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CRYSTAL TAYLOR

FAULKNER COUNTY CIRCUIT CLERK

BY: SHAWN MIX, D.C.

**ORDINANCE**

**City of Conway, Arkansas  
Ordinance No. O-22- 111**

**AN ORDINANCE AMENDING THE PROCEDURES FOR AUTHORIZING CONDITIONAL USES AND AMENDMENTS TO CONWAY ZONING CODE O-94-54, AS AMENDED; AND FOR OTHER PURPOSES:**

**Whereas**, the City Council of the City of Conway wishes to amend procedures for authorizing conditional use permits and rezoning in order to better protect the public welfare;

**Whereas**, in accordance Arkansas Code Annotated § 14-56-416 has the City Council of City of Conway adopted a Zoning Code and Arkansas Code Annotated § 14-56-423 provides for the amendment of such regulations; and

**Whereas**, the Conway Planning Commission has prepared amendments to the Conway Zoning Code, gave proper notice in accordance with Arkansas Code Annotated § 14-56-422, held a duly authorized public hearing on September 19th, 2022, and adopted the prepared amendments.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:**

**Section 1:** That these amendments to the Conway Zoning Code are hereby adopted by reference, and included as exhibit "A" to this ordinance, as Section 902 and Section 903 of O-94-54, as amended and also known as the Conway Zoning Code.

**Section 2:** That the existing Sections 901.2 and 901.4 are hereby repealed.

**Section 3:** That any ordinances in conflict herewith are hereby repealed to the extent of the conflict, except that it is understood that it will take time for adequate implementation of the code by design professionals and city staff. Given this, these amendments shall not take effect until November 18<sup>th</sup>, 2022.

**PASSED** this 27<sup>th</sup> day of September, 2022.

**Approved:**

**Mayor Bart Castleberry**

**Attest:**

**Michael O. Garrett  
City Clerk/Treasurer**



## **EXHIBIT "A"**

### ***SECTION 902 – CONDITIONAL USE PERMITS***

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#### **902.1 – PURPOSE**

Because of their unique character and impact on adjacent properties, some uses in this code are designated as conditional uses and require a permit. Depending on the nature of the use, a use requiring such permit may or may not be desirable and appropriate in all circumstances. Each application must be individually considered to provide reasonable conditions of approval to mitigate the impact of the use and protect the adjacent area from harm by the use.

The following regulations in conjunction with other provisions of this code, specifically Article 601 – Special Provisions, provide the procedure and standards for the evaluation of conditional use permit applications.

#### **902.2 – APPLICATION FOR A CONDITIONAL USE PERMIT**

An application shall be made by the property owner/authorized agent. The application may accompany a rezoning request and shall be made by means provided by the City of Conway in accordance with the Planning Commission calendar. No application shall be accepted and processed without all required materials and payment of fees.

The application shall include the following information and documents:

- A. Applicant Information. The name and address of the applicant.
- B. Property Owner/Authorized Agent Form. Form indicating that the applicant is the owner(s) of the property or the applicant is authorized to apply and act on behalf of the owner(s).
- C. Location Information. Address and accurate legal description of the property.
- D. Use Description/Operational Plan. A written description of the proposed use of the property including an operational plan.
- E. Scaled Site Plan. A scaled site plan showing property boundaries, building locations, building outlines, driveways, parking, screening, abutting streets, north arrow, and other pertinent information as may be required by the Administrative Official. The Administrative Official shall have the authority to require plans prepared and stamped by a licensed design professional.
- F. Fee. Payment of the prescribed nonrefundable fee as indicated the Schedule of Fees adopted by the City Council. The fee shall be at least three hundred twenty-five (\$325) dollars.

#### **902.3 – PUBLIC NOTICE**

Public notice for conditional use permit applications shall consist of a legal notice in a publication of general circulation within the City of Conway, public notice signs on the property, and mailed notice to property owners within two hundred (200) feet. No application may be heard for a public hearing by the Planning Commission until all forms of public notice have been made. The following requirements shall satisfy public notice requirements:

A. Legal Notice

The applicant shall be responsible for publication of a legal notice in a publication of general circulation within the City of Conway. Notice must be published once at least fifteen (15) days prior to the public hearing. The notice shall include:

1. Requested use sought in the application and current zoning of the property.
2. Location including accurate legal description and address. If no address is assigned, a general description of the location in relation to a nearby address shall suffice.
3. Time, date, and location of the public hearing.

An affidavit of publication shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

B. Public Notice Signs

The applicant shall be responsible for posting a sign or signs of public notice on the property at least fifteen (15) days prior to the public hearing. Sign posting shall meet the following requirements:

1. One (1) sign for each five hundred (500) feet of street frontage with at least one (1) sign per street frontage.
2. Signs shall be placed at the property line nearest the street, and be clearly visible to passing vehicle and pedestrian traffic.

Signs shall be supplied by the City of Conway and the Administrative Official shall determine the number of required signs. The applicant shall pay a nonrefundable fee established by the Schedule of Fees adopted by the City Council. The fee shall be at least ten (\$10) dollars per sign.

Photographic proof of posting of the required public notice signs shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

C. Letters of Public Notice

The applicant shall mail, by USPS First Class mail with Certificates of Mailing, a notice of the public hearing to all property owners within two hundred (200) feet of the property as well as all school board members and the school superintendent of the school district in which the property is located. Notice must be mailed at least fifteen (15) days prior to the public hearing. The City of Conway shall supply the required mailing list.

Notice shall be made using a completed form provided by the City of Conway which shall at least include a description of the conditional use being sought, location, and date/time/location of the public hearing. The applicant may include additional information regarding the application.

Proof of mailing, including Certificates of Mailing and a copy of notice letter, shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

#### **902.4 – REVIEW PROCEDURE**

A. Staff Review

The Administrative Official shall review the application and may provide a recommendation for action on the item.

B. Planning Commission Review

The Planning Commission shall hold a public hearing on the application and render a decision within at least forty-five (45) days following the closing of the public hearing.

1. Approval: If the Planning Commission approves the application, the item shall be forwarded to the City Council for review and action.
2. Denial: If a conditional use permit request is denied by the Planning Commission, written notice of denial shall be provided to the applicant within fifteen (15) days of the decision being rendered. Such written notice shall include the reasons for denial of the application. The applicant may appeal the denial to the City Council in writing, stating why they consider the Planning Commission's findings and decision to be in error. The appeal must be filed with the Administrative Official within thirty (30) days of receiving the written notice of denial and shall be subject to a public hearing before the City Council. The applicant must complete the public notice requirements indicated in § 902.3 and pay a nonrefundable fee prescribed in a Schedule of Fees adopted by the City Council. The fee shall be at least two hundred (\$200) dollars.

If no appeal is filed, the decision of the Planning Commission shall be final and no further action on the application shall take place.

C. City Council Review

The Planning Commission shall report their findings and recommendations, including recommended conditions and/or restrictions, to the City Council. The City Council may grant the application as presented, grant the application with other/additional conditions and/or restrictions, deny the application, or remand the case back to the Planning Commission for additional consideration. If the case is remanded back to the Planning Commission, an additional public hearing at the next regular meeting of the Planning Commission shall be required and public notice given in accordance with § 902.3.

No conditional use permit shall become effective without approval by the City Council.

#### **902.5 – STANDARDS FOR APPROVAL**

The Planning Commission and/or City Council shall not approve a conditional use permit unless making a finding of fact that affirms the following:

- A. The establishment, maintenance, and operation of the conditional use will not result in external effects that will harm adjacent and nearby properties.

- B. Negative external effects of the conditional use can be mitigated with appropriate and reasonable conditions of approval.
- C. Adequate buffering devices such as fencing, landscaping, or grading are sufficiently used to protect adjacent and nearby properties.
- D. Establishment of the conditional use will not impede normal and orderly development and improvement of adjacent and nearby properties.
- E. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust, and odor have been addressed in the proposed application.
- F. Traffic generated by the use will not unduly burden transportation facilities within the surrounding area.
- G. The size of the site is adequate for the conditional use.
- H. The conditional use will be in compliance with all applicable provisions of this code including, but not limited to, area requirements, off-street parking and loading, and landscaping for the district in which it is located.

**902.6 – CONDITIONS OF APPROVAL, LIMITATIONS, EXPANSION, EXPIRATION, AND REVOCATION**

A. Conditions of Approval

Reasonable conditions or restrictions upon construction, location, and operation of a conditional use may be imposed as part of approval of any conditional use. Once the conditional use is commenced all conditions shall take effect unless otherwise specified as part of approval.

B. Limitations

1. No conditional use may be operated in a manner as to require the approval of a zoning variance as a result of commencement of the conditional use.
2. The Planning Commission and City Council shall not be permitted to authorize any reduction in minimum requirements of any provisions of this code as part of approval of a conditional use permit.
3. A conditional use application may not be filed for a site that has received final denial action within one (1) year from the effective date of final denial action unless authorized by the City Council.

C. Expansion

Any expansion of the use, including but not limited to, additions, substantial increase in use intensity, new buildings, new or additional parking, expansion of the use to new areas/buildings on the site, or any substantial changes in character shall require approval of a new conditional use permit.

D. Expiration

A conditional use permit shall expire if the use is not commenced within eighteen (18) months of approval and if the use ceases for a consecutive period of greater than eighteen (18) months. Upon expiration, all use of the property shall be required to revert to its status prior to approval.

E. Revocation

Where any specific conditions or restrictions of a permit are violated, ignored, or otherwise not observed, the permit may be revoked. In such instances, the Administrative Official shall provide written notice to the property owner using Certified Mail. Such notice shall identify the alleged violation of the conditions or restrictions of the conditional use permit, required corrective action, deadline for corrective action, and right to file appeal of the determination of the Administrative Official. The Administrative Official shall designate the deadline for corrective action, giving the property owner at least thirty (30) days and no greater than ninety (90) days.

If no appeal is filed within thirty (30) days of receipt of written notice and corrective action is not taken in accordance with the deadline provided by the Administrative Official, the permit shall be revoked. Revocation shall be immediate, and the property shall revert to its use status prior to issuance of the conditional use permit.

If an appeal is filed, the matter shall be forwarded to the City Council for review. The City Council shall review evidence submitted by Administrative Official. The property owner may additionally submit evidence to be considered by the City Council including an oral petition. The City Council shall be authorized to revoke the conditional use permit upon finding that the property owner has violated the conditions or restrictions of the permit. If such action is taken, revocation shall be immediate, and the property shall revert to its use status prior to issuance of the conditional use permit.

## ***SECTION 903 – AMENDMENTS***

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### ***903.1 – GENERAL***

This code may be amended by changing the text, the Official Zoning Map, or both in accordance with the procedures in this section.

### ***903.2 – REQUEST FOR AMENDMENTS***

The following may initiate a request to amend this Code:

- A. The Administrative Official acting on behalf of the Mayor or City Council.
- B. The Administrative Official acting on behalf of the Planning Commission.
- C. A property owner or his/her authorized agent.

### ***903.3 – AMENDMENTS INITIATED BY THE MAYOR OR CITY COUNCIL***

Amendments initiated by the Administrative Official acting on behalf of the Mayor or City Council may be made in the following manner:

- A. The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with procedures outline in § 903.4.

- B. The City Council may amend this Code in accordance with the provisions of § 14-56-423 of the Arkansas Code, Annotated.

**903.4 – AMENDMENTS INITATED BY THE PLANNING COMMISSION**

Amendments initiated by the Administrative Official acting on behalf of the Planning Commission may be made in the following manner:

- A. The Planning Commission may consider amendments or additions to the Zoning Code.
- B. If the proposed amendments are not consistent with the Comprehensive Plan or other applicable adopted plans, the Planning Commission must first consider and adopt any necessary changes to the plan(s).
- C. The Planning Commission will hold a public hearing to consider amendments to the Zoning Code and, when necessary, amendments to the Comprehensive Plan or other applicable adopted plans.
- D. Notice of such hearing shall be published at least fifteen (15) days prior to the public hearing in a publication of general circulation in the City of Conway and shall include a general description of the changes being made. Changes in zoning district classifications initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and notice to individual property owners shall not be made.
- E. The Administrative Official shall make a map and/or documents indicating the proposed changes available in City Hall and on the city website for review at least thirty (30) days prior to the public hearing at which the changes will be considered.
- F. Following the public hearing, the proposed amendments may be approved as presented, or in modified form, by a majority of the entire Planning Commission.
- G. Following its adoption of the amendments of the Zoning Code or adopted plans, the item shall be forwarded to the City Council for consideration of adoption.
- H. The City Council may adopt the amendments as prepared, revise and adopt the prepared amendments, reject the amendments, or remand the matter back to the Planning Commission for further consideration. If the matter is remanded back to the Planning Commission, an additional public hearing at the next regular meeting of the Planning Commission shall be required and public notice given in accordance with § 903.5.B.

**903.5 – AMENDMENTS INITATED BY A PROPERTY OWNER**

Amendments initiated by a property owner or his/her authorized may be made in the following manner:

A. Application

An application shall be made by the property owner/authorized agent. The application shall be made by means provided by the City of Conway in accordance with the Planning Commission calendar. No application shall be accepted and processed without all required materials and payment of fees.

The application shall include the following information and documents:

1. Applicant Information. The name and address of the applicant.
2. Property Owner/Authorized Agent Form. Form indicating that the applicant is the owner(s) of the property or the applicant is authorized to apply and act on behalf of the owner(s).
3. Location Information. Address and accurate legal description of the property.
4. Survey. A boundary survey of the property including building locations, building outlines, driveways, parking lots, abutting streets, north arrow, and other pertinent information as may be required by the Administrative Official.
5. Fee. Payment of the prescribed nonrefundable fee as indicated the Schedule of Fees adopted by the City Council. The fee shall be at least three hundred twenty-five (\$325) dollars.

B. Public Notice

Public notice for amendment application shall consist of a legal notice in a publication of general circulation within Conway, public notice signs on the property, and mailed notice to property owners within two hundred (200) feet. No application may be heard for a public hearing by Planning Commission until all forms of public notice have been made. The following requirements shall satisfy public notice requirements:

1. Legal Notice: The applicant shall be responsible for publication of a legal notice in a publication of general circulation within the City of Conway. Notice must be published once at least fifteen (15) days prior to the public hearing. The notice shall include:
  - a. The existing zoning district of the property and the proposed zoning district sought in the application.
  - b. Location including accurate legal description and address. If no address is assigned, a general description of location in relation to a nearby address shall suffice.
  - c. Time, date, and location of the public hearing.

An affidavit of publication shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

2. Public Notice Signs: The applicant shall be responsible for posting a sign or signs of public notice on the property at least fifteen (15) days prior to the public hearing. Sign posting shall meet the following requirements:
  - a. One (1) sign for each five hundred (500) feet of street frontage with at least one (1) sign per street frontage.



- b. Signs shall be placed at the property line nearest the street and be clearly visible to passing vehicle and pedestrian traffic.

Signs shall be supplied by the City of Conway and the Administrative Official shall determine the number of required signs. The applicant shall pay a nonrefundable fee established by the Schedule of Fees adopted by the City Council. The fee shall be at least ten (\$10) dollars per sign.

Photographic proof of posting of the required public notice signs shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

3. Letters of Public Notice: The applicant shall mail, by USPS First Class mail with Certificates of Mailing, a notice of the public hearing to all property owners within two hundred (200) feet of the property and all school board members and school superintendent of the school district in which the property is located. Notice must be mailed at least fifteen (15) days prior to the public hearing. The City of Conway shall supply the required property owner list.

Notice shall be made using a completed form provided by the City of Conway which shall at least include a description of the existing and proposed zoning districts of the property, location, and date/time/location of the public hearing. The applicant may include additional information regarding the application.

Proof of mailing including Certificates of Mailing and a copy of notice letter shall be provided to the Administrative Official at least ten (10) days prior to the public hearing.

C. Review Procedure

1. Staff Review: The Administrative Official shall review the application and may provide a recommendation for action on the item.
2. Planning Commission Review: The Planning Commission shall hold a public hearing on the application and render a decision within at least forty-five (45) days following the closing of the public hearing.
  - a. Amendments to the Application:
    - 1) An application may be amended by the applicant no later than ten (10) days prior to the public hearing for the application, provided the amendment shall result in the applicant seeking a lower intensity proposed zoning district than the original request. In such instances, no additional public hearing shall be required.
    - 2) Any amendment to an application sought later than ten (10) days prior to public hearing for the application shall be automatically tabled following the public hearing for the application. An additional public hearing at the next regular meeting of the Planning Commission shall be required and public

notice given in accordance with § 903.5.B. before a vote by the Planning Commission may be conducted on the application.

- b. Approval: If the Planning Commission approves the application, the item shall be forwarded to the City Council for review and action.
- c. Denial: If an amendment request is denied by the Planning Commission, written notice of denial shall be provided to the applicant within fifteen (15) days of the decision being rendered. Such written notice shall include the reasons of denial of the application. The applicant may appeal the denial to the City Council in writing, stating why they consider the Planning Commission's findings and decisions to be in error. The appeal must be filed with the Administrative Official within thirty (30) days of receiving the written notice of denial and shall be subject to a public hearing before the City Council. The applicant must complete the public notice requirements indicated in § 903.5 and pay a nonrefundable fee prescribed in a Schedule of Fees adopted by the City Council. The fee shall be at least two hundred (\$200) dollars.

If no appeal is filed, the decision of the Planning Commission shall be final and no further action on the application shall take place.

- 3. City Council Review: For applications approved by the Planning Commission, the Commission shall report their findings and recommendations to the City Council. The City Council by ordinance may grant the amendment as requested, deny the amendment request, or remand the case back to the Planning Commission for additional consideration of the item. Any amendment or modification of the request shall require the application be remanded back to the Planning Commission. If the case is remanded back to the Planning Commission, an additional public hearing at the next regular meeting of the Planning Commission shall be required and public notice given in accordance with § 903.5.B.

D. Effect of Denial

An amendment application may not be filed for a site that has received final denial action within one (1) year from the effective date of final denial action unless authorized by the City Council.

**903.6 – GUIDELINES FOR DECISION MAKING**

In consideration of amendments, the Planning Commission and City Council shall, at a minimum, consider the following:

- A. Public comments received regarding the amendments.
- B. The consistency of the amendments with the Comprehensive Plan or other adopted plans.
- C. The potential public benefits of the amendment.
- D. Issues identified by the Administrative Official.

- E. If concerning an individual property, the impact of the amendment application on adjacent and nearby properties including potential development impacts.

**CERTIFICATE**

**STATE OF ARKANSAS  
COUNTY OF FAULKNER  
CITY OF CONWAY**

I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 27<sup>th</sup> day of September, 2022 same is duly recorded in the minutes of meeting of said Council.

Witness, my hand, and seal of the City of Conway, Arkansas this 6<sup>th</sup> day of October, 2022.

  
**CITY CLERK-TREASURER**

