

ORDINANCE NO. 38-19

**AN ORDINANCE AMENDING THE 2009 UNIFIED DEVELOPMENT
ORDINANCE OF THE CITY OF FORT SMITH**

WHEREAS, the Board of Directors passed and approved Ordinance No. 36-09 which adopted the Unified Development Ordinance on May 19, 2009; and,

WHEREAS, it is necessary to amend certain sections of the Unified Development Ordinance to provide clarity and remove conflicts with other provisions of the municipal code; and,

WHEREAS, the Planning Commission held a public hearing regarding these amendments and recommended on May 14, 2019, that said changes be made; and,

WHEREAS, three (3) copies of June 2019 Amendments to the Unified Development Ordinance have been on file in the Office of the City Clerk of the City of Fort Smith for inspection and review by the public prior to the passage of this Ordinance; and,

WHEREAS, the June 2019 Amendments to the Unified Development Ordinance includes an amendment to Section 27-445, which will allow Planned Zoning Districts in the Extraterritorial Jurisdiction; and,

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH THAT:


SECTION 1: The June 2019 Amendments to the Unified Development Ordinance, including an amended Section 27-445 to allow Planned Zoning Districts in the Extraterritorial Jurisdiction, are hereby adopted.

SECTION 2: The codifier shall codify the new sections and amend the existing sections of the Unified Development Ordinance.

SECTION 3: Emergency Clause. It is hereby found and determined that the adoption of the June 2019 Amendments to the Unified Development Ordinance is necessary to alleviate an emergency created by the lack of regulation of uses of property within the City of Fort Smith so that protection of the health, safety and welfare of the inhabitants of the City requires that the June 2019 Amendments be effective immediately. Therefore an emergency is declared and the June 2019 Amendments are hereby made effective as of date of approval of this Ordinance.

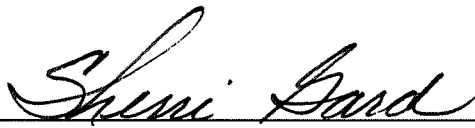
PASSED AND APPROVED THIS 4th DAY OF June, 2019.

APPROVED:



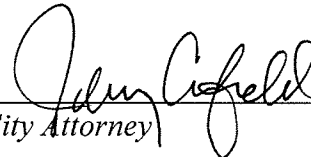
Mayor

ATTEST:



City Clerk

Approved as to form:



City Attorney

27-445- Planned Zoning District

27-445- 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.

27-445- 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. A pre-application conference with the Planning and Zoning Department is required. The pre-application conference shall be held at least ten (10) days before the submission date unless otherwise specified by the Director.
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 27-445
 - 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).

27-445- Application and Review Procedures

- A. **Determination of Completeness.** Applications shall be submitted to the Director for a determination of completeness. 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.** A neighborhood meeting is encouraged.
- C. Staff Review.** Following a determination of completeness, the Staff shall review the application.
- D. Notice and Public Hearing.** Following completion of Staff review and any neighborhood meetings, 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 27-445.
 - 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 27-445).
 - 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. landscaping, high quality materials, signage, screening, and lighting 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 27-445-(E) and may take any action 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.

27-445- 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 27-445- (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.