or pulled, without the assistance of a motor vehicle or other source of power, used for the displaying, storing or transporting of products offered for sale by a vendor.

Vendor shall mean any person engaged in the selling or offering for sale of food or beverages or art or crafts or other products on the public sidewalks from a stand.

B. Exemptions.

Temporary sales by non-profit entities that operate for less than five (5) consecutive days as part of a festival or special event shall be exempt from sidewalk vending regulations.

C. Findings and purpose.

It is found and declared that:

1. The primary purpose of public sidewalks is for use by pedestrian traffic.
2. Vending on the downtown public sidewalks promotes the public interest by contributing to an active and attractive pedestrian environment.
3. Reasonable regulation of sidewalk vending is necessary to protect the public health, safety and welfare.

D. Prohibited conduct.

No vendor shall:

1. Vend within one hundred (100) feet of any church assembly place while an assembly of the church is in session.
2. Vend on any sidewalks where vending is otherwise prohibited.
3. Leave any stand unattended.
4. Store, park or leave any stand overnight on any street or sidewalk.
5. Sell food or beverages for immediate consumption, unless there is a litter receptacle available within twenty (20) feet of the vending stand for public use.
6. Leave any location without first picking up, removing and disposing of all trash or refuse remaining from sales.
7. Place any items relating to the operation of the vending business anywhere other than in, on or under the stand.
8. Set up, maintain or permit the use of any table, crate, carton, rack or any other device to increase the selling or display capacity of his stand.
9. Solicit or conduct business with persons in motor vehicles.
10. Sell anything other than that which such vendor is licensed to vend.
11. Vend at any location where the sidewalk is not over five (5) feet in width.
12. Vend within fifteen (15) feet of an entrance way to any building unless written permission is provided by the property owner.
13. Vend within twenty-five (25) feet of any driveway entrance.
14. Vend within ten (10) feet of the crosswalk at the intersection.

E. Vendor stand specifications.

1. No stand shall exceed eight (8) feet in length, and all stands shall have a width compatible with that of a standard cart design.
2. The height of each stand may be determined by the design needs of the vendor's product, but in no case shall it be greater than six (6) feet.
3. All lettering shall be of constant height with smooth-painted edges having not more than one-eighth-inch variation.
4. No advertising shall be permitted on any stand, except to identify the name of the product and the name of the vendor and a posting of prices.

F. PERMIT. Required; display; fee; renewal.

1. Required. It shall be unlawful to sell or offer for sale any food or beverage or art or craft or any other product on any public sidewalk within the city without first obtaining a permit from the city.
2. Display. All city-required permits shall be displayed on the cart at all times.
3. Fee. A permit fee shall be required for a one-year permit in the amount of $150.00.
4. Renewal. All permits are valid for the entire approved one-year period, unless revoked or suspended by the city prior to expiration. An application to renew a permit shall be made no later than thirty (30) days before the expiration of the current permit.

G. Applications.

1. Applications shall contain the following information:
   (a) The name, home and business address of the applicant and the name and address of the owner, if other than the applicant of the vending business.
   (b) A description of the type of food or beverage or art or craft or of any other product proposed for vending.
   (c) A description of the proposed location(s) and hours of operation.
   (d) A description and photograph of the stand to be used.
   (e) Certification by the city/county health department for food and/or beverage sales.
   (f) Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damages to property and bodily injury including death, which may arise from operations under or in connection with the license to operate the business in the public right-of-way. Such insurance shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days' advance written notice to the city administrator. The vendor shall obtain Commercial General Liability insurance on an occurrence basis with limits of

not less than $1,000,000 each occurrence, $1,000,000 personal and advertising injury, $2,000,000 products and completed operations aggregate, $2,000,000 general aggregate and $5,000 medical expense (any one person). The policy shall name the City of Fort Smith as Primary Additional Insured and include ISO forms CG2010 and CG2037 (or equivalent endorsements).
Vendor shall also provide evidence that ISO endorsement Products/Completed Operations Hazard Redefined-Changes (CG2407) has been added to the policy. Waiver of Subrogation shall apply in favor of the City of Fort Smith.

(g) A statement that the vendor/insured shall hold the City harmless from and indemnify the city for all expenses, losses, cost, causes of action and judgments, including legal expense, arising from the vendor's/insured's operations.

2. Applications shall be filed with the planning department of the city.

H. Issuance; denial, suspension and revocation; appeal.

1. Issuance of permit. No later than fifteen (15) days after the filing of a completed application for a vendor's permit the applicant shall be notified by the planning department of the decision on the issuance or denial of the license.
2. Denial, suspension and revocation. Any permit may be denied, suspended or revoked by the city for any of the following causes:
   (a) Fraud or misrepresentation contained in the application for the permit.
   (b) Fraud or misrepresentation made in the course of carrying on the business of vending.
   (c) Conduct of the permitted business in such manner as to create a public nuisance or constitute a danger to the public health, safety, welfare or morals.
   (d) Conduct of the vendor which is contrary to the provisions of this Section.
   (e)The proposed sale of food or beverages or art or crafts or other products inappropriate or incompatible with standards promulgated by the Central Business Improvement District Commission.

I. Appeals of Administrative Determinations.

The Planning Commission shall hear appeals from the Director's decision in respect to the enforcement and application of this Section, and may affirm or reserve in whole or in part the decision of the Director in accordance with Section 27-327-6(J) Appeals of Administrative Determinations.

J. Forfeiture of Fee. If the City revokes a vendor permit, the fee already paid for the permit shall be forfeited.

27- 327-6 Outdoor Mobile Food Vending

The purpose of Section 27-327-6 is to promote and encourage open-air retail environments, while preserving and protecting the health, safety and welfare of citizens through regulations that promote opportunities and management of such enterprises.

A. Definitions.

Angled parking space shall mean a parking space that is on a geometric angle to the street curb.

Edible goods shall include, but are not limited to prepackaged and prepared foods, excluding the sales of alcoholic beverages.

Food service establishment shall mean businesses that sell edible goods and have been inspected and approved by the Sebastian County Health Department and the City of Fort Smith.

Mobile shall mean the state of being active, but not necessarily continuous, movement.

Mobile food court shall mean a site that contains more than one mobile food vendor on a regular basis as the principal use of the land.

Mobile food vendor shall mean any person(s) who owns or operates a mobile food vehicle for the purpose of mobile food vending.

Mobile food vendor, private property shall mean any person(s) who exhibits, displays, or sells any food or beverage from a mobile food vehicle at a designated location on private property.

Mobile food vendor, public street right-of-way shall mean any person(s) who exhibits, displays, or sells any food or beverage from a mobile food vehicle at a designated location on the public street right-of-way.

Mobile food vehicle shall include, but not be limited to:

(a) **Mobile food truck**: A motorized unit selling edible goods.

(b) **Mobile food truck or concession trailer (self-contained)**: A motorized unit selling edible goods. The unit shall be self-contained meaning all items such as water tanks, generators, etc. are affixed or contained within the mobile food truck.

(c) **Concession trailers**: A vending unit which is pulled by a motorized unit and has no power to move on its own.

Parallel Parking Space shall mean a parking space that is adjacent to the curb the full length of the parking space.

Sell shall mean the act of exchanging a food for a profit or in return for a donation.

Stationary location shall mean the position of the mobile food vendor when not in motion and addressing the public for the purpose of sales.

Temporary building shall mean a structure not exceeding 160 s.f. used to vend edible foods and that is not permanently affixed to the ground, or on blocks, etc.

Tow Vehicle – A motorized land vehicle.

B. Exemptions

1. An approved Farmers Market;

2. Temporary sales for non-profit entities that operate for less than five (5) consecutive days as part of a festival or special event shall be exempt from this Section.

3. Children's lemonade stands.

C. Outdoor Mobile Food Vendors Located on Private Property

The purpose of this section is to facilitate and control the ability of mobile food vendors and mobile food courts to operate on private property while ensuring such uses are compatible with nearby properties, fosters an aesthetically appealing streetscape, and does not create a dangerous traffic condition.

1. **Single Vendor**

a. Zoning Districts. Outdoor mobile food vendors shall be permitted on private property in C-2 through C-6 commercial zoning districts and I-1 and I-2 industrial zoning districts. Outdoor mobile food vendors are prohibited in residential zoning districts.

b. **Number of Vendors.** Only one (1) mobile food vendor shall be permitted per lot. However, if a lot has multiple street frontages, vendors may operate on the lot provided there is only one mobile food vendor proposed per street frontage. Otherwise, all proposed multiple mobile food vendors on a single lot shall be considered a Mobile Food Court and shall comply with the requirements for Mobile Food Courts below.

c. **Permission required.** Outdoor mobile food vendors shall first obtain written permission from the property owner prior to submitting an application.

2. **Mobile Food Courts**

a. **Zoning Districts.** Mobile food courts shall be permitted as a conditional use in C-2 through C-6 and I-1 and I-2 industrial zoning districts. Outdoor mobile food courts are prohibited in residential zoning districts.

b. **Review Criteria.** A property owner, or agent, proposing a mobile food court shall submit an application for a Conditional Use Permit to the Planning Department. The Planning Commission will review the overall compatibility of the planned semi-permanent use with the surrounding property as well as such specific items as screening, parking and landscaping to make sure that no harmful effects occur to nearby property. The property owner, or agent, proposing a mobile food court may also be required to provide any of the following improvements to the property:

i. Improvements necessary to provide permanent utility connections for each mobile vending unit location in the mobile food court. This may include permanent water, sanitary sewer and electricity connections.

ii. Improvements necessary to ensure safe pedestrian and vehicular access to the site.

iii. Off-street parking improvements in compliance with Section 27-601 of the Unified Development Ordinance.

iv. A minimum of 1 ½ spaces off-street parking spaces provided for each vending unit in the mobile food court. The number of parking spaces shall be rounded to the next higher whole number when the fraction is 0.5 or higher. Mobile food courts in the C-6 zoning district are exempt from the off-street parking requirements.

v. Provide adequate restrooms facilities on site or through the provision of a shared use agreement with a neighboring business for access to restroom facilities.

c. Permit Requirements. Individual mobile food vendors within a mobile food court shall comply with the permitting requirements in Section E – Mobile Food Vendor Permit Requirements – Private Property. The mobile food court owner/operator shall not pay an annual permit fee, but shall maintain a current business license. The owner/operator shall also provide the following information:

i. Name, address, and contact information of the individual mobile food vendors operating in the mobile food court.

ii. Name, address, and contact information of the mobile food court operator and/or owner.

D. Public Street Right-of-Way. Outdoor mobile food vending on public street right-of-way shall be permitted only within the Commercial Downtown (C-6) zoning district. Mobile food vendor permits shall be issued to the owner of the mobile food vendor vehicle. All permits shall expire December 31.

1. Permit requirements. Each application for a permit to conduct a mobile food vendor business on a public street right-of-way shall contain the following:

a. A permit and processing fee of $150.00. For Permits issued after June 30th the permit and processing fee shall be $75.00.

b. The name, address, contact information and signature of the mobile food vendor requesting to locate within a public street right-of-way.

c. A scaled drawing, photo, or written documentation verifying the dimensions of the mobile food vehicle and/or trailer.

d. A statement of how and where solid and liquid wastes will be disposed,

if applicable.

e. Proof of an insurance policy, issued by an insurance company licensed to do business in the state, protecting the licensee and the city from all claims for damages to property and bodily injury including death, which may arise from operations under or in connection with the license to operate the business in the public right-of-way. Such insurance shall provide that the policy shall not terminate or be cancelled prior to the expiration date without thirty (30) days' advance notice to the city administrator.

   The vendor shall obtain Commercial General Liability insurance on an occurrence basis with limits of not less than $1,000,000 each occurrence, $1,000,000 personal and advertising injury, $2,000,000 products and completed operations aggregate, $2,000,000 general aggregate and $5,000 medical expense (any one person). The policy shall name the City of Fort Smith as Primary Additional Insured and include ISO forms CG2010 and CG2037 (or equivalent endorsements).
   Vendor shall also provide evidence that ISO endorsement Products/Completed Operations Hazard Redefined-Changes (CG2407) has been added to the policy. Waiver of Subrogation shall apply in favor of the City of Fort Smith.

f. A statement that the vendor/insured shall hold the City harmless from and indemnify the city for all expenses, losses, cost, causes of action and judgments, including legal expense, arising from the vendor's/insured's operations.

g. Written verification that the applicant is registered with the Arkansas Department of Finance and Administration.

2. The mobile food vendor shall occupy only one parallel parking space. If the mobile food vendor is utilizing a concession trailer, two parallel parking spaces can be utilized provided the mobile food vehicle is connected to a tow vehicle at all times.

3. **Location Restrictions.** No vendor within the Commercial Downtown (C-6) zoning district on public right-of-way shall be permitted to operate in the following areas:

a. Within 10 feet of any street intersection or pedestrian crosswalk.

b. Within 10 feet of any driveway, loading zone or bus stop.

c. Within 10 feet of any fire hydrant or fire escape.

d. Within 10 feet of any parking space or access ramp designated for persons with disabilities

e. Angled on-street parking spaces.

f. Within 50 feet of a driveway to police or fire station.

g. Within 50 feet of the principal public entrance to a food service establishment not owned by mobile food vendor, unless written permission has been given by the food service establishment, or the food service establishment is closed for business.

h. Any area that obstructs pedestrian traffic.

i. No customer shall be served on the street side of the mobile unit. All service must occur on curb side when the mobile unit is abutting a public street.

j. No drive thru or drive-by customer service shall be provided or permitted as part of a mobile food vendor business.

k. No mobile food vendor shall conduct business so as to violate any ordinances of the city regulating traffic and rights-of-way now in effect or hereafter amended.

l. No seating or signage shall be provided or permitted in a street right-of-way or public sidewalk as part of a mobile food vendor business.

m. No mobile food vendor shall sell or vend from his/her vehicle within 300 feet of a public or private school property while school is in session and one hour before and after school is in session; classes or school related events, except when authorized in writing by the school.

n. In the public street right-of-way on the designated truck route.

o. In the public street right-of-way of a state highway (Garrison Avenue, Towson Avenue, Rogers Avenue (east of Towson Avenue), North 10th Street, and North 11th Street).

p. In any parallel parking space that is designated as reserved.

4. **Hours of Operation**. Outdoor mobile food vending on public street rights-of-way within the Commercial Downtown (C-6) zoning district shall be allowed to engage in the business of mobile food vending only between the hours of 9:00 pm and 2:00 a.m. Mobile food vending vehicles shall be removed from the public street right-of-way when not in use.

5. **Waste Disposal.** The mobile food vendor has the responsibility to dispose of all solid and liquid wastes in accordance with all applicable laws. Mobile food vendors are not permitted to dispose of their trash in public trash receptacles.

6. **Extended hours vending at limited locations marked by City.** Outdoor mobile food vending on public street right-of-way between the hours of 7:00 a.m. and 9:00 p.m. is permitted in limited locations marked by the City within the Commercial Downtown (C-6) zoning district. The following criteria shall apply:

    a. Each vending location shall be limited to a designated and marked parallel parking space in public right-of-way adjacent to a public park.

    b. Applicants shall be governed by all permit requirements required for vending in a public street right-of-way with the following exceptions:

        i. The mobile food truck or concession trailer (self-contained) shall occupy only one Parallel Parking Space;
        ii. Permitted and required additional hours of operation are as provided in this subsection D 6;
        iii. The requirements of subsection D 3 are not applicable to the limited locations designated by the City.
        iv. The mobile food truck or concession trailer (self contained) shall be attended at all times.

        Otherwise, vending shall comply with all applicable requirements of this Chapter.

    c. The Mobile Food Truck shall be constructed of quality materials with an attractive, inviting appearance and kept clean and in good repair.

    d. Lottery. Persons who hold a permit for outdoor mobile food vending on public street right-of-way (“Section 27-327-6D permit”)

or who have completed the application for a Section 27-327-6D permit other than paying the permit and processing fee are eligible lottery participants. At any time two (2) or more eligible lottery participants make application to use a City marked location for vending between the hours of 7:00 a.m. and 9:00 p.m., each lottery participant's right to select a marked Parallel Parking Space reserved for use by that lottery participant shall be determined by publically conducted lottery. The initial lottery shall be conducted on June 21, 2016, at 12:00 p.m. (noon) (for vending in July and August, 2016) in the Planning Conference Room, Room 326 of the offices of the City, and shall be officiated by the Mayor or his designee. Thereafter, lotteries (if needed) shall be conducted by the Planning Commission at the Planning Commission's first regular meeting in the month of August (for vending in September and October), 2016, and every second month thereafter, and each subsequent lottery shall be officiated by the chairman of the Planning Commission or his or her designee. The lottery will determine the order of right to select a marked location for all lottery participants. Subsequent to the initial lottery, at any time not all City marked locations are selected for use by lottery participants, the City Administrator may issue to eligible persons a vending permit for any unused, marked location for the remaining portion of an applicable two (2) month period. In the event there is only one (1) eligible lottery participant making application to utilize a City marked location in any two (2) month period, the lottery need not be held and the eligible lottery participant may vend from a selected City marked location upon payment of the fees provided for in (e) below for the applicable two (2) month period.

e. Fee. In addition to the annual $150.00 permit and process fee for the Section 27-327-6D permit, vendors selected in the lottery or pursuant to the last two (2) sentences of (d) above shall pay a nonrefundable permit fee of $100.00 for vending rights in the selected marked location for the applicable two month period. The permit is non-transferable.

E. Mobile Food Permit and Permit Requirements – Private Property

1. Mobile Food Vendor Annual Permit. Mobile food vendors are allowed to operate on a temporary basis for one year in one location with administrative approval of the Planning Department. After the one-year period has expired, the mobile food vendor shall move to another location or may request a one-year renewal from the Planning Department. Mobile food vendor permits shall

be issued to the owner of the mobile food vendor vehicle. All permits shall expire December 31.

2. **Mobile Food Vendor Permit Requirements.** Each application for a permit to conduct a mobile food vendor business on a private property shall contain the following:

a. A permit and processing fee of $150.00. For Permits issued after June 30th the permit and processing fee shall be $75.00.

b. The name, address, contact information and signature of both the property owner and the mobile food vendor requesting to locate on private property.

c. Written permission, signed by the property owner or legal representative of record, stating that the mobile food vendor is permitted to operate on the subject property for a specified period of time.

d. Written verification that the applicant is registered with the Arkansas Department of Finance and Administration.

e. A statement on how and where solid and liquid wastes will be disposed, if applicable.

3. **Permit Transfer.** The permit issued to a mobile food vendor shall not be transferrable to another owner or operator without a new application submitted and approved by the city.

4. **Permit Displayed.** The mobile food vendor permit issued shall be conspicuously displayed at all times during the operation of the mobile vending business.

5. **Waste Disposal.** The mobile food vendor has the responsibility to dispose of all wastes in accordance with all applicable laws. Mobile food vendors are not permitted to dispose of their trash in public trash receptacles.

6. **Parking Space Requirements.** Mobile food vendors shall maintain compliance with parking lot requirements for the existing businesses. The use of parking for a mobile food vendor may not reduce the number of spaces below the minimum required for other uses occurring on the property.

7. **Temporary Buildings – Private Property.** A temporary building can be used on private property to vend edible foods. A permit from the city building official

is required for all temporary buildings. All temporary buildings must comply with the Arkansas Fire Prevention Code. Permits for temporary buildings are limited to 180 days unless a time extension is granted by the City Building Official. A temporary building must also comply with the requirements of this Chapter.

8. **Mobile Food Vendor Transfer Option – Private Property.** Within the permit period, mobile food vendors on private property may transfer to another location that allows mobile food vending. Each transfer request shall be accompanied with an application to the Planning Department and a permit and processing fee of $40.00.

9. **Mobile Food Vendor on Multiple Locations – Private Property.** Mobile food vendors are allowed to operate on a temporary basis on multiple locations after meeting the following conditions:

   a. The applicant has submitted an application to the Planning Department accompanied with permit and processing fee of $200.00.

   b. The property owner for each location must provide a written statement giving the mobile food vendor permission to operate on the property.

   c. The mobile food vendor has the responsibility to dispose of all wastes in accordance with all applicable laws. Mobile food vendors are not permitted to dispose of their trash in public trash receptacles.

10. **Renewal Requirements – Private Property**. Mobile vendors requesting a one-year renewal to stay in the same location shall comply with the following:

    a. Applicant shall submit a renewal request on a form provided by the Planning Department.

    b. Applicant shall provide verification that the mobile food vendor has a valid sales tax permit registered with the Arkansas Department of Finance and Administration.

    c. The Director or his designee shall review each application for renewal, and upon determining that the applicant is in full compliance with the provisions of these regulations, shall issue a new permit.

    d. Planning Commission approval shall be required for all mobile food vendors who have received formal enforcement actions from the city.

e. Payment of a $150.00 permit fee.

F. Littering and Trash Removal.

1. Mobile food vendors shall keep the sidewalks, roadways, property where the vendor is located and other locations adjacent to their vending site clean and free of debris and refuse generated from the operation of their business.

2. Mobile food vendors shall provide a receptacle for litter that shall be maintained and emptied regularly.

G. Prohibited Conduct.

No person authorized to engage in the business of mobile food vending under these regulations shall do any of the following:

1. Locate in any residential zoning district.

2. Locate within a site triangle described as the area delineated by a distance of twenty-five (25) feet along the intersecting property lines, beginning at a property corner point and extending twenty-five (25) feet in both directions away from the corner point of an intersection and then connecting the terminus points by a line to form the triangular area.

3. No mobile food vendor shall sell or vend from his/her vehicle within 300 feet of a public or private school property while school is in session and one hour before and after school is in session; classes or school related events, except when authorized in writing by the school.

4. Unduly obstruct pedestrian or motor vehicle traffic flow, except a reasonable time to load and unload the mobile food vendor vehicle.

5. Obstruct traffic signals or regulatory signs.

6. Stop, stand or park any mobile food vendor upon any street for the purpose of selling during the hours when parking, stopping and standing have been prohibited by signs or curb markings.

7. Leave any mobile food vehicle in a public street right-of-way overnight.

8. Sounds projecting from the mobile food vendor that violate Article II – Noise regulations of the Fort Smith Code of Ordinances.

9. Conducting the business in such a way that would restrict or interfere with the ingress or egress of the abutting property owner or tenant, create traffic congestion or delay, constitute a hazard to traffic, life or property, or obstruct adequate access to emergency and sanitation vehicles.

10. Use or install any lighting that does not comply with Section 27-602-5 Commercial and Outdoor Lighting requirements of the Unified Development Ordinance.

11. Run hoses, cords, or other apparatus across a pedestrian pathway or sidewalk.

12. Utilize any portion of a public sidewalk or public right-of-way where mobile food vending is not allowed or authorized.

13. Remove the wheels from a mobile food vehicle. The mobile food vehicle shall not otherwise be rendered immobile such as being placed on blocks, railroad, ties, etc.

H. Revocation of Permit.

A license issued pursuant to Section 27-327-6 may be revoked, in writing, by the Director or his designee for any of the following reasons:

1. Any fraud, misrepresentation or false statement contained in the application for license;

2. Any fraud, misrepresentation or false statement made in connection with selling of products;

3. Any violation of this Section.

4. Conducting the business license under this Section in an unlawful manner or in such a manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

I. Appeal.

Appeals to the Director's decision relating to this Section shall be made to the Planning Commission concerning the issuance of a license or revocation of a license pertaining to this Section.

J. Appeals of Administrative Determinations.

The Planning Commission shall hear appeals from the Director's decision in respect to the enforcement and application of this Section, and may affirm or reserve in whole or in part the decision of the Director.

1. Process. Any person, officer of the City, or other governmental agency not in agreement with a decision made by the director may appeal the decision within 10 (ten) days of the decision by filing with the Director a notice of appeal along with payment of the required appeal fee. The filing shall specify the reason for the appeal. The Director shall then transmit to the Planning Commission all the information on the details of the decision and reason for the appeal. This shall be done in advance of the next regularly scheduled meeting.

3. Stay. An appeal puts all processing of applications on hold until the appeal process is completed.

4. Hearing. The Planning Commission shall schedule a reasonable time for the hearing of the appeal or any other matter referred to it. Notice shall be published one (1) time in a local newspaper fifteen (15) days before the public hearing.

5. Action. In exercising its powers, the Planning Commission, in conformity with the provisions of law, may reserve or affirm, wholly or in part, or may modify the order, requirement, decision, or determination.

6. Appeals. Appeals from the decision of the Planning Commission shall be made to the Board of Directors within ten (10) days of the Planning Commission's decision.

K. Forfeiture of Fee. If the City revokes a mobile vending permit, the fee already paid for the permit shall be forfeited.

III Development Applications

27-328 Comprehensive Plan and Master Land Use Plan Amendment

27-328-1 Purpose

The Comprehensive Plan and associated neighborhood, corridor, area, and other functional plans may be revised or updated to reflect changes in the City of Fort Smith's growth, development, and planning policies. Revisions or updates may also be necessary to the Future Land Use Map based on changing neighborhoods or social

demands. The Board of Directors may establish a schedule prescribing when and how frequently the Comprehensive Plan and relevant maps shall be amended.

27-328-2 Applicant

Proposed changes to the Comprehensive Plan and Master Land Use Plan may be initiated by the Board of Directors, Planning Commission, Director, a property owner or their agent, and any other interested property owner within the area proposed for a change.

27-328-3 Applicability

Amendments to the Comprehensive Plan and Master Land Use Plan shall be required in circumstances where the proposed rezoning does not conform to the Comprehensive Plan or Master Land Use Plan classification or in circumstances where the Planning Commission or Board of Directors has determined that the change is appropriate for planning purposes.

27-328-4 Pre-Application Conference

A pre-application conference is required pursuant to Section 27-302.

27-328-5 Determination of Type

A. **Determination**. The Director shall determine whether the application is for a minor, standard, or major amendment.

B. **Major Amendments**. Major amendments shall be submitted with a complete area plan for the subject property. At the discretion of the Director, standard amendments shall require a neighborhood, area, corridor, or other plan as appropriate.

C. **Criteria.** The Director shall use the following criteria as guidelines for the classification of amendments:

Minor Amendment	Standard Amendment	Major Amendment
Property in single ownership	Property in single or multiple ownership	Property in single or multiple ownership
Typically fewer than 10 acres in size	Typically between 10 and 80 acres in size	Typically more than 80 acres in size
No text amendment	Text amendments related to specific policies that govern subject property	General text amendments

Minor Amendment	Standard Amendment	Major Amendment
Traffic generation at same level or less than existing classification	Traffic generation can be accommodated through new streets and/or minor improvements to existing streets	Traffic generation shall require substantial improvements to existing streets
No need for new or upgraded public infrastructure or services	New or upgraded public infrastructure or services paid by developer	New or upgraded public infrastructure shall service area larger than development at significant cost to community

27-328-6 Submission Requirements

The Planning Department shall provide an application form which specifies the information to be submitted. The application shall include the following:

A. Comprehensive Plan-Text Amendment Only

1. A typewritten copy of the proposed changes to the text in underline/strikeout (also known as “track changes”) format.

2. A description of the reasons supporting the amendment and the special circumstances requiring the change.

B. Comprehensive Plan-Master Land Use Plan Map Amendment

1. All applications

    a. A legal description of the subject property for which the amendment is requested.

    b. A map of the property which includes the scaled distance, legal description, and general vicinity map inset showing the property’s location.

    c. The area dimensions of the property in square feet or acres.

    d. The name, address, and telephone number of the applicant and property owner.

e. A description of the present use of the property, existing Comprehensive Plan/Master Land Use Plan classification, and the existing zoning classification, along with the same information for surrounding properties.

f. Identification of the new Comprehensive Plan/Master Land Use Plan classification.

g. A description of the existing road conditions and new roads to be included in the development and the effect of the proposed development on existing road and traffic conditions.

h. The source or method for providing utility/infrastructure services to the property.

i. A statement of the proposed density and maximum potential density (units per acre) permitted by the land use classification.

j. Identification of any known or anticipated environmental concerns.

k. A written description of the differences between the current and proposed designations.

2. Standard and Major Land Use Amendments

a. All items required in Section 27-328-6(B)(1), above.

b. An analysis of the impact of the amendment on surrounding properties and plans in terms of:

(1) Potential changes to development patterns in terms of local and regional impact.

(2) Consistency of zoning between existing and planned uses, and

(3) Understanding of the need and demand for the proposed uses.

c. An analysis of the long term development plan for the area (10-20 years) which incorporates a review of the land use, transportation, and infrastructure impact to both the City of Fort Smith and the property owner.

27-328-7 Application and Review Procedures – Comprehensive Plan Amendment and Master Land Use Plan Amendment

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. **Neighborhood Meeting**.

1. Minor Amendment. (Section 27-328-5 Determination of Type) The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304.

2. Standard and Major Amendments. (Section 27-328-5 Determination of Type) In lieu of a neighborhood meeting, the applicant shall hold at least two public meetings within or near the subject area.

3. The Director shall establish general meeting requirements, including number, timing, and notice.

C. **Planning Staff Review**. Following a determination of completeness, the Planning Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. After completion of the Planning Staff review and required neighborhood meetings the applicant shall be scheduled for a public hearing before the Planning Commission.

1. Public Notice shall be provided pursuant to Section 27-308.

   a. Comprehensive Plan Text Amendment: Requires the following: Published notice.

   b. Master Land Use Plan for individual property: Requires the following: (1) published notice, (2) mailed notice, (3) posted notice. This may also required a meeting notice as described above.

   c. Master Land Use Plan for multiple properties: Requires the following: (1) published notice, (2) posted notice. This may also require a meeting notice as described above.

2. The Planning Commission shall consider the criteria listed in Section 27-328-7(E), below, in making a recommendation.

3. Following the final hearing on an application to amend the Comprehensive Plan and Master Land Use Plan, the Planning Commission may recommend

approval, approval as amended, or denial of the requests and shall prepare an accurate written summary of the proceedings for the Board of Directors. The Planning Commission may also table the application to a later date.

4. If the Planning Commission fails to make a recommendation on a Comprehensive Plan or Master Land Use Plan amendment request, the request shall default to a recommendation of denial.

E. **Factors to be Considered**. Approval or denial of the Comprehensive Plan or Master Land Use Plan amendment shall be based upon consideration of the following factors:

1. Whether events after the Comprehensive Plan and Master Land Use Plan adoptions have changed the character and conditions of the area so as to make the application acceptable;

2. Whether the change is consistent with the goals, objectives, and policies of the Comprehensive Plan and with Master Land Use Plan amendments to corridor, neighborhood, or area plans;

3. Whether the City utilities and facilities infrastructure, (such as sanitary storm sewers, water lines, police/fire protection, parks and recreation, and roads) are adequate given the type, scope, and degree of development suggested by the proposed land use plan. If utilities are not available, a determination needs to be made whether they can be reasonably extended;

4. Whether the proposed amendment would allow for a change in development of the subject property without creating adverse impacts on existing or planned surrounding uses, or would create inconsistencies with planned future land use map patterns; and

F. **Action by Board of Directors**. When the Planning Commission submits a recommendation to the Board of Directors and provides the reasons for such, the Board shall consider the criteria established in Sections 27-310-1 and 27-327(E) and may take any action consistent with Sections 27-310 and 27-311 including:

1. Approve the application;

2. Approve the application as amended;

3. Deny the application.

4. Where there is new material evidence received at the Board of Directors meeting that was not available to the Planning Commission, return the application to the Planning Commission for reconsideration based upon the new evidence; or

5. Where the Planning Commission has recommended denial of the application, the applicant may appeal the recommendation to the Board of Directors.

G. Appeal. An appeal of the Board of Directors decision shall be made to a court of record having jurisdiction.

27-328-8 Incorporation

Changes to the Comprehensive Plan and Master Land Use Plans shall be incorporated into the official version of the documents as maintained by the Planning and Zoning Department. Amendments shall be identified by date and ordinance number for the purpose of later reference.

27-329 Rezoning: Planned Development District

27-329-1 Purpose

Planned Development District (PD) rezoning is appropriate for the purpose of providing design flexibility not normally available through standard zoning procedures. Planned Development District rezoning is available in any zoning district classification except Mixed Use and Residential Historic. For example, an applicant seeking to rezone from a low density residential district to a high density residential district may apply for a RS-4 Planned Development that will allow all of the uses of the RS-4 with the flexibility of the Planned Development site planning as described below. Planned Development rezoning is intended to encourage high quality smart growth development that provides:

A. More efficient infrastructure;

B. Reduced traffic demands;

C. More usable public or private open space and pedestrian connectivity;

D. Needed housing choices and affordability;

E. Assurance of new quality development; and

F. Protection of the quality and integrity of existing neighborhoods.

Planned Development approval is a two-step process – approval of a preliminary development plan followed by approval of a final development plan. Preliminary Plan approval may take place at the same time as rezoning if both applications are submitted together. The approved final development plan shall serve as a basis for use (permitted within the district), density, and design criteria.

The sale, subdivision or re-platting of the lot after zoning approval does not exempt the project from complying with applicable development standards, architectural quality, sign concepts, or other conditions that were committed to at the time of rezoning.

27-329-2 Applicant

A proposal for zoning change may be initiated by the Board of Directors, Planning Commission, or upon application or petition of property owners or the owner's agents.

27-329-3 Applicability

Planned Development zoning should be used when the applicant is seeking to vary the requirements and lot sizes of the basic zone district classification.

27-329-4 Pre-Application Conference

A pre-application conference is required pursuant to Section 27-302.

27-329-5 Submission Requirements

The Director shall prepare an application form which specifies the information to be submitted in support of a Planned Development rezoning application. This shall include, at a minimum:

A. **Plan.** Preliminary development plan pursuant to Section 27-331.

B. **Application Fee**

C. **Traffic Study for Rezoning**. When the proposed land use associated with a rezoning application has the potential to change traffic patterns or create congestion, the Director may require that the applicant provide a Traffic Impact Analysis or Traffic Statement as described in Section 27-503-7.

D. **Application Information**. Other information as specified by the application form.

E. **Additional Information**. Any additional information as requested by the Director, City Engineer, other City departments/agencies, Planning Commission, or Board of Directors.

27-329-6 Development Standards

A. **Revisions to Site Standards**. All applications for Planned Developments (PDs) may propose to revise site standards such as setbacks or lot sizes provided that they are reduced to not less than 25% of the underlying district standard and provided the revisions are appropriate to the location and design of the development.

B. **Density Bonus**. A density bonus of up to 15% over what is allowed by the underlying zoning district may be granted to projects that offer higher development standards and enhanced site amenities such as:

1. Provide additional landscaping and buffering beyond the minimum amounts required under the UDO design guidelines;

2. Provide quality enhancements to the overall architectural design for the site;

3. Utilize a unified signage design theme;

4. Dedication of park land and open space, including recreation facilities;

5. Maximizing traffic efficiency and connectivity while minimizing congestion by providing shared access to existing businesses and proposed land uses;

27-329-7 Application and Review Procedures for the Rezoning Application and Preliminary Development Plan

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by the UDO and on the application form are prepared and answered, and when any required supplemental or additional applications (e.g., comprehensive plan amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

B. **Neighborhood Meeting**. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304.

C. **Planning Staff Review.** Following a determination of completeness, the Planning Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. Following the completion of the Planning Staff review and required neighborhood meetings, the applicant shall be scheduled for a public hearing before the Planning Commission. Notice shall be provided, published, mailed and posted pursuant to Section 27-308.

E. **Factors to be Considered**.

1. Rezoning Application -- Approval, approval as amended, or denial of the Planned Development rezoning application shall be based on consideration of the following factors:

    a. Compatibility with the Comprehensive Plan, Master Land Use Plan, Master Street Plan, and appropriate Area Plans (such as corridor or neighborhood plans).

    b. The character of the neighborhood.

    c. The zoning and land use of adjacent and nearby properties and their compatibility with the request.

    d. The extent to which the proposed land use is necessary for the convenience and welfare of the public and a determination that the rezoning request shall not detract from the appropriate land use, visual quality or marketability of nearby properties.

    e. The extent to which the proposed land use would increase traffic or parking demand volumes in a negative way that could adversely affect road capacities, conditions, and safety; or create parking problems.

    f. The extent/degree in which the proposed land use could either cause negative environmental consequences or conversely positively enhance the aesthetic environment of the surrounding properties and neighborhoods.

    g. The extent to which public utilities and services are readily available to serve the proposed land use.

    h. That the application shall comply with all relevant ordinance requirements.

    i. The relative gain to the public health, safety, and welfare as compared to the hardship imposed upon the individual landowner or landowners.

2. Preliminary Development Plan –The following criteria shall be considered when reviewing the Preliminary Development Plan:

    a. The development meets the terms of the underlying zoning district and Planned Development district standards established by the provisions of Section 27-329-6.

    b. The site is capable of providing the required amount of open space (green space) for the buildings, parking and drive areas;

    c. The site plan provides for safe and easy ingress, egress and internal traffic circulation.

    d. All easements and utilities shall be at or above the engineering standards/service capacities of the approving departments and agencies;

    e. The plan is consistent with good land use planning and site engineering design principles, particularly with respect to safety and aesthetics;

    f. The architectural designs are consistent with the City of Fort Smith policies and regulations and compatible with surrounding features;

    g. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, Master Street Plan, Master Land Use Plan, and other adopted planning policies;

    h. Right-of-way, as determined by the City's Engineering Department, has been identified for dedication.

    i. Recreational and aesthetic amenities associated with the Planned Developments shall be of an equal or higher quality to what is required of normal (non-planned) developments.

F. Planning Commission Action. Following the public hearing, the Planning Commission may recommend approval, approval as amended, or denial by a majority vote of the entire Planning Commission. The Planning Commission may also table/continue the application to a later date.

1. The Planning Commission shall certify recommendations of approval or approval as amended to the Board of Directors for further procedure in conformity with A.C.A. tit. 14, ch. 56, subch. 4[§ 14-56-401 et. seq.]

2. The Planning Commission's certified recommendations shall be automatically placed on the agenda of the Board of Directors at the second regularly scheduled meeting following action by the Planning Commission.

G. Appeal. Applicants may appeal the decision(s) of the Planning Commission as follows:

1. If the Planning Commission denies a rezoning request or preliminary development plan so that no recommended action is certified by them to the Board of Directors, the applicant shall have the right to file a request for the Board of Directors to review the decision of the Planning Commission.
2. Such right shall be exercised in the following manner or be considered waived:

   a. File a written notice to appeal the Planning Commission decision with the City Clerk's office during normal business hours.

   b. The appeal must be filed on or before the tenth calendar day following the Planning Commission's public hearing date on the proposed rezoning request, or following the date on which the Planning Commission handed down its decision of non-recommendation. Notice of the review of such decision to the Board of Directors shall be provided to those persons who were provided postal notice of the original application. The applicant who is filing the appeal shall pay a fee established by the Board of Directors to cover the cost of providing such notice.

3. The review shall be scheduled for the second regular meeting of the Board of Directors following the request for review deadline. After the filing of a notice of review, the request may not be withdrawn or the hearing date postponed without the approval of the Board of Directors.

4. If the Board of Directors, upon review, deny the application, the applicant shall not be permitted to re-apply for the same or substantially same request for a period of one (1) calendar year from the date of action by the Board of Directors.

H. **Action by the Board of Directors**. When the Planning Commission certifies a proposed rezoning to the Board of Directors, the Board shall consider the criteria established in Section 27-329-7(E) and may take any action consistent with Sections 27-310 and 27-311, to include:

1. Approval of the application and preliminary plan;

2. Approval of the application and/or preliminary plan as amended; or

3. Denial of the application and preliminary plan.

4. Where there is new material evidence presented at the Board of Director's meeting that was not available to the Planning Commission, the Board may return the application and preliminary plan to the Planning Commission for reconsideration based on this new evidence.

I. **Appeal.** Appeal of the final decision of the Board of Directors may be made to a court of record having proper jurisdiction.

J. **Re-application**. If the Board of Directors denies a proposed preliminary development plan or rezoning application that the Planning Commission has certified for approval, the applicant shall not be permitted to reapply for the same or substantially similar request for a period of six (6) months from the date of the action from the Board Directors. After the six month period has lapsed, the application may be resubmitted to the Planning Commission for consideration through a complete review process.

K. **Determination of Re-application**. The Director shall determine whether a re-filed application for rezoning meets the requirements of these provisions and whether the new application is the same or substantially similar to the previous application. The Director may consult with other departments, the Planning Commission, or the Board of Directors to make this determination. Appeals to the Director's determination of Re-application shall be made to the Planning Commission. No further action shall be taken to process the application pending the Planning Commission's determination.

27-329-8 Amendments to Preliminary Development Plans

Once property has been rezoned to a Planned Development District, changes to the preliminary development plan may be made only after approval of a revised preliminary development plan. Minor revisions or changes that are not considered significant (pursuant to Section 27-329-8(a)) may be approved by the Director without a public hearing. If these revisions or changes are not approved they may be appealed to the

Planning Commission. Significant changes may only be approved after a rehearing by the Planning Commission, which shall be subject to the same procedural requirements of the original application.

A. **Criteria**. For the purposes of this section, significant changes shall be determined by the Director and shall mean any of the following as compared to the approved Preliminary Development Plan:

1. Any changes that exceed the provisions of Section 27-329-6 or other terms specified by the Planning Commission and/or Board of Directors;

2. Increases in density or intensity of residential uses by more than 5%;

3. Increases in total floor area (entire plan) of all nonresidential buildings by more than 5% or 5000 square feet, whichever is less;

4. Increases of lot coverage by more than 5%;

5. Changes in architectural style that shall make the project less compatible with surrounding land uses;

6. Changes in ownership patterns or stages of construction that shall lead to a different development concept;

7. Changes in ownership patterns or stages of construction that shall impose substantially greater traffic volumes on streets and load capacities on other public facilities;

8. Decreases in any peripheral setback of more than 5%;

9. Decreases in areas devoted to open space of more than 5% or the substantial relocation of such areas;

10. Changes to the traffic circulation patterns that shall affect traffic outside of the project boundaries;

11. Modification or removal of conditions and stipulations to the preliminary development plan approval;

12. Modifications that change, amend, or violate the terms of the Comprehensive Plan.

B. **Appeal**. Appeal of the Director's determination of significance may be made to the Planning Commission, whose decision shall be final. No further action shall be taken to process the application pending the Planning Commission's determination.

27-329-9 Review and Approval: Final Development Plans

A. **Contents:** As specified in Section 27-331-8.

B. **Submitting Preliminary and Final Plans.** The developer may submit preliminary and final development plans simultaneously at such person's own risk.

C. **Grading and Construction.** Permits for grading or construction shall be issued only after final plans have been approved by the Planning Commission.

D. **Conditions for Approval.** Final plans shall be approved only after the following conditions have been met:

1. Final plans conform to the approved preliminary development plan and meet any special amendments or requirements imposed at the time of rezoning. Significant changes, as defined in Section 27-329-8(a) and determined by the Director, between the preliminary plan and the final plan shall be sufficient reason to require the resubmission of a preliminary plan.

3. If the project is being constructed in phases, each phase shall be functional and shall be adequately served by access drives, parking and utilities as a freestanding project and shall not have adverse effects on the neighborhood if the later phases of development are not carried out.

E. **Director Action.**

1. A final development plan (that contains no modifications or additions from the approved preliminary plan) shall be approved by the Director if it is determined that all of the submission requirements have been satisfied.

2. A final development plan (that contains modifications from the approved preliminary development plan but which changes are not significant pursuant to Section 27-329-8 as measured against the original approved preliminary development plan), may be approved by the Director if it is determined that all of the submission requirements have been satisfied.

3. If the final development plan has significant changes from the preliminary plan (pursuant to Section 27-329-8), it shall not be considered by the Director and shall be returned to the applicant.

4. Appeal of the Director's determination may be made to the Planning Commission, whose determination shall be final. No further action shall be taken to process the application pending the Planning Commission's determination.

27-329-10 Abandonment of Final Development Plan

A. **Termination**. If a plan or section of a plan is given final approval, but the landowner/applicant abandons the plan, then the final approval shall be considered terminated and void.

B. **Process**. Abandonment may proceed as such:

1. Notification to the City in writing by the landowner/applicant that the approval has been abandoned; or

2. Failure to commence construction or obtain a building permit within 18 months of approval.

C. **Extension**. Prior to a determination of abandonment, an applicant may make a written request to the Planning Commission for a one-time, six month extension of the final approval provided there is a valid reason for the extension. Any further requests for a time extension must be made to the Board of Directors.

C. **New Plan.** Whenever a final plan or section thereof has been abandoned by the landowner/applicant no development shall take place on the property until a new final development plan has been approved.

27-330 Rezoning: Conventional Districts

27-330-1 Purpose

A. **Purpose.** Rezoning to conventional (non-planned) zoning districts is appropriate for the development of single lots provided the land uses are compatible with existing or planned surrounding development as identified on the Master Land Use Plan. The development of multiple lots, subdivisions where changes of development standards are requested, and most non-residential uses should be accomplished, when feasible, through a Planned Development (PD) District rezoning pursuant to Section 27-329.

B. **Development Plan.** A development plan will not be required for a residential neighborhood rezoning or a corrective rezoning. The Planning Commission may waive or defer the requirement for a development plan for other developments upon the applicant making the request to waive or defer the requirement and a public hearing.

27-330-2 Applicant

An application for a conventional rezoning request may be initiated by the Board of Directors, Planning Commission, property owner(s) or the owner's agent, or upon application of any interested property owner within the area proposed to be rezoned.

27-330-3 Applicability

A conventional zoning request should be used when the applicant is seeking a zone change that meets one of the basic zone district classifications.

27-330-4 Pre-Application Conference

A pre-application conference is required pursuant to Section 27-302.

27-330-5 Submission Requirements

The Director shall prepare an application form which specifies the information to be submitted in support of a conventional rezoning application. This shall include, at a minimum:

A. Preliminary Development Plan (Section 27-331)

B. Application Fee

C. Technical studies pursuant to Section 27-303-2.

D. Other information as specified on the application form or as requested by the Director, other departments or agencies, the Planning Commission, or the Board of Directors.

27-330-6 Application and Review Procedures

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by the Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

B. **Neighborhood Meeting**. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304.

C. **Staff Review**. Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. Following completion of Staff review and such neighborhood meetings as are required, the application shall be scheduled for a public hearing before the Planning Commission.

1. Notice shall be provided, published, mailed and posted pursuant to Section 27-308.

2. The Planning Commission may recommend a change in a zoning district category which constitutes a more restrictive change than requested by the applicant.

E. **Factors to be Considered.**

1. Rezoning Application -- Approval, approval as amended, or denial of the rezoning application shall be based upon consideration of the following factors:
    a. Compatibility with the Comprehensive Plan, Master Land Use Plan, Master Street Plan, and applicable area plans (e.g., corridor, neighborhood).

    b. Compatibility of the proposed development with the character of the neighborhood.

    c. The zoning and uses of adjacent and nearby properties, and the compatibility of the proposed future uses with those existing uses.

    d. The extent to which the proposed land use is reasonably necessary for the convenience and welfare of the public and shall not substantially or permanently alter the appropriate use, visual quality or marketability of nearby properties.

e. The extent to which the proposed land use would increase or change traffic volume or parking demand in any ways that would adversely affect road capacity, road conditions, road safety, or create parking problems.

f. The extent to which the proposed land use could either negatively detract from or positively enhance the environment of the surrounding neighborhoods.

g. The current availability of public utilities and services and the future capacity needed to adequately serve the proposed land use.

h. That the application complies with all relevant ordinance requirements.

j. The relative gain to the public health, safety, and welfare as compared to the hardship imposed upon the individual landowner or landowners.

2. Development Plan -- The following criteria shall be considered when reviewing the preliminary development plan:

a. Is the site capable of accommodating the building(s), parking areas and drives with the appropriate open space provided?

b. Does the plan provide for safe and easy ingress, egress and internal traffic circulation?

c. Is the plan consistent with good land use planning and site engineering design principles, particularly with respect to safety;

d. Are the architectural designs consistent with the City of Fort Smith policies and regulations and compatible with surrounding land use features;

e. Does the Plan represent an overall development pattern that is consistent with the Comprehensive Plan, Master Street Plan, Master Land Use Plan, and other adopted planning policies;

f. The required right-of-way dedication has been identified by the City Engineering Department.

g. All easements and utilities shall meet the requirements of the approving departments and agencies.

F. Planning Commission Action. Following the public hearing, the Planning Commission may recommend approval, approval as amended, or denial by a majority vote. The Planning Commission may also continue the application to a date certain.

1. The Planning Commission shall certify recommendations of approval or approval as amended to the Board of Directors for further procedure in conformity with A.C.A. tit. 14, ch. 56, subch. 4[§ 14-56-401 et. seq.]

2. The Planning Commission's certified recommendations shall be automatically placed on the agenda of the Board of Director's second regularly scheduled meeting of the month following action by the Planning Commission.

G. Appeal. Appeals from the decisions of the Planning Commission shall be as follows:

1. If the Planning Commission denies a rezoning request or preliminary development plan so that no recommended action has been certified to the Board of Directors, the applicant shall have the right to file a request for review of the Planning Commission's decision with the Board of Directors.

2. The request for review shall be initiated in the following manner or be considered waived:

   a. Filing a written notice of such appeal with the office of the City Clerk, or the Clerk's designated agent, during normal business hours.

   b. Filed on or before the tenth calendar day following the Planning Commission meeting at which the proposed rezoning and/or preliminary plan hearing was held, or following the date on which the Planning Commission handed down its decision of non-recommendation, if the date of decision differs from the date of hearing. Notice of review of such decisions to the Board of Directors shall be provided to those persons who were provided postal notice of the original application. When filing the notice of appeal, the applicant shall pay the sum established by the Board of Directors to cover the cost of providing such legal notice.

3. The review shall take place at the second regularly scheduled meeting of the Board of Directors, following the request for review deadline. After the filing of a notice of review, the request may not be withdrawn or the hearing date postponed without the approval of the Board of Directors.

4. If the Board of Directors denies the application the applicant shall not be permitted to reapply for the same or substantially same request for a period of one (1) calendar year from the date of action by the Board.

H. Action by the Board of Directors. When the Planning Commission certifies a proposed conventional rezoning to the Board of Directors, the Board shall consider the criteria established in Section 27-330-6(E) and may take any action consistent with Sections 27-310 and 27-311, including:

1. Approve the application and preliminary plan;

2. Approve as amended the application and/or preliminary plan; or
3. Deny the application and preliminary plan.

4. Where there is new, material evidence presented at the Board of Directors meeting that was not available to the Planning Commission, the Board shall return the application and preliminary plan to the Planning Commission for reconsideration based on the new evidence.

I. Appeal. Appeal of the Board of Director's determination may be made to a court of record having jurisdiction.

J. Re-application. If the Board of Directors denies a proposed preliminary development plan or rezoning application certified to it with the Planning Commission's approval, the applicant shall not be permitted to re-apply for the same or substantially similar request for a period of six (6) months from the date of the action. No such rejected proposal shall be re-submitted, even after the expiration of six months for the consideration of the Board of Directors until it has been resubmitted first to the Planning Commission for consideration.

K. Determination of Re-application. The Director shall determine whether a re-filed application for rezoning meets the requirements of these provisions and whether the new application is the same or substantially similar to the previous application. The Director may consult with other departments, the Planning Commission, or the Board of Directors in making this determination. Appeals of the Director's determination decision may be made to the Planning Commission.

27-330-7 Amendments to Preliminary Development Plans

Once a preliminary plan has been approved, significant changes may be made only after approval of a revised preliminary development plan. This requires re-submittal of the application through the same procedural requirements of the original application. Changes that are not considered significant pursuant to Section 27-331-7(a) may be approved at the Director's discretion. Disapproval of the changes may be appealed to the Planning Commission.

B. **Criteria.** For the purposes of this section, significant changes shall be determined by the Director. Significant changes shall mean any of the following, provided they are still within the approved standards of the applicable zoning district.

1. Increases in density or intensity of residential uses by more than 5%;

2. Increases in total floor area (entire plan) of all non-residential buildings by more than 5% or 5000 square feet, whichever is less;

3. Increases of lot coverage by more than 5%;

4. Changes to the architectural style that shall make the project inconsistent with previous approvals;

5. Changes in ownership patterns or stages of construction that shall lead to a different development concept;

6. Changes in ownership patterns or stages of construction that shall impose substantially greater volumes on streets and load capacities on public facilities;

7. Decrease of more than 5% to any perimeter setbacks;

8. Decrease of more than 5% in areas devoted to open space or the substantial relocation of such areas;

9. Changes in traffic circulation patterns that will affect traffic outside of the project boundaries;

10. Modification or removal of conditions and stipulations to the preliminary development plan approval; or

11. Modifications that change, amend, or violate the terms of the Comprehensive Plan.

C. **Approval.** Any changes that seek to vary the standards of the applicable district must either be approved by the Planning Commission through a Planned Development District rezoning application or through a variance request to the Board of Zoning Adjustment.

D. **Appeal.** Appeal of the Director's determination of whether changes are significant may be taken to the Planning Commission, whose decision shall be final. No further action shall be taken to process the application pending the Planning Commission's determination.

27-330-8 Review and Approval: Final Development Plans

A. Contents. Contents of a Final Development Plan – as specified in Section 27-331-5

B. Final Applications. Permits for grading or construction shall be issued only after final plans have been approved by the Planning Commission. The developer may submit preliminary and final development plans simultaneously at developer's own risk.

C. Conditions for Approval. Final plans shall be approved only after the following conditions have been met:

1. Final plans must conform to the approved preliminary plans and meet any special conditions imposed at the time of rezoning. Significant changes (as defined in Section 27-331-7 and determined by the Director) between the preliminary plan and the final plan shall be a sufficient reason to require the re-submission of a preliminary plan.

2. If the project is being constructed in phases over time, each phase shall need to be a functionally operational freestanding project that is serviced by access drives, parking facilities, and on-line utilities. It must also be demonstrated that each phase shall not have adverse effects on the neighborhood if subsequent phases are not carried out.

D. Director Action.

1. A final development plan that contains no modifications or additions from the approved preliminary plan shall be approved by the Director if it is determined that all of the submission requirements have been satisfied.

2. A final development plan that contains modifications from the approved preliminary development plan but for which changes are not significant (Pursuant to Section 27-330-7 as measured against the original approved preliminary development plan), may be approved by the Director if it is determined that all of the submission requirements have been satisfied.

3. If the final development plan has significant changes from the preliminary plan (pursuant to Section 27-330-7), it shall not be considered by the Director but returned to the applicant.

4. An appeal to the Director's decision may be made to the Planning Commission, whose decision shall be final. No further action shall be taken to process the application until the Planning Commission has made a final determination.

27-330-9 Abandonment of Final Development Plan

A. Abandonment. If a plan or section of a plan is given final approval, but the landowner/applicant abandons the plan, then the final approval shall be considered terminated and void.

B. Determination. Abandonment may occur as follows:

1. Notification to the City in writing by the landowner/applicant that the approval has been abandoned; or

2. Failure to commence construction or obtain a building permit within the 18 months approval period.

C. Request for Extension. Prior to a determination of abandonment, an applicant may make a written request to the Planning Commission for a one-time, six month extension of the final approval provided a valid reason for the delay exists. Any further requests for extension after the 6 month period must be made to the Board of Directors.

D. New Plan Required. Whenever a final plan has been abandoned as provided in this Section, no development shall take place on the property until a new final development plan has been approved.

27-331 Development Plan

27-331-1 Purpose

A Development Plan may be submitted as a single approval project or concurrently as part of another application or approval process. The approval process is necessary to ensure that the proposed development shall conform to the Unified Development Ordinance and shall incorporate a compatible arrangement of buildings, parking, lighting, signage, landscaping, circulation, drainage, and open spaces.

27-331-2 Applicant

When no rezoning request is required, a development plan is submitted by the applicant to the Director. When other applications or permits are sought, a development plan is submitted concurrently with other development applications. (e.g., variances, conditional uses)

27-331-3 Applicability

A. Approval Procedures. When no other development approvals are required before submitting for a building permit, a development plan shall be required for all new non-residential construction of 5,000 square feet or more, or multifamily construction of 8 units or more.

Type	Size	New/Rehab	Submission
Multifamily residential/ no subdivision application required	8 units or more	New	Development Plan
Office, Commercial	5,000 s.f. or larger	Both	Development Plan
Industrial	5,000 s.f. or larger	Both	Development Plan
Downtown and Existing Buildings	all	Both	Development Plan

B. Use As Preliminary Plat. A Development Plan is first submitted as a preliminary plan and later revised and refined before the submittal of the final plan. A Preliminary Development Plan may be used as a Preliminary Plat where all of the information required on the Preliminary Plat has been included on the Preliminary Development Plan.

27-331-4 Development Plan: Preliminary

The size, scale and number of copies (paper and digital) required to be submitted shall be established by the Planning and Zoning Department. The Department shall establish a checklist of Preliminary Development Plan requirements that includes the following:

A. The development plan shall be submitted electronically as a PDF file and on paper no larger than twenty-four by thirty-six inches (24 x 36), with at least one copy of each page provided on an 11” x 17” paper. The development plan shall be drawn to a scale of no less than one inch equals twenty feet (1:20) unless the Director approves a different scale.

B. The name, address, phone number, and e-mail address of the landowner and architect/engineer/surveyor/ planner/contractor shall be provided. An authorization of agent from the property owner shall also be provided, which acknowledges and approves the application submitted on the owner’s behalf.

C. The date, north arrow, scale, existing zoning classification and proposed zoning classification;

D. Vicinity map at a scale of not less than 1” = 500’;

E. Location and size of existing and proposed right-of-ways, easements, public improvements, infrastructure, overhead transmission lines, sewer lines, water mains, gas mains, culverts, and other underground installations.

F. Size dimensions, use and location of, and entrances to existing and proposed structures and drives on the subject property. This includes the dimensioned distances between buildings (existing that shall remain and proposed) and the distances from the structures (existing that shall remain and proposed) to the property lines;

G. Identification of existing zoning, structures, and driveways on the properties within 300 feet of the subject property.

H. The street address or address of entire property and a legal description of the property, showing the location and type of boundary and including a statement of the total area of the property;

I. Existing topography with a maximum contour interval of 5 feet, except where existing ground is on a slope of less than 2%, then either two-foot contours or spot elevations shall be provided;

J. Proposed finished grades may be shown either as percentages or with finished contours;

K. Location of floodplains and areas subject to flooding, centerlines of drainage courses, and finished floor elevations of proposed buildings;

L. The height, number of floors, proposed square footage of buildings, both above and below or partially below the finished grade;

M. The setback dimensions from the development boundaries and adjacent streets and alleys;

N. Existing and proposed traffic and pedestrian circulations system, including the location and width of all streets, driveways, entrances to parking areas and parking structures, walkways and bicycle paths;

O. Off-street parking and loading areas, including dimensions or proposed drives and parking spaces, and structures and landscaping for parking areas;

P. Description of outdoor surfacing and/or paving for all parking and loading areas;

Q. Green belt and other active recreation and greenspace areas, together with proposed private recreation areas, specifying the proposed improvement of all such areas, and delineating those areas proposed for specific types of recreation facilities;

R. The proposed location, description, and screening plan for dumpster facilities for garbage drop off, storage, disposal, and pick-up;

S. When the development is to be constructed in phases provide a development schedule showing the order of construction and approximate completion date for each phase;

T. Preliminary architectural building elevations, listing of proposed building materials, a material and color palette (where required by specific zoning district), and proposed written design guidelines (for non-residential development that supplements the City's existing regulations);

U. A master sign plan which details the proposed signage for the site (including flat signs on building facades);

V. A landscape buffer concept plan that details the basic size, quantity, and type of screening material (fences, walls, and plants) to be used for the perimeter treatment of the property. The concept plan should also have a description of land uses, setbacks, and the relationship of the subject property to the surrounding areas.

W. Preliminary drainage and erosion control information which meets City, State and Federal requirements;

X. A chart displaying the following information as applicable:

1. Total number of dwelling units;

2. Residential density and units per acre;

3. Gross floor area per floor (in square feet), number of floors, height of building, total floor area, and floor area ratio for each structure;

4. Total acres in open space;

5. Total number of off-street parking spaces required, method of calculation and the number of spaces provided;

6. Seating capacity (where appropriate);

7. Uses by floor.

27-331-5 Application and Review Procedures.

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. **Neighborhood Meeting**. When a Development Plan is submitted concurrently with another application (e.g.-rezoning, conditional use) the neighborhood meeting requirements of that application shall apply. When no other application is submitted, the Director shall determine if a neighborhood meeting is necessary based upon the following:

1. The impact of the project on surrounding properties.

2. The impact of the project on the neighborhood as a whole.

3. The interest expressed by the neighborhood to have a public meeting regarding the project.

C. **Notice.**

1. When a Development Plan is submitted concurrently with another application, public notice shall be provided according to the requirements for that application (e.g., published, mailed and/or posted).

2. Review by the Director does not require public notice.

27-331-6 Preliminary Development Plan Review

A **Director Review.** If the Preliminary Development Plan is submitted as a single application in a conventional district (Non-Planned Development District), the Director shall review the application. If it is determined that the application shall meet the terms of the Unified Development Ordinance, the application shall be approved.

B **Additional Applications.** If the Preliminary Development Plan is submitted concurrently with any supplemental or additional applications (e.g., rezoning) or as a requirement of a Planned Development district, it shall be reviewed by the Planning Commission.

C **Appeal.** Decisions made by the Director may be appealed to the Planning Commission. No further action shall be taken to process the application pending the Planning Commission's final determination.

27-331-7 Submission Requirements: Final Development Plan

The final development plan shall include the following information, with separate sheets for each category below:

A. **Landscape**. A landscape plan showing the following:

1. Turf areas with approximate dimensions.
2. Shrubs, ornamental trees and shade trees.
3. Botanical names, sizes when planted, quantities.
4. Trash/dumpster bin enclosure(s).
5. Details of the screening method to be employed.
6. Photometric site lighting plan, sign locations, elevations, dimensions and descriptions.
7. Irrigation plans to be submitted by the contractor at the time of installation unless the landscape is xeriscape.

B. **Architecture**. Architectural plans which show the following:

1. Floor plans with gross square footage and total number of floors
2. All four (4) building elevations with dimensions
3. Location of mechanical equipment, screening details if on roof, building materials, colors, signs and other details.

4. Trash/dumpster enclosures and grease traps.

C. Final Engineering Plans. Final engineering plans which show the following:

1. Sanitary sewer improvements
2. Street improvements
3. Storm water control
4. Any necessary revisions to a previously submitted traffic study
5. Water improvements
6. Parking area, if applicable, including handicap/accessible parking
7. Grading and drainage improvements

27-331-8 Final Development Plan Review

A Director Review. If the Final Development Plan is submitted as a single application in a conventional (Non-Planned Development District), the Director shall review the application. If it is determined that the application meets the terms of Unified Development Ordinance and conforms to the approved Preliminary Development Plan, the Director shall approve the application.

B Additional Applications. If the Final Development Plan is submitted concurrently with any supplemental or additional applications (e.g., rezoning) or as a requirement of a Planned Development District, the Final Development Plan shall be reviewed pursuant to the provisions of that application.

C Appeal. Decisions made by the Director may be appealed to the Planning Commission. No further action shall be taken to process the application pending the Planning Commission's final determination.

27-332 Conditional Use Permit

27-332-1 Purpose

This division is established to set standards used in approving conditional uses and procedures for processing them. Certain uses are defined as conditional because of the potential harmful effects the use can cause to nearby property and because the requirements needed to eliminate those harmful effects vary from site to site. The planning commission will review the overall compatibility of the planned use with surrounding property as well as such specific items as screening, parking and landscaping to make sure that no harmful effects occur to nearby property.

27-332-2 Applicant

An application for a conditional use permit may be submitted by the owner of the property or the property owner's authorized agent.

27-332-3 Pre-Application Conference

A pre-application conference is required pursuant to Section 27-302.

27-332-4 Submission Requirements

The Planning and Zoning Department shall provide an application form specifying the information to be submitted in support of a conditional use permit application. This shall include, at a minimum:

A. A preliminary development plan must be submitted and include the information as specified in Section 27-331-4. The conditional use permit satisfies the requirement for a development plan review.

B. A survey prepared by a licensed professional surveyor and a certified site plan of the property prepared by a registered architect or licensed professional engineer. At the discretion of the director, a survey and/or site plan may not be required for some applications (e.g. existing developments in C-6/downtown zoning districts).

C. A description of the proposed conditional use, including the description of any construction proposed on the property.

D. The names and address of all owners of property included in the conditional use application.

E. Application fee.

F. Any information on restrictive covenants that apply to the property that appears to restrict or prohibit the conditional use requested. (Note: The City does not enforce restrictive covenants.)

G. Where the proposed land use has the potential for significant traffic generation or may change traffic patterns, the Director may request a traffic study with the application. Section 27-303-2.

H. In addition to the above information, the applicant shall submit supportive information that shall include but not be limited to the information required in section 27-332.

I. Other information as specified on the application form and as requested by the Director, other departments or agencies, Planning Commission, or the Board of Directors.

27-332-5 Planning Commission Application and Review Procedures

A. Determination of Completeness. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by the Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fees to the Planning and Zoning Department.

B. Neighborhood Meeting. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304.

C. Staff Review. Following a determination of completeness, the Planning and Zoning Staff shall review the application pursuant to Section 27-305.

D. Notice and Public Hearing. Following completion of the Planning and Zoning Department review and the required neighborhood meetings held by the applicant, the application shall be scheduled for a public hearing before the Planning Commission.

1. Public notice shall be provided pursuant to Section 27-308. The notice shall be published in a newspaper of general circulation in the City of Fort Smith, mailed and posted.

2. The Planning Commission shall consider the criteria listed in Section 27-332-5(E), below in making a recommendation.

3. The Planning Commission shall consider conditional use applications at their regular monthly meeting by holding the required scheduled public hearing on a conditional use application at that time.

E. Factors to be Considered.

1. Compliance with the following development standards and design specifications shall be the basis for the approval of conditional uses:

   a. The design, location and operating plans for the use shall ensure that the safety of the public is protected.

b. The proposed land use shall not adversely affect nearby properties.

c. The size and shape of the site in relation to the size, shape and arrangement of structures (maximum lot coverage and applicable setbacks) meets the minimum requirements of this chapter.

d. The entrances and exits, internal street systems, off-street parking and loading facilities and pedestrian walkways are adequate for the proposed purpose.

e. Nearby properties shall be protected from fumes, lighting, noise, glare, dust and odor.

f. The landscaping and screening required to meet the intent of this section shall be provided.

g. Open space shall be maintained by the property owner.

h. Signage shall conform to the requirements of this chapter.

2. Development Plan

a. The site is capable of accommodating the buildings, parking areas and driveways while retaining the required amount of open space;

b. The plan provides for safe and efficient ingress, egress and internal traffic circulation;

c. All easements and utilities shall meet the requirements of the approving departments and agencies;

d. The plan is consistent with good land use planning and site engineering design principles, particularly with respect to safety and aesthetics;

e. The architectural designs are consistent with the City of Fort Smith's policies and regulations and compatible with surrounding land use features;

f. The plan represents an overall development pattern that is consistent with the Comprehensive Plan, Master Land Use, and Master Street Plan, and any other adopted planning policies;

g. The amount of right-of-way dedication needed for a roadway shall be determined by the City Engineering Department.

F. Planning Commission Action. After the public hearing, the commission shall take one (1) of the following actions:

(1) Approve the application as submitted.

(2) Approve as amended.

(3) Continue the application to a date certain.

(4) Deny the application.

G. Conditions. The Planning Commission may impose conditions and restrictions upon the property under consideration with the intent of minimizing the impact of the conditional use upon nearby properties.

H. Minimum Requirements. The Planning Commission shall not reduce requirements associated with a conditional use request concerning the minimum requirements of this chapter unless unusual circumstances or hardships exist.

27-332-6 Conditions

A. Conditions Must be Met. All requirements for a conditional use must be met before any part of the use may be utilized. If any specific condition is not met, the conditional use authorization may be revoked by the City of Fort Smith pursuant to Section 27-314.

B. Timing. Requirements for a conditional use must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the Planning Commission. An extension of time beyond one (1) year or that imposed by the Planning Commission may be granted by the Director one (1) time for up to ninety (90) days.

C. Variances. No variances may be granted to a conditional use authorization except that the Director may grant minor changes to the conditions imposed as long as they conform to the intent of the Planning Commission. No building permit shall be issued for a conditional use until the provisions of this section have been met.

27-332-7 Appeals

The decision of the Planning Commission concerning a conditional use request may be appealed to the Board of Directors. Any interested party may file an appeal provided that it is filed with the City Clerk by 5:00 p.m. on the tenth calendar day following the

date of the Planning Commission decision. A fee in an amount established by the Board of Directors is required for filing an appeal.

27-333 Subdivision – Major

27-333-1 Applicability.

This section applies to:

A. New subdivisions with six (6) or more lots; or

B. New subdivisions with fewer than six (6) lots that are not a minor subdivision; or

C. Any commercial subdivision with limited frontage as provided in § 27-335.

D. Any proposed development that will generate at least 51 trips per day, as determined by the Trip Generation Manual (see references); or

E. Any plat that involves an extension of streets or utilities. A plat with minor utility extensions may be processed as a minor plat.

27-333-2 Replatting of existing easements.

The Planning Commission may vacate, abandon and relocate any existing platted easements for the benefit of the City or its owned utility functions (but not public utility easements) through the subdivision platting process. Prior to exercising such authority, the Planning Commission will request the recommendation of appropriate City departments and all franchised public utilities. Any developer desiring to replat an existing easement pursuant to this section must accurately identify, by legal description, dimensions and allowed usages, and the easement to be vacated, abandoned or relocated, in the proposed plat. Any error in the identification shall negate the replatting effect on the existing easement.

27-333-3 Concept Plan

A. Applicability

At the applicant's discretion, the Planning Commission may review and approve a Concept Plan for major subdivisions that will be built in phases.

B. Initiation. The applicant shall file the Concept Plan with the Director. The Concept Plan shall include the following elements:

1. Lot configuration; and
2. Street layout; and

3. Location and size of parks and open space; and
4. The location of any Resource Conservation areas subject to Section 27-510.
5. Location and anticipated demands for utilities and improvements such as streets, stormwater management, water, wastewater, fire protection, parks and recreation, and schools.
6. The proposed uses for the ultimate development of the entire property under common ownership.

C. Review

1. The Director shall review the Concept Plan and submit any comments verbally or in writing. The Director shall then forward the Concept Plan to the Planning Commission.

2. The Planning Commission shall review the Concept Plan and submit its comments to the applicant verbally or in writing. The Concept Plan shall not be formally approved or denied. The Concept Plan is not binding on the preliminary or final plat application, and serves only to provide information to the Planning Commission about the general development concepts included in subsequent plat applications.

27-333-4 Preliminary Plat

A. Applicability

A preliminary plat shall be approved for all major subdivisions prior to review of a final plat and the submission of construction drawings.

B. Applicant

An application for a major subdivision may be initiated by the Board of Directors, Planning Commission, property owner(s), or the owner's agent.

C. Pre-Application Conference

A pre-application conference is required pursuant to Section 27-302.

D. Submission Requirements

The Director shall prepare an application form which specifies the information to be submitted in support of a major subdivision application. This shall include, at a minimum:

1. A Preliminary Development Plan if subdivision request is submitted with another development application.

2. Preliminary Plat, if there is no Preliminary Development Plan, shall include:

   a. The development plat shall be submitted electronically as a PDF file and on paper no larger than twenty-four by thirty-six inches (24 x 36), with at least one copy of each page provided on an 11” x 17” paper. The development plat shall be drawn to a scale of no less than one inch equals twenty feet (1:20) unless the Director approves a different scale.

   b. The name, address, phone number, and e-mail address of the landowner and architect/engineer/surveyor/ planner/contractor shall be provided. An authorization of agent from the property owner shall also be provided, which acknowledges and approves the application submitted on the owner’s behalf.

   c. The date, north arrow, scale, existing zoning classification and proposed zoning classification;

   d. Vicinity map at a scale of not less than 1” = 500’;

   e. Legal description of property (preliminary plats shall include all contiguous, adjacent, and/or nearby land under the ownership and/or control of the developer) including boundary dimensions sufficient to accurately locate the property;

   f. Adjoining subdivisions/lots/streets/alleys/easements;

   g. Subdivision acreage;

   h. Original lot configuration shown with dashed lines when replatting existing lots;

   i. Topographic information at two-foot intervals, including physical features, buildings, streams, drainage facilities, etc.;

   j. Flood boundaries as identified on the official Flood Insurance Rate Map (FIRM);

   k. Location and dimensions of proposed streets, alleys, easements, and lot lines;

   l. Street names, lots, and block numbers;

   m. Preliminary street centerline curve radii and right-of-way widths;

n. Proposed drainage facilities, including approximate structure sizes and types;

o. Location and purpose of easements, including existing and proposed public and private water supply and sanitary sewer lines. Show existing franchise utilities. Identify book and page where applicable;

p. Proposed buildings and other development features where applicable on commercial, industrial, and multi-family developments.

3. Application Fee

4. Technical studies pursuant to Section 27-303-2.

5. Other information as specified on the application form or as requested by the Director, other departments or agencies, the Planning Commission, or the Board of Directors.

E. Application and Review Procedures

1. Determination of Completeness. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by the Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

2. Staff Review. Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.

3. Public Hearing. Following completion of Staff review, the application shall be scheduled for a public hearing before the Planning Commission.

F. Planning Commission Action. Following the public hearing, the Planning Commission may approve, approve as amended, or deny the application. The Planning Commission may also continue the application to a date certain.

1. Approve. Approval of the preliminary plat shall be granted by the Planning Commission when all applicable conditions of this Chapter are met.

2. Approve as Amended. The Planning Commission may require amendments to a preliminary plat prior to approval. This may include approval of completed engineering documents following plat approval provided stipulations for approval are provided. Upon approval with amendments, the Planning Commission shall state the amendments required and transmit them in writing to the applicant.

3. Denial. The Planning Commission may deny the preliminary plat. The reasons for the denial shall be clearly stated in writing and transmitted to the applicant.

G. Standards

The preliminary plat shall be approved if it complies with all applicable standards of this Chapter.

H. Effective period of approval

The approval or conditional approval of a preliminary plat shall be effective for a period of two (2) years. Any preliminary plat which has been approved or conditionally approved by the Planning Commission shall be null and void if a final plat for the subdivision has not been submitted to the Planning Commission within two (2) years of the approval date of the preliminary plat. The Director may extend this time period at the applicant's request if he or she determines that no material changes to the standards in this Chapter have occurred since the original approval. In reviewing a preliminary plat that has been voided by the passage of time and resubmitted, the Planning Commission is not bound by a previous approval.

I. Existing regulations compliance

The preliminary plat shall conform to all City regulations in effect at the time of Planning Commission action. However, any preliminary plat that has been approved or conditionally approved shall be exempt from any subsequent amendments to the zoning regulations or improvement requirements that would otherwise render that plat nonconforming. However, the effective period of the Planning Commissions' approval must still be in effect.

27-333-5 Final Plat

Purpose: the purpose of the final plat is to create a document for recording which is substantially the same in terms of lot configuration and overall design as the preliminary plat and accurately describes the developed land and other legal provisions which are pertinent and relate to the development.

A. Applicability

No subdivision plat shall be recorded until a final plat is approved by the Planning Department and signed as provided below.

B. Submission Requirements

The Director shall prepare an application form which specifies the information to be submitted in support of a final plat application.

C. Initiation

A final plat may consist of all of the area or part of the area outlined in the preliminary plat. The Director shall forward the final plat to all appropriate City departments and public utilities for their review and comment. After receipt of a complete application for final plat approval, the Director shall recommend approval or denial of the final plat.

D. Review and Decision

Action must be taken on all final plats submitted to the Planning Commission within thirty-five (35) days of the date of the official meeting of the commission where the initial review occurred. If no action is taken by the Planning Commission within thirty-five (35) days, the final plat is deemed approved. The Planning Commission shall not attach any conditions to the final plat for a major subdivision unless agreed to by the applicant.

E. Standards

The Planning Commission shall approve the final plat if it complies with the following:

1. all applicable standards of this Chapter; and

2. all conditions attached to the preliminary plat.

F. Effective period of approval

An application for final plat approval expires if a final plat is not approved within two (2) years from the date that the final plat application was formally submitted.

G. Plat recording procedure

After all required approvals of the plat and the affixing of all required signatures on the original tracing and other copies and associated documents, the final plat will be filed with the county recorder.

27-333-6 Infrastructure Improvements

A. Applicability

The Developer is responsible for construction of subdivision improvements, including engineering design and construction administration, in accordance with the design approved by the City. The Developer will execute an agreement (acknowledgment form letter) guaranteeing that the construction will conform to the plans and design documents approved by the City. This acknowledgment form letter must be posted prior to final approval of construction plans and design documents. The Developer shall provide all required plans and design documentation for review by the appropriate City

departments, franchise utility companies and governmental agencies. Construction plans shall be approved and all improvements shall either be completed and accepted by the city or a performance guarantee shall be posted with the City in accordance with section 27-513 to assure the completion of the improvements before approval of a final plat.

B. Initiation

1. Construction Plans and Documentation

Plans and documentation for improvements shall be prepared, sealed and signed by a professional engineer registered in the state of Arkansas. Plans and design documentation shall conform to the City engineering design standards.

2. Project Changes

Changes in the design or construction of a project or development, including changes in the plans or specifications, shall be submitted to the City for approval. The City shall be notified immediately (by telephone or other means) of field changes in order that a timely approval may be issued.

3. Project Coordination and Scheduling

No construction of improvements shall begin until a pre-work meeting with the consulting engineer, contractor and City personnel has been conducted and a construction schedule established. The City shall be notified of all interruptions in the work and changes to the schedule.

C. Construction Administration

1. Generally

The Developer shall provide for construction administration, including inspection, testing and final documentation, throughout the construction of the subdivision improvements. The City reserves the right to inspect the construction at all times.

2. Inspection and Testing

The City Engineer or service provider shall approve all materials, construction, and quality control testing employed in improvements. The Developer shall provide all inspection and testing except as otherwise stated herein.

3. Inspection by Developer

The Developer shall provide for inspection of improvements during construction. Inspection shall be accomplished under the supervision of the design engineer. The engineer will provide certification that all materials and construction conform to the approved plans and specifications.

4. Inspection by City

The construction of improvements is subject to inspections by the City at various stages including, but not limited to, connection to existing water and sanitary sewer systems, street subgrade, base course, surfacing and any other stage identified at the pre-work meeting. An inspection for a particular stage will not be conducted until the pertinent test data have been submitted. Scheduling of construction shall provide sufficient time for review of test data and scheduling inspections. A representative of the engineering firm responsible for the project shall be present at the inspections.

D. Record Documents

Record drawings (as-built plans), test reports, catalogue data, shop drawings and related information shall be provided by the developer's consulting engineer. Record drawings shall depict an accurate account of the constructed improvements. The consulting engineer shall provide written certification that constructed improvements conform to the approved plans and to the City's standard specifications and detail drawings. Where applicable, maintenance bonds shall be delivered with the record documents.

E. Acceptance by City

Acceptance of improvements by the City will be acknowledged in writing upon completion of all requirements. Initial acceptance will be for a temporary warranty period as specified in the City's design standards.

F. Effective Period of Approval

Approval of construction plans shall remain in effect for one year from the date of approval by the City. The Director of Engineering may extend this time for a period not to exceed one year upon request from the applicant. A request for extension must be made at least 30 days prior to the original expiration date.

27-333-7 Subdivision Improvement Agreements

The City may enter into an agreement with the applicant to provide the required improvements. All formal agreements entered into by the City will be with the Developer only.

27-334 Subdivision - Minor

27-334-1 Applicability

A. Applicability. This section applies to any of the following, unless subsection B applies:

1. Replat of an existing subdivision.

2. Any Single Tract Development. A "single tract development" means an application for approval of a building permit on one (1) parcel of land that is made of up one (1) or more platted or unplatted parcels and when right-of-way dedication, utility improvements, or drainage improvements are required to meet the master street plan requirements and City design standards and construction specifications.

3. Any subdivision with no more than five (5) lots (excluding a commercial subdivision as described below) when the plat complies with all provisions of these regulations.

4. Any plat involving only the adjustment of the boundary between two or more lots, and not involving a change in the number or average size of the lots.

B. Major Subdivision. The following require major subdivision plat review even if they fall within the thresholds established in subsection A, above:

1. Any proposed development that will generate at least 51 trips per day, as determined by the Trip Generation Manual (see references); or

2. Any plat that involves an extension of streets or significant utility extensions.

27-334-2 Initiation

An application for approval of a minor plat shall be filed with the Director. The minor subdivision shall be submitted for processing as a final plat. If there are buildings or structures on the lot at the time of final plat approval, the applicant shall provide a survey that shows the location of all buildings, structures, and parking areas along with the application for plat approval.

27-334-3 Review and Decision

Within ten days of the Director's action on the minor plat, the applicant or an aggrieved party may appeal decision to the Planning Commission. If an appeal is filed, the Planning Commission shall process the appeal using the procedures established in § 27-312, and shall approve, approve with conditions, or deny the minor plat application.

27-334-4 Standards

The minor plat shall be approved if it complies with all applicable standards of this Chapter.

27-334-5 Effective period of approval

An application for final plat approval expires if a final plat is not approved within two (2) years from the date that the final plat application was formally submitted.

27-334-6 Existing regulations compliance

The minor plat shall conform to all City regulations in effect at the time of the Director's or Planning Commission's action. However, any minor plat that has been approved or conditionally approved is exempt from any subsequent amendments to the zoning regulations or improvement requirements that would otherwise render that plat nonconforming if the effective period of approval is still in effect.

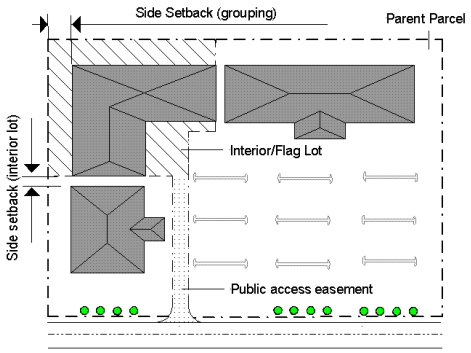
27-334-7 Replatting of existing easements.

The Planning Commission may vacate, abandon and relocate any existing platted easements for the benefit of the City or its owned utility functions (but not public utility easements) through the subdivision platting process. Prior to exercising such authority, the Planning Commission will request the recommendation of appropriate City departments and all franchised public utilities. Any developer desiring to replat an existing easement pursuant to this section must accurately identify, by legal description, dimensions and allowed usages, and the easement to be vacated, abandoned or relocated, in the proposed plat. Any error in the identification shall negate the replatting effect on the existing easement.

27-335 Commercial Subdivision – Limited Frontage

A. **Purpose**: This section permits the division of land into commercial lots, without the frontage normally required in the applicable zoning district and subject to adequate internal circulation, access, and parking. This allows flexibility in the subdivision and development of commercial parcels, while insuring that adequate on site and off site infrastructure is provided. Commercial Subdivision – Limited Frontage applications shall be filed as either Major Subdivisions (27-333) or Minor Subdivisions (27-334) based upon which qualifications the subdivision design triggers.

B. The parent parcel may be subdivided with individual buildings or structures internal to the parent parcel and that have frontage abutting a private street, if the subdivision plat conforms to the criteria established in subsections (b) through (e) below. For purposes of this subsection, the "parent parcel" means the original lot or parcel from which smaller lots or parcels are subdivided.



C. The parcels must be part of a common scheme of development,

D. Access must be internalized using the shared circulation system of the principal use or structures (such as a shopping center).

E. The subdivided lot must abut a private street, drive, or an easement that complies with the following standards:

1. The private street, drive, or an easement must provide direct, unobstructed access to a dedicated public street, and

2. The subdivided lot must be named as a beneficiary of the private street, drive, or an easement for purposes of public access; and

3. The private street, drive, or an easement must be recorded and submitted with the subdivision plat approval.

4. In order to provide access for vehicles, utilities and emergency vehicles, the private street, drive, or easement have a minimum paved surface width equal to the required width of a shared driveway (see § 27-503-14, Shared Driveways).

27-336 Written Interpretations

27-336-1 Authority.

The Director shall have authority to make all written interpretations concerning the provisions of the Unified Development Ordinance, the Official Zoning Map, and Master Land Use Plan.

27-336-2 Request for Interpretation.

A form to make a request for interpretation shall be made available to the public. Completed forms shall be submitted to the Director.

27-336-3 Interpretation by Director

The Director shall:

A. Review and evaluate the request in light of the Unified Development Ordinance, Zoning Map, the Comprehensive Plan, and any other relevant information;

B. Consult with other Staff as necessary and render an opinion;

C. The interpretation shall be provided to the applicant in writing.

27-336-4 Official Record.

The Director shall maintain an official record of interpretations which shall be available for public inspection during normal business hours.

27-336-5 Appeals.

Appeals to the Director's interpretation of the terms of Unified Development Ordinance may be made to the Board of Zoning Adjustment. Appeals to the Director's interpretation of the Master Land Use Plan or other maps shall be made to the Planning Commission.

27-337 Appeals and Variances

27-337-1 Appeals of Administrative Determinations

The Planning Commission shall hear appeals from the decision of the administrative officers in respect to the enforcement and application of this chapter, and may affirm or reserve in whole or in part the decision of the administrative officer.

A. **Process.** Any person, officer of the City, or other governmental agency not in agreement with a decision made by the Director may appeal the decision within 30 days of the decision by filing with the Director a notice of appeal along with a payment of the required appeal fee. The filing shall specify the reason for the appeal. The Director shall then transmit to the Planning Commission all the information on

the details of the decision and the reason for the appeal. This shall be done in advance of the next regularly scheduled meeting that is more than 30 days from the date of the appeal.

B. **Stay**. An appeal puts all processing of applications on hold until the appeal process is completed.

C. **Hearing**. The Planning Commission shall schedule a reasonable time for the hearing of the appeal or any other matter referred to it. Notice shall be provided, published, mailed and posted pursuant to Section 27-308.

D. Action. In exercising its powers, the Planning Commission, in conformity with the provisions of law, may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination.

E. Appeal. Appeal to the Board of Directors.

27-337-2 Variances

The Board of Zoning Adjustment shall hear requests for variances from the literal provisions of the zoning chapter in instances where strict enforcement of the zoning chapter would cause undue hardship due to circumstances unique to the individual property under consideration, and shall grant such variances only when it is demonstrated that such action shall be in keeping with the spirit and intent of the provisions of the zoning chapter. The Board of Zoning Adjustment shall not permit, as a variance, any use in a zone that is not permitted under the chapter. The Board of Zoning Adjustment may impose conditions in the granting of a variance to insure compliance and to protect adjacent property.

27-337-3 Board of Zoning Adjustment Procedures

The Board of Zoning Adjustment shall establish regular meeting dates, adopt rules for the conduct of its business, establish a quorum in procedure, and keep a public record of all findings and decisions. The public meeting requires a notice of the meeting date and agenda to be published in a newspaper of general circulation in the City of Fort Smith at least one (1) time seven (7) days prior to the meeting.

27-337-4 Submission Requirements

The Director shall prepare an application form specifying the information to be submitted.

A. **Application**. The applications shall contain at least the following information:

1. The legal description of the subject property;

2. The street address of the subject property;

3. A certified site plan drawn to scale (1" – 20', unless otherwise approved) showing existing and proposed structures;

4. A copy of the proposed or approved development plan if one has been prepared;

5. The literal provision from which a variance is requested and the provision desired in lieu of the literal provision;

6. The names and addresses of all property adjacent or contiguous to the petitioned property, including property across streets and intersections;
7. The names and addresses of all owners of the subject property and/or their agent; and the date that this petition shall be considered by the Board of Zoning Adjustment.

8. Application fee.

B. Notice. This information shall be used by the Director to mail notice to all persons listed in the application to inform them of the public hearing on the variance request, the street address of the property and the reason for the variance request.

27-337-5 Application and Review Procedures

A. Determination of Completeness. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

B. Neighborhood Meeting. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304, except the applicant shall notify adjacent and contiguous property owners. The applicant also shall notify any homeowners association, neighborhood association, or merchants association registered with the Planning and Zoning Department and located within 300 feet of the parcel. The Director may waive the requirement for a neighborhood meeting where:

1. The proposed variance shall allow development in compliance with surrounding land uses.

2. The variance request represents a minor change to the development requirements that shall have little or no effect on surrounding properties.

C. **Staff Review**. Following a Determination of Completeness, the Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. Following the completion of Staff review and required neighborhood meetings, the application shall be scheduled for a public hearing before the Board of Zoning Adjustment.

1. Notice shall be provided pursuant to Section 27-308.

27-337-6 Action

A **Action.** Following the public hearing, the Board of Zoning Adjustment may approve, approve as amended, or deny the application for variance.

B **Conditions.** The Board of Zoning Adjustment may impose conditions on the granting of a variance to insure compliance and to protect adjacent properties.

27-337-7 Appeal of Board of Zoning Adjustment Decisions

Decisions of the Board of Zoning Adjustment in respect to the above shall be subject to appeal only to a court of record having jurisdiction.

27-338 Home Occupations

27-338-1 Purpose

A. **Purpose.** The purpose of this section is to grant the Planning Commission the authority to allow residents in Residential Medium/High Density (R-3), Residential High Density (R-4), and Residential Historic (RH) zones the privilege of engaging in the limited pursuits of home occupations. This would allow residents to operate minimal business activities and offer limited professional services in their homes. The Planning Commission must determine that such activities shall not conflict with the purposes and objectives of this chapter as stated in Section 27-400. The Planning Commission in granting a home occupation request may impose any conditions and limitations it deems necessary for any particular case to preserve the spirit and intent of this section.

B. **Intent.** Home occupations, as allowed by this section, are intended to be clean, quiet, non-obtrusive activities operated on a limited basis with the business use incidental to the residential character of those areas.

27-338-2 Applicants

Applications for home occupations may be filed by the resident or an authorized agent for the resident. All applications shall be submitted to the Planning and Zoning Department for review by the Director and Staff. The application shall be accompanied by a processing fee in an amount to be established by the Board of Directors.

27-338-3 Submission Requirements

The Planning and Zoning Department shall prepare an application form specifying the information to be submitted with the application. An application for Home Occupation shall include at least the following information:

A. Identification of applicant as owner or tenant of the property. Where the applicant is not the owner, copy of a letter or other notice provided to the property owner describing the application for home occupation.

B. The legal description of the property.

C. The street address of the property.

D. The present zoning classification of the property.

E. The description of the proposed home occupation.

F. The names and the addresses of all persons listed on the current tax records as the owners of all property located within three hundred (300) feet of the site, including property across streets, alleys and intersections.

G. Any part of a restrictive covenant applicable to the property that appears to prohibit this home occupation request.

H. A questionnaire or series of questions about the nature and impact of the use.

I. Application fee.

J. Other information as identified on the application.

K. Other information as requested by the Director, other departments or agencies, the Planning Commission, or the Board of Directors.

27-338-4 Application and Review Procedures

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

B. **Neighborhood Meeting**. Even though a neighborhood meeting is not required, pursuant to Section 27-304, the Planning Commission and Planning and Zoning Staff would encourage the applicant to meet with property owners who may be affected by the proposed application.

C. **Staff Review**. Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. Following completion of Staff review the application shall be scheduled for a public hearing before the Planning Commission.

1. Notice shall be provided pursuant to Section 27-308. Notice shall be posted and mailed.

2. The Planning Commission shall consider the criteria listed in Section 27-338-4(F), below in making a recommendation.

E. **Planning Commission Consideration**. The Planning Commission shall review home occupation applications at its regularly scheduled monthly meeting, at which time interested persons may appear and offer information in support of or in opposition to the proposed home occupation.

F. **Minimum Requirements for Consideration**. The Planning Commission, in reviewing applications under this section, may consider the performing of a skill, talent, service or profession on a limited basis as a home occupation only if it complies with all of the following:

1. The area to be used for the home occupation is no greater than thirty (30%) percent of the living space of the residence.

2. There shall be no occupational activity on the premises outside of the main structure. An existing detached building which is utilized in conjunction with a home occupation shall be no larger than three hundred (300) square feet in size and can only be utilized for storage of materials.

3. No sign may be used in the operation of the business.

4. No outdoor display of any goods or services and no outdoor storage of materials or equipment are allowed.

5. The home occupation is required to be run only by the resident members of the household and shall not have any other employees, concessionaires or other operators or helpers whether such business is conducted on the premises or off the premises.

6. No sale of any retail or wholesale item or items is allowed on the premises unless they are considered as an accessory item of the approved business. Items drop-shipped or delivered by order may be permissible only after the Planning Commission has approved such operation.

7. Any business conducted on the premises shall be by appointment only, such that no more than two (2) patrons shall be at the business at any one time.

8. The Planning Commission shall have the authority to limit the operating hours of a business where it deems it necessary in order to assure compatibility with the residential neighborhood.

9. The resident shall not utilize the address of the property in any form of business advertising. This includes, but is not limited to, paid commercial advertising, telephone directory advertising, flyers, business cards, etc.

10. The home occupation shall not produce any fumes, odors, noise or any other offensive effects that are not normal to residential activity.

11. The home occupation shall not require the construction of any additional off-street parking areas which would detract from the residential character of the neighborhood. The Planning Commission in exceptional circumstances may allow the construction of additional off-street parking, but under no circumstances more than two (2) spaces in addition to those currently in use for residential purposes. All parking and maneuvering areas must be completely contained on private property. A parking site plan must be approved by the Planning Commission where a business would require customers coming to the property.

12. A commercial trash container shall not be utilized.

13. All vehicles shall be parked in compliance with Section 14-52, Section 14-54, and Section 14-55 of the Fort Smith Municipal Code.

G. **Determination**. The Planning Commission shall then make one (1) of the following determinations on the application:

1. Approve the application as submitted.

2. Approve the application as amended with modification(s).

3. Continue the application to a date certain.

4. Deny the application.

H. **Conditions**. The Planning Commission may impose conditions and restrictions on the property benefited by the home occupation use to reduce or minimize the injurious effects of the home occupation.

I. **Compatibility**. The Planning Commission is not required to approve any application for the operation of any home occupation which, in its opinion, is not compatible with the integrity of the neighborhood.

J. **Verification**. No license for the conduct of any business shall be issued until City Inspections verify compliance with all conditions set by the Planning Commission.

27-338-6 Conditions

In approving a home occupation application, the Planning Commission has granted an applicant the privilege of engaging in a designated business at the designated address. An approved home occupation and the license thereof cannot be transferred or relocated to another address. Approved home occupations and the license thereof cannot be transferred to any other person. Any approved home occupation which is discontinued for a period of twelve (12) months or more shall be deemed abandoned and the re-establishment of such business shall require the re-application and approval of the Planning Commission as required by this section.

27-338-7 Established Home Occupations

Legally established businesses, occupations or professions conducted at the time of the effective date of Unified Development Ordinance in a residential structure, or accessory building in a residential use area may be continued until that particular business is abandoned for a period of twelve (12) months provided that this shall not be construed to approve continuation of any activity constituting a common law nuisance, or activity prohibited by the statutes, ordinance or restricted covenants applicable to the area.

27-338-8 Appeals

The Board of Directors shall hear appeals from the decision of the Planning Commission in respect to the approval of applications as defined in this section. Any such decision may be appealed by any person having an interest therein by the filing of a written notice of appeal with the City Clerk before 5:00 p.m. on the tenth calendar day following the date of the decision of the Planning Commission. A fee in the amount established by Board of Directors shall be required at the time any appeal is filed in respect to a home occupation application ruling of the Planning Commission.

Sec. 27-338-9 Enforcement

A. This section shall be enforced by the City Administrator, or designated agent, who shall investigate complaints and routinely conduct inspections of occupations operating hereunder.

B. When any substantial violation is detected, the operator shall be notified in writing that the home occupation privilege and the privilege license are revoked and terminated effective fifteen (15) days from date of notice.

C. The operator may within fifteen (15) days of the date of the notice, file a notice of appeal to the Planning Commission, which shall hear such appeal in a regularly scheduled meeting.

D. In the event of such appeal, revocation and termination, where no violation of other ordinances is involved, enforcement action shall be delayed until ten (10) days following the decision of the Planning Commission.

E. Where such appeal is requested, the Planning Commission shall hear the facts and determine whether or not the privilege and license shall be terminated for failure to comply with the requirements of this section or other conditions set at the time of approval; or the Planning Commission may issue whatever other direction it may deem appropriate and consistent with the purposes of this section.

F. If all such operations have not ceased upon termination of the privilege, the owner of the home occupation shall be guilty of a misdemeanor and shall be subject to the penalties as delineated in Section 1-9 of this Code.

G. Any appeal to the decision of the Planning Commission pertaining to such revocation or termination shall be to a court of appropriate jurisdiction.

27-339 Vested Rights Determination

27-339-1 Purpose.

The purpose of this section is to establish regulations, procedures and standards to be used in the determination of vested land use rights. Where a land use right has been found to be vested, the property owner has permission to proceed with a properly approved and permitted project despite changes made to the Fort Smith zoning and subdivision regulations through the adoption of the UDO, or changes which may be made to these regulations in the future. Vested rights may be affected by changes in life, health or safety codes or other regulations.

A. This section is not intended to make a change in common law vested rights standards as established by Arkansas law.

B. This section is not intended to address legal nonconforming uses or structures, questions regarding permit enforcement, or development or uses in accordance with binding development agreements.

27-339-2 Applicability

The provisions of this section are applicable in all zoning districts.

27-339-3 Regulations

A. No person who has obtained a vested right in a development prior to the effective date of Unified Development Ordinance shall be required to re-apply or obtain additional approvals that were not contemplated at the time of the initial approval; provided, however, that no significant or substantial change may be made in any such development without prior approval from the City of Fort Smith pursuant to the terms of Unified Development Ordinance.

B. Any person claiming a vested right that is disputed by the Planning and Zoning Department shall substantiate the claim according to this section. The claimant has the burden of proof as to each finding necessary to establish a vested right.

C. Exceptions to vested rights determination for new or amended regulations related to issues of health and safety shall also be determined through this process.

27-339-4 Submission Requirements.

The Director shall prepare an application form specifying the information to be submitted. This shall include, at a minimum:

A. Claimant's and claimant's agent/attorney's name, address, phone number , e-mail address and fax number.

B. Description of the development claimed to be vested, including: location, parcel id or tax number, existing and proposed structures, uses, and all incidental improvements such as utilities, road and other infrastructure.

C. A list of all governmental approvals that have been obtained and/or approved, including those from state or federal agencies, and the date of each final approval. Copies of the approvals shall be attached to the application. If amendments or conditions were included with any approval, date on which the conditions were satisfied or are expected to be satisfied.

D. A list of any anticipated approvals and their anticipated dates of approval.

E. Specification of the nature and extent of the work or use in progress or completed, including date of commencement for each portion (e.g., grading, foundation, structural work, etc.); portions completed and date completed; status of each portion on date of claim; and amount of money expended on each portion whether completed or in progress.

F. A list of the amount and nature of any liabilities or expenditures incurred that are not described above, the date(s) incurred, and a list of any remaining liabilities to be incurred with the expected date.

G. A statement of the total expected cost of the development or use.

H. A statement of the anticipated completion date for the total development.

I. Other information as requested by the Director, other agencies or departments, the Planning Commission, or the Board of Directors.

J. Appropriate filing fee.

27-339-5 Application and Review Procedures

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

B. **Staff Review**. Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.

C. **Notice and Public Hearing**. Following completion of Staff review, the application shall be scheduled for a public hearing before the Planning Commission.

1. Notice shall be provided pursuant to Section 27-308. Notice shall be published in a newspaper of general circulation in the City of Fort Smith, mailed and posted.

2. The Planning Commission shall consider the criteria listed in Section 27-339-5(D), in making a recommendation.

D. **Factors to be Considered.**

1. Whether the claimant's actions were taken based on a validly-issued City permit or were undertaken prior to the enactment or applicability of City regulations requiring a permit; and

2. Whether the claimant performed substantial work and incurred substantial financial liabilities in good faith reliance on a building permit issued by the City, or did so prior to the enactment or applicability of City regulations requiring a permit; and

3. That the development for which the vested right is sought has not been abandoned; and

4. That the development or use for which the vested right is sought does not exceed the scope authorized by the terms and conditions of the City-issued permit relied upon (if any).

E. **Planning Commission Action**.

1. If the claim of vested rights is shown pursuant to the criteria in Section 27-339-5(D) above, the Planning Commission shall grant a vested rights determination to the extent the claim has been substantiated.

2. If additional information is necessary, the Planning Commission may continue the hearing to a date certain and instruct the applicant to provide the necessary information.

3. If the claim of vested rights cannot be substantiated, the Planning Commission shall deny the vested rights determination.

27-339-6 Effect

A final determination by the Planning Commission recognizing a claim of vested rights shall constitute acknowledgement that the development does not require any additional permit pursuant to City regulations, unless additional permits were specified by the vested approval.

A. No substantial change may be made in the development except in accordance with the City's approval and/or permit requirements.

B. If any approval upon which the vested rights determination was based lapses or is voided, either by its own terms or any provision of law, the acknowledgement made under this section shall automatically and without further action be null and void and the development or use shall become subject to the permit requirements of the City.

27-339-7 Appeals

Appeal of the Planning Commission's determination may be made to the Board of Directors. A fee in the amount established by Board of Directors shall be required at the time any appeal is filed in respect to a home occupation application ruling of the Planning Commission.

27-340 Amendment to the Text of the Unified Development Ordinance

27-340-1 Purpose

It may be necessary to periodically amend the provisions of the Unified Development Ordinance regulations. This section provides the method of amending the regulations.

27-340-2 Applicant

Any proposed text amendment may be initiated by the Board of Directors, Planning Commission, or Director. Any citizen of Fort Smith may request in writing to the Planning Commission that a proposed text amendment be considered. After review of such request from a citizen, the Planning Commission may initiate the proposed text amendment.

27-340-3. Review Procedures.

A. **Staff Report**. The Director or Planning Staff shall prepare a Staff report that reviews the proposed amendment in light of the Comprehensive Plan, Master Land Use Plan, Master Street Plan, other adopted plans, and the terms of the Unified Development Ordinance.

B. **Planning Commission Review**. The Director shall provide a copy of the report to the Planning Commission prior to the scheduled public hearing.

C. **Notice.** Notice of the proposed amendment shall be provided pursuant to Section 27-308. Notice shall be published in a newspaper of general circulation in the City of Fort Smith.

D. **Consideration.** The Planning Commission shall take into account all factors that it deems relevant, including consistency of the proposed amendment with the Comprehensive Plan, Master Land Use Plan, Master Street Plan, and other adopted plans, as well as whether the proposed amendment serves to carry out the purposes of the Unified Development Ordinance, and the factors established in Section 27-310.

E. **Planning Commission Action**. Following the public hearing, the Planning Commission may recommend approval, approval as amended, or denial of the proposed amendment.

1. The Planning Commission's recommendation shall be certified to the Board of Directors.

2. The Board of Directors shall consider the Planning Commission's recommendation at the second regularly scheduled meeting following action by the Planning Commission.

3. If the Planning Commission fails to make a recommendation on the amendment, it shall be deemed to have made a recommendation of denial. At that point the amendment shall be forwarded to the Board of Directors with no recommendation having been made.

F. **Action by the Board of Directors**. When the Planning Commission certifies a recommendation to the Board of Directors, the Board shall consider the criteria established in section 27-340-3(E) and take any action consistent with its authority, including:

1. Approving the amendment;

2. Approving the amendment as amended;

3. Denying the amendment;

4. Returning the application to the Planning Commission with specific questions or issues; or

5. Continue the application to a date certain.

27-340-4 Official Copy.

If amendments to the Unified Development Ordinance regulations are approved, the Director shall have appropriate changes made to the official copy of the regulations and make the updated information available.

27-340-5 Application Appeals Chart

Application	Appeal Entity		
	Planning Commission	Board of Directors	Court of Jurisdiction
Rezoning		X	X
Comp Plan & Master Land Use Amendment		X	X
Conditional Use		X	X
Home Occupation		X	X
Accessory Residential Use	X	X	X
Zoning Variance			X
Subdivision Variance		X	
Driveway Variance		X	
Preliminary Development Plan Amendment - Major			X
Preliminary Development Plan Amendment - Minor	X		X
Development Plan Review	X	X	X
Subdivision Plat – Major			X
Subdivision Plat – Minor	X		X
Text Amendment		X	X
Written Interpretation of UDO	X	X	X
Vested Rights		X	X

27-341 Planned Zoning District

27-341-1 Purpose

A. The process is deemed necessary to assure control of certain development while providing the applicant a means of gaining commitment without undue financial risk. Specifically, the purposes of this article are to encourage:

1. Comprehensive and innovative planning and design of diversified yet harmonious development consistent with the comprehensive plan;

2. Better utilization of sites characterized by special features of geographic location, topography, size, or shape;

3. Flexible administration of general performance standards and development guidelines;

4. Primary emphasis shall be placed upon achieving compatibility between the proposed development and surrounding areas to preserve and enhance the neighborhood through the use of enhanced site design, architecture, landscaping, and signage.

5. Developments that utilize design standards greater than the minimum required by the UDO.

27-341-2 Submission Requirements.

The director shall prepare an application form which specifies the information to be submitted in support of a planned zoning district. This shall include at a minimum:

1. Pre-application conference is required pursuant to Section 27-302.

2. Application Fee

3. A project booklet, submitted graphically and in narrative form, addressing as many items as applicable. In no instance shall the design requirements and development standards be less than those found in Chapters 27-200, 27-500, 27-600, and 27-700.

a. Reason (need) for requesting the zoning change and response to how the proposal fulfills the intent/purpose of the Planned Zoning District.
b. Current ownership information (landowner/applicant and representative of applicable) and any proposed or pending property sales.
c. Comprehensive description of the scope, nature, and intent of the proposal.
d. General project concept:
    i. Street and Lot Layout
    ii. Site plan showing proposed improvements
    iii. Buffer areas, screening, and landscaping
    iv. Storm water detention areas and drainage
    v. Undisturbed natural areas
    vi. Existing and proposed utility connections and extensions
    vii. Development and architectural design standards
    viii. Building elevations
    ix. Proposed signage (type and size)
e. Proposed development phasing and time frame
f. Identify land use designations.
g. Identify area and bulk regulations.
h. A chart comparing the proposed planned zoning district to the current zoning district requirements (land uses, setbacks, density, height, intensity, bulk and area regulations, etc.)
i. A chart comparing the proposed land uses and the zoning district(s) where such land uses are permitted.
j. A chart articulating how the project exceeds the UDO requirements (ex. increased landscaping, increased high quality materials on the façade, etc.).
k. Statement of how the development will relate to existing and surrounding properties in terms of land use, traffic, appearance, height, and signage.
l. A traffic study when required by the Engineering Department (consult with staff prior to submittal)
m. Statement of availability of water and sewer (state size of lines).

27-341-3 Application and Review Procedures

A. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303. An application is complete when all of the items required by the Unified Development Ordinance and on the application form are prepared and/or answered, and any required supplemental or additional applications (e.g., Comprehensive Plan Amendment) are submitted with the appropriate fee to the Planning and Zoning Department.

B. **Neighborhood Meeting**. The applicant shall comply with the requirements for a neighborhood meeting pursuant to Section 27-304.

C. **Staff Review**. Following a determination of completeness, the Staff shall review the application pursuant to Section 27-305.

D. **Notice and Public Hearing**. Following completion of Staff review and such neighborhood meetings as are required, the application shall be scheduled for a public hearing before the Planning Commission.

1. Notice shall be provided, published, mailed and posted pursuant to Section 27-308.

2. The Planning Commission may recommend a change in a zoning district category which constitutes a more restrictive change than requested by the applicant.

E. **Factors to be Considered.**

1. Rezoning Application -- Approval, approval as amended, or denial of the rezoning application shall be based upon consideration of the following factors:
    a. Compatibility with the Comprehensive Plan, Master Land Use Plan, Master Street Plan, and applicable area plans (e.g., corridor, neighborhood).

    b. Compatibility of the proposed development with the character of the neighborhood.

    c. The zoning and uses of adjacent and nearby properties, and the compatibility of the proposed future uses with those existing uses.

    d. The extent to which the proposed land use would increase or change traffic volume or parking demand in documented evidence or engineering data, road conditions, road safety, or create parking problems in combination with any improvements that would mitigate these adverse impacts.

e. The current availability of public utilities and services and the future capacity needed to adequately serve the proposed land use in combination with any improvements that would mitigate these adverse impacts.

f. That the application complies with all relevant ordinance requirements (for example 27-200, 27-500, 27-600, and 27-700).

2. Project Booklet -- The following criteria shall be considered when reviewing the project booklet:

a. Is the site capable of accommodating the building(s), parking areas and drives with the appropriate open space provided?

b. Does the plan provide for safe and easy ingress, egress and internal traffic circulation?

c. Is the plan consistent with good land use planning and site engineering design principles, particularly with respect to safety;

d. Are the architectural designs consistent with the City of Fort Smith policies and regulations and compatible with surrounding land use features;

e. Does the Plan represent an overall development pattern that is consistent with the Comprehensive Plan, Master Street Plan, Master Land Use Plan, and other adopted planning policies;

f. The required right-of-way dedication has been identified by the City Engineering Department.

g. All easements and utilities shall meet the requirements of the approving departments and agencies.

h. Articulate how the plan minimizes or mitigates the impact of increased traffic both in volume and vehicle size.

i. Articulate how the plan exceeds the UDO requirements. (ex. increased landscaping, increased high quality materials, etc.)

F. Planning Commission Action. Following the public hearing, the Planning Commission may recommend approval, approval as amended, or denial. The Planning Commission may also continue the application to a date certain.

1. The Planning Commission shall certify recommendations of approval or approval as amended to the Board of Directors for further procedure in conformity with A.C.A. tit. 14, ch. 56, subch. 4[§ 14-56-401 et. seq.]

   The Planning Commission may impose a time limit for the development as described in the project booklet.

2. The Planning Commission's certified recommendations shall be automatically placed on the agenda of the Board of Director's second regularly scheduled meeting of the month following action by the Planning Commission.

G. Appeal. Appeals from the decisions of the Planning Commission shall be as follows:

1. If the Planning Commission denies a rezoning request or project booklet so that no recommended action has been certified to the Board of Directors, the applicant shall have the right to file a request for review of the Planning Commission's decision with the Board of Directors.

2. The request for review shall be initiated in the following manner or be considered waived:

   a. Filing a written notice of such appeal with the office of the City Clerk, or the Clerk's designated agent, during normal business hours.

   b. Filed on or before the tenth calendar day following the Planning Commission meeting at which the proposed rezoning and/or preliminary plan hearing was held, or following the date on which the Planning Commission handed down its decision of non-recommendation, if the date of decision differs from the date of hearing. Notice of review of such decisions to the Board of Directors shall be provided to those persons who were provided postal notice of the original application. When filing the notice of appeal, the applicant shall pay the sum established by the Board of Directors to cover the cost of providing such legal notice.

3. The review shall take place at the second regularly scheduled meeting of the Board of Directors, following the request for review deadline. After the

filing of a notice of review, the request may not be withdrawn or the hearing date postponed without the approval of the Board of Directors.

4. If the Board of Directors denies the application the applicant shall not be permitted to reapply for the same or substantially same request for a period of one (1) calendar year from the date of action by the Board.

H. Action by the Board of Directors. When the Planning Commission certifies a proposed rezoning to the Board of Directors, the Board shall consider the criteria established in Section 27-330-6(E) and may take any action consistent with Sections 27-310 and 27-311, including:

1. Approve the application and preliminary plan;
2. Approve as amended the application and/or preliminary plan. The Board of Directors may impose a time limit for the development as described in the project booklet; or
3. Deny the application and preliminary plan.
4. Where there is new, material evidence presented at the Board of Directors meeting that was not available to the Planning Commission, the Board shall return the application and preliminary plan to the Planning Commission for reconsideration based on the new evidence.

I. Appeal. Appeal of the Board of Director's determination may be made to a court of record having jurisdiction.

J. Re-application. If the Board of Directors denies a proposed preliminary development plan or rezoning application certified to it with the Planning Commission's approval, the applicant shall not be permitted to re-apply for the same or substantially similar request for a period of six (6) months from the date of the action. No such rejected proposal shall be re-submitted, even after the expiration of six months for the consideration of the Board of Directors until it has been resubmitted first to the Planning Commission for consideration.

K. Determination of Re-application. The Director shall determine whether a re-filed application for rezoning meets the requirements of these provisions and whether the new application is the same or substantially similar to the previous application. The Director may consult with other departments, the Planning Commission, or the Board of Directors in making this determination. Appeals of the Director's determination decision may be made to the Planning Commission.

27-341-4 Amendments to the Planned Zoning District Plans

Once a PZD has been approved, significant changes may be made only after approval of a revised PZD. This requires re-submittal of the application through the same procedural requirements of the original application. Changes that are not considered significant pursuant to Section 27-341-4(a) may be approved at the Director's discretion. Disapproval of the changes may be appealed to the Planning Commission.

A. **Criteria.** For the purposes of this section, significant changes shall be determined by the Director. Significant changes shall mean any of the following, provided they are still within the approved standards of the applicable zoning district.

1. Increases in density or intensity of residential uses by more than 5%;

2. Increases in total floor area (entire plan) of all non-residential buildings by more than 5% or 5000 square feet, whichever is less;

3. Increases of lot coverage by more than 5%;

4. Changes to the architectural style that shall make the project inconsistent with previous approvals;

5. Changes in ownership patterns or stages of construction that shall lead to a different development concept;

6. Changes in ownership patterns or stages of construction that shall impose substantially greater volumes on streets and load capacities on public facilities;

7. Decrease of more than 5% in areas devoted to open space or the substantial relocation of such areas;

8. Changes in traffic circulation patterns that will affect traffic outside of the project boundaries;

9. Modification or removal of conditions and stipulations to the planned zoning district approval; or

10. Modifications that change, amend, or violate the terms of the Comprehensive Plan.

B. **Approval.** Any changes that seek to vary the standards of the applicable district and cannot be approved through paragraph (A) above must either be approved by the Planning Commission through a Planned Zoning District rezoning application or through a variance request to the Board of Zoning Adjustment.

C. **Appeal.** Appeal of the Director's determination of whether changes are significant may be taken to the Planning Commission, whose decision shall be final. No further action shall be taken to process the application pending the Planning Commission's determination.

27-400
Zoning Districts

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27-401 Comprehensive Plan/Zoning District Conversion Chart

A. **Chart.** The following chart describes the relationship between the Fort Smith Comprehensive Plan, zoning districts included in the Unified Development

Ordinance, and previously existing districts. This chart is included for descriptive purposes only. Specific conversions between previous and existing zoning districts are made through the Planning and Zoning Department pursuant to Section 27-336.

B.

Plan Classification	New Zoning District	Existing Zoning District
	Residential	
Rural		
	Residential Estate Three Acres (RE-3)	n/a
		O-1
Residential Detached		
	Residential Estate One Acre (RE-1)	O-1
	Residential Single Family Low Density (RS-1)	R-1-SF
	Residential Single Family Medium Density (RS-2)	R-2-SF
	Residential Single Family Medium/ High Density (RS-3)	R-3-SF
	Residential Single Family High Density (RS-4)	R-4-SF
	Residential Single Family Rowhouse and Zero Lot Line District (RS-5)	R-7-SF R-6
	Residential Historic (RH)	H-1
	RMU	n/a
Residential Attached		
	Residential Single Family – Duplex Low/Medium Density (RSD-2)	R-2-SFDP

Plan Classification	New Zoning District	Existing Zoning District
	Residential Single Family – Duplex Medium/High Density (RSD-3)	R-3-SFDP
	Residential Single Family – Duplex High Density (RSD-4)	R-4-SFDP
	Residential Multifamily Low Density (RM-2)	R-2-MF
	Residential Multifamily Medium Density (RM-3)	R-3-MF
	Residential Multifamily High Density (RM-4)	R-4-MF
	Residential Mixed Density (RMD)	R-5
	Residential Single Family Rowhouse and Zero Lot Line District (RS-5)	R-6 R-7-SF
	Residential Historic (RH)	H-1
	Mixed Use (MU)	n/a
	RMU	T-1
	Transitional	T-2 T-3
Mixed Use Residential		
	Mixed Use or combination of residential and commercial districts	
	RMU	n/a
	All Residential Districts	n/a
	All Commercial Districts when included as part of a Mixed Use Development in accordance with Section 27-417 C (3)	n/a

Plan Classification	New Zoning District	Existing Zoning District
	Commercial	
Commercial Neighborhood		
	Residential Mixed Use /Commercial Employment Mixed Use	n/a
	Residential Multifamily Low Density (RM-2)	R-2-MF
	Residential Multifamily Medium Density (RM-3)	R-3-MF
	Residential Multifamily High Density (RM-4)	R-4-MF
	Commercial Neighborhood Compatible (C-1)	C-1
	Commercial Light (C-2)	C-2
	Commercial Moderate (C-3)	C-3-P
	Transitional (T)	T-1 T-2 T-3
General Commercial		
	Residential Multifamily Low Density (RM-2)	R-2-MF
	Residential Multifamily Medium Density (RM-3)	R-3-MF
	Residential Multifamily High Density (RM-4)	R-4-MF
	Transitional (T)	T-1 T-2

Plan Classification	New Zoning District	Existing Zoning District
		T-3
	Commercial Employment Mixed Use/ Residential Mixed Use	n/a
	Commercial Neighborhood Compatible (C-1)	C-1
	Commercial Light (C-2)	C-2
	Commercial Moderate (C-3)	C-3-P TOS-1
	Commercial Regional (C-4)	C-4-P
	Commercial Heavy (C-5)	C-5 C-5-SP(A-D) TOS-2
	Commercial Downtown (C-6)	C-6 C-6- SPL
	Residential Historic (RH)	H-1
Mixed Use Employment		
	Commercial Employment Mixed Use (CEMU)	n/a
	Mixed Use (MU)	n/a
	All Residential Districts	n/a
	Transitional	T-1 T-2 T-3
	All Commercial Districts	n/a
Regional Center		

Plan Classification	New Zoning District	Existing Zoning District
	Commercial Employment Mixed Use (CEMU)	n/a
	Commercial Regional (C-4)	C-4-P
	Commercial Heavy (C-5)	C-5 C-5 SP (A-D)
	Commercial Downtown (C-6)	C-6 C-6-SPL
Industrial		
Office, Research and Light Industrial		
	Commercial Heavy (C-5)	C-5
	Industrial Light (I-1)	I-1-P I-2 I-2-SPL I-2-P
Industry		
	Industrial Light (I-1)	I-1-P I-2 I-2-SPL I-2-P
	Industrial Moderate (I-2)	I-3 I-32-O I-3-SPL
	Industrial Heavy (I-3)	I-4

Plan Classification	New Zoning District	Existing Zoning District
		I-42-O I-43-O I-4-SPL
	Other	
Park/Open Space/ Floodway	No districts - ▪ Floodway must be FEMA mapped ▪ Park/Open Space must be identified by owner as same	F-1 Any zoning classification O-1
Institutional	No districts, land use classifications identifies existing institutional uses as may be permitted in any district	All residential zones TOS-1 TOS-2 I-1 I-2 I-3 C-5 C-5 (SPL A-D) C-6- SPL H-1

27-402 Zoning Map

A. Adoption and Maintenance. The location and boundaries of the zoning districts established by the Unified Development Ordinance are shown on the City of Fort Smith Zoning Map, which is maintained by the Planning and Zoning Department. The zoning map shall be considered a part of the Unified Development Ordinance by reference. If there is any dispute regarding the zoning classifications of properties which are subject to the Unified Development Ordinance regulations, the zoning map kept by the Planning and Zoning Department shall govern.

B. Location of District Boundaries. The following rules shall apply in interpreting zoning district boundaries when the location of such boundaries are unclear:

1. Where zoning district boundary lines are indicated as following alleys, streets, or railroads, the boundary lines are located and measured along the center line of the street right of way, railroad, or alley.

2. Where a legal description is not available, zoning district boundary lines are generally intended to coincide with property lines. Where a boundary line coincides approximately, but not exactly, with a property line, the boundary line shall be considered to be the property line.

3. Streets or other rights-of-way that have been vacated fall into the same zoning district as the lots or parcels abutting both sides. If the lots or parcels were classified in different zoning districts before the vacation, the center line of the vacated right-of-way shall be interpreted as the boundary line between the districts.

4. Zoning boundaries which are indicated as approximately following the City or Extraterritorial Jurisdiction Boundaries shall be interpreted to follow such boundaries.

5. Questions about the location of zoning boundaries may be subject to interpretation by the Director pursuant to Section 27-336.

27-403 Land Use Regulations

A. Types of Uses Land, buildings and structures may be used for any of the listed uses indicated in the following zone classification as set forth by the City of Fort Smith Land Use Matrix (Chapter 27-400, Appendix A).

B. Classifications

1. Uses Permitted by Right. P indicates that a land use is permitted by right in the respective district. Such uses are subject to all other applicable regulations.

2. Uses Permitted Conditionally. C indicates that a land use is permitted conditionally, subject to the issuance of a conditional use permit.

3. Accessory Uses. A indicates that a land use is typically permitted as an accessory structure.

4. Blank. A blank cell in the Land Use Table indicates that a land use category is not allowed in the indicated district.

C. Unlisted Uses.

When uses arise that have not been classified, the following procedure shall be used to determine the proper classification for those uses:

1. The director of planning shall make an administrative decision as to the appropriate zones in which an unlisted use will be allowed.

2. Should an unlisted use be proposed to be located in the H-1 historic zone, the director of planning shall refer the request to the historic district commission for a recommendation prior to making an administrative decision.

3. The decision of the director of planning concerning the appropriate zones for an unlisted use may be appealed to the planning commission. The following procedure will be used for such appeals:

a. Upon request of the person wishing to appeal, the director of planning will refer the question of the location of an unlisted use to the planning commission for the commission's decision.

b. The appeal will contain a statement of facts concerning the nature of the use, including pertinent information such as types of sales anticipated, types of dwelling activities anticipated, whether enclosed or open storage accompanies the use, types of products manufactured or sold, and information about odor, noise, fumes, dust and toxic materials generated by the planned use. In addition, the appeal should contain information about the demand that will be placed on public utility services by the use.

4. Upon receiving the appeal, the planning commission will consider the nature of the proposed use and its compatibility with uses permitted in the zones for which the use is proposed and then will make a decision upon the request.

5. The decision of the planning commission on the appropriate zone of a new use may be appealed to the board of directors.

27-404 Lot Dimension Standards

A. Standards. Table 27-404-A lists the lot dimension standards that apply within all zoning districts. These are base standards only; other provisions within the Unified Development Ordinance may further limit development on a site. These standards apply to all uses unless expressly exempted.

Table 27-404-A Lot Dimension Standards

RESIDENTIAL DISTRICTS										
DISTRICT	**MIN. LOT SIZE**	**MIN. LOT WIDTH AT BUILDING LINE**	**MIN. STREET FRONTAGE**	**MAX LOT COVERAGE**	**SETBACKS**					**HEIGHT**
					FRONT	SIDE	STREET SIDE	REAR	SIDE/REAR ADJACENT TO:	
Residential Estate Three	3 acres	200 feet	50 feet	10%	50	25	50	25		35 feet
Residential Estate One	1 acre	100 feet	50 feet	20%	40	15	40	20		35 feet
SF Low Density	14,000 sf	100 feet	50 feet	30%	30	10	30	10		35 feet
SF Medium Density	10,500 sf	75 feet	50 feet	50%	30	7.5	30	10		35 feet
SF Medium/High Density	6,500 sf	60 feet	20 feet	60%	25	7.5	25	10		35 feet
SF High Density	5,000 sf	50 feet	20 feet	65%	20	5	20	10		35 feet
SF Row house and zero lot line	See Section 27-411.1									
SF - Duplex Low/Med Density	10,500 sf	75 feet	50 feet	50%	30	7.5	30	10		35 feet
SF-Duplex Med/High Density	6,500 sf	60 feet	20 feet	60%	25	7.5	25	10		35 feet
SF-Duplex high Density	5,000 sf	50 feet	20 feet	65%	20	5	20	10		35 feet
MF Low Density	10 du/acre 10,500 sf	75 feet	20 feet	60%	30	7.5	15	10	SF - 30	35 feet
MF Medium Density	20 du/acre 6,500 sf	60 feet	20 feet	65%	25	7.5	15	10	SF - 30	40 feet
MF High Density	30 du/acre 5,000 sf	50 feet	20 feet	70%	20	5	15	5	SF - 40	40 feet
Mixed Density	See Section 27-415									
Res Historic	5,000 sf	50 feet	20 feet	65%	10	5	10	5		35 feet
Res Mixed Use	Determined based on development plan approval									
TRANSITIONAL										
Transitional	5,000 sf	50 feet	50 feet	65%	20	5	20	10		35 feet
COMMERCIAL DISTRICTS										
Neighborhood Compatible	7,000 sf	50 feet	20 feet	60%	25	10	10	10		35 feet
Commercial Light	7,000 sf	50 feet	20 feet	60%	25	10	10	10		35 feet
Com. Moderate	12,000 sf	75 feet	n/a	60%	25	20	15	20	SF-30	35 feet
Com. Regional	40,000 sf	150 feet	n/a	80%	25	20	20	20	SF-100	45 feet
Com. Heavy	14,000 sf	100 feet	n/a	75%	25	20	15	20	SF-30	45 feet
Com. Downtown	Determined based on development plan approval									
Com. Mixed Use	Determined based on development plan approval									
INDUSTRIAL DISTRICTS										

Ind. Light	20,000 sf	100 feet	n/a	75%	25	10	15	10	SF-100	45 feet
Ind. Moderate	20,000 sf	100 feet	n/a	60%	50	25	50	20	SF-100	45 feet
Ind. Heavy	20,000 sf	100 feet	n/a	60%	100	50	100	20	non Ind.-100	45 feet

Some building heights may be adjusted on setback, see districts

Building separation shall be determined by current City building and fire codes.

B. Lot Area

1. Measurement. Lot area is measured as the amount of net land area contained within the property lines of a lot or parcel, not including right-of-way for streets.

2. Lots With Less Than Minimum Width.

   a. A single- or two-family house may be built on a lot that is smaller than required by the zoning district in which the lot is located, provided that the lot:

      1. Is located in a residential zone that permits the intended use;

      2. Is at least 50 feet wide and 5000 square feet in area; and

      3. The boundaries and dimensions were established by record on the effective date of the Unified Development Ordinance by a recorded plat of a subdivision.

      4. Shall comply with the residential parking regulations in Section 14-52 of the Fort Smith Municipal Code.

   b. On any non-conforming lot that is less than 60 feet wide at the building line or 6,500 square feet in area, new structures must conform to the bulk and area requirements of the residential zone which most nearly corresponds to the minimum lot dimensions of the substandard lot.

3. Utilities. Utilities using land or an unoccupied building covering less than 1,000 square feet of site area are exempt from the minimum lot area standards.

C. Setbacks

1. Measurement. Setbacks are measured as the unobstructed and unoccupied open area between the minimum setback and the property lines of the lot on which the structure is located, except as modified by the standards of this

section. Setbacks must be unobstructed from the ground to the sky except as specified in this section.

2. Along a private street, setback measurement shall start at a point 25 feet from the street centerline.

3. The following structures may encroach no more than three feet into the required setbacks if: (1) they are approved by the city building official, and (2) provided that they do not cross property lines or utility easements:

a. porches, decks landings, and stairs, provided they are for single story buildings and are not covered;

b. play equipment;

c. clothesline poles if not located in the setbacks adjacent to street right-of-way;

d. portable yard furniture;

e. overhangs, coves, and cornices as defined in the currently adopted building code may be allowed, provided they do not exceed 3 feet. The definition of overhang specifically excludes any exterior wall of any structure regardless of its elevation above ground level.

f. mechanical units;

g. area and security lighting fixtures and supports (poles);

4. Setback Averaging. Regardless of the minimum front or rear setback required by the underlying zoning district, front or rear setbacks may be adjusted to the average of the existing setbacks of the lots that are on both sides of the subject lot according to the following:

a. Only the setbacks on the lots that abut each side of the subject lot on the same side of the street as the subject lot may be used.

b. When one abutting lot is vacant or a corner lot, then the average is of the setback of the non-vacant lot and the zoning district minimum setback.

5. All residential lots on a cul-de-sac street that have frontage on the radius of the cul-de-sac are permitted to have a front yard setback of 20 feet.

6. Except as otherwise provided in individual zone districts and/or overlay districts, signs are to be exempt from setbacks and minimum requirements

provided they are erected in compliance with the provisions of the Fort Smith Sign Regulations.

7. Gasoline sales are permitted under the following conditions:

a. Pump islands shall be located a minimum of twenty (20) feet from any public right-of-way.

b. Island canopy overhangs shall be located at least ten (10) feet from any public right-of-way and must have a height of at least twelve (12) feet. Supportive posts of canopies shall be located at least twenty (20) feet from any public right-of-way.

8. The following structures are exempt from setback regulations as specified below:

a. Patios, terraces, walks, and driveways provided they are at grade, and do not have enclosed walls or a roof;

b. Ramps for the purpose of meeting accessibility requirements provided they do not have enclosed walls or a roof;

b. Fences;

9. Residential property platted prior to the effective date (August 12, 2009) of the UDO is permitted to use the 15' exterior side yard setback. This exemption does not include multifamily developments.

D. Height

1. Measurement. Building height is the mean vertical distance from the average ground level at the minimum front setback to the highest permanent part of the building or structure.

2. A structure may not be more than the maximum allowable feet high at the minimum setback lines, but for each additional foot of horizontal setback in excess of the minimum from all setbacks, the height may be increased by one foot. The height of a gabled end of a building shall be measured at the midpoint of the gable instead of the peak of the gable.

3. The following structures may be exempted from the height requirements in the various districts if they are not detrimental to neighboring property and are approved by the city building official:

a. chimneys;

b. vents;

c. flagpoles;

d. antenna, including dish antenna, for reception only of radio and television signals (transmitting antenna, towers, and other structures on which receiving antenna are located are not exempt from height or other setback requirements);

e. rooftop HVACR units (heating and air equipment);

f. penthouse as defined in the building code.

4. The construction, maintenance, or establishment of any building, tree, smokestack, chimney, flagpole, wire, tower, parapet or other structure or appurtenance thereto, which can constitute a hazard or obstruction to safe air navigation, landing, or take-off of aircraft near an airport, is prohibited. Regulations adopted by the Federal Aviation Agency (FAA) shall be minimum standards. No request shall be approved if it violates FAA standards.

27-405 Street Hierarchy

Street classification as used in the Unified Development Ordinance as follows, from lowest to highest:

A. Residential

B. Residential Collector, Restricted Parking

C. Residential Collector

D. Major Collector

E. Minor Arterial

F. Major Arterial

G. Boulevard

H. Industrial Street

For more information about street hierarchy, see the Fort Smith Master Street Plan.

RESIDENTIAL DISTRICTS

27-406 Residential Estate Three Acres (RE-3)

A. Purpose. To provide areas for very low density single family uses. This district is appropriate for locations where low density residential development is desired or where the lack of public facilities and services requires low intensity development. Development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RE-3 zoning is generally appropriate in the Rural, Mixed Use Residential, and Mixed Use Employment future land use classification of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the RE-3 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific uses not identified on the use matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

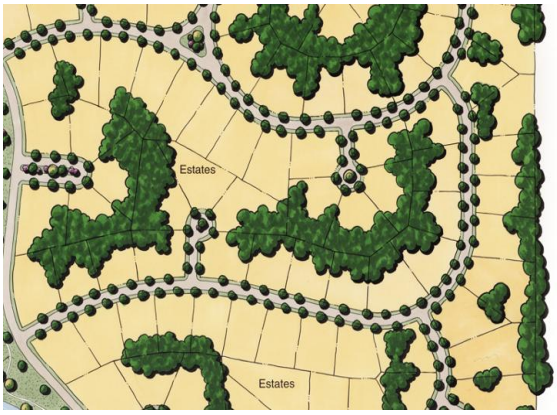
Density/ Min. Lot Size	Min. Lot Width at Bldg. Line	Maximum Lot Coverage	Minimum Street Frontage	Max Height
.33 du per acre/ (3 acres)	200 feet	10%	50 feet	35 feet(See 27-404(D))

Setbacks			
Front	**Side**	**Street Side/Corner**	**Rear**
50 feet	25 feet	50 feet	25 feet

1. Minimum building separation shall be 15 feet.

27-407 Residential Estate One (RE-1)

A. Purpose The purpose of the Residential Estate One Zoning District is to provide areas for low-density, large lot single family residential development. Property zoned RE-1 should include tracts that abut or are in close proximity to existing or approved large-lot single family development, making RE-1 an appropriate transition between rural and suburban uses.



Where public facilities and services are not yet available, development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RE-1 zoning is appropriate in the Residential Detached, Mixed Use Residential, and Mixed Use Employment future land use classification of the Master Land Use Plan.

B. Uses

Permitted, Conditional and Accessory uses in the RE-1 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
1 du/acre (1 acre)	100 feet	20%	50 feet	35 feet(See 27-404(D))

Setbacks

Front	Side	Street Side/Corner	Rear
40 feet	15 feet	40 feet	20 feet

1. Minimum building separation shall be 15 feet.

27-408 Residential Single Family Low Density (RS-1)

A. Purpose. The purpose of the Single Family Low Density zoning district is to maintain, protect, and provide opportunities for low density residential

development in spacious environments, along with compatible limited public and institutional uses. RS-1 zoning is appropriate in the Residential Detached, Mixed Use Residential, and Mixed Use Employment category of the Master Land Use Plan.

B. **Land Uses.** Permitted, Conditional and Accessory land uses in the RS-1 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. **Area and Bulk Regulations**

Density/ Min. Lot Size (s.f.)	Min. Lot Width at Bldg Line	Max Lot Coverage	Min. Street Frontage	Max Height
3 du per acre/ 14,000 s.f.	100 feet	30%	50 feet	35 feet(See 27-404(D))

Setbacks

Front	Side	Street Side/Corner	Rear
30 feet	10 feet	30 feet	10 feet

1. Minimum building separation shall be 15 feet.

27-409 Residential Single Family Medium Density (RS-2)

A. **Purpose.** To provide for detached homes in low-to-medium density single family neighborhoods where adequate public services and facilities are available. The RS-2 zoning district is appropriate in suburban areas and primarily applies to the Residential Detached, Mixed Use Residential, and Mixed Use Employment category of the Master Land Use Plan.

B. **Land Uses.** Permitted, Conditional and Accessory land uses in the RS-2 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. **Area and Bulk Regulations**

Density/ Min. Lot Size	Min. Lot Width at Bldg	Max Lot Coverage	Minimum Street	Max Height

(s.f.)	Line		Frontage	
4 du per acre/ 10,500 s.f.	75 feet	50%	50 feet	35 feet(See 27-404(D))

Setbacks

Front	Side	Street Side /Corner Setback	Rear
30 feet	7.5 feet	30 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-410 Residential Single Family Medium/High Density (RS-3)

A. Purpose. To provide for medium-to-high density, compact single family detached development on new sites or as infill construction. Adequate public services and facilities shall be available with sufficient capacity to serve the proposed development. This zoning district is intended to serve as a transition between the lower density single family districts and the multifamily or commercial districts. RS-3 zoning is appropriate in urban and suburban areas and primarily applies to the Residential Detached, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the RS-3 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size (s.f.)	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
6.7 du per acre/ 6,500 s.f.	60 feet	60%	20 feet	35 feet (see 27.404(D))

Setbacks

Front	Side	Street Side /Corner	Rear
25 feet	7.5 feet	25 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-411 Residential Single Family High Density (RS-4)

A. Purpose. To provide very dense single family detached housing as either new or infill development. The RS-4 Zoning District is appropriate in higher density residential areas near the downtown, in mixed use/density areas, and as a transitional buffer zone between lower density residential development and multifamily or commercial uses. The RS-4 Zoning District corresponds to the Residential Detached, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the RS-4 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size (s.f.)	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
8.7 du per acre/ 5,000 s.f.	50 feet	65%	20 feet	35 feet/ (see 27.404(D))

Setbacks

Front	Side	Street Side/Corner	Rear
20 feet	5 feet	20 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-___ Residential Single Family Rowhouse and Zero Lot Line District (RS-5)

A. **Purpose.** The principal purpose to achieve a more efficient use of land as compared with the typical single-family development, making available needed housing at a more affordable cost. By placing the dwelling against one (1) or more property lines, the outdoor space is essentially grouped and utilized to its maximum benefit to provide high density attached homes, including multi-story residential buildings in those areas where such building types already exist or where such buildings would be consistent with an area's established development pattern and character. The use of this district is equally appropriate in portions of the city as a transitional or buffer zone between low density residential districts, commercial district, industrial districts, or major transportation arteries, or other uses that are not compatible with a low density residential environment. RS-5 zoning is appropriate in urban areas in the Residential Attached, Residential Detached, Mixed Use Residential, or Mixed Use Employment categories of the Master Land Use Plan.

B. **Land Uses.** Permitted, Conditional and Accessory land uses in the RS-5 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
2,200 s.f./ Row Houses 5,000 s.f./ Zero Lot Line Dwellings	22 feet/ Row Houses 50 feet/ Zero Lot Line Dwelling Units	60%	20 feet	35 feet (See 27-404(D))

Setbacks

Front	Side	Street Side/Corner	Side/Rear Adjacent to RS/RSD Dist/Development	Rear
20 feet	See Below	20 feet/ Row Houses 15 feet/ Zero Lot Line Dwellings	10 feet	20 feet

1. **Regulations for conventional single family dwelling construction shall be the same as in the RS-4 residential district.**

D. Regulations for Row Houses and Zero Lot Line Developments

1. Mutual access easements and utility easements may be permitted in row house and zero lot line developments. When provided, mutual access easements shall provide automobile access to individual units and utility companies.

2. Minimum Side Yard.

   a. Row Houses: No internal side yard setback required on common property lines. For exterior outside walls of the end units, side-yard setback requirements apply.

   b. Zero Lot Line: No minimum setback on one side of the lot and ten (10) feet on the opposite side of the lot.

3. Zero Lot Line on Zero Setback Side. When a zero lot line dwelling unit is built on the property line on one side of the lot, this side of the structure shall contain no openings, appendages, or overhangs. Atriums or courts may be permitted on the zero setback side when the court or atrium is enclosed by three walls of the dwelling unit and a wall of at least seven feet in height is provided on the zero lot line. The wall shall be constructed of the same material(s) as the exterior walls of the unit.

4. No structures shall be permitted in the front yard unless as an element of permissible landscaping.

5. Where lots have double frontage running through from one (1) street to another, the required front yard shall be provided on both streets.

6. A chimney of not more than ten (10) feet in width, as well as eaves, cornices, fire separation wing walls and other architectural embellishments may extend into the required front or side yard setback a maximum of three (3) feet.

7. Alleys may be permitted in zero lot line developments. When provided, alleys shall provide automobile access to individual units and utility companies. Where alleys are provided the minimum front yard setback shall be fifteen (15) feet. In all other cases the front yard shall be twenty (20) feet.

8. Maintenance Easement.

    a. A perpetual four (4) foot maintenance easement shall be provided on the lot adjacent to the zero lot line property line. This easement shall be kept clear of structures, with the exception of free standing walls and/or fences. This easement shall be shown on the plat and incorporated into each deed transferring title to the property. The wall shall be maintained in its original color and treatment unless otherwise agreed to in writing by the two affected lot owners.

    b. Roof overhangs may encroach on the easement of the adjacent lot by a maximum of 24 inches, but the roof shall be designed so that water run-off from the dwelling's placement on the lot line is limited to the easement area.

9. Zero Lot Line Adjacent to Single Family Residential. In no case shall zero lot line dwelling units be built closer than ten (10) feet to the lot line of a lot that is zoned in any RS or RSD classification.

10. The Minimum Rear Yard setback shall be twenty (20) feet for row houses, and zero lot line homes. Such space however, may be used for parking purposes and open carports.

11. Maximum Number of Dwelling Units. A maximum of eight (8) dwelling units shall be permitted in each row of row houses. When an end unit does not side on a street, an open space or court of at least twenty (20) feet in width shall be provided between any adjacent structures.

12. Facing Courtyard. Where row house lots and dwelling units are designed to face an open area or common access court rather than a street, this area shall be a minimum of forty (40) feet in width and shall not include vehicular drives or parking areas.

13. Row House Side Lot Lines. Row Houses shall be constructed up to the lot lines for lots without side yards. No windows, doors, or other openings shall face a side lot line, except that the outside wall of the end units may contain such openings.

27-4__ Residential Single Family - Duplex Low/Medium Density (RSD-2)

D. Purpose. To provide for attached and detached homes in low-to-medium density neighborhoods where adequate public services and facilities are available. The RSD-2 zoning district is appropriate in suburban areas and primarily applies to the Residential Attached, Mixed Use Residential, and Mixed Use Employment category of the Master Land Use Plan.

E. Land Uses. Permitted, Conditional and Accessory land uses in the RSD-2 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

F. Area and Bulk Regulations

Density/ Min. Lot Size (s.f.)	Min. Lot Width at Bldg Line	Max Lot Coverage	Minimum Street Frontage	Max Height
4 dwellings per acre/ 10,500 s.f.	75 feet	50%	50 feet	35 feet(See 27-404(D))

Setbacks

Front	Side	Street Side /Corner Setback	Rear
30 feet	7.5 feet	30 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-4__ Residential Single Family - Duplex Medium/High Density (RSD-3)

D. Purpose. To provide for medium-to-high density, compact single family detached and duplex development on new sites or as infill construction. Adequate public services and facilities shall be available with sufficient capacity to serve the proposed development. This zoning district is intended to serve as a transition between the lower density single family-duplex districts and the multifamily or commercial districts. RSD-3 zoning is appropriate in urban and

suburban areas and primarily applies to the Residential Attached, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

E. **Land Uses.** Permitted, Conditional and Accessory land uses in the RSD-3 district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

F. **Area and Bulk Regulations**

Density/ Min. Lot Size (s.f.)	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
6.7 dwellings per acre/ 6,500 s.f.	60 feet	60%	20 feet	35 feet (see 27.404(D))

Setbacks

Front	Side	Street Side /Corner	Rear
25 feet	7.5 feet	25 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-4__ Residential Single Family - Duplex High Density (RSD-4)

C. **Purpose.** To provide very dense single family detached and duplex housing as either new or infill development. The RSD-4 Zoning District is appropriate in higher density residential areas near the downtown, in mixed use/density areas, and as a transitional buffer zone between lower density residential development and multifamily or commercial uses. The RSD-4 Zoning District corresponds to the Residential Attached, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

D. **Land Uses.** Permitted, Conditional and Accessory land uses in the RSD-4 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. No more than one principal structure may be erected on each defined lot.

C. **Area and Bulk Regulations**

Density/	Min. Lot	Max Lot	Minimum	Max Height

Min. Lot Size (s.f.)	Width at Bldg. Line	Coverage	Street Frontage	
8.7 dwellings per acre/ 5,000 s.f.	50 feet	65%	20 feet	35 feet/ (see 27.404(D))

Setbacks

Front	Side	Street Side/Corner	Rear
20 feet	5 feet	20 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-412 Residential Multifamily Low Density (RM-2)

A. Purpose. To provide low-to-medium density detached and attached single family homes and duplexes in areas characterized by similar development. The RM-2 zone is appropriate for suburban areas within the Residential Attached, Commercial Neighborhood, General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan, and may serve as a transition or buffer zone between single family development and higher density multifamily or commercial land uses.

B. Land Uses. Permitted, Conditional and Accessory uses in the RM-2 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. With the exception of multifamily developments, no more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width at Bldg Line	Max Lot Coverage	Minimum Street Frontage	Max Height
10 du per acre/ 10,500 s.f.	75 feet	60%	20 feet	35 feet (see 27-404(D))

Setbacks

Front	Side	Street Side/ Corner	Side/Rear Adjacent to RS district/development	Rear
30 feet	7.5 feet	15 feet	30 feet	10 feet

1. Minimum building separation shall be 10 feet.

27-413 Residential Multifamily Medium Density (RM-3)

A. Purpose. To provide for medium density attached homes, including multi-unit residential buildings in areas where such development already exists or is planned for the future. The RM-3 Zoning District is appropriate in urban areas within the Residential Attached, Mixed Use Residential, Mixed Use Employment, Commercial Neighborhood, and General Commercial land use categories of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the RM-3 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. With the exception of multifamily developments, no more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
20 du per acre/ 6,500 s.f.	60 feet	65%	20 feet	40 feet (See 27-404(D))

Setbacks

Front	Side	Street Side/Corner	Side/Rear (Adjacent to RS dist/development)	Rear
25 feet	7.5 feet	15 feet	30 feet	10 feet

1. Minimum building separation shall be 10 feet.

E. Multifamily developments shall conform to Design Guidelines of chapter 27-600 et seq.

27-414 Residential Multifamily High Density (RM-4)

D. Purpose. To provide high density attached homes, including multi-story residential buildings in those areas where such building types already exist or where such buildings would be consistent with an area's established development pattern and character. RM-4 zoning is appropriate in urban areas in the Residential Attached, Mixed Use Residential, Mixed Use Employment, Commercial Neighborhood, and General Commercial categories of the Master Land Use Plan.

E. Land Uses. Permitted, Conditional and Accessory land uses in the RM-4 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. With the exception of multifamily developments, no more than one principal structure may be erected on each defined lot.

F. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width at Bldg. Line	Max Lot Coverage	Minimum Street Frontage	Max Height
30 du per acre/ 5,000 s.f.	50 feet	70%	20 feet	40 feet (See 27-404(D))

Setbacks				
Front	**Side**	**Street Side/Corner**	**Side/Rear Adjacent to RS Dist/Development**	**Rear**
20 feet	5 feet	15 feet	40 feet	5 feet

1. Minimum building separation shall be 10 feet.

E. Multifamily developments shall conform to Design Guidelines of chapter 27-600 et seq.

27-415 Residential Mixed Density (RMD)

A. Purpose. To provide a mixture of housing styles and products which are consistent with an area's established development pattern and neighborhood character. Mixed Density Residential land uses should also be located convenient to commercial uses and employment centers. The RMD Zoning District is appropriate in urban areas within the Residential Attached, Mixed Use Residential, or Mixed Use Employment land use categories of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory uses in the RMD district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336. With the exception of apartment complexes, no more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size (detached)	**Min. Lot Width at Bldg. Line**	**Max Lot Coverage**	**Minimum Street Frontage**	**Max Height**
6.7 du per acre/ 6,500 s.f.	60 feet	60%	20 feet	35 feet (See 27-404(D))

Setbacks

Front	**Side**	**Street Side/Corner**	**Side/Rear (Adjacent to RS dist/development)**	**Rear**
25 feet	7.5 feet	25 feet	25 feet	10 feet

Notes

1. Minimum parcel for rezoning to RMD: 2 acres
2. Maximum density for multifamily dwellings: 30 dwelling units per acre
3. Minimum building separation shall be 10 feet.

D. District Standards

1. Single family residential dwellings constructed in an RMD zone shall be subject to the following minimum requirements:

   a. The principal structure must have a minimum width of twenty (20) feet.

   b. The principal structure(s) must have a minimum pitched roof of three in twelve or fourteen degrees.

   c. The principal structure(s) shall be sited on the lot, so that the front door or the main entry of the home is oriented to the front of the lot.

   d. The principal structure must be placed and anchored upon permanent foundations that consist of concrete footings and piers or perimeter foundations.

   e. The principal structure must be completely underpinned around the entire perimeter with masonry materials.

   f. The principal structure must have all transport elements (such as wheels, axles, trailer, or transport hitches and exterior lighting systems) which are attached for highway use removed.

   g. All exterior finish materials of the principal structure shall be compatible with the neighborhood.

E. Regulations for Row Houses and Zero Lot Line Developments

1. Mutual access easements and utility easements may be permitted in row house and zero lot line developments. When provided, mutual access easements shall provide automobile access to individual units and utility companies.

2. Minimum Side Yard.

   a. Row Houses: No internal side yard setback required on common property lines. For exterior outside walls of the end units, side-yard setback requirements apply.

   b. Zero Lot Line: No minimum setback on one side of the lot and ten (10) feet on the opposite side of the lot.

3. Zero Lot Line on Zero Setback Side. When a zero lot line dwelling unit is built on the property line on one side of the lot, this side of the structure shall contain no openings, appendages, or overhangs. Atriums or courts

may be permitted on the zero setback side when the court or atrium is enclosed by three walls of the dwelling unit and a wall of at least seven feet in height is provided on the zero lot line. The wall shall be constructed of the same material(s) as the exterior walls of the unit.

4. Maintenance Easement.

   a. A perpetual four (4) foot maintenance easement shall be provided on the lot adjacent to the zero lot line property line. This easement shall be kept clear of structures, with the exception of free standing walls and/or fences. This easement shall be shown on the plat and incorporated into each deed transferring title to the property. The wall shall be maintained in its original color and treatment unless otherwise agreed to in writing by the two affected lot owners.

   b. Roof overhangs may encroach on the easement of the adjacent lot by a maximum of 24 inches, but the roof shall be designed so that water run-off from the dwelling's placement on the lot line is limited to the easement area.

5. Zero Lot Line Adjacent to Single Family Residential. In no case shall zero lot line dwelling units be built closer than ten (10) feet to the lot line of a lot that is zoned in any RS classification.

6. The Minimum Rear Yard setback shall be twenty (20) feet for row houses, and zero lot line homes.

7. Maximum Number of Dwelling Units. A maximum of eight (8) dwelling units shall be permitted in each row of row houses. When an end unit does not side on a street, an open space or court of at least twenty (20) feet in width shall be provided between any adjacent structures.

8. Facing Courtyard. Where row house lots and dwelling units are designed to face an open area or common access court rather than a street, this area shall be a minimum of forty (40) feet in width and shall not include vehicular drives or parking areas.

9. Row House Side Lot Lines. Row Houses shall be constructed up to the lot lines for lots without side yards. No windows, doors, or other openings shall face a side lot line, except that the outside wall of the end units may contain such openings.

F. Multifamily developments shall conform to Design Guidelines of chapter 27-600 et seq.

27-416 Residential Historic (RH)

A. Purpose. To preserve and promote the educational, cultural and general welfare of the public through the preservation, protection, and restoration of the traditional architectural character and historic significance of structures located in the RH District. The RH Zoning District is appropriate in the Residential Attached, Residential Detached, General Commercial, Mixed Use Residential, and Mixed Use Employment of the Master Land Use Plan.

1. No property shall be zoned as Residential Historic before it has been recommended to be part of a historic district by the Historic District Commission. Before an application for rezoning can be filed the property must be established by the governing body as a historic district.

2. See also Section 19-61 et seq. of the Fort Smith Municipal Code.

B. Land Uses

Permitted, Conditional and Accessory uses in the RH district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336. With the exception of multifamily developments, no more than one principal structure may be erected on each defined lot.

C. Area and Bulk Regulations

Density/ Min. Lot Size	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height
8.7 du per acre/5,000 s.f.	50 feet	65%	20 feet	35 feet (See 27-404(H))

Setbacks

Front Setback	Side Setback	Street Side/Corner Setback	Rear Setback
10 feet	5 feet	10 feet	5 feet

1. Minimum building separation shall be 10 feet.

D. District Standards

1. No property shall be zoned or rezoned to this classification unless the property has been (prior to the rezoning) recommended as an historic district by the Historic District Commission and established as a historic district by the Board of Directors.

2. All properties zoned RH shall be subject to the architectural design review requirements set forth in the ordinance creating such property as a historic district.

3. Parking Requirements.

    a. The Historic District Commission shall review all parking plans to consider the surface paving material, site screening, access drives, and landscape/streetscape elements of the plan.

    b. A parking lot shall only be allowed in the historic district to serve a permitted use that is located in the district.

4. Signs. The Historic District Commission shall review each "business sign" application to determine its architectural and aesthetic compatibility with the Historic District. The purpose of their review is to assure the preservation of the authentic historic character of the district as nearly as possible. In addition to the review by the Historic District Commission and their determination of the appropriateness of business signs, the following criteria shall govern all business signs in the district:

    a. Permitted signs.

        1. Business signs as defined in section 27-200 shall be permitted in the Historic District. A business sign shall not exceed six (6) square feet in area.

        2. Banners, as follows:

            a. May not exceed an area of six (6) square feet in total area;

            b. May be displayed only on the outside walls of buildings and may not obscure windows, doors or any other architectural feature;

            c. Display time is limited as determined by the Historic District Commission;

d. Design elements must be approved by the Historic District Commission;

e. A permit must be obtained by application to the City Building Department. The application must include written approval by the Historic District Commission.

b. Exempted signs. The following signs may be placed by the appropriate entities without obtaining a sign installation permit or certificate of appropriateness.

1. Any official sign installed by a federal, state or local governing entity for purposes of maintaining the public health, safety or welfare.

2. Real estate signs (not exceeding six (6) square feet).

c. Prohibited signs. The following types of signs and similar devices shall be prohibited within the Historic District:

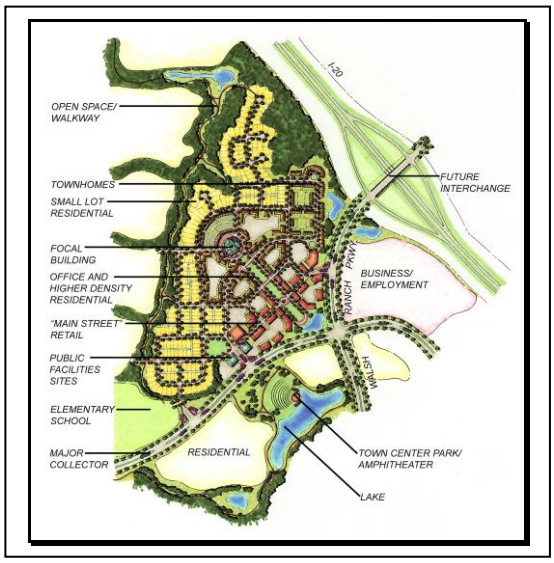
1. No signs that flash, blink, revolve, or are otherwise in motion shall be permitted. No visible bulbs, neon tubing, luminous paints, or plastics shall be permitted as part of any sign.

2. Portable signs, internally illuminated signs, outdoor advertising signs, inflatable signs and balloons, beacons, streamers, pennants, and similar devices used to direct attention are prohibited.

d. Historical markers. Historical markers and building markers may be permitted within the District provided the location, size and materials are approved by the Historic District Commission.

27-417 Residential Mixed Use/Commercial Employment Mixed Use (RMU/CEMU)

A. Purpose. To provide for residential and commercial mixed use developments to serve the community and provide flexibility and innovation in layout and development designs. The RMU Zoning District is appropriate for the Commercial Neighborhood, General Commercial, Mixed Use Residential and Residential Attached classifications of the Master Land Use Plan. Where only single family detached development is proposed, the RMU District is appropriate in a Residential Detached Master Land Use Plan classification. The CEMU district is appropriate in the Mixed Use Employment, Commercial Neighborhood, General Commercial classifications of the Master Land Use Plan.



B. Minimum Development Size. Mixed use development sites shall be two (2) acres in size unless two or more of the following conditions are met:

1. The proposed Mixed Use development site is consistent with the City of Fort Smith's Comprehensive Plan and Master Land Use Plan.
2. The site is contiguous to or across the street from a location that has already been developed as a mixed use project pursuant to the Unified Development Ordinance regulations. As such, the expansion of the Mixed Use development would contribute to the maintenance of the amenities and land values of the neighboring properties.
3. The site is contiguous or across the street from property that has already been developed for commercial purposes and would not create conditions leading to strip (linear) commercial uses or encroachment into an established residential area, or
4. The land use would not impose any adverse impacts on the public facilities, utilities, transportation, or storm drainage systems of adjoining properties.

C. Permitted Uses

1. Permitted uses and development patterns shall be established in the development plan and approved in the ordinance governing the creation of the district. Permitted uses and development patterns shall be in compliance with the purpose statement in Section 27-417(A), above.
2. Specific uses include land uses designated as permitted, accessory, or conditional uses in any of the Single Family, Multi-Family, or Commercial Districts unless otherwise limited by these regulations. The Planning Commission may recommend and the Board of Directors approve limitations, restrictions, or exclusions of any specific land use, structure, or building type that is not in conformance with the area surrounding the district or Section 27-417(A), above.
3. Residential Mixed Use Districts shall include a minimum of 60% of the overall development, as measured by the gross floor area, in residential uses.
4. Commercial/Employment Mixed Use Districts shall include a minimum of 60% of the overall development, as measured by gross floor area, in commercial/office uses.
5. In the Commercial/Employment Mixed Use Districts, institutional, cultural, entertainment, and recreational uses may be used on a 1 to 1 basis to reduce the commercial/office required minimum floor area by up to 25%.

D. Design Guidelines

All Mixed Use Developments shall conform to the Design Guidelines of Chapter 27-600 et seq.

E. Minimum Lot Area, Residential Density, Yard Setback Requirements, and Height

1. Minimum Lot Area. Minimum lot areas shall be established within the individual Mixed Use Districts through the approval of the development plan. Residential lots at the perimeter of the district must be within 20% of the size of abutting residential lots unless they are separated by an arterial or higher classification roadway.
2. Residential Densities.
    a. Residential densities shall be established within the individual Mixed Use Districts through the approval of the development plan. Residential densities shall not exceed 30 dwelling units per acre.
    b. Perimeter residential densities shall be within 10% of adjoining residential densities unless the adjoining lots are separated by an arterial or higher classification roadway.
3. Yard Setback Requirements.

a. Residential. All buildings and structures shall be set back from any public or private street or road right-of-way lines.

1. Front Yard Setback. There shall be a minimum front yard setback of 15 feet from any public or private street or road right-of-way line.

2. Side and Rear Yard Setbacks. Side and rear yards for buildings or structures shall be:

a. 10 feet -where the building or structure is no more than 3 stories high.

b. 10 feet plus one additional foot for each additional foot of height of a building or structure over 3 stories.

b. Commercial. Commercial and office setbacks shall be established in the individual Mixed Use Districts through the approval of the development plan.

4. Height. The height of all buildings shall be established in the individual Mixed Use Districts through the approval of the development plan.

F. Parking. Parking shall be provided pursuant to the requirements of Chapter 27-600.

1. Parking shall not be located in landscaped areas adjacent to the sidewalk or within the front yard setback*s* of any lot.

2. Where buildings have more than one category of land use, the number of spaces required shall be 80% of the sum of the required spaces for each category of land use.

G. Open Space

1. At least twenty percent (20%) of the land included in the total project area shall be set aside as permanent and usable open space.

2. The open space shall be maintained by a homeowners association or under other appropriate ownership as approved by the City.

H. Approval Process. Residential Mixed Use and Commercial/Employment Mixed Use rezoning requests shall be processed through Section 27-329 Rezoning – Planned District Procedures. The following review criteria apply to the layout and design of the development and shall be considered in addition to the criteria contained in Section 27-329:

1. The proposed development allows a diversity of surrounding land uses which are in close proximity to each other within a limited area.

2. The proposed development preserves the overall character of the area.

3. The proposed development promotes a balance of land uses.

4. The proposed development promotes the opportunity for people to work, meet, shop, and use services in the vicinity of their residences.
5. The proposed development provides opportunities for the development of housing.
6. The proposed development provides opportunities for a mixture of uses within the same building.
7. The proposed development promotes a pedestrian friendly environment.
8. The proposed development facilitates integrated physical designs.
9. The proposed development promotes a high level of design quality in conformance with the Fort Smith Design Guidelines of Section 27-620 et seq.
10. The proposed development encourages the development of flexible space for small and emerging businesses.
11. The proposed development is responsive to current and future market demands and conditions.

Sections 27-418 and 419 are reserved for future use.

TRANSITIONAL DISTRICT

27-4__ Transitional - (T)

A. Purpose. To provide small scale areas for limited office, professional service, and medical services designed in scale with surrounding residential uses. The transitional zoning district applies to the Residential Attached, Institutional, Commercial Neighborhood, and General Commercial categories of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the Transitional district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the matrix are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size (s.f.)/ /Max Bldg Size (s.f.)	Min. Lot Width at Bldg Line	Max Lot Coverage/Max Bldg (s.f.)	Minimum Street Frontage	Max Height
5,000s.f./ 40,000 s.f.	50 feet	65%	50 feet	35 feet(See 27-404)

Setbacks

Front	Side	Street Side /Corner Setback	Rear
20 feet	5 feet	20 feet	10 feet

1. Minimum building separation:
   a. Residential: 10 feet
   b. Non-residential: Determined by the current City building and fire code.

2. Maximum Parcel/Lot Size for Rezoning to Transitional:
   a. New District (by classification): 2 acres
   b. Existing District (by extension): Lot size shall not exceed 2 acres.

3. No more than three (3) dwelling units per acre of single-family homes.

4. No more than six (6) dwelling units per acre of two-family homes.

5. Required street access: Residential collector or higher.

COMMERCIAL DISTRICTS

Sec. 27-420. General Purpose

The Commercial Zoning Districts established by this chapter are designed to promote the following specific purposes:

A. To protect the property values of land and buildings, to promote the most desirable use of land and building development, to promote stable commercial development, to strengthen the economic base of the metropolitan area, and to protect the character of the Commercial Zoning Districts and their suitability for particular land uses.

B. To provide sufficient and appropriate land areas at appropriate locations, to meet the City's current and anticipated future needs for commercial developments within central shopping districts, regional, community and neighborhood shopping centers, as well as all other types of commercial and miscellaneous service facilities.

C. To provide off-street parking and loading facilities for commercial areas; to encourage commercial establishments to concentrate in planned developments

to the mutual advantage of both consumers and merchants, to encourage or require common entrances and exits to businesses thereby limiting the number of curb-cuts and promoting shared parking facilities.

D. To protect both commercial developments and nearby residences against congestion by regulating the intensity of commercial developments by restricting those types of establishments which generate heavy traffic.

E. Commercial developments shall conform to Design Guidelines of chapter 27-600 et seq.

Sec. 27-421 Commercial Zones Established

Seven (7) commercial zones are established by this chapter. Their designation is as follows:

A. Neighborhood Compatible (C-1)
B. Commercial Light (C-2)
C. Commercial Moderate (C-3)
D. Commercial Regional (C-4)
E. Commercial/Employment Mixed Use (CEMU)
F. Commercial Heavy (C-5)
G. Commercial Downtown (C-6)

27-422 COMMERCIAL NEIGHBORHOOD COMPATIBLE (C-1)

A. **Purpose.** To provide small scale areas for limited office, professional service, and local retail businesses designed in scale with surrounding residential land uses. The C-1 zoning district encourages the incorporation of compatible neighborhood commercial uses in close proximity to residential uses for easy and convenient accessibility and the promotion of pedestrian-oriented development. C-1 zoning is appropriate in the Commercial Neighborhood, General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the

Master Land Use Plan.

B. Land Uses

Permitted, Conditional and Accessory land uses in the Neighborhood Compatible (C-1) Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Max. Lot Size/Max. Bldg (s.f.)	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height
21,000 lot/ 30,000 bldg.	50 feet	60%	20 feet	35 feet (See 27-404(D))

Setbacks (feet)

Front Setback	Side Setback	Street Side Setback	Rear Setback
25 feet	10 feet	10 feet	10 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to C-1
   a. New District (By Classification): Minimum 7,000 s.f. to a maximum of 2 acres.
   b. Existing district (By Extension): Min. 7,000 s.f. to a maximum of 21,000 s.f.
3. Maximum building total for development -30,000 s.f.; Maximum individual building or unit in multi-unit structure – 5,000 s.f.
4. Required street access: residential collector or higher.

D. District Standards

1. On-street parking may be included to meet as much as 50% of the overall parking requirement with the approval of the Engineering Department.
2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

3 No display of merchandise shall be permitted on public sidewalks or rights-of-way.

4. Special sales merchandise may be temporarily displayed outdoors, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:

   a. The display shall be limited to the private walk in front of the store.

   b. No required parking area shall be used as a display or sales area.

27-423 COMMERCIAL LIGHT (C-2)

B. Purpose. To provide office, service, and retail activities that are located within buffer areas near the edge of residential areas but which serve an area larger than adjacent neighborhoods. The C-2 zoning district is intended to accommodate well designed development sites and shall provide excellent transportation access, make the most efficient use of existing infrastructure, and provide for orderly buffers and transitions between Commercial and Residential land uses. C-2 zoning is appropriate in the Commercial Neighborhood, General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

C. Land Uses. Permitted, Conditional and Accessory land uses in the C-2 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

D. Area and Bulk Regulations

Min. Lot Size/Max. Bldg (s.f.)	**Min. Lot Width**	**Max Lot Coverage**	**Minimum Street Frontage**	**Max Height** (see 27-404(D))
7,000 lot / 30,000 bldg.	50 feet	60%	20 feet	35 feet

Setbacks (feet)

Front Setback	**Side Setback**	**Street Side Setback**	**Side/Rear Setback (Adjoining SF Res. Dist/Development)**	**Rear Setback**
25 feet	10 feet	10 feet	30 feet	10 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to C-2
    a. New District (By Classification) : 42,000 s.f.
    b. Existing District (By Extension): 7,000 s.f. (one lot)
3. Maximum Individual building square footage on a single lot: 30,000 s.f.
4. Required street access: major collector or higher

E. District Standards

1. On-street parking may be included to meet as much as 50% of the overall parking requirement with the approval of the Engineering Department.

2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

3. No display of merchandise shall be permitted on public sidewalks or rights-of-way.

4. Special sales merchandise may be temporarily displayed outdoors, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:

    a. The display shall be limited to the private walk in front of the store.

    b. No required parking area shall be used as a display or sales area.

27-424 COMMERCIAL MODERATE (C-3)

A. Purpose. To provide for general commercial activities, offices, and services for the community. The C-3 zoning district promotes a broad range of commercial activities, operations, and services that are dispersed throughout the City and designed at a smaller scale than a regional center. The C-3 zoning district is appropriate in the General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the

Master Land Use Plan.

B. Land Uses

Permitted, Conditional and Accessory land uses in the C-3 zoning district are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size/Max. Bldg (s.f.)	Min. Lot Width)	Max Lot Coverage	Minimum Street Frontage	Max Height
12,000 lot/ 60,000 bldg.	75 feet	60%	n/a	35 feet (See 27-404(D))

Setbacks (feet)

Front Setback	Side Setback	Street Side Setback	Side/Rear Setback (Adjoining SF Res. Dist/development)	Rear Setback
25 feet	20 feet	15 feet	30 feet	20 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to C-3: 2 acres
3. Maximum individual building square footage on a single lot: 60,000
4. Required street access: major collector or higher

D. District Standards

1. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate visual screening from the public and adjoining properties is provided.

2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

3. No display of merchandise shall be permitted on public sidewalks or right-of-ways.

4. Special sales merchandise may be temporarily displayed outdoor, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:

    a. The display shall be limited to the private walk in front of the store.

    b. No required parking area shall be used as a display or sales area.

5. There shall be no open display in the first twenty (20) feet of the required front yard setback.

27-425 COMMERCIAL REGIONAL (C-4)

A. Purpose. To provide for the development of large shopping centers, mixed use developments, entertainment venues, and other appropriate land uses that serve the broad retail, commercial, and entertainment needs of the metropolitan area. The C-4 zoning district is appropriate in the Regional Center, General Commercial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

B. Land Uses

Permitted, Conditional and Accessory uses in the C-4 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size (s.f.)	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height (see 27-404(D))
40,000	150 feet	80%	n/a	45 feet

Setbacks (feet)

Front Setback	Side Setback	Street Side Setback	Side/Rear Setback (Adjoining SF Res. Dist/Development)	Rear Setback
25 feet	20 feet	20 feet	100 feet	20 feet

1. Building separation shall be determined by the current City building and fire code.

2. Minimum Parcel/Lot Size for Rezoning to C-4:

   a. New District (By Classification) : 10 acres

   b. Existing District (By Extension): 3 acres

3. Maximum individual building square footage: n/a

4. Required street access: major arterial or higher

D. District Standards

1. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate visual screening from the public and adjoining properties is provided.

2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

3. No display of merchandise shall be permitted on public sidewalks or rights-of-way.

4. Special sales merchandise may be temporarily displayed outdoor, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:

   a. The display shall be limited to the private walk in front of the store.

   b. No required parking area shall be used as a display or sales area.

5. There shall be no open display in the first twenty (20) feet of the required front yard setback.

27-426 COMMERCIAL HEAVY (C-5)

A. Purpose. To provide adequate locations for retail uses and services that generate moderate to heavy automobile traffic. The C-5 zoning district is designed to facilitate convenient access, minimize traffic congestion, and reduce visual clutter. The C-5 zoning district is appropriate in the General Commercial, Office, Research, and Light Industrial, Mixed Use Residential, and Mixed Use Employment classification of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory uses in the C-5 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size (s.f.)	**Min. Lot Width**	**Max Lot Coverage**	**Minimum Street Frontage**	**Max Height** (see 27-404(D))
14,000	100 feet	75%	n/a	45 feet
Setbacks				
Front Setback	**Side Setback**	**Street Side Setback**	**Side/Rear Setback** **(Adjoining SF Res. Dist/Development)**	**Rear Setback**
25 feet	20 feet	15 feet	30 feet	20 feet

1. Building separation shall be determined by the current City building and fire code.

2. Minimum Parcel/Lot Size for Rezoning to C-5:

a. New District (By Classification) : 2 acres

b. Existing District (By Extension): 14,000 s.f. (one lot)

3. Maximum individual building square footage: n/a

4. Required street access: minor arterial or higher

D. District Standards

1. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate visual screening from the public and adjoining properties

2. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

3. No display of merchandise shall be permitted on public sidewalks or rights-of-way.

4. Special sales merchandise may be temporarily displayed outdoor, but not to exceed a period for more than 14 days or no more than two occasions per year (total of 28 days per year) provided:

    a. The display shall be limited to the private walk in front of the store.

    b. No required parking area shall be used as a display or sales area.

5. There shall be no open display in the first twenty (20) feet of the required front yard setback.

27-427 COMMERCIAL DOWNTOWN (C-6)

A. Purpose To provide for the orderly development of the original downtown area of Fort Smith and the areas immediately adjacent to it. The Commercial Downtown (C-6) Zoning District establishes guidelines and controls that allow for retail and residential development which is compatible with existing and expanding governmental, financial, professional, cultural, historic, and entertainment facilities. Commercial, governmental, and professional uses that serve the metropolitan area are allowed in this zone.

B. Land Uses. Permitted, Conditional and Accessory land uses in the C-6 District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Max. Lot Size/Max. Bldg (s.f.)	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height
n/a	n/a	100%	n/a	n/a

Setbacks (feet)

Front Setback	Side Setback	Street Side	Rear Setback

		Setback	
n/a	n/a	n/a	n/a

1. Multifamily density: n/a

2. Minimum Parcel/Lot Size for Rezoning to C-6:

    a. There shall be no new C-6 zones created by classification.

    b. Existing District (By Extension): 42,000 s.f. (one lot)

D. District Standards

1. New billboards are not permitted in the C-6 Zoning District.

2. Development in the C-6 Zoning District may also be governed by the CBID Design Guidelines, which is a separate process from the Planning and Zoning Department's approval.

3. No minimum parking is required in this zone. If off-street parking is provided, such parking shall conform to Section 27-601-12.

INDUSTRIAL DISTRICTS

27-430 INDUSTRIAL LIGHT (I-1)

A. Purpose

To provide for a mixture of light manufacturing, office park, research and development, and limited retail/service retail land uses in an attractive, business park setting. The Industrial Light District may be used as a zoning buffer between mixed uses, commercial uses and heavier industrial uses. The I-1 Zoning District is appropriate with the Office, Research, and Light Industrial (ORLI) and Industry classifications of the Master Land Use Plan.

B. Land Uses

Permitted, Conditional and Accessory land uses in the Industrial Light Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size (s.f.)	Min. Lot Width	Max Lot Coverage	Minimum Street Frontage	Max Height (see 27-404(D))
20,000	100 feet	75%	n/a	45 feet

Setbacks

Front Setback	Side Setback	Street Side Setback	Side/Rear Setback (Adjoining SF Res. Dist/Development)	Rear Setback
25 feet	10 feet	15 feet	100 feet see C.3 below	10 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to I-1:
   a. New District (By Classification) : 2 acres
   b. Existing District (By Extension): 20,000 s.f. unless extension of existing development.
3. Required street access: major arterial or higher
4. Side/Rear setback abutting residential may be reduced to 60 feet with Planning Commission approval of screening and/or landscaping through the Development Plan approval process.

D. District Standards

1. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.
2. Areas which are allowed to have outdoor storage and display of merchandise shall be maintained in a manner that does not collect trash, debris, and/or vermin.
   a. No required parking lot area shall be used as a display or sales area.
   b. No public sidewalk or street right-of-way shall be used for display.
3. There shall be no open display of merchandise or inventory.
4. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate “sight-proof” visual screening from the public and adjacent residences is provided.

5. No manufacturing, assembly, or repair work shall take place outside the confines of an enclosed building.

6. All residential uses are prohibited except sleeping facilities required by watchmen or caretakers employed upon the premises.

7. Auto impoundment or holding yards shall be screened with a minimum six (6) to eight (8) foot opaque fence constructed of wood or masonry.

E. Industrial developments shall conform to Design Guidelines of chapter 27-600 et seq.

27-431 INDUSTRIAL MODERATE (I-2)

A. **Purpose.** To provide for industrial land uses which can be operated in a clean and quiet manner that shall not be obnoxious to adjacent land uses, and shall have relatively limited environmental impacts. The land uses within an Industrial Moderate (I-2) zoning district are primarily contained indoors and have heavier traffic generation than the I-1 uses. I-2 zoning is appropriate within the Industry classification of the Master Land Use Plan.

B. **Land Uses.** Permitted, Conditional and Accessory land uses in the I-2 Zoning District are identified on the Land Use Matrix, Chapter 27-400; Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. **Area and Bulk Regulations**

Min. Lot Size (s.f.)	**Min. Lot Width**	**Max Lot Coverage**	**Minimum Street Frontage**	**Max Height** **(see 27-404(D))**
20,000 .	100 feet	60%	n/a	45 feet
Setbacks				
Front Setback	**Side Setback**	**Street Side Setback**	**Side/Rear Setback** **(Adjoining SF Res. Dist/Development)**	**Rear Setback**
50 feet	25 feet	50 feet	100 feet (See C.3 below)	20 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to I-2:

a. New District (By Classification) : 10 acres

b. Existing District (By Extension): 20,000 s.f. unless extension of existing development.

3. For buildings and structures located between 100 and 150 feet from residentially zoned property, each additional foot of setback in excess of the minimum required setback may allow the building height to be increased by one foot. Buildings or structures which are located more than 150 feet from residentially zoned property shall have no specific height requirements.

4. Side/Rear setback abutting residential may be reduced to 60' with Planning Commission approval of screening/landscaping through the Development Plan approval process. Additional building height may not be calculated in this space.

5. Required street access: major arterial or higher

D. District Standards

1. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

2. Outdoor storage and display of merchandise shall be maintained in a manner that does not collect trash, debris, and vermin and comply with the following:

a. No required parking lot area shall be used as a display or sales area.

b. No public sidewalk or street right-of-way shall be used for display.

3. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate "sight-proof" visual screening from the public and adjacent residences is provided.

4. No manufacturing, assembly, or repair work shall take place outside the confines of an enclosed building.

5. All residential uses are prohibited except sleeping facilities required by watchmen or caretakers employed upon the premises.

6. Auto impoundment or holding yards shall be screened with a minimum six (6) to eight (8) foot opaque fence constructed of wood or masonry.

F. Industrial developments shall conform to Design Guidelines of chapter 27-600 et seq.

27-432 INDUSTRIAL HEAVY (I-3)

A. Purpose. To accommodate a wide variety and intensity of industrial uses, some of which may have significant external impacts. This may include areas of heavy and concentrated fabrication, manufacturing, and industry. The Industrial Heavy (I-3) zoning district requires readily available and adequate public facilities and services, including access to major transportation hubs (rail, river, or highway-interstate). The I-3 Zone must be located so as to minimize conflicts with other land uses. Industrial Heavy Zoning is appropriate in the Industry classification of the Master Land Use Plan.

B. Land Uses. Permitted, Conditional and Accessory land uses in the I-3 Zoning District are identified on the Land Use Matrix, Chapter 27-400, Appendix A. Specific land uses not identified on the list are subject to classification pursuant to Section 27-336.

C. Area and Bulk Regulations

Min. Lot Size (s.f.)	**Min. Lot Width**	**Max Lot Coverage**	**Minimum Street Frontage**	**Max Height** **(see 27-404(D))**
20,000.	100 feet	60%	n/a	45 feet
Setbacks				
Front Setback	**Side Setback**	**Street Side Setback**	**Side/Rear Setback** **Abutting Non-Industrial**	**Rear Setback**
100 feet	50 feet	100 feet	100 feet (See C.3 below)	20 feet

1. Building separation shall be determined by the current City building and fire code.
2. Minimum Parcel/Lot Size for Rezoning to I-3
   a. New District (By Classification) : 20 acres
   b. Existing District (By Extension): 20,000 s.f. unless extension of existing development
3. For buildings and structures located between 100 and 150 feet of residentially zoned property, for each additional foot of setback in excess of the minimum required setback, building height may be increased by one

foot. Buildings or structures located more than 150 feet from residentially zoned property shall have no specific height requirement.

4. Side/Rear Setback Abutting Residential may be reduced to 60' with Planning Commission approval of screening/landscaping through Development Plan approval process. Additional building height may not be calculated in this space.

5. Required street access: major arterial or higher.

D. District Standards

1. All areas unoccupied by buildings, parking lots or used as traffic ways shall be maintained in a safe and orderly condition.

2. Outdoor storage and display of merchandise shall be maintained in a manner that does not collect trash, debris, and/or vermin and comply with the following:

    a. No required parking lot area shall be used as a display or sales area.

    b. No public sidewalk or street right-of-way shall be used for display.

3. Vehicle servicing and equipment assembly as part of a sales operation shall be conducted within an enclosed building unless adequate "sight-proof" visual screening from the public and adjacent residences is provided.

4. No manufacturing, assembly or repair work activity other than permitted storage shall take place outside the confines of an enclosed building.

5. All residential uses are prohibited except sleeping facilities required by watchmen or caretakers employed upon the premises.

6. Auto impoundment or holding yards shall be screened with a minimum six (6) to eight (8) foot opaque fence constructed of wood or masonry.

E. Industrial developments shall conform to Design Guidelines of chapter 27-600 et seq.

Sections 27-433 and 434 are reserved for future use.

27-440 OVERLAY DISTRICTS

Phoenix Avenue Overlay

A. **Area of applicability**. The signage and landscaping regulations adopted by these 1998 amendments to the zoning code shall apply to all real properties zoned with designations other than residential and physically contiguous to the right-of-way lines (both sides of the street) of the hereinafter designated sections of Phoenix Avenue. The regulations shall be applicable to all portions of said tracts of real property which are located within four hundred (400) feet of the right-of-way line. The regulations apply to those sections of Phoenix Avenue commencing, on the west, at the point where the I-540 overpass crosses the Phoenix Avenue right-of-way and continuing, to the east, to the intersection with Massard Road.

B. **Signage regulations**.

1. Monument sign defined. When used herein, "monument sign" shall refer to a ground mounted sign having no more than two (2) faces and being constructed of materials of the same type and in design similar to the principal structure located on the lot on which the sign is located.

2. Signage per lot. Each separately owned lot is allowed no more than one (1) monument sign; provided, any such lot having frontage on two (2) public streets, is allowed no more than two monument signs. In addition to the allowed monument sign(s), each such lot is allowed signs of a maximum total of six (6) square feet to provide traffic directions. No monument sign shall be installed closer than ten (10) feet to the property line of the lot.

3. Sign size. Each monument sign shall be a maximum of six (6) feet high (inclusive of the base and the display area) and shall not be more than one (1) square foot in area per linear foot of lot frontage with a maximum area of seventy-five (75) square feet in area per sign. As to the monument sign for a retail center or business park, as defined in zoning code section 27-200, the sign area and height may be increased by an additional twenty (20) percent if only identification of the name and/or logo of the retail center or business park (and not individual tenants) is used on the monument sign.

4. Wall sign allowance. The wall sign area for the principal structure shall not exceed twenty (20) percent of the wall area. The wall sign area for each accessory structure shall not exceed five (5) percent of the wall area on which the sign is located.

5. Sign content. Content of monument signs shall be such that no more than fifty (50) percent of the monument sign may be used for advertising. The

remaining area of a monument sign is limited to the name and/or logo of the business(es) operating in the structure.

6. Content of wall signs for the principal structure shall be limited to the name and/or logo of the business(es) operating in the structure. Directional and information signs meeting the conditions of paragraph (4) above are permitted.

7. Content of wall signs for each accessory structure shall be limited to building identification, directional information and the name and/or logo of the business(es) operating in the structure.

8. Advertising shall not be permitted on the principal or accessory structure, wall sign or traffic direction sign.

9. Outdoor advertising (offsite) signs. Outdoor advertising (offsite) signs are prohibited in that portion of the area described in (a) above located between Leigh Avenue and four hundred (400) feet west of the Massard Road right-of-way.

10. Signs prohibited. Banners, marquees and changeable letter reader boards and portable signs are expressly prohibited. Changeable letters and/or numbers are permitted in the advertising portion of monument signs. Except as allowed by this section, no signs shall be installed in the area described in (a) above.

11. Other sign ordinances. All signs allowed by these regulations shall comply with further sign regulations of the zoning code and the Code of Ordinances. In the event of a conflict of these regulations and the further sign regulations of the zoning code and the Code of Ordinances, these regulations will control.

12. Variance procedures. Administrative decisions applying the provisions of this section may be appealed to the board of zoning adjustment according to the procedure provided for in section 27-337 of the Code of Ordinances.

C. **Landscaping regulations**. Each separately owned lot zoned with a designation other than residential within the area described in (a) above shall comply with the following landscaping requirements at the time of developing each lot.

1. Perimeter landscaping requirements along public rights-of-way. A ten-foot wide landscaping area is required and shall be located on the property parallel and adjacent to the public right-of-way line. At a minimum, the planting strip shall be planted with one (1) tree and ten (10) shrubs for every fifty (50) linear feet of right-of-way frontage. To insure that

landscape materials do not constitute a sight hazard, a clear sight triangle shall be observed at all street intersections or intersections of driveways with streets. Within the designated sight triangle, no landscape material exceeding twenty-four (24) inches in height shall be permitted; provided, trees shall be permitted as long as only the tree trunk is visible between the ground and eight (8) feet above the ground and the tree does not otherwise present a traffic visibility hazard. The dimensions of the sight triangle are as indicated in the attached diagram for driveways and diagram for street intersections.

2. Interior landscaping for vehicular use areas.

a. Requirement. For any open vehicular use area, excluding loading and unloading areas, containing more than six thousand (6,000) square feet of area, or twenty (20) or more vehicular parking spaces, the owner shall provide interior landscaping in addition to the previously required landscaping along the public right-of-way. Interior landscaping may be peninsular or island types.

b. Landscape area. For each one hundred (100) square feet or fraction thereof of vehicular use area, a minimum total of five (5) square feet of landscaped area shall be constructed and maintained. Additionally, the minimum size for the landscaped area shall be sixty-four (64) square feet. In order to encourage the required landscape areas to be dispersed, no individual landscape area may be larger than three hundred fifty (350) square feet in size, unless the vehicular use area is over thirty thousand (30,000) square feet. If the vehicular use area is in excess of thirty thousand (30,000) square feet, no individual landscape area may be larger than one thousand five hundred (1,500) square feet.

c. Setbacks. In all required interior landscape areas, trees are required to be set back a distance of four (4) feet from the edge of pavement.

d. Vehicle overhang. Parked vehicles may overhang the interior landscaped area no more than two and one-half (2 1/2) feet, provided concrete or other wheel stops are installed to insure no greater overhand of the landscaped area.

3. Landscape materials.

4. Materials. Required landscape areas shall be planted using, at the option of the owner, tree, shrub, grass or ground cover plants identified in

subsections (e), (f), (g) and (h). Any owner desiring to plant unlisted plants may make written application to the administrative officials of the city. Any decision of the administrative officials is subject to appeal to the board of zoning adjustment according to the provisions of section 27-44 of the Code of Ordinances.

a. Plants. Artificial plants are prohibited. All plant materials shall be living plants and shall meet the following requirements:

b. Quality. Plant materials must conform to the standards of the American Association of Nurserymen and shall have passed any inspections required by state regulations.

c. Deciduous trees. All planted deciduous trees shall have a minimum thickness of two (2) inches at the aboveground trunk at time of planting.

d. Evergreen trees. Evergreen trees shall be a minimum of five (5) feet height at the time of planting.

e. Grass or ground cover. Grass may be sodded or seeded; provided, in drainage swales or other areas subject to erosion, solid sod, erosion reducing net, or suitable mulch must be used and nurse-grass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be clean and free of weeds and noxious pests or diseases. In areas where ground cover rather than grass is used, the ground cover shall be planted in such a manner as to present a finished appearance and seventy-five (75) percent complete coverage after one (1) complete growing season.

f. Maintenance. The initial developer and the owner of the property, and their successors in interest, shall be responsible for the continued maintenance of all landscaping areas so as to keep them (a) in a proper, neat and orderly appearance, (b) free from refuse and debris, (c) with dead plant material replaced within one (1) year of the death of the plant material or by the next planting period, whichever comes first and (d) with other defective landscape materials replaced or repaired within three (3) months of defect. The maintenance obligation of the developer, and the developer's successor in interest other than the owner, shall terminate two (2) years following the developer's sale of the subject property.

g. Enforcement. Violation of the regulations adopted by this section may be enforced in any lawful manner including, without limitation, the refusal by the city to issue a building occupancy permit.

D. Tree species.

1. Primary list. The following list of trees are those which have been found to be best suited to this area and yet requiring the least amount of maintenance. This list, along with the secondary list, are those trees which may be planted in the required landscaping area. Additional selective trees may be substituted when proven to be hardy to this region:

Common Name	Scientific Name
Bald cypress	Taxodium distichum
Chinese elm	Ulmus parvifolia
Ginkgo (male)	Ginkgo biloba
Honey locust	Gleditsia triacanthos
Loblolly pine	Pinus taeda
Pin oak	Quercus palustris
Sawtooth oak	Quercus acutissima
Sugar hackberry	Ceitis laevigata
Willow oak	Quercus phellos

2. Secondary list. The following list of trees are those which have been found to be the next best suited to this area but require increased maintenance:

Common Name	Scientific Name
American holly	Ilex opaca
Crab apple	Malus spp.
Crepe myrtle	Lagerstoemia indica
Dogwood	Cornus florida
Hawthorn	Crataegus opaca

Redbud	Cercis canadensis
River birch	Betula nigra
Southern magnolia	Magnolia grandiflora
Swamp red maple	Acer rubrum
Water oak	Quercus nigra
Weeping willow	Salix babylonica

E. Shrub species.

1. Primary list. The following list of shrubs are those which have been found to be best suited to this area and yet requiring the least amount of maintenance. This list, along with the secondary list, are those shrubs which may be planted in the required landscaping area. Additional selective shrubs may be substituted when proven to be hardy to this region:

Common Name	Scientific Name
Evergreen hollies	Ilex species
Nandina	Nandina domestica

2. Secondary list. The following list of shrubs are those which have been found to be the next best suited to this area but require increased maintenance:

Common Name	Scientific Name
Abelia	Abelia grandiflora
Boxwood	Buxus sempervirens
Chinese photinia	Photinia serrulata

F. Grasses.

1. The following grasses may be used:

Mayer Z-52 Zoysia

Emerald zoysia

Bermuda grass

Bermuda grass hybrids

Centipede

St. Augustine

2. The grasses listed in (a) of this exhibit are the more commonly used grasses adjacent to vehicular use areas.

G. Ground covers.

1. Primary list. The following list of ground covers are those which have been found to be best suited to this area and yet requiring the least amount of maintenance. This list, along with the secondary list, are those ground covers which may be planted in the required landscaping area. Additional selective ground covers may be substituted when proven to be hardy to this region.

Common Name	Scientific Name
Dwarf nandina	N. domestica "harbour dwarf"
Junipers	Juniperus species
Liriope	Liriope muscari
Memorial rose	Rosa wichuraiana
Mondo grass	Ophiopogon japonicus
Periwinkle	Vinca minor
Spreading euonymus	E. fortunei "radicans"

2. Secondary list. The following list of ground covers are those which have been found to be the next best suited to this area but require increased maintenance:

Common Name	Scientific Name
Carolina Jessamine	Gelsemium sempervirens
Dwarf bamboo	Arundinaria pygmaea

English ivy	Hedera helix
Honeysuckle	Lonicera sempervirens

H. Design requirements for new commercial buildings and additions to existing commercial buildings.

1. Purposes.

a. To protect and enhance the overlay zone for the Phoenix Avenue Extension.

b. To provide good civic design and arrangement.

c. To preserve property values of surrounding property.

2. Commercial building design standards.

a. Any development that contains more than one building shall incorporate a recurring, unifying and identifiable theme for the entire development.

b. The predominant (fifty-one (51) percent of the gross wall area or greater) exterior building facade of all commercial buildings must be of high quality materials such as brick, wood, native stone, tinted glass, cementious siding, stucco, exterior insulated finished systems (EIFS) or tinted/textured concrete masonry units. Smooth-faced concrete block, plain or untextured tilt-up panels and prefabricated steel panels are prohibited as the predominant facade.

c. All facades of a building that are visible from the finish grades of adjoining properties or public streets shall have design characteristics similar to the buildings front facade. This shall be implemented by requiring the same treatment as discussed in 27-214(i)(2)b above.

d. Mechanical equipment, including but not limited to, heating/cooling systems, trash receptacles and utility boxes shall be completely screened from adjoining properties and street right-of-way. For ground-mounted or located equipment the screening shall be a wall or fence or the equipment shall be enclosed within a building. For roof-mounted equipment, the screening shall be architecturally incorporated into the roof and shall consist of materials compatible with the supporting building.

e. Chain link, barbed wire or sheet metal fencing material is prohibited.

I. **Design review**. All landscaping, new commercial building developments and additions to existing commercial buildings shall be subject to design review and approval by the Planning and Zoning Department. The following drawings, information and plans shall be submitted to the Planning and Zoning Department for design review and approval with site plan or development plan applications.

a. Rendered elevation drawings of front, rear and one (1) side of the proposed structure at one-eighth (1/8) inch to one (1) foot (minimum) scale showing the design of the structure and the materials of the building's external finishes being proposed.

b. The site plan shall include the location and proposed screening of all mechanical equipment.

c. The city administrator or his designated agent, at his discretion, may refer any design review and approval to the board of zoning adjustment for their review and approval. Any administrative decision applying the provisions of this section may be appealed to the board of zoning adjustment according to the procedure provided for in section 27-44 of this Code of Ordinances.

2. Effects of approval.

a. An approved design shall be binding on the applicants and their successors and assignees. No building permit shall be issued for any building or structure not in conformance with the approved design. No element of an approved design shall be eliminated, altered or provided in another manner unless an amendment is approved in accordance with this section, provided, however, that the city administrator, or his designated agent, may approve such minor changes in the design as will not cause any of the following circumstances to occur:

b. Any change to the recurring, unifying and identifiable theme from one building to the next in a single development.

c. Any change that reduces the percentage of the predominate facade to a percentage less than fifty-one (51) percent of the gross wall area.

d. Any modification having an adverse impact on adjacent property.

e. Any modification that lessens the requirements for screening of the mechanical equipment.

f. Any modification that lessens the requirements for all facades of a building, visible from adjoining properties or public streets, having similar design characteristics to the building's front facade.

27-441 Massard/Zero Street Corridor Overlay – See Appendix E

27-445 Extraterritorial Jurisdiction

A. Title - These regulations shall be known as the "Extraterritorial Zoning Ordinance for the City of Fort Smith, Arkansas."

27-445-1 Authority and Purpose

These zoning regulations are adopted pursuant to the authority granted the city by A.C.A. § 14-56-413 in order to carry out the purposes listed below:

(1) These zoning regulations have designed to promote the health, safety, and general welfare, to prevent the overcrowding of land, and to facilitate the adequate and economic provision of transportation, utilities and other public facilities.

(2) These regulations and associated districts have been designed to protect private property values, to protect both private and public investments in infrastructure and improvements, and to protect the existing and future environments in neighborhoods and developments.

(3) The zoning districts and land use maps have been determined with due consideration of future growth, development, and change in land development according to the goals and objectives expressed in the city comprehensive plan.

(4) These regulations have been designed to provide locations for each land use which are properly related to traffic, utilities, and other land uses.

(5) These regulations have been designed to eliminate congestion and to improve the living conditions and fire protection by provisions of adequate light, air, and open space.

(Ord. No. 12-03, § 1, 3-18-03)

27-445-2 Jurisdiction

These regulations govern the development and use of that real property located outside the city and which real property is described by the following legal description and is illustrated on the extraterritorial zoning map (May 6, 2003) adopted hereby.

Property description: Parts of Sections 1, 2, 3, 8, 11, 12, 13, 14, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, Township 7 North, Range 32 West, Sebastian County, Arkansas being more particularly described as follows.

All of Section 1, less and except those parcels previously annexed by the City of Fort Smith; all of Section 2, less and except those parcels previously annexed by the City of Fort Smith; all of Section 3, less and except those parcels previously annexed by the City of Fort Smith; the south half and the south half of the north half of Section 8, less and except those parcels previously annexed by Fort Smith Ordinance 2602, as filed April 17, 1967, and Fort Smith Ordinance 87-85, as filed August 29, 1985; all of Section 11 less and except those parcels previously annexed by the City of Fort Smith; all of Section 12, less and except those parcels previously annexed by the City of Fort Smith; all of Section 13, less and except those parcels previously annexed by the City of Fort Smith; all of Section 14, less and except those parcels previously annexed by the City of Fort Smith; the southwest quarter of the northwest quarter and the west half of the southwest quarter of Section 16, less and except that portion of the platted subdivision called Fianna Estates, Phase IV, as filed for record November 7, 1994, that lies within Section 16; all of Section 17; all of Section 20, less and except that portion of the platted subdivision called Beverly Corporate Plaza, Lots 1 and 2, as filed for record October 15, 1998, that lies within Section 20, and the platted subdivision called Belle Chase, Lots 1 thru 75, as filed for record June 22, 2000; all of Section 21, less and except those parcels previously annexed by the City of Fort Smith; all of Section 22, less and except those parcels previously annexed by the City of Fort Smith; all of Section 23, less and except those parcels previously annexed by the City of Fort Smith; all of Section 24, less and except those parcels previously annexed by the City of Fort Smith; the north half of Section 25; the north half of Section 26; the north half of Section 27; the north half of Section 28; and the north half of Section 29.

Also:

Parts of Sections 6, 7, 18, 19, 20, and 30, Township 7 North, Range 31 West, Sebastian County, Arkansas being more particularly described as follows:

All of Section 6, less and except those parcels previously annexed by the City of Fort Smith and the following described parcel of land also known as the Arkansas National Guard Armory site being more particularly described as follows:

Beginning at the intersection of the west line of the fractional NE 1/4 of fractional Section 6 with the south right-of-way line of Arkansas State Highway No. 22; thence southeasterly along said south right-of-way 379.77 feet to a point; thence south 560 feet to a point; thence west 375 feet to a point on the said west line of said fractional NE 1/4; thence north along said west line 600 feet to the point of beginning and containing 5.0 acres, more or less.

All of Section 7, less and except those parcels previously annexed by the City of Fort Smith; all of Section 18, less and except those parcels previously annexed by the City of

Fort Smith; the west half and the south half of the east half of Section 19; the west half of the southwest quarter of Section 20; the north half of Section 30.

(Ord. No. 12-03, § 1, 3-18-03; Ord. No. 13-03, 3-18-03; Ord. No. 29-03, § 1, 5-6-03)

27-445-3 Interpretations

When referring to this article, the following rules of interpretation shall be applied, except when the context clearly requires otherwise:

(1) The particular shall control the general.

(2) In the case of any difference of meaning or implication between the text of this article and any chart, graph, illustration or table, the text shall control.

(3) The word "shall" and "will" are always mandatory and are not discretionary. The word "may" is permissive and discretionary.

(4) Words used on the present tense include the future tense; words in the future tense include the present tense; words in the singular number include the plural, and words in the plural number include the singular number.

(5) The words "building" and "structure" shall be construed as though followed by the words, "or a portion thereof".

(6) The word "lot" includes the words "parcel," "plot," or "tract," but does not include leased lands.

(7) The word "occupied" shall be construed as though followed by the words, "or intended, arranged, or designed to be occupied."

(8) The word "city" means the area of jurisdiction of the City of Fort Smith, Arkansas.

(9) All public officials, bodies and agencies to which reference is made are those of the City of Fort Smith, Arkansas.

(Ord. No. 12-03, § 1, 3-18-03)

27-445-4 Relation to other ordinances

It is not intended that this article will in any way repeal, annual or interfere with any rules, regulations or permits that were legally adopted or issued under previous ordinances for the use of land or structures. It is not intended that this article will interfere with any easements, covenants, or other agreements between parties. However, if the provisions of this article impose greater restrictions or higher standards for the use of a lot, parcel, or tract of land than is called for by other ordinances, permits,

easements or agreements, then the provisions of this article will take precedence over the others and will control the use or development of land within its jurisdiction.

27-445-5 Severability

If any specific provision or standard of these regulations or any zoning district boundary that now exists or may exist in the future is found by a court to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, standard, or district boundary of these regulations except the provision in question. The other provision of these regulations not affected by the decision of the court shall remain in full force and effect.

27-445-6 Effective Date

These regulations shall become effective on August 6, 2002.

27-445-7 Enforcement

(1) The provisions of this article shall be enforced by the city administrator, or designated agents, of the city.

(2) It shall be the duty of the city administrator, or designated agents, of the city to initiate proceedings for the enforcement of these regulations.

(3) If the city administrator, or designated agents, of the city finds a violation of these regulations, the director of planning shall notify the violator and give the violator a specified time to correct the violation. If the violation continues or is not corrected, the director of planning shall initiate proceedings for enforcement as described in this section.

(4) The provisions of this article may be enforced by any one, all, or combinations of remedies authorized and prescribed by this article. If a person continues to fail to comply with a particular provision of these regulations after the imposition of any type of penalty, the person shall continue to remain subject to the remedies prescribed by this article for the continued violation of the particular provisions of these regulations. The City Administrator, or a designated agent, shall have the authority to prosecute actions seeking the imposition of fines and penalties for violation of the ordinance as provided herein and, after obtaining approval from the governing body of the City, may initiate judicial actions to secure injunctions and abatement orders to further ensure compliance with the ordinance. Each day's continuing violation shall be a separate and distinct offence and may be subject to any one, all, or a combination of remedies authorized and prescribed by this article.

(5) Any person or entity who violates the provisions of these regulations shall be deemed guilty of committing a misdemeanor and, upon conviction thereof, shall be subject to a penalty as set forth in Section 1-9 of the Fort Smith Code of Ordinances.

(6) The city administrator, or designated agents, of the city is empowered to issue citations to any person if there is a reasonable cause to believe that the person has violated any provision of these

regulations. A violator shall be deemed to be the owner of the property, the agent of the owner authorized to be responsible for the property, or the occupant of the property. Citations may be directly issued to the occupant, lessee, or person having immediate beneficial use of the property. The non-occupant owner or agent responsible for the property each has the duty to maintain the property in compliance with these regulations. Written notice shall be given to the non-occupant owner, agent, or occupant prior to the issuance of any citation.

27-445-8 Definitions

Accessory building or use

shall mean a building or use which is incidental and subordinate to and serves the principal building or principal use.

Apartment house

shall mean any building or portion thereof which is designed, built, rented, leased or let to be occupied as three (3) or more dwelling units or apartments or which is occupied as a home or place of residence by three (3) or more families living in independent dwelling units.

Authorized agent

shall mean an architect, attorney, builder, developer or other person or persons legally empowered to act on behalf of other persons.

Board of adjustment

shall mean the board of zoning adjustment of the city.

Certificate of land use compliance

shall mean official certification that the property usage conforms to the provisions of these regulations and may be used or occupied. Unless a certificate is issued by the city administrator, or designated agents, of the city, the property cannot be used or occupied.

Church

shall mean a place of worship and religious training, including accessory housing facilities such as a rectory.

City

shall mean the City of Fort Smith, Arkansas.

City administrator

shall mean the city administrator of the city.

Commission

shall mean the city planning commission.

Conditional use

shall mean uses that can be approved in a zone where they are specifically listed as conditional uses and are subject to special conditions as determined by the planning commission.

Country club (private)

shall mean an area containing a clubhouse and recreation facilities restricted to the use of specific membership and which may contain a golf course, tennis court, swimming pool, dining room, social facilities and similar recreation and service facilities, with a minimum of ten (10) acres.

Dwelling* or *dwelling unit

shall mean any room or group of rooms located within a structure forming a single habitable unit with facilities which are used and intended to be used for living, sleeping, cooking, eating and sanitation by one (1) family, but not including hotels, motels or boarding homes.

(1) *Single family* shall mean a building containing one (1) dwelling unit designed for occupancy by not more than one (1) family.

(2) *Duplex* shall mean a building designed for and/or occupied exclusively by two (2) families living independently of each other.

Dwelling, mobile home

shall mean a single detached single-family dwelling unit with all of the following characteristics:

(1) Designed for full time occupancy and containing sleeping accommodations, flush toilet, tub or shower bath, and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems.

(2) Designed to be transported after fabrication on its own wheels or on a flatbed or other trailers of detachable wheels, or by other means.

(3) Designed to arrive at the site where it is to be occupied, complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on and connection to foundation supports, and connection to utilities.

Easement

shall mean a right-of-way or parcel of land specified or set aside for a specific use, normally used for access, utilities, and other public or private usage, given by the owner of land to another party, and kept free from buildings or structures.

Flood

shall mean a temporary rise in stream level that results in water covering areas not ordinarily covered by water.

Flood hazard boundary map (FHBM)

shall mean an official map of the city or of the county issued by the Federal Insurance Administration, designating the boundaries of special flood hazards.

Floodway

shall mean the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

Golf course (commercial)

shall mean a golf course, privately or publicly owned but opened to the public for a fee and operated as a commercial venture.

Greenhouse or plant nursery

shall mean an area or structure for the growing, display and sale, at retail, of plants, flowers, trees and other plant materials and the supplies for maintaining plant material.

Heavy industrial district

is an industrial zone that is primarily for the manufacturing, assembly, and fabrication activities resulting from the processing of raw materials. Industrial uses which generate relatively high levels of noise, vibrations, smoke, dust, odor or an objectionable site condition are limited to this zone. The industrial uses permitted in this zone are generally

incompatible with residential uses and therefore they should be located as far away as possible from residential and most commercial uses.

High density residential district

shall mean a residential use zone primarily for medium to high population densities. The principal uses of land may range from two-family residential to high density multi family apartment residential use where the multi family apartments do not exceed twenty-four (24) units per acre.

Home occupation

shall mean an occupation carried on in a residential dwelling and/or related accessory building as an incidental, subordinate and accessory activity to the primary use of the premises.

Light commercial/office

This zone is established to provide locations beyond the central area of the city, primarily along arterial or major collector streets which will accommodate offices or laboratories for professional persons and other related uses. This zone should not be established in a "strip" zoning manner along major streets but should be concentrated to provide easy accessibility to the public. The zone is intended to provide availability of professional services conveniently to all neighborhoods in the community. Uses permitted in the LCO zone would typically include offices for doctors, dentists, accountants and other similar professions, medical and dental laboratories and pharmacies. Each single LCO zone shall contain a minimum of one (1) acre and a maximum of twenty (20) acres.

Light industry

This district is intended for light manufacturing, processing, storage, wholesaling and distribution. Commercial and service uses in support of industrial uses are also permitted. Examples of permitted uses are listed below:

(1) Establishments for the manufacture, processing and assembly of goods and uses. Examples of such establishments include:

a. Clothing manufacturers.
b. Metal fabricators.
c. Industrial laundries.
d. Furniture and wooden products manufacturers.

(2) General contractors and specialty contractors.

(3) Building materials and supplies.

(4) Retail, service and other commercial establishments intended to serve the needs of the industrial community. Examples of such establishments include:

a. Industrial machinery dealers.
b. Packaging materials.
c. Gasoline service stations.
d. Petroleum products dealers and wholesalers.
e. Machine shops.
f. Warehousing.
g. Truck terminals.
h. Self-service storage (mini-warehouses).

Light residential

shall mean single family detached.

Lot

shall mean a parcel of land intended to be occupied by principal buildings or uses and accessory buildings or uses customarily intended to go with them and having frontage on a dedicated public street. A lot as defined herein may consist of one (1) or more platted lots, or tract or tract conveyed or parts thereof.

Medium industrial district

is an industrial use zone that is intended to primarily accommodate wholesale activities, processing, distribution, storage, and warehouse and industrial operations which may generate relatively low levels of noise, odor, smoke, dust or intense light. Residential development is excluded from this zone, both to protect residents from an undesirable environment and to facilitate maximum efficiency of industrial activity.

Medium residential

shall mean single-family and two-family but no more than six (6) units per acre. Lots not served by sanitary sewer must have a soil test and site evaluation. The results of the test and evaluation will determine the possibility for the maximum density of 6 units per acre.

Neighborhood commercial

The neighborhood commercial (NC) zone is established to provide an area in which the primary use of the land is for commercial and service uses to serve the daily convenience needs of the surrounding residential neighborhood. The zone is intended to be located within neighborhood areas and to be integrated into the residential structure of a neighborhood in a manner that will create a minimum of detriment, hazard, or inconvenience to surrounding residential development. Each neighborhood commercial zone will be small (containing from one (1) to five (5) acres) and will be located within convenient walking distance from the edge of the surrounding residential area it is designed to serve. In general, the NC zones will be located from one-half (1/2) to one (1) mile from each other, or from another zone in which the daily commercial needs of a neighborhood or residential area will be served.

Nonconforming use

shall mean a use of land lawfully occupied at the time of the effective date of these regulations or amendment thereto, or which was subsequently included in the extraterritorial zoning jurisdiction of the city which does not conform to the use regulations for the zone in which it is situated.

Nursing homes

shall mean a building used for lodging, boarding and nursing care, on a twenty-four-hour basis, of four (4) or more persons who, because of mental or physical incapacity, may be unable to provide for their own needs and safety without the assistance of another person.

Occupancy

shall mean the use or intended use of land.

Orphanage

shall mean an institution for the care of orphans or homeless children.

Park or playground (public)

shall mean an open recreational facility or park owned and operated by a public agency such as the city, the county or Fort Smith School Board and available to the general public.

Park or playground (nonpublic)

shall mean a park or playground developed and sponsored by a quasipublic group or private agency for the benefit of specific groups, such as Little League Baseball, or the public in general.

Planning commission

shall mean the planning commission of the city.

Portable building

shall mean a temporary building that does not have a foundation and is transportable and is not used as a residential structure.

Principal use

shall mean the use which fulfills the primary function of an establishment, institution, household and other entity.

Public building

shall mean any building held, used or controlled exclusively for public purposes by any department or branch of government, state, county, or municipal, without reference to the ownership of the building or of the realty upon which it is situated. A building belonging to or used by the public for the transaction of public or quasi-public business.

School business professional*,*

shall mean a business organized to operate for a profit and offering instruction and training in a service or art such as secretarial school, barber college, beauty school or commercial art school, but not including trade schools.

School, public or private,

shall mean a school under the sponsorship of a public or religious agency having a curriculum generally equivalent to a public elementary or secondary school, but not including trade or commercial schools.

School, trade or technical,

shall mean a business organized to operate for a profit and offering instruction and training in a trade such as welding, bricklaying, machinery operation and similar trades.

Site

shall mean a single holding which consists of a lot, tract, parcel or acreage, or a combination thereof, not divided in any manner by a public right-of-way including a street or alley but not including easements.

Street

shall mean a public maintained right-of-way, other than an alley, which affords a primary means of access to property.

Telecommunication tower*,*

shall mean a structure designed and constructed to support one (1) or more antennas used by commercial wireless telecommunication facilities and including all appurtenant devices attached to it. A tower can be freestanding (solely self-supported by attachment to the ground) or supported (attached directly to the ground and with guy wires), of either lattice or monopole construction.

Truck farm

shall mean a farm devoted to the production of vegetables for the market.

Use

shall mean a purpose to which land, structures or buildings are committed.

Utility substation

shall mean a station which is subsidiary to a central station and at which a utility from the central station is converted or passed on to another area.

Zone

shall mean a section of the lands within the extraterritorial jurisdiction designated in these regulations in which requirements for the use of land and development standards are prescribed.

Zone boundaries

shall mean that boundary line which separates unlike zoning districts.

27-445-9 Nonconforming Uses

(1) "Nonconforming" shall mean that which does not meet the requirements of these regulations but which was in existence on the date of adoption of this Code or, if not in existence on the date of adoption of this Code, has been in continuous existence for at least seven (7) years.

(2) A nonconforming use of land is a use of real property which does not conform to the permitted uses in the zoning district within which the real property is located and which does not involve utilization of a structure or as to which the utilization of a structure is incidental.

(3) Abandonment shall mean the cessation of a nonconforming use of land. The ceasing shall be deemed to be established by the failure to obtain or renew a privilege license for a period of at least one (1) calendar year, the termination of utility services for at least one (1) year or the ceasing of a nonconforming use due to a felony conviction of the owner or the authorized representative of the owner and which felony conviction is related to the subject use. Ceasing may also be established by a written statement of the intention to abandon the use by the owner or the owner's representative.

(4) A nonconforming use of land may be continued unless such use is abandoned, provided that this provision shall not be construed to approve continuation of an activity constituting a nuisance or any activity prohibited by statute or ordinance applicable to the use.

(5) A nonconforming use of land shall not be enlarged or extended, either by the addition of other real property to the use area or by the intensification of the use on the utilized real property.

(6) A nonconforming use of land may be changed to a use permitted in the same classification in which the original use is listed. However, if the original use is listed in multiple zoning district classifications, then the nonconforming use of land may only be changed to a use permitted in the most restrictive zoning district classification in which the original use is listed.

(7) A nonconforming use of land which has ceased for a continuous period of more than one (1) year shall be deemed abandoned.

(8) A structure housing a nonconforming use that is destroyed or damaged to the extent that the cost of repair is more than fifty (50) percent of the value of the structure after repair shall not be replaced unless all of the following conditions are met:

(a) A conditional use application is presented to the planning commission in accordance with section 27-445-12 of this Code;
(b) The conditional use is approved by the planning commission;
(c) Construction is completed within one (1) year from the date of the loss; the determination of "cost of repair" shall be based on the anticipated cost of a repair performed by a contractor in the ordinary course of the construction industry, and the determination of the "value of the structure after repair" shall not include real property value. Both determinations shall be made by the director of planning.
(d) The structure shall be adapted for the same use as the previous structure; and
(e) The structure as built shall not exceed the bulk and area characteristics of the previous structure;
(f) Provided a maximum time extension not to exceed sixty (60) calendar days may be granted upon written application of the owner to the director of planning, provided substantial progress has been made to repair the structure.

27-445-10 Home Occupation

(1) The planning commission, in reviewing application for home occupations may consider the performing of a skill, talent, service or profession on a limited basis as a home occupation only if it complies with all of the following:

(a) Requires the use of an area no greater than thirty (30) percent of the living space of the residence.
(b) Requires no occupational activity on the premises outside the main structure. An existing detached building, utilized in conjunction with a home occupation shall be no larger that three hundred (300) total square feet and may only be utilized for storage of materials.
(c) Requires no usage of a sign in the operation of the business.
(d) Requires no outdoor display of any goods or services and requires no outdoor storage of materials or equipment required for the operation of the business.
(e) Required to be totally operated only by the resident members of the household and shall not have any employees, concessionaires or any other form of operator or helper whether such business is conducted on the premises or off the premises.
(f) Shall not involve, on the premises, the sale of any retail or wholesale item or items that are not totally considered as an accessory item of the approved business. Items drop-shipped or delivered by order may be permissible only after the planning commission has approved such operation.
(g) Any business conducted on the premises will be by appointment only, such that no more than two (2) persons will be at the business at any one (1) time.
(h) The planning commission shall have the authority to limit the operating hours of a business where it deems it necessary in order to assure compatibility with the residential neighborhood.
(i) Will not utilize the address of the property in any business advertising. This includes, but is not limited to, paid commercial advertising, telephone directory advertising, flyers, business cards, etc.
(j) Will not produce any fumes, odors, noise or any other offensive effects that are not normal to residential activity

(k) Will not require the construction of any additional off-street parking which would detract from the residential character of the neighborhood. The planning commission, in exceptional circumstances may allow the construction of additional off-street parking, but under no circumstances more that two (2) spaces in addition to those currently in use for residential purposes. All parking and maneuvering areas must be completely contained on private property. A parking site plan must be approved by the planning commission where a business would require customers coming to the property.

(l) Shall not create diminishment or impairment of established property values to adjoining or surrounding properties.

(2) The planning commission shall review home occupations at its regularly scheduled monthly meeting at which time one (1) of the following actions may be taken:

(a) Approve as submitted.
(b) Approve with modification.
(c) Defer.
(d) Table.
(e) Deny.

(3) The planning commission may impose conditions and restriction upon the premises benefitted by the home occupation use as may be necessary to reduce or minimize the injurious effects of the home occupation.

(4) The planning commission is not required to approve any application for the operation of any home occupation which, in its opinion, is not compatible with the integrity of the neighborhood.

(5) No license for the conduct of any business will be issued until city inspections show compliance with all conditions set by the planning commission.

27-445-11 Accessory Residential Use

A. Purpose. To grant the Planning and Zoning Department the authority to permit citizens in all residential zones to operate an accessory residential use in accordance with the criteria set forth in this section. It is further the intent of this section to regulate the operation of the accessory residential use so that the neighborhood shall be unaware of its existence.

B. Business License. An individual with an approved business license from the City shall not be required to obtain an accessory residential use permit in order to conduct the business from his or her residence as long as the practice is within the criteria of 27-324-6 of this section.

C. Applicant. An accessory residential use permit may be sought only by the home owner or tenant of the address for which the permit is sought.

D. Pre-Application Conference. A pre-application conference pursuant to Section 27-302 is recommended.

E. Submission Requirements. The Director shall prepare an application form specifying the information to be submitted in support of an accessory residential use permit application. This shall include, at a minimum:

1. **Request**. Request for a written description of the use.

2. **Space**. Requirement of a calculation of the amount of space to be occupied by the use.

3. **Fee**. Application Fee established by the Board of Directors.

4. **Affidavit**. Affidavit from the applicant that the proposed use meets each of the approval criteria established in Section 27-324-6 and that the applicant gives the City permission to withdraw the permit should a valid neighborhood complaint be received which identifies actions that violate the terms of the Accessory Residential Use approval. Withdrawal shall take place pursuant to Section 27-314.

1. **License.** Copy of a valid business license issued by the City of Fort Smith.

F. Application and Review Procedure

1. **Determination of Completeness**. Applications shall be submitted to the Director for a determination of completeness pursuant to Section 27-303.

2. **Review.** Complete applications shall be reviewed by the Director. If the Director determines that the application meets the requirements of the UDO (including the provisions of Subsection 27-324-6 C, below) the application shall be approved.

3. **Criteria.** Applicants for an accessory residential use shall meet all of the following requirements:

   a. The activity shall be contained in an area no greater than thirty (30) percent of the total heated living space of the residential structure, and there shall be no alteration to the residential structure and no separate outside entrance for the business area of the residential structure.

   b. Only resident members of the household shall operate the activity.

   c. No inventory of materials or supplies other than normal office, art, craft or photography supplies shall be stored at this location.

   d. No customers shall be served in person at this location.

   e. The address shall not be used for any advertising.

f. No signs shall be used.

g. No business vehicle larger than a pickup truck shall be housed at the residence.

4. **Appeal**. If the Director denies an application for an accessory residential use, the denial may be appealed to the Planning Commission. No further action shall be taken on the application pending the decision of the Planning Commission.

G. **Conditions for Approval.** When an accessory residential use application is approved, the Planning and Zoning Department is allowing the applicant the privilege of engaging in a specific designated activity at a specific residential address. An approved accessory residential use cannot be moved, transferred, or relocated to another address, or remain at the address where it was approved if a new owner occupies the property. If the owner to which the permit was issued moved, the approval does not transfer nor remain at the residence with the new owner, the approval is considered void. The applicant is required to give the Planning and Zoning Department permission to withdraw the accessory residential use permit should a reasonable complaint be received.

H. **Withdrawal of Permit.** When one (1) verifiable complaint is received on the applicant or location for which the permit approval was issued, or when a violation of any of the criteria set forth in section 27-445-11 is confirmed, the accessory residential use may be withdrawn pursuant to Section 27-314.

27-445-12 Conditional Uses

The conditional use permit process allows for special conditions to be attached to a development where the proposed use in not totally inconsistent with the other permitted uses but it may have a significant impact on the surrounding area. The planning commission's intent is to provide flexibility for the petitioner by identifying those special conditions for specific uses without making the ordinance unreasonably strict.

Those uses which are deemed as conditional uses are listed under the extraterritorial open 1 zone (ETJ O-1) in section 27-445-19 of this article.

Conditions:

(1) All conditions required for a conditional use permit must be met before any part of the use can be utilized. If any condition is not met, the conditional use authorization may be revoked by the city.

(2) All conditions required for a conditional use permit must begin to be met within one (1) year of the authorization unless a special time limit has been imposed by the planning commission. An extension of time beyond one (1) year or that imposed by the planning commission may be granted by the director of planning one (1) time for up to ninety (90) days.

(3) The planning commission will review the conditional use permit based on adopted development criteria and if it determines that the criteria have been met it may approve the application unless it determines that if the development is completed as proposed, there is a probability that the development will:

a. Not adequately safeguard the health, safety, and general welfare of the persons residing or working in adjoining or surrounding properties; or
b. Impair an adequate supply of light and air to the surrounding property; or
c. Unduly increase congestion on the roads, or the hazard from fire, flood or similar dangers; or
d. Diminish or impair established property values on adjoining or surrounding properties; or
e. Not be in accord with the intent, purpose, and spirit of the extraterritorial zoning ordinance and land use policies.

(4) A conditional use permit authorizes the permit holder the use of land in a particular way and subject to certain conditions. As such it is transferable to an owner of the same property. However no person may make use of the land covered under such permit except in accordance with all terms and requirements of the permit, so long as the permit remains in effect.

(5) The decision of the Planning Commission concerning a conditional use request may be appealed to the Board of Directors. Any interested party may file an appeal provided that it is filed with the City Clerk by 5:00 p.m. on the tenth calendar day following the date of the Planning Commission decision. A fee in an amount established by the Board of Directors is required for filing an appeal.

27-445-13 Temporary Use Permits

The director of planning may grant a temporary use special permit for religious revivals, temporary recreational facilities, temporary medical facilities, temporary classroom facilities for public and private institutions and similar uses that do not involve retail or food or beverage sales activities, provided that the use complies with regulations governing area, parking, signs, sanitation requirements etc. for the area and does not constitute a nuisance for adjacent properties. Temporary use special permits when granted will be for a specified duration of time, not to exceed sixty (60) days, and are renewable for sixty-day periods thereafter. Permits for periods in excess of one hundred twenty (120) days (one (1) initial period plus one (1) renewable permit) must be reviewed and approved by the planning commission.

Construction offices that are necessary for the sole purpose of providing a temporary office for a particular construction project will not be required to obtain a temporary use special permit when a land use permit has been issued. The construction office may be allowed to remain on the site for the duration of the project. The construction office must be located on the project site and must not constitute a nuisance for adjacent properties. The director of planning may establish special criteria for the location and setup of a construction office.

Any mobile (retail) structure (trailer) existing at the time of this provision may continue to operate provided that this provision shall not be construed to approve continuation of an activity constituting a nuisance or an activity prohibited by statute or ordinance applicable to the use and that the structure has a valid temporary use special retail permit and/or a valid business license for the special site on which it is located. However, should the mobile retail structure be removed from the site for thirty (30) consecutive calendar days, it shall be considered a nonconforming mobile retail structure and shall not operate at that location.

27-445-14 Classification of Unlisted Uses

When uses arise that have not been classified, the following procedure shall be used to determine the proper classification for those uses.

(1) The director of planning shall make an administrative decision as to the appropriate zones in which an unlisted use will be allowed.

(2) The decision of the director of planning concerning the appropriate zones for an unlisted use may be appealed to the planning commission. The following procedure shall be used for such appeals.

a. Upon request of the person wishing to appeal, the director of planning will refer the question of the location of an unlisted use to the planning commission for the commission's decision.

b. The appeal will contain a statement of facts concerning the nature of the use, including pertinent information such as the types of sales anticipated, types of dwelling activities anticipated, whether enclosed or open storage accompanies the use, types of products manufactured or sold, and information about odor, noise, fumes, dust and toxic materials generated by the planned use. In addition, the appeal should contain information about the demand that will be placed on public utility services by the use.

(3) Upon receiving the appeal, the planning commission will consider the nature of the proposed use and its compatibility with uses permitted in the zones for which the use is proposed and then make a decision upon the request.

(4) The decision of the planning commission on the appropriate zone of a new use may be appealed to the board of directors.

27-445-15 Amendments

(1) The board of directors may supplement, change or amend the zoning map and the zoning regulations in the manner prescribed by A.C.A. §§ 14-56-421.

(2) A change in the zoning map or the zoning regulations may be proposed by the city planning commission either on its own initiative or upon the application of any interested property owner within the area proposed for a change.

(a) Before the planning commission shall recommend any alteration or change in the zoning map or regulations to the board of directors, the planning commission

shall hold a public hearing and the proponent of such alteration or change will cause notice of said hearing is made in a newspaper or general circulation in the city at least one (1) time fifteen (15) days prior to that hearing. In connection with this public notice and in addition thereto, any proponent for a zoning map change, other than the planning commission, shall deliver to the director of planning the following information: the legal description of the property proposed to be rezoned; the street address of the entire petitioned area; the present zone and the proposed zone, and the names and addresses of all persons listed on the current tax records as the owners of all property within three hundred (300) feet of the petitioned property, including property across any street and intersection and all owners of property within the petitioned area, and finally, the date that the petition will be heard by the planning commission. This information will be utilized by the director of planning by mailing notices to all persons listed therein, notifying them of the public hearing on such proposed change and listing the street addresses of the property and the proposed change. In addition, for applications to change the zoning map, other than those made by the planning commission, the director of planning will, no later than ten (10) days prior to the date of the public hearing, cause adequate signs to be posted on the petitioned premises so that the information thereon will be visible to the general public and the signs shall contain the information that the planning commission has been petitioned to change the zoning and that the current zoning and proposed zoning will be listed on the sign as well as the date on which the public hearing is to be held. It shall be a misdemeanor to remove or tamper with this sign, punishable by a fine of not less than ten dollars ($10.00), nor more than one hundred dollars ($100.00) and a statement to this effect shall be on the sign. The information required in this section for an alteration in the zoning map or regulations shall be submitted to the director of planning at least twenty (20) days prior to the date of the public hearing, scheduled before the planning commission. Following the public hearing, the planning commission may adopt any proposed alterations or changes in the zoning map or regulations as present or in a modified form by a majority vote of the entire planning commission, and shall certify such recommendations to the board of directors for further procedure in conformity with A.C.A. § 14-56-401 et seq. Such certified recommendations shall be automatically placed on the agenda of the board of directors at the second regularly scheduled meeting following action by the planning commission. Subsequent to the filing of an application for a change in the zoning map and the publication of the notices provided for in this subsection, the application may not be withdrawn or the date set for the hearing of the application postponed without the approval of the planning commission.

(b) Where changes or alterations in the zoning map or regulations are proposed by a property owner, then such property owner shall bear the expense of publication of notice given by the planning commission, in addition to the expense of publication of the ordinance after adoption by the board of directors, and in addition thereto, shall deposit with the planning department the sum established by the board of directors.

(c) Appeals from decisions of the planning commission shall be as follows:

1. In the event the planning commission denies a requested change in the zoning map or zoning regulations so that no recommended action is certified by the planning commission to the board of directors pursuant to subsection (1) of this subparagraph, the proponent of such alteration or change shall have the right to file an appeal of the decision of the planning commission with the board of directors. Such right shall be exercised by filing a written notice of such appeal with the office of the city administrator, or designated agent, during normal business hours on or before the tenth calendar day following the planning commission meeting at which the hearing on the proposed change or alteration was held (or following the date on which the planning commission handed down its decision of non recommendation of alteration or change if the date of decision differs from the date of hearing), otherwise the right of appeal shall have been waived by the proponent.
2. Notice of the appeal of such decision to the board of directors will be provided to those persons initially provided postal notice with reference to the hearing by the planning commission of the proposed change or alteration. The proponent of the change who has sought such appeal shall pay, at the time of filing his notice of appeal, the sum established by the board of directors to cover the cost of providing such notice.
3. The hearing of the proponent's appeal will be scheduled for the first regular meeting of the board of directors following the date of deadline for the filing of such appeal. Subsequent to the filing of a notice of appeal, the appeal may not be withdrawn or the hearing date for the appeal postponed without the approval of the board of directors.
4. In the event that the appeal to the board of directors of the planning commission decision is rejected by the board of directors, the proponent of such change or alteration shall not be permitted for a period of one (1) calendar year from the date of action by the board of directors to file with the planning commission a petition requesting an identical or substantially identical change or alteration in the zoning of the subject real property or any portion thereof.

(d) In the event that the board of directors denies a proposed change in the zoning map certified to it with the planning commission's approval, the proponent of such change or alteration shall not be permitted for a period of six (6) months from the date of the action of the board of directors to present the identical proposed change on the same property to the board of directors. No such rejected proposal shall be submitted, even subsequent to the expiration for the consideration of the board of directors until it has been resubmitted to the planning commission for consideration.

27-445-16 Use regulation types of uses

The ETJ use matrix, section 27-445-28 is based on the American Planning Association's Land Based Classification System (LBCS), as interpreted by these regulations and the city planning department. All of the use categories listed in the use table are defined in section 27-445-8,

definition of uses of the Fort Smith Municipal Code or the Land Based Classification System of the American Planning Association.

(1) *Classifications.*

a. Uses permitted by right. A "P" indicates that a use is allowed by right in the respective district. Such uses are subject to all other applicable regulations.

b. Uses permitted conditionally. A "C" indicates that a use is allowed conditionally, subject to the issuance of a conditional use permit.

c. Accessory uses. An "A" indicates that a use is typically permitted as an accessory use.

d. Blank. A blank cell in the use table indicates that a use category is not allowed in the indicated district.

(2) *Unlisted uses.* The director shall determine whether or not an unlisted use is part of an existing use category. Any interpretation made by the planning department or planning commission shall be deemed final regardless of the contents of the LBCS.

27-445-17 Dimensional Standards

(1) *Lot area.*

(a) *Measurement.* Lot area is measured as the amount of net land area contained within the property lines of a lot or parcel, not including right-of-way for streets.

(b) *Utilities.* Utilities using land or an unoccupied building covering less than one thousand (1,000) square feet of site area are exempt from minimum lot area standards.

(2) *Lot width.* Lot width is the width of the lot as measured at the front setback line.

(3) *Street frontage.* Street frontage (or frontage) is the distance along a property line that is also the right-of-way line of a public street. It is measured between side lot lines along the front lot line.

(4) *Setbacks.*

(a) *Measurement.* Setbacks are the minimum horizontal distance between the front or side of a building and the front lot line or side lot line of the lot on which the building is located, disregarding any exceptions or projections allowed by these regulations. The setback line is a line which is the specified distance from and parallel to any lot line.

(b) Along a private street, setback measurement shall start at a point 25 feet from the street centerline.

(c) The following structures may encroach no more than three feet into required setbacks if they are approved by the city building official and provided that they do not cross property lines or utility easements:

1. Patios, terraces, walks, and driveways, provided they are at grade and not covered;
2. Porches, decks landings, and stairs, provided they are for single story buildings and are not covered;
3. Play equipment;
4. Clothesline poles;
5. Portable yard furniture;
6. Fences;
7. Flagpoles;

8. Overhangs, coves, and cornices as defined in the currently adopted building code may be allowed, provided they do not exceed 3 feet. The definition of overhang specifically excludes any exterior wall of any structure regardless of its elevation above ground level.

(d) Setback averaging. Regardless of the minimum front or rear setback required by the underlying zoning district, front or rear setbacks may be adjusted to the average of the existing setbacks of the lots with structures that are on both sides of the subject lot. All residential lots on a cul-de-sac street that have frontage on the radius of the cul-de-sac are permitted to have a front yard setback of twenty (20) feet.

(e) Except as otherwise provided in individual zone districts and/or overlay districts, signs are exempt from setbacks and other requirements provided they are erected in compliance with the provisions of Chapter 7.

(5) *Lot coverage.* Lot coverage is the maximum percentage of the lot that may be covered by structures and other impervious surfaces. It is calculated by dividing the square footage of impervious cover by the square footage of the lot.

(6) *Floor area ratio (FAR).* Floor area ratio is measured as the gross floor area of all buildings on a lot or parcel divided by the lot area.

(7) *Height.*

(a) *Measurement.* Building height is the mean vertical distance from the average ground level abutting a building or structure to the highest permanent part of the building or structure.

(b) A structure may not be more than the maximum allowable feet high at the minimum side setback line, but for each addition foot of horizontal setback in excess of the minimum, the height may be increased by one foot. The height of a gabled end of a building shall be measured at the midpoint of the gable instead of the peak of the gable.

(c) The following structures may be exempted from the height requirements in the various districts if they are not detrimental to neighboring property and are approved by the city building official:

1. Chimneys;
2. Vents;
3. Flagpoles;
4. Antenna for reception only of radio and television signals (transmitting antenna, towers, and other structures on which receiving antenna are located are not exempt from height or other setback requirements).

(d) The construction, maintenance, or establishment of any building, tree, smokestack, chimney, flagpole, wire, tower, or other structure or appurtenance thereto, which may constitute a hazard or obstruction to safe air navigation, landing, or take-off of aircraft near an airport, is prohibited. Regulations adopted by the Federal Aviation Agency (FAA) shall be minimum standards. No request shall be approved if it violates FAA standards.

(8) *Building separation.* Required building separation shall be determined by the Arkansas Fire Prevention Code.

(9) *Density.* Density is measured by net lot area, not including street or other dedicated right-of-way(s).

27-445-18 Street Hierarchy

Street classification as used in these regulations is as follows, from lowest to highest:

(1) Residential;
(2) Residential collector, restricted parking;
(3) Residential collector;
(4) Major collector;
(5) Minor arterial;
(6) Major arterial;
(7) Boulevard;
(8) Industrial street.

27-445-19 Extraterritorial open zone (ETJ Open-1) created

All real property identified in the extraterritorial zoning jurisdiction as defined in section 27-445-2 of these regulations is hereby zoned extraterritorial open zone (ETJ Open-1). The following zoning district regulations shall apply to all properties zoned as ETJ Open-1:

(1) *Characteristics.* A zone to protect the undeveloped areas within the city's extraterritorial zoning jurisdiction from incompatible land use or other specific uses that may constitute a nuisance to the residents therein or uses that may create an endangerment to the health, safety, or general welfare of the jurisdiction's population. The ETJ Open-1 zone designation may be utilized as a zoning classification for properties until a distinct land utilization pattern is developed in keeping with the city's comprehensive plan and other land use policies.

(2) *Permitted uses.*

a. General uses:
   1. Single-family homes;
   2. Two-family homes (duplexes);
   3. Nurseries and greenhouses, private and commercial;
   4. Truck farms;
   5. Private or public golf courses;
   6. Fire and police stations;
   7. Utility substations;
   8. Parks, playgrounds and other open spaces;

b. *Conditional uses:*
   1. Agricultural (not including commercial/industrial operations, e.g., commercial food lots, processing plants, sales yards;
   2. Churches;
   3. Country clubs of more than ten (10) acres;
   4. Boarding schools;
   5. Nursing homes;
   6. Orphanages;
   7. Public, private or parochial schools and colleges (not including industrial trade schools);
   8. Public buildings;

c. *Accessory uses:*

1. Guest houses, not including mobile homes and employee's quarters, not including mobile homes.
2. Accessory farm buildings (requires conditional use permit) including barns, cribs, sheds, tool rooms, shops, bins, tanks, and silos. All structures for the housing of large and small domestic farm animals shall be located no closer than one hundred (100) feet from any property line.
3. Accessory open or closed storage of farm materials, products, equipment and vehicles.
4. Accessory farm dwellings, not to include mobile homes, two (2) on farms with a minimum of fifty (50) tillable acres. These dwellings shall share a common entrance from a public or private road or highway and shall be occupied by permanent employees of the farm or immediate members of the family owning or operating the farm. All accessory farm dwellings shall be landscaped and screened from adjacent properties.
5. Other accessory uses, as determined by the planning commission, that are incidental to the permitted uses and not detrimental to the adjacent properties or the character of the ETJ Open-1 zone.

27-445-20 Rural residential (RR).

(1) *Purpose.* To provide areas for low intensity agricultural operations and very low density single family uses rural areas. This district is appropriate where low density development is desired or where lack of public facilities and services requires low intensity development. Development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RR zoning is appropriate in the low density residential future land use classification of the Fort Smith ETJ land use map.

(2) *Uses.* Permitted, conditional and accessory uses in the RR district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one (1) principal structure may be erected on each defined lot.

(3) *Area and bulk regulations.*

TABLE INSET:

Density/Min. Lot Size	Min. Lot Width (at setback line)	Maximum Lot Coverage	Minimum Street Frontage	Max. Height/Number of Stories
1 structure/3 acres	200 feet	10%	50 feet	35 feet/2.5 stories

TABLE INSET:

Setbacks			
Front	Side	Street Side/Corner	Rear

50	25	50	25

(4) *References to other standards.* Development in the city extra-territorial jurisdiction area shall conform to the following standards of the city zoning ordinance:

TABLE INSET:

Standard	Section
Home Occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

(Ord. No. 14-06, § 2, 2-7-06)

27-445-21 Residential Estate (RE)

(a) *Purpose.* The purpose of the residential estate district is to provide areas for low-density, large lot single family residential development. Property zoned RE should include tracts that abut or are in close proximity to existing or approved large-lot single family development, making RE an appropriate transition between rural and suburban uses. Where public facilities and services are not yet available, development in this district shall be designed to allow for the future planned expansion of utilities and services where necessary. RE zoning is appropriate in the low density residential future land use classification of the city ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the RE district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one principal structure may be erected on each defined lot.

(c) *Area and bulk regulations.*

TABLE INSET:

Density/Min. Lot Size	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height/Number of Stories
1 structure/1 acre	100 feet	20%	50 feet	35 feet/2.5 stories

TABLE INSET:

Setbacks			
Front	Side	Street Side/Corner	Rear
40	15	40	20

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home Occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

27-445-22 Residential single-family low density (RS-1)

(a) *Purpose.* The purpose of the single-family low density district is to maintain, protect, and provide opportunities for low density residential development in spacious environments, along with compatible limited public and institutional uses. RS-1 zoning is appropriate in the low density residential category of the city ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the RS-1 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one principal structure may be erected on each defined lot.

(c) *Area and bulk regulations.*

TABLE INSET:

Density/Min. Lot Size (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Min. Street Frontage	Max. Height/Number of Stories
1 structure/14,000 s.f.	100'	30%	50'	35 feet/2.5 stories

TABLE INSET:

Setbacks (feet)

Front	Side	Street Side/Corner	Rear
30	10	30	10

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home Occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

Sec. 27-4__. Residential single-family medium density (RS-2).

(a) *Purpose.* A low to medium density district allowing residential uses for single-family homes, duplexes and manufactured homes in areas where adequate public services and facilities are available. RS-2 zoning is appropriate in suburban areas in the low density residential category of the city ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the RS-2 district are identified in section 27-529, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one (1) principal structure may be erected on each defined lot.

(c) *Area and bulk regulations.*

TABLE INSET:

Min Lot Size	Minimum Lot Width (at setback line)	Max. Lot Coverage	Min. Street Frontage	Max. Height
1/2 acre	75'	50%	20'	35'

Setbacks (feet)

TABLE INSET:

Front	Side	Street Side/Corner	Rear
30	7.5	30	10

(1) *Minimum parcel/lot size for rezoning to MUR.*

a. New district: 2 acres.

b. Extending existing district: 1 acre.

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home occupations	Article VI, section 27-511
Conditional uses	Article VI, section 27-512

(e) *Additional requirements.* Single-family dwellings constructed or installed in a single-family medium density (RS-2) zone shall be subject to the following additional requirements:

(1) The principal structure(s) must be wider than twenty-two (22) feet.

(2) The principal structure(s) must have a minimum pitched roof of three (3) in twelve (12) or fourteen (14) degrees or greater.

(3) The principal structure(s) shall be appropriately sited on the lot, with the front door or main entry of the home oriented to the front of the lot.

(4) The principal structure(s) must be placed upon permanent foundations that consist of concrete footings and piers or perimeter foundations.

(5) The principal structure(s) must be completely underpinned around the entire perimeter with masonry materials.

(6) The principal structure(s) must have all transport elements such as wheels, axles, trailer or transport hitched and exterior lighting systems attached for highway use removed.

(7) The exterior siding consists of vinyl or aluminum lap siding, wood, masonite, or other materials similar to the exterior siding commonly used in standard residential construction. All exterior finish materials of the principal structure shall be compatible with the neighborhood.

(f) *Mobile home park requirements.*

(1) *Location.*

a. Mobile home parks may be located in any area zoned residential single-family medium density (RS-2) provided a conditional use has been approved by the planning commission in accordance with chapter 27-512.

b. It shall be unlawful to park any mobile home to be occupied for dwelling or sleeping purposes within the extraterritorial jurisdiction (ETJ) of the city, as the

same now exists or may be hereafter designated, outside a licensed mobile home park or an approved mobile home subdivision.

(2) *Site plan.* Prior to the issuance of a development permit, a detailed site plan showing all requirements shall be submitted to the director of planning for approval.

(3) *Supervision.* The licensee or permittee, or a duly authorized attendant or caretaker, shall be in charge at all times to keep the mobile home park, its facilities and equipment in a clean, orderly and sanitary condition. The attendant or caretaker shall be answerable, with the licensee or permittee, for the violation of any provision of this division to which the licensee or permittee is subject.

(4) *Wall.* Where any boundary of a mobile home park directly abuts property which is improved with a permanent residential building or directly abuts unimproved property which may, under existing laws and regulations, be used for permanent residential building construction, a wall, solid fence, or hedge screen with a minimum height above finish grade of six (6) feet shall be provided along such boundary.

(5) *Drainage.* The mobile home park shall be located on a well-drained site, properly graded to ensure rapid drainage and free from stagnant pools of water.

(6) *Size of spaces.* Each mobile home park shall provide mobile home spaces, and each such space shall be clearly defined or delineated. Each space shall have a minimum depth of sixty (60) feet and width of not less than forty (40) feet.

(7) *Placement of homes.* Mobile homes shall be so located on each space that there shall be at least a twenty-foot clearance in all directions between mobile homes or buildings within the mobile home park. No mobile home shall be located closer than ten (10) feet to any property line of the park which does not abut upon a public street or highway. No mobile home park shall be located closer to any property line of the park abutting upon a public street or highway within twenty-five (25) feet or such other distance as may be established by ordinance or regulations as a front yard or setback requirement, with respect to conventional buildings in the zone in which the mobile home park is located.

(8) *Curb and gutter roadway required.* All mobile home park spaces shall abut upon a curb and gutter roadway of not less than twenty-two (22) feet in width, which shall have unobstructed access to a public street or highway.

(9) *Illumination of driveways, walks.* All roadways and walkways within the park shall be hard surfaced and area lighting shall be required at all roadway intersections and at three hundred (300) feet intervals along all roadways and walkways. The minimum size for lamps shall be one hundred seventy-five (175) watts mercury vapor or equivalent.

(10) *Electrical services.* Electrical services shall be constructed in accordance with the current adopted city electrical code.

(11) *Water supply.* An adequate supply of pure water for drinking and domestic purposes shall be supplied by pipes to all buildings and mobile home spaces within the park to meet the requirements of the park. Each mobile home space shall be provided with a cold water tap at least four (4) inches above the ground. An adequate supply of hot water shall be provided at all times in the service buildings for all bathing, washing and cleansing facilities.

(12) *Sanitation facilities.* Each mobile home park shall provide sanitation facilities in compliance with the rules and regulations pertaining to mobile home and travel trailer parks as adopted by the state board of health.

(13) *Specifications of service buildings.*

a. Service buildings housing sanitation facilities shall be permanent structures complying with all applicable ordinances and statutes regulating buildings, electrical installations and plumbing and sanitation systems.

b. The service buildings shall be well lighted at all times of the day and night, shall be well ventilated with screened openings, shall be constructed of such moistureproof material, which may be painted woodwork, as shall permit repeated cleaning and washing and shall be maintained at a temperature of at least sixty-eight (68) degrees Fahrenheit during the period from October first to May first. The floors of the service buildings shall be of water-impervious material.

c. All service buildings and the grounds of the park shall be maintained in a clean, sightly condition and kept free of any condition that will menace the health of any occupant or the public or constitute a nuisance.

(14) *Sewage and refuse disposal.*

a. Water from showers, bathtubs, flush toilets, urinals, lavatories and slop sinks in service and other buildings within the park shall be discharged into a public sewer system in compliance with applicable provisions of this Code and city ordinances or into a private sewer and disposal plant system of such construction and in such manner as will present no health hazard.

b. Each mobile home space shall be provided with a sewer at least four (4) inches in diameter, which shall be connected to receive the waste from the shower, bathtub, flush toilet, lavatory and kitchen sink of the mobile home

harbored in such space and having any or all of such facilities. The sewer in each space shall be connected to discharge the mobile home waste into a public sewer system in compliance with applicable ordinances or into a private sewer and disposal plant system of such construction and in such manner as will present no health hazard. Plans for construction of sewage disposal and/or treatment facilities shall be approved by the state board of health and the city.

(15) *Fire protection.* Every mobile home park shall be equipped at all times with fire extinguishing equipment and hydrants in good working order of such type, size and number and so located within the park as to satisfy applicable regulations of the fire department. No open fires shall be permitted at any place which may endanger life or property. No fires shall be left unattended at any time.

(16) *Animals and pets.* No owner or person in charge of any dog, cat or other pet animal shall permit it to run at large or commit any nuisance within the limits of any mobile home park.

(17) *Parking space.* Each mobile home space shall have a minimum of two (2) off roadway, ten (10) by twenty (20), all weather parking spaces.

(18) *Open or recreational area.* Not less than five (5) percent of the gross site area of the mobile home or recreational vehicle park, shall be devoted to recreational facilities, generally provided in a central location. In large parks this may be decentralized. Recreational areas may include space for community buildings and community use facilities such as adult recreations, child play areas, and swimming pools, but not include vehicle parking areas. When playground space is provided, it shall be so designated and protected from traffic, thoroughfares, and parking areas. Such space shall be maintained in a sanitary condition and free of safety hazards.

(Ord. No. 53-08, § 2, 10-7-08)

27-445-23 Neighborhood compatible (C-1)

(a) *Purpose.* To provide small areas for limited office, professional service, and local retail designed in scale with surrounding residential uses. This district encourages the incorporation of neighborhood-scale commercial uses in proximity to residential uses for each of accessibility and promotion of pedestrian-oriented development. C-1 zoning is appropriate in the neighborhood commercial classification of the ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the C-1 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one principal structure may be erected on each defined lot; however, second-story residential is permitted as a second use in all commercial structures.

(c) *Area and bulk regulations.*

TABLE INSET:

Max. Lot Size/Max. Bldg (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height
21,000 Lot/30,000 Bldg.	50'	60%	20'	35 feet

TABLE INSET:

Setbacks (feet)			
Front	Side	Street Side	Rear
25	10	10	10

1. Minimum parcel/lot size for rezoning to C-1:
   a. New district: Minimum seven thousand (7,000) square feet, maximum two (2) acres.
   b. Extending existing district: Minimum seven thousand (7,000) square feet, maximum twenty-one thousand (21,000) square feet.

2. Maximum building total for development: Thirty thousand (30,000) square feet; maximum individual building or unit in multi-unit structure: five thousand (5,000) square feet.

3. Required street access: residential collector or higher.

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home Occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

27-445-24 Commercial light (C-2)

(a) *Purpose.* To provide office, service, and retail activities that are located at the edge of residential areas but which serve an area larger than adjacent neighborhoods. The C-2

district is intended to accommodate well designed development sites that provide excellent transportation access, make the most efficient use of existing infrastructure, and provide for orderly buffers and transitions between uses. C-2 zoning is appropriate in the commercial neighborhood classification of the ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the C-2 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director. No more than one principal structure may be erected on each defined lot; however, second-story residential is permitted as a second use in all commercial structures.

(c) *Area and bulk regulations.*

TABLE INSET:

Min. Lot Size/Max. Bldg (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height
7,000 lot/30,000 bldg.	50'	60%	20'	35 feet

TABLE INSET:

Setbacks (feet)			
Front	Side	Street Side	Rear
25	10	10	10

1. Minimum parcel/lot size for rezoning to C-2:
   a. New district: forty-two thousand (42,000) square feet.
   b. Extension of existing district: seven thousand (7,000) square feet (one (1) lot).

2. Maximum individual building square footage on a single lot: thirty thousand (30,000) square feet.

3. Required street access: major collector or higher.

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home Occupations	Section 27-445-10

Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

27-445-25 Commercial moderate (C-3)

(a) *Purpose.* To provide for general commercial activities, offices, and services to serve the community. This district promotes a broad range of activities, commercial operations, and services that are dispersed throughout the city and designed at a smaller scale than a regional center. C-3 zoning is appropriate in the light commercial office classification of the ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the C-3 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director of planning and zoning. No more than one principal structure may be erected on each defined lot; however, second-story residential is permitted as a second use in all commercial structures.

(c) *Area and bulk regulations.*

TABLE INSET:

Min. Lot Size/Max. Bldg (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height
12,000 lot/60,000 bldg.	75'	60%	n/a	35 feet

TABLE INSET:

Setbacks (feet)				
Front	Side	Street Side	Side/Rear	Rear
			Abutting RS	
25	20	15	30	20

1. Minimum parcel/lot size for rezoning to C-3: Two (2) acres.
2. Maximum individual building square footage on a single lot: Sixty thousand (60,000).
3. Required street access: major collector or higher.

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

27-445-26 Industrial light (I-1)

(a) *Purpose.* To provide for a mix of light manufacturing uses, office park, research and development, and limited retail/service uses in an attractive, business park setting. Industrial light may be used as a transition between mixed use or commercial uses and heavier industrial uses. I-1 zoning is appropriate in the light industrial classification of the ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the Industrial-1 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director.

(c) *Area and bulk regulations.*

TABLE INSET:

Min. Lot Size (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height
20,000	100'	75%	n/a	45'

TABLE INSET:

Setbacks (feet)				
Front	Side	Side	Side/Rear Abutting Residential	Rear
25	10	15	100	10

1. Minimum parcel/lot size for rezoning to I-1:
   a. New district: Two (2) acres.
   b. Extension of existing district: Twenty thousand (20,000) square feet unless extension of existing development.
2. Required street access: major arterial or higher.
3. Side/rear setback abutting residential may be reduced to sixty (60) with planning commission approval of screening/landscaping through development plan approval process.

4. References to other standards.

TABLE INSET:

Standard	Section
Home occupations	Section 27-445-10
Accessory Residential Use	Section 27-445-11
Conditional Uses	Section 27-445-12

27-445-27 Industrial moderate (I-2)

(a) *Purpose.* To provide for industrial uses that can be operated in a clean and quiet manner that will not be obnoxious to adjacent uses and have relatively limited environmental impacts. I-2 uses are primarily contained indoors and have heavier traffic generation than I-1 uses. I-2 zoning is appropriate in the industrial classification of the ETJ land use map.

(b) *Uses.* Permitted, conditional and accessory uses in the Industrial-2 district are identified in section 27-445-28, ETJ use matrix. Specific uses not identified on the use list are subject to classification by the director.

(c) *Area and bulk regulations.*

TABLE INSET:

Min. Lot Size (s.f.)	Min. Lot Width (at setback line)	Max. Lot Coverage	Minimum Street Frontage	Max. Height
20,000	100'	60%	n/a	45'

TABLE INSET:

Setbacks (feet)				
Front	Side	Street Side	Side/Rear Abutting Residential	Rear
50	25	50	100	20

1. Minimum parcel/lot size for rezoning to I-2:
   a. New district: Ten (10) acres.
   b. Extension of existing district: Twenty thousand (20,000) square feet unless extension of existing development.

2. For buildings and structures located between one hundred (100) and one hundred fifty (150) feet of residentially zoned property, for each additional foot of setback in excess of

the minimum required setback, building height may be increased by one foot. Buildings or structures located more than 150 feet from residentially zoned property shall have no specific height requirement.

3. Side/rear setback abutting residential may be reduced to sixty (60) feet with planning Commission approval of screening/landscaping through development plan approval process. Additional building height may not be calculated in this space.
4. Required street access: major arterial or higher.

(d) *References to other standards.*

TABLE INSET:

Standard	Section
Home occupations	Article VI, section 27-511
Conditional uses	Article VI, section 27-512

27-445-28 ETJ use matrix

TABLE INSET:

Districts			RR	RE	RS-1	RS-2	C-1	C-2	C-3	I-1	I-2
Uses	P = Permitted Use, C = Conditional Use, A = Accessory Use										
Function	*Size or density restrictions for any use may be noted in the district*										
1000 Residence or Accommodation											
Residence or Accomodation	1100 Private household										
		1100 Single-family building									
	Structure	1110 Detached	P	P	P	P					
		1120 Attached									
		1121 Duplex				C					
		1130 Accessory Unit									
		1140 Townhouse						P	P		

		1150 Manufactured housing				P					
		1160 Mobile Home Parks				C					
		Guest house	A	A	A	A					
		1200 Multifamily structure						P	P		
		Commercial structure with accessory residential					A	A	A		
		6520 Family group home I	P	P	P	P					
		6520 Neighborhood group home II						P	P		
		6520 Community residential facility				C		P	P		
		6561 Orphanage						C	C		
		6560 Homeless shelter/rescue mission							C		
	1200 Housing services for the elderly										
		1210 Retirement housing services									
		1220 Congregate living services									
		1230 Assisted living services									
		1250 Skilled-nursing services									
	1300 Hotels, motels, or other accommodations										
		1310 Bed and Breakfast						P	P		

		Inn									
		1320 Rooming and boarding						P	P		
		S1320 Dormitory, sorority, fraternity						C	C		
		1330 Hotel, motel or tourist court									
2000 General sales or services											
General sales or service	S2000 Commercial buildings and other specialized structures										
	2000 General sales or services										
	2100 Retail sales										
	2110 Automobile sales or service										
		2110 Body shop									
			Car wash - full service								P	
			Car wash self-service							C	P	
			Detailing service							P	P	
			Engine repair								P	
			Other repair								P	
			Paint								P	
			Quick lube							P		
		2111 Car dealer								P	
		2112 Bus, truck, mobile homes, or large vehicles								P	P
		2113 Bicycle, motorcycle,								P	

		ATV									
		2114 Boat or marine craft								P	
		2115 Parts, accessories							P	P	
		Tires								P	
		2116 Gasoline service								P	P
		with convenience store							P	P	P
		without convenience store							P	P	P
		automobile storage								C	C
		truck stop/travel plaza								C	C
	2120 Heavy consumer goods sales or service										
		2120 Agricultural equipment								P	
		Construction equipment and machinery								P	
		Heavy machinery and equipment								P	P
		Repair - commercial and industrial machinery								P	
		Repair - consumer goods, large								P	
		Repair - consumer goods, small							P		
		Repair - clothing and personal items						P	P		
		2121 Furniture or home						P	P		

		furnishings									
		Used furniture									
		2122 Hardware, home centers						P	P	P	
		2123 Lawn and garden supplies							P	P	P
		Greenhouse								P	
		2124 Department store, warehouse club or superstore							P		
		2125 Electronics and appliances						P	P		
		New inventory only					P				
		2126 Lumber yard and building materials								P	P
		2127 Heating and plumbing equipment								P	P
		2128 Oil and Gas Equipment (sales or service)								P	P
	2130 Durable consumer goods sales or service										
		2131 Computer and software						P	P	P	
		2132 Camera and photographic supplies						P	P		
		2133 Clothing, jewelry, luggage, shoes					P	P	P		
		Used clothing, jewelry						P	P		
		2134 Sporting goods, toy and hobby, and musical						P	P		

		inst.									
		2135 Books, magazines, music, stationery						P	P	P	
	2140 Consumer goods, other										
		2141 Florist					P	P	P		
		2142 Art dealers, supplies, sales and service						P	P	P	
		2143 Tobacco or tobacconist establishment					P	P	P		
		2144 Mail order or direct selling establishment							P	P	
		2145 Antique shops					C	C	P	P	
		2145 Flea markets (indoor only, no outdoor storage)					P	P	P		
	2150 Grocery, food, beverage, dairy										
		2151 Grocery store, supermarket, or bakery					P	P	P	P	
		2152 Convenience store (no gasoline sales)						P	P	P	
		2153 Specialty food store						P	P	P	
		2154 Fruit and vegetable store						P	P		
		2155 Beer, wine and liquor store						C	P		
			with drive-through						P		
		2160 Health and personal care									
		2161 Pharmacy or drug store					P	P	P		
		2162 Cosmetic and beauty									

		supplies									
		2163 Optical						P	P		
		2200 Finance and Insurance									
		2200 Pawnshop (inside only)							P		
		Pawnshop (outdoor storage and sales)									
	2210 Bank, credit union, or savings institution										
		Branch office							P	P	P
		Automatic teller machine						P	P	P	P
		2220 Credit and finance establishment						P	P	P	P
		2230 Investment banking, securities, and brokerages						P	P	P	P
		2240 Insurance-related establishment						P	P	P	P
		2250 Fund, trust, or other financial establishment						P	P	P	P
	2300 Real estate, and rental and leasing										
		2310 Real estate services						P	P	P	P
		2320 Property management services						P	P	P	P
		2330 Rental and leasing									
		2332 Cars								P	
		2332 Trucks, trailers, RVs								P	

			2333 Recreational goods									
			2334 Commercial, industrial machinery and equip.								P	
			2335 Consumer goods									
			2336 Video, music, software						P	P		
	2400 Business, professional, scientific, and technical services											
		2410 Professional services							P	P	P	P
			2411 Legal services						P	P	P	P
			2142 Accounting, tax, bookkeeping, payroll						P	P	P	P
			2143 Architectural, engineering						P	P	P	P
			2144 Graphic, industrial, interior design						P	P	P	P
			2145 Consulting services						P	P	P	P
			2146 Research and development services						P	P	P	
				Medical laboratories (no animal research)						C		
				Medical laboratories							C	C
			2147 Advertising, media, photography services						P	P	P	P
			2418 Veterinary services (indoor)						P	P	P	P
				Veterinary services							P	P

				(with outdoor kennels)								
		2420 Administrative services										
			2421 Office and administrative services						P	P	P	P
			2422 Facilities support services						P	P	P	P
			2423 Employment agency							P	P	P
			2424 Business support services						P	P	P	P
			2425 Collection agency						P	P	P	P
		2430 Travel arrangement and reservation services							P	P		
		2440 Investigation and security services							P	P		
		2450 Services to buildings and dwellings										
			2451 Extermination and pest control									P
			2452 Janitorial						P	P		
			2453 Landscaping/greenhouse								P	P
			2454 Carpet and upholstery cleaning					C	P	P	P	P
				Carpet and upholstery cleaning - mobile				C	P	P	P	P
			2455 Packing, crating, and convention/trade svcs.									
	2500 Food services											

		2510 Full-service restaurant						P	P	P	
		2520 Cafeteria or limited service restaurant						P	P	P	
		With drive-through						C	P	P	
		With drive-in								P	
		2530 Snack or nonalcoholic bar, cafe						P	P	C	
		2540 Bar or drinking place						C	C		
		Beer garden							C		
		2550 Mobile food services									
		2560 Caterer						P	P	C	
		2570 Food service contractor								P	P
		2580 Vending machine operator									
	2600 Personal services										
		2600 Bail bonds									
		2600 Salon/spa services					P	P	P		
		Tanning salons						P	P		
		2600 Cleaners, dry cleaning, laundry						P	P		
		Pick-up/drop-off only					P	P			
		Commercial laundry								P	P

		2600 Photography						P	P		
		2600 Printing, photocopying						P	P	P	P
		2600 Tattoo parlor							P		
		2600 Weight loss centers									
	2700 Pet and animal services (except veterinary)										
		2710 Pet or pet supply store						C	P		
		2720 Animal and pet services (indoor)						P	P		
			Outdoor								
			Pound							P	P
	S5200 Automobile parking facilities									C	
		S5210 Surface parking, open								C	
		S5220 Surface parking, covered								C	
		S5230 Multistoried parking structure with ramps								C	
		S5240 Underground parking structure with ramps								C	
3000	Manufacturing and wholesale trade										
Manufacturing and Wholesale Trade	3100 Food, textiles and related products										
		3110 Food and beverages								P	P
		3120 Tobacco									

		manufacturing									
		3130 Textiles									P
		3140 Leather and allied products									
	3200 Wood, paper and printing products										
		3210 Wood products establishment									P
		3220 Paper and printing materials									P
		3230 Furniture and related products									P
	3300 Chemicals, metals, machinery, and electronics manufacturing										
		3310 Petroleum and coal products									P
		Refinery									
		Asphalt									
		3320 Chemicals, plastics and rubber products									
		Medical/pharmaceutical								P	P
		Acid									
		3330 Nonmetallic mineral products									
		3340 Primary metal manufacturing									P
		3350 Machinery manufacturing									P
		3360 Electrical equipment,								P	P

		appliance and components									
		3370 Transportation equipment, automobile, boats									P
	3400 Miscellaneous manufacturing										
		3410 Jewelry and silverware									
		3420 Dolls, toys, games, musical instruments									
		3430 Office supplies, inks									
		3440 Signs								P	P
	3500 Wholesale trade establishment										
		3510 Durable goods								P	P
		Automobile auction									P
		3520 Nondurable goods (life expectancy < 3 years)								P	P
	3600 Warehouse and storage services										
		Packaging and distribution									P
		Bulk petroleum storage									
		S2710 Mini-warehouse								P	
		Container storage								P	
		S2720 High-rise mini-warehouse									
		S2730 Warehouse structure								P	P

			Petroleum storage and loading									C
			Junkyard, salvage									
4000 Transportation, Communication, Information and Utilities												
Transportation, Communication, Information and Utilities	4100 Transportation services											
		4110 Air transportation							C	C	P	P
		4120 Rail transportation									P	P
		4130 Road, ground passenger, and transit transportation									C	
		4138 Towing service									P	P
		4140 Truck and freight transportation services										
		4150 Marine and water transportation									P	P
		4160 Courier and messenger services							C	P		
		4170 Postal services							C	P	P	C
		4180 Pipeline transportation										P
	4200 Communications and information											
		4210 Publishing									P	P
			Printing								P	P
		4220 Motion pictures and sound recording studios							P	P	P	P

		4230 Telecommunications and broadcasting studios						C	P	P	P
		4240 Information services and data processing									
		S6500 Communication towers	C	C	C	C	C	C	P	P	P
	4300 Utilities and utility services		C	C	C	C	C	C	C	P	P
		Private franchise utilities								P	P
		4310 Electric power								C	P
		4313 Nuclear power									
		4340 Sewer, solid waste and related services									P
		Recycling drop-off								C	P
		4342 Hazardous waste treatment and disposal									
		4343 Solid waste collection									P
		4344 Solid waste combustor or incinerator									P
		4345 Solid waste landfill									
5000 Arts, Entertainment, and Recreation											
Arts, Entertainment and Recreation	5100 Performing arts or supporting establishments										
		S3110 Performance theater									
		S3120 Movie theater									
		S3140 Drive-in theater								C	C
	5110 Circus (temporary with permit)							P	P	P	P

	5140 Fairground/rodeo ground									C	C
	5200 Museums and other special purpose recreational institutions										
		5210 Museum						C	C		
		5220 Historical or archaeological institution									
		5230 Zoos, botanical gardens, arboreta								C	C
	5300 Amusement, sports, or recreation establishment										
	5300 Country club (driving range is accessory)				C	C	C	C	C		
		Dance hall/nightclub							P		
	5310 Amusement or theme park (indoor)								P		
		Amusement or theme park (outdoor)								C	
	5330 Bingo										
		Casino								C	C
	5370 Fitness, recreational sports, gym, athletic club										
		Athletic/health club facilities							C	P	
		Community center (public or private)			P	P		C	C	C	C
		Driving range									P
		Golf course			P	P	C	C	C	C	C
		Gun club (indoor)								C	C

		Gun club (outdoor range)								C	C
		Miniature golf							P	C	C
		Sexually oriented businesses (see sec. 14-153)						P	P		
		Swimming pools						C	C	P	
		Swimming pool - private	A	A	A	A					
		Youth sports leagues or teams									
		S3200 Indoor games facility									
		S3300 Sports stadium or arena								C	C
	5380 Bowling, billiards							P	P		
	5380 Pool hall								P	P	
	5390 Skating rink										
	5400 Camps, camping, and related establishments										
	5400 Day camp						C	C	C		
	5500 Natural and other recreational parks				P	P	C	C	C	C	C
6000 Education, Public Administration, Health Care and Other Institutions											
Education, Public Administration, Health Care and Other Institutions	6100 Educational services										
		6100 Nursery and preschool			C	C	C	C	C	C	C
		6120 Grade schools			C	C		C	C	C	

		6130 Colleges and universities			C	C		C	C	C	
		6140 Technical, trade and other specialty schools								C	
		6142 Business school					C	C	C	C	
		6145 Fine art and performance education					C	C	C	C	
		S4300 Library			C	C		C	C		
	6200 Public administration - government										
	6300 Other government functions (non-city offices)							C	C	P	
	6400 Public safety										
		6410 Fire and rescue					C	C	C	C	C
		6420 Police					C	C	C	C	C
		6430 Emergency response					C	C	C	C	C
	6500 Health and human services										
		6510 Ambulatory or outpatient care services						C	C	P	
		6510 Doctors offices and clinics						P	P	P	
		6511 Ambulatory surgical centers or clinics							C	P	
		Community health clinic							C		
		6513 Medical and diagnostic laboratories						C	C	P	P
		6520 Nursing, supervision, and other rehabilitative						C	C		

		services									
		6530 Hospital							C		
		Mental health hospital									
		6560 Social assistance, welfare, and charitable services									
		6561 Child and youth services									
		6562 Child day care (up to 12 children)				C	C	C	C	C	C
		Day care center				C	C	C	C	C	C
		6563 Community food services						C	C		
		6564 Emergency and relief services									
		6565 Other family services						C			
		6566 Services for elderly and disabled									
		Adult day care									
		6567 Veterans affairs									
		6568 Vocational rehabilitation									
	6600 Religious institutions				C	C		C	C	C	
		Church affiliated daycare, on-site			A	A	A	A	A		
	6700 Death care services							C	C	C	

	6800 Associations, nonprofit organizations										
			Fraternal organization						C	C	C	C
7000 Construction-Related Businesses											
Construction-related businesses	7100 Building, developing, and general contracting									P	P	P
	7200 Machinery related											
	7300 Special trade contractor											P
	7400 Heavy construction											
8000 Mining and extraction establishments											
Mining and extraction establishments	8100 Oil and natural gas										
	8200 Metals										
	8300 Coal										
	8400 Non-metallic mining										
	8500 Quarrying and stone cutting										C
9000 Agriculture, forestry, fishing, and hunting											
Agriculture, forestry, fishing and hunting	9100 Crop production										
	9200 Support functions for agriculture										
		S8100 Grain silos and other storage structures									
		S8200 Livestock facility									
		S8300 Animal feed operations facility									
		S8400 Animal waste-handling facility									
		S8500 Greenhouse									
		S8600 Hatcheries									
		S8700 Kennels and other									

		canine related facilities									
		S8800 Apiary and other related structures									
	9300 Animal production including slaughter										
	9400 Forestry and logging										
	9500 Fishing, hunting and trapping, game preserves										

27-445-29 Commercial communication towers

(a) *Purpose.* The purpose of these regulations is described as follows:
1. Minimize the adverse effects and impact of towers through careful design, siting and screening;
2. Conserve the value of adjacent land and buildings;
3. Avoid potential damage to adjacent properties through engineering and careful siting of tower structures; and
4. Maximize use of existing towers in order to reduce and minimize the number of towers needed.

(b) *Approved tower locations (zoning districts).* As defined herein, commercial communication towers are prohibited within any public right-of-way, utility easement or residential zoning districts unless granted by conditional use permit. Such uses are allowed by right within C-3, I-1 and I-2 zoning districts subject to applicable zoning restrictions, as well as the following restrictions set forth herein.

(c) *Ownership.* The proposed location for the tower must be large enough to accommodate the communications tower and support facilities, and must include access to a public right-of-way or accessible parking area. Purchase or ownership of a separate parcel may require platting and improvements before construction permits can be issued.

(d) *Construction.* In order to minimize visual impacts and possible damage that can result from the presence of such facilities, towers (including attached antennae) are limited to monopole construction and shall not exceed two hundred (200) feet in height. Compliance with all requirements of the city building code, including a licensed engineer's structural certification of the tower structure and foundation, must be demonstrated before a building permit will be issued.

(e) *Setback.* All commercial towers must meet the minimum setbacks for the zoning districts in which they are located. Additionally, commercial towers must be set back from any residential structure a number of feet equal to that distance stated by the tower manufacturer's registered structural engineer's determination of the maximum possible fall zone for the tower. The structural engineer shall be licensed in the state.

(f) *Appearance.* No lights, signals or illumination shall be permitted on any tower unless required by the Federal Communication Commission (FCC), Federal Aviation Administration (FAA), or other federal, state or city agency. No commercial advertising, signage or flags shall be allowed on any tower. This shall not prevent the joint use of a legal existing sign structure as a support mechanism for antennae or microwave dishes. Towers and accessory facilities must be colored or painted in muted tones that minimize their visibility, unless otherwise required by the FCC, FAA, or other federal, state or city agency.

(g) *Site design.* The area containing the monopole, accessory and support structures, and the immediate surrounding area utilized for servicing of the communication tower shall be secured by a minimum eight-foot chain-link fence. The area within the fence must be either paved or graveled and kept weed-free. Other than the street side of the site, any side that faces any residential use shall include opaque fencing or sufficient shrubs to screen the site. Any shrubbery provided will be planted and maintained within the next appropriate growing season. If security lighting is installed, such light should be directed into the site and only triggered by motion detectors.

(h) *Co-location.* To minimize tower proliferation, each applicant proposing to construct a commercial communication tower shall with the building permit or conditional use permit application submit a statement of the following in writing:

1. Whether any tower or suitable structure exists, within the geographic area to be served by the proposed new tower, which meets the applicant's engineering requirements.

2. Whether existing towers or suitable structures are of sufficient height to meet the applicant's engineering requirements;

3. Whether existing towers or suitable structures have sufficient structural strength to support applicant's proposed antenna and related equipment;

4. Whether the fees, cost, and/or contractual provisions required by the owner of an existing suitable site for co-location of the applicant's antenna are commercially reasonable; and
5. Other significant limiting factors make existing towers or structures unsuitable for co-location of the proposed antenna.

The permit issuing agent of the city shall utilize the submitted information, together with other available information, to determine whether co-location may be waived and a new commercial communication tower be authorized for construction.

The decision of the agent of the city concerning co-location may be appealed to the planning commission. Any interested party may file an appeal provided that the appeal is filed with the planning commission by 5:00 p.m. on the tenth calendar day following the date of the decision by the agent. A fee in the amount established by the board of directors is required for filing an appeal.

Antennae may be placed wholly within or upon any building located within a commercial or industrial zoning district as permitted in section 27-529(b) or any publicly owned building, provided any supporting equipment is screened from nearby residential districts. A commercial antenna may be mounted to the exterior of such buildings if integrated into the overall architectural design of the building. Roof mounted antennae may not extend more than twenty (20) feet above the highest point of the roof structure, provided any supporting equipment is screened from nearby residential districts. A commercial antennae may be attached to any utility structure (such as a water tower or electrical transmission tower) or to a public building not located in a street right-of-way and owned by a government or public agency, provided that the antennae does not extend more than twenty (20) feet above the height of the structure, provided any supporting equipment is screened from nearby residential districts. At the time a building permit is issued, the planning department may notify all existing telecommunication providers of the opportunity for co-location. Notice of a desire to co-locate shall be given within sixty (60) days of the receipt of said notice.

Signs:

27-445- Permitted signs in ETJ Open, ETJ Commercial, and ETJ Industrial

The following types of signs are permitted for all permitted uses, conditional uses and non-residential nonconforming uses in ETJ open, ETJ commercial or ETJ industrial zones.

(1) All free-standing signs shall not exceed one (1) square foot in area per linear foot of frontage with a maximum area not to exceed three hundred (300) square feet.

(2) All single face, facade (wall) signs are unlimited in size if placed directly on and are contained totally within the dimensions of the outside wall.

27-445- General ETJ sign regulations

(a) Signs shall not be erected or illuminated in such a manner as to obscure or otherwise interfere with an official traffic sign, signal or device, or to obstruct or otherwise interfere with the driver's view of approaching, merging or intersecting traffic.

(b) Signs shall not be erected which imitate or resemble any traffic sign, signal or device, or which are erected or maintained upon trees or painted or drawn upon rocks or natural features, or which are structurally unsafe or in disrepair.

(c) All signs occurring in the sight triangle: The sight triangle is described as the area delineated by a distance of twenty-five (25) feet along the intersecting property lines, beginning at the property corner point and extending said twenty-five (25) feet in both directions away from the corner point of intersection and then connecting the terminus points by a line to form the triangular area. A clearance of at least twelve (12) feet to the bottom of the sign shall be maintained, except for not more than two (2) supportive posts which are not more than sixteen (16) inches in width or diameter. Such height of twelve (12) feet is to be measured from the elevation of the center of the lower street.

(d) No flashing signs shall occur in or over any building setbacks or public rights-of-way.

(e) No sign base or support shall be erected in a public right-of-way.

(f) It shall be a violation of this division for any person to place or cause to be placed any sign on any property within the ETJ without first obtaining a certificate of land use from the planning and zoning department.

27-445-30 Permits

Any owner or authorized agent who intends to use, convert, change or alter the use of land, buildings or structures shall first make application to the city administrator, or designated agents, of the city and obtain the required certificate of land use. The certificate of land use must first be obtained before the use, expansion, conversion, change or alteration can be used or occupied.

27-445-31 Adoption of land use plan

The land use map (May 6, 2003) for the extraterritorial jurisdiction area is hereby adopted by the board of directors. Three (3) copies have been and now are filed in the office of the clerk of the city.

27-445-32 ETJ land use/zoning district conversion chart

TABLE INSET:

ETJ Land Use Classifications and Descriptions	Zoning District
Residential	
LDR low density residential Residential development - consistent with the comprehensive plan and consistent with adjacent/surrounding uses. Shall be located where public utilities exist or expect to be expanded over the next twenty (20) years. Development of specific sites will depend upon the availability of utilities and the maintenance of an acceptable level of service of roads and other public facilities and services.	Rural residential (RR) Residential estate (RE) Residential single-family low density (RS-1)
Commercial	
NC neighborhood commercial Commercial and service uses to serve the daily convenience needs of the surrounding residential neighborhood; small districts located within walking distance from the edge of surrounding residential areas	Commercial neighborhood compatible (C-1) Commercial light (C-2)
LCO light commercial office	Commercial

Locations beyond the central area of the city, primarily along arterial or major collector streets, which will accommodate offices or laboratories for professional persons and related uses	moderate (C-3)
Industrial	
LI light industrial Light manufacturing, research technology, processing, storage, wholesaling, and distribution under high environmental performance standards. Commercial and service uses in support of industrial uses are also permitted.	Industrial light (I-1)
I industry Intended to primarily accommodate wholesale activities, processing, distribution, storage, and warehouse and industrial operations which may generate low levels of noise, odor, smoke, dust, or intense light	Industrial moderate (I-2)