



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. The Board of Directors may waive the requirement for a companion zoning or rezoning application and master land use plan amendment application when the future use of the property can be described and agreed upon in a pre-annexation agreement.
- 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
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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	Comprehensive Plan
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- A. The comprehensive plan is a policy document, as compared to a regulatory document, which sets forth the goals, policies, land planning principles, and actions that define and support a common vision for the city. The comprehensive plan does not designate zoning or land use classifications. The UDO is intended to be used as a tool for implementing the goals, objectives and policies of the comprehensive plan.
- B.- No action taken pursuant to the UDO, including but not limited to amending the Master Land Use Plan or amending the zoning map, shall require any amendment or modification to the comprehensive plan. In no event shall an amendment to the zoning map or Master Land Use Plan be considered inconsistent with the comprehensive plan.

27-108	Coordination with Other Regulations
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- 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
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- 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
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- 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
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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
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- 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
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27-118-1	Nonconforming Use of Land
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- 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