



TO: Mayor Jordan
City Council

CC: Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

DATE: December 3, 2013

RE: Home Protection Ordinance

I have slightly modified what I have proposed to be the Home Protection Ordinance which was presented to the City Council a couple of weeks ago. I have expanded the type of new construction that would be subject to the setback and stepback protection for single family residences from "multifamily, commercial or mixed use construction" to "multifamily, commercial, **office, parking deck** or mixed use construction."

Although we haven't seen tall office buildings being constructed in the Downtown area for a while, there may be a need for such construction in the future. This type of construction should be controlled as much as new commercial or multifamily buildings to protect single family residences in Downtown General and Main Street Center districts.

I believe parking decks would likely be considered a part of multifamily, commercial or office building construction. However, I wanted to be sure that no builder could claim that a parking deck would not be covered by the setback and stepback protection provisions so I specifically included parking deck construction (when adjoining a single family residence's lot).

I want to remind everyone that this proposal would **only be applicable in the Main Street Center and Downtown General** zoning districts which are located primarily in the Downtown and Walker Park neighborhoods. This **setback protection is only provided to a single family home** being used primarily as a single family residence. Houses converted primarily to office or commercial use would not be protected by this setback provision. The 15 foot setback provision would only be applicable from the single family home's adjoining property line for a to-be-constructed, tall parking deck or an apartment, commercial or office building. Single family homes and any construction not exceeding twenty four feet tall would not be effected by this ordinance.

The protection remains as a fifteen (15) foot setback from the residential lot line before a thirty six (36) foot wall can be built. If a developer wants to build to the maximum allowed height in Downtown General (56 feet) or Main Street Center (84 feet), a further fifteen (15) stepback from the single family resident's property line would be required.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND § 164.11 **HEIGHT AND SETBACK REGULATIONS; EXCEPTIONS** TO PROVIDE HOMEOWNERS PROTECTION OF THEIR RIGHT TO SUNLIGHT AND AIR

WHEREAS, Fayetteville homeowners' rights to adequate sunlight and room for air and wind should be protected; and

WHEREAS, preservation of the many homeowners' single family residences used as homes in the Downtown Master Plan District have inadequate setback protection from large and tall buildings require that minimum side and rear setbacks and upper story setbacks be enacted to ensure adequate sunlight, wind and air for these homes to remain attractive and healthful places to live; and

WHEREAS, residential homeowners who wish to install solar panels or passive solar heat collectors, etc. must have enough protected access to sunlight for these ecological and green technology products to work effectively; and

WHEREAS, trees and other plants within the yards of homes also need adequate sunlight that reasonable setback and setback regulations can ensure.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby amends § 164.11 **Height of Setback Regulations; Exceptions** by amending its title to be: "**Height of Setback Regulations; Exceptions and Home Protection Requirements**" and by enacting a new (C) *Home Protection Requirements* as shown below:

“(C) Home Protection Requirements.”

Regardless of any other setback or build-to zone regulations, new multifamily, commercial, office, parking deck, or mixed use construction exceeding twenty-four (24) feet in height which adjoins or abuts a single family home being used primarily as a single family residence within the Downtown General or Main Street Center Zoning Districts must at a minimum be set back from the side or rear adjoining property line at least fifteen (15) feet. The maximum height of the new building from the fifteen foot setback shall be thirty-six (36) feet for an additional fifteen (15) foot stepback from the residence's property line. These setback and stepback requirements are minimums so that, if larger setbacks or stepbacks are required by other zoning laws, the larger setback/stepbacks are controlling.”

PASSED and APPROVED this 3rd day of December, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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