

**City of Fayetteville Staff Review Form**

**2019-0358**

**Legistar File ID**

**7/16/2019**

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Garner Stoll

5/10/2019

DEVELOPMENT SERVICES (620)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Amendment to Chapter 157- Notifications and Public Hearings. Change notification requirements for public hearings.

**Budget Impact:**

Account Number		Fund	
Project Number		Project Title	
<b>Budgeted Item?</b>	NA	Current Budget	\$ -
		Funds Obligated	\$ -
		Current Balance	\$ -
<b>Does item have a cost?</b>	No	Item Cost	
<b>Budget Adjustment Attached?</b>	NA	Budget Adjustment	
		Remaining Budget	\$ -

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



# CITY COUNCIL AGENDA MEMO

## MEETING OF JULY 16, 2019

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff

**FROM:** Garner Stoll, Development Services Director  
Andrew Garner, City Planning Director

**DATE:** June 10, 2019

**SUBJECT:** **Amendment to Chapter 157- Notifications and Public Hearings.** Change notification requirements for public hearings.

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## RECOMMENDATION:

Staff is recommending changing the notification requirements from “adjacent property owners” to “all landowners within 200 feet of the boundary line of the property on which the use is proposed” for 157.02 Development, 157.03- Annexation and Zoning Map Amendments, 157.05 Conditional Use Permits, 157.07 Board of Adjustment, and 157.11 Large Site Improvement Plan. Staff is recommending amending 157.05 (C) (1) to remove “manufactured and mobile homes” from the list of special uses that require 500-foot surrounding property owner notification.

## BACKGROUND:

In many instances impacts of proposed land use changes may affect property owners beyond those immediately adjacent on which the change is requested. A 200-foot radius notice requirement is common practice with our peer communities and results in significantly more property owners notified. Analysis of three recent rezoning applications comparing the present number of property owner notifications to the proposed 200-foot radius resulted in the following increases in property owners notified:

		Adjacent	200-foot radius
19-6553	510 S. College	5	28
19-6552	3220 Old Farmington Rd.	14	25
19-6640	3231 West MLK Blvd	16	18

As might be expected, the increase in number of notifications resulting from the proposed change is greater in fully developed areas than in low density out-lying areas.

**DISCUSSION:**

Under Chapter 157 the applicant is responsible for obtaining property owner lists and completing the required notifications. Planning staff presently assists applicants by checking the accuracy of notifications letters and property owner lists. If City Council approves the proposed amendments staff would propose to delegate to the applicant the certification of the accuracy of the property owner lists. The present ordinance is clear that incomplete notification can result in a need for rehearing an application and is the applicant's responsibility.

**BUDGET/STAFF IMPACT:**

If implemented as recommended, there is no budget impact.

**Attachments:**

UDC Chapter 157 (with underlines and strikeouts)

## CHAPTER 157: - NOTIFICATION AND PUBLIC HEARINGS

### 157.01 - General Requirements/Information

(A)

Purpose. Notification is to be provided for public hearings in accordance with the requirements herein. The purpose of providing notification of public hearings is to ensure that all applications comply with state statutes and that affected or interested property owners are notified of the action being considered.

(1)

The applicant shall be responsible for public notification as required herein. In calculating the time period for public notification the day of publishing, posting, or mailing shall be counted toward the total number of days required. The day of the hearing shall not be counted toward this total.

(2)

The degree of accuracy required for the information contained in these public notices shall be that of substantial compliance with the provisions of this section. Substantial compliance for these public notices shall be determined by the Zoning and Development Administrator.

(3)

In the event the applicant does not provide notice as required herein, the requested application may not be considered until all notification requirements are met.

(B)

Written Notice. Notice shall include the following information, unless specific requirements herein provide otherwise:

(1)

The applicant shall mail a written notice of the hearing by first-class mail to the address all landowners within 200 feet of the boundary line of the property on which the use is proposed.

adjacent landowner as such address is shown in the records of the Washington County Assessor's Office. Adjacent landowners include those across street rights-of-way, excluding interstates.

(2)

Notice shall include the following information, unless specific requirements herein provide otherwise:

(a)

Project Description. Brief written description of the project or request, project type, and location.

(b)

Use. The proposed use of the property.

(c)

Zoning. Current zoning.

(d)

Size. Acreage of project.

(e)

Density/Intensity. Include number of residential units and/or square feet of nonresidential use(s), as applicable.

(f)

Public Hearing. Time, date, place, and location of public hearing.

(g)

Name. The property owner's and/or the developer's name.

(h)

Review Location. City of Fayetteville Planning Division, 479-575-8267, 125 W. Mountain Street, Fayetteville, AR 72701. Monday-Friday 8AM-5PM.

(3)

By the revision submittal prior to the hearing, the applicant shall provide the following to the Planning Division:

(a)

Alphabetical list of the landowners receiving notification;

(b)

Map showing the landowners' relationship to the site;

(c)

Copy of the notice sent to the landowners; and

(d)

Certificates of mailing.

(4)

The person completing the mailing of the written notice shall provide a certificate of mailing. Such certificate shall read as follows:

CERTIFICATE OF MAILING
I hereby certify that a true and correct copy of the attached written notice was placed in the U.S. mail, first-class, postage prepaid this ____

day of _____, 20___, and addressed as follows:
( list of addresses )
_____
( signature of person completing the mailing )

(5)

In the event that the applicant fails to mail a notice to an adjacent landowner or otherwise fails to comply with the written notice required in this section, the adjacent landowner may waive such notice by submitting a written waiver to the Planning Division prior to the hearing or by appearing at the hearing.

(C)

Posted Notice. The applicant shall post a notice on the land for which the use is requested.

(1)

The notice shall consist of at least one (1) sign adjacent to the street, unless otherwise determined by the Planning Division. The sign shall be placed in a visibly prominent location no more than 10 feet from the street, and shall not impede the vision of drivers or pedestrians.

(2)

In the event the staff planner determines a sign cannot be placed adjacent to such street and be visible to the public or that there is no adjacent public or private street open for travel, the staff planner may require an alternate location for a sign.

(3)

Additional signs may be required by the staff planner, especially in the case of properties with multiple street frontages, to ensure nearby property owners are well-informed.

(4)

Signs shall be made available to the applicant by the Planning Division. A \$5.00 fee per sign shall be remitted by the applicant.

(5)

By the revision submittal prior to the hearing, the applicant shall submit a certificate of sign posting to the Planning Division. The sign(s) shall be photographed by the applicant and attached to the certificate as follows:

CERTIFICATE OF SIGN POSTING
( attach photo here )
( sign lettering must be legible in photo )
I, ( applicant/representative/person posting sign ), attest that the above sign was posted on ( date ) adjacent to ( name of street ).
_____ ( signature )_____
File No./Name:
_____
_____
( signature of person completing the sign posting )

(6)

The Planning Division will be responsible for retrieval of signs after the hearing; if a hearing is postponed, the applicant will be notified when a new sign has been created. The applicant shall then be responsible for posting the new date of the hearing in accordance with the criteria herein.

(D)

Who May Be Heard. Any person desiring to be heard at a public hearing may appear in person, by agent, or by attorney.

(E)

Additional Notification Required. In the event a project is tabled and a date for the new public hearing is not set at a public meeting, all notification requirements shall again be required pursuant to Chapter 157.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; ord. 5183, 10-7-08)

157.02 - Development

Notification of public hearings for development applications shall occur as follows:

(A)

Public Hearing Required. A public hearing shall be held at the meeting of the Subdivision Committee and/or Planning Commission, in accordance with the Unified Development Code the established bylaws of the Planning Commission.

(B)

Applicability. Development applications include, for the purpose of notification, preliminary plats, concurrent plats, and large scale developments. If an application does not require a public hearing, notification is not required.

(C)

Notice of Public Hearing. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed development shall be given to all landowners within 200 feet of the boundary line of the property on which the use is proposed. ~~all adjacent landowners.~~

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided at least seven (7) days prior to Subdivision Committee and at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice at least seven (7) days prior to Subdivision Committee and at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(D)

Large Scale Development applications that are subject to administrative approval are exempt from the notification requirements of this code subsection, however, they are subject to and shall complete the public notification requirements for a Large Site Improvement Plan application.

(Code 1965, App. C., Art. IV, §1; App. A., Arts. 5, 5(IIA), 8(12), 12(1); App. C., Art. V, §F; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 1903, 3-6-73; Ord. No. 2379, 9-20-77; Ord. No. 2538, 7-3-79; Ord. No. 2582, 12-4-79; Ord. No. 2603, 2-19-80; Ord. No. 2633, 5-20-80; Ord. No. 2710, 3-24-81; Ord. No. 2779, 11-17-81; Ord. No. 2980, 2-7-84; Ord. No. 3128, 10-1-85; Ord. No. 1747, 6-29-70; Code 1991, §§159.54, 159.68, 160.032, 160.035, 160.121(L), (M), 160.156; Ord. No. 2716, §1, 6-15-93; Ord. No. 3925, §§6, 7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5183, 10-7-08; Ord. No. 5296, 12-15-09; Ord. No. 5653, 01-21-14)

157.03 - Annexation And Zoning Map Amendments

Notification of public hearings for annexation petitions and zoning map amendments (including planned zoning districts) shall occur as follows:



(A)

Public Hearing Required. Upon receipt of a petition for an annexation or an amendment to the zoning map, the Planning Commission shall hold a public hearing on the proposed amendment.

(B)

Notice of Public Hearing. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed annexation or zoning map amendment shall be given to all landowners within 200 feet of the boundary line of the property on which the use is proposed. ~~all adjacent landowners.~~

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(c)

Published Notice. Notice of public hearing shall be given by the city by publishing a notice in a newspaper of general circulation in the city, at least one time, at least fifteen (15) days prior to Planning Commission.

(Code 1965, App. A., Art. 12(1); Ord. No. 1747, 6-29-70; Ord. No. 2538, 7-3-79; Code 1991, §160.156; Ord. No. 3716, §1, 6-15-93; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5183, 10-7-08; Ord. No. 5920, §1, 10-18-16)

#### 157.04 - Indefinitely Tabled Rezoning Ordinance

If the City Council removes from the table any indefinitely tabled rezoning ordinance, the City Council may not pass this ordinance at that meeting. The applicant shall be required to repost the Planning Department's notice signs within six (6) days of the removal of the item from the table and at least seven (7) days before the City Council meeting when the rezoning ordinance will again be considered.

(Ord. No. 5920, §2, 10-18-16)

Editor's note— Ord. No. 5920, §§ 1 and 2, adopted Oct. 18, 2016, repealed §157.04 and added a new section as set out herein. The former §157.04 pertained to planned zoning district and derived from App. A., Art. 7(10), (20) of the 1965 Code; Ord. No. 1747, adopted June 29, 1970; Ord. No. 1880,

adopted Aug. 15, 1972; Ord. No. 2486, adopted Nov. 21, 1978; Ord. No. 2605, adopted Feb. 19, 1980; §§160.085, 160.090, 160.095, 160.096 of the 1991 Code; Ord. No. 3716, §3, adopted June 15, 1993; Ord. No. 3780, §1, adopted April 19, 1994; Ord. No. 4100, § 2 (Ex. A), adopted June 16, 1998; Ord. No. 4178, adopted Aug. 31, 1999; Ord. No. 5183, adopted Oct. 7, 2008; Ord. No. 5654, adopted Jan. 21, 2014.

#### 157.05 - Conditional Use Permit

Notification of public hearings for conditional use permits shall occur as follows:

(A)

Public Hearing Required. A public hearing shall be held by the Planning Commission for consideration of a conditional use permit.

(B)

Notice of Public Hearing. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed conditional use permit shall be given to all landowners within 200 feet of the boundary line of the property on which the use is proposed. ~~all adjacent landowners.~~

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice at least fifteen (15) days prior to the Planning Commission meeting. Proof of notice shall be provided as required by this chapter.

(C)

Special Uses. The following conditional use permits require more stringent notification. Applicants applying for consideration of the following uses must meet the following additional notification criteria:

(1)

Dance halls; Facilities emitting odors and facilities handling explosives; wireless communication facilities; carnival, circus, amusement park or similar temporary open-air enterprise; ~~manufactured and mobile homes~~; outdoor music establishments; sexually oriented business;

(a)

Who Gets Notice. All landowners within 500 feet of the boundary line of the property on which the use is proposed.

(Code 1965, § 18-15; Ord. No. 1685, 7-7-69; Ord. No. 1898, 1-16-73; Code 1991, §98.13; Ord. No. 3925, §1, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No 1779, 2-01-71; Ord. No. 5127, 4-1-08; Ord. No. 5183, 10-7-08)

#### 157.06 - Vacations Of Rights-Of-Way And Easements

(A)

Public Hearing Required. The City Council shall hold a public hearing, after receiving a recommendation by the Planning Commission, on applications requesting vacation of rights-of-way or easements.

(B)

Notice of Public Hearing. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed vacation shall be given by the applicant to all persons owning property adjacent to a utility easement and all property owners adjacent to or within the same block as a public right-of-way. Adjoining property notification forms with responses shall be submitted to the Planning Division with the vacation application.

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided at least fifteen (15) days prior to the Planning Commission meeting. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.

(c)

Published Notice. Notice of the City Council hearing shall be published, by the City Clerk, in a newspaper of general circulation in the city prior to the City Council hearing.

(Code 1965, App. A., Art. 10(2); Ord. No. 1747, 6-29-70; Ord. No. 2538, 7-3-79; Code 1991, §§160.172, 162.03; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93; Ord. No. 3925, §7, 10-3-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A.), 6-16-98; Ord. No. 5183, 10-7-08)

#### 157.07 - Board Of Adjustment

Notification of public hearings for zoning variances and appeals shall occur as follows:

(A)

Public Hearing Required. Upon receipt of a petition for a variance or appeal of staff decisions/interpretations concerning Zoning, Chapters 160 through 165, the Board of Adjustment shall hold a public hearing.

(B)

Notice of Public Hearing. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed variance or appeal shall be given to all landowners within 200 feet of the boundary line of the property on which the use is proposed. ~~all adjacent landowners.~~

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided at least seven (7) days prior to the meeting of the Board of Adjustment. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice at least seven (7) days prior to the meeting of the Board of Adjustment. Proof of notice shall be provided as required by this chapter.

(3)

Airport Zone. The city shall publish the variance or appeal request in a local newspaper of general circulation in the city at least fifteen (15) days prior to the public hearing.

(Code 1965, §13B-13; Ord. No. 1859, 3-20-72; Code 1991, §156.077; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5183, 10-7-08)

#### 157.08 - Unified Development Code

Amendments. Amendments to the Unified Development Code shall follow the procedures established by Ch. 154: Amendments, of the Unified Development Code, and require a public meeting by the City Council. All notification shall follow applicable state statutes and city ordinances.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4125, 11-17-98; Ord. No. 5183, 10-7-08)

#### 157.09 - Manufactured Homes And Manufactured Home Parks

Whenever the enforcement officer determines that there are reasonable grounds to believe that there has been a violation of any provision of Chapter 175, or any regulation adopted pursuant thereto, he/she shall give notice of such alleged violation to the owner of the park and to the person to whom the operator's permit was issued, as hereinafter provided.

(B)

Such notice shall:

(1)

Be in writing;

(2)

Include a statement of the reasons for its issuance;

(3)

Allow a reasonable time for the performance of any act it required;

(4)

Be served upon the owner and the operator; provided, that such notice or order shall be deemed to have been properly served upon such owner or operator when a copy thereof has been sent by certified mail to their last known address, or when they have been served with such notice by any other method authorized or required by the laws of the state; and,

(5)

Contain an outline of remedial action, which, if taken, will effect compliance with the provisions of Chapter 175 and with regulation adopted pursuant thereto.

(Code 1965, §13B-13; Ord. No. 1859, 3-20-72; Code 1991, §156.077; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5183, 10-7-08)

#### 157.10 - Fire Prevention Code

Blasting. In addition to the requirements and regulations provided in the Fire Prevention Code, the applicant for a blasting permit shall notify all residential property owners located within 200 yards of a blasting site. Notification may be personal contact, or by written notice left at the residence and shall contain the dates of any blasting activity.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4125, 11-17-98; Ord. No. 5183, 10-7-08)

#### 157.11 - Large Site Improvement Plan

Notification of review for Large Site Improvement Plan application shall occur as follows:

(A)

Public Hearing. A public hearing shall not be required.

(B)

Applicability. Notification is required for a Large Site Improvement Plan.

(C)

Notice of Large Site Improvement Plan. The applicant shall provide the following notice:

(1)

Who Gets Notice. Notice of the proposed development shall be given to all landowners within 200 feet of the boundary line of the property on which the use is proposed. ~~all adjacent landowners.~~

(2)

Methods of Notice. Notice shall be provided by the following methods, as required by this chapter:

(a)

Written Notice. Written notice shall be provided no later than the date of Technical Plat Review Committee at which the item is considered. Proof of notice shall be provided as required by this chapter.

(b)

Posted Notice. The applicant shall post notice no later than the date of Technical Plat Review Committee at which the item is considered. Proof of notice shall be provided as required by this chapter.

(D)

Public Review Period. The public review period shall consist of seven (7) days, beginning upon the date the item appears before the Technical Plat Review Committee. The Large Site Improvement Plan application shall not be approved within the public review period in order to allow adequate time for a review and comment.

(E)

Public Notification of Approval. The Planning Division's administrative approval of a Large Site Improvement Plan shall be placed as an informational item on the agenda of the Subdivision Committee or Planning Commission, and constitutes the final decision of the Zoning and Development Administrator regarding the development application.

(Ord. No. 5296, 12-15-09)

157.12—157.99 - Reserved



## DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE  
CITY ATTORNEY

TO: **Mayor Jordan**  
**City Council**

CC: **Don Marr**, Chief of Staff  
**Garner Stoll**, Development Services Director

**Kit Williams**  
*City Attorney*

**Blake Pennington**  
*Assistant City Attorney*

**Jodi Batker**  
*Paralegal*

FROM: **Kit Williams**, City Attorney

DATE: **July 30, 2019**

RE: **Amendment of "Who gets notice" provisions of U.D.C.**

Pursuant to the City Council's suggestion that development/rezoning notices are also furnished to possible tenants of structures within 200 feet of the boundary line on which the use or development is proposed, Development Services Director Garner Stoll has suggested the following amendment for all such notice provisions in the U.D.C.

"Who gets notice. Notice of the proposed development shall be given to all landowners and renters with separate addresses within 200 feet of the boundary line of the property for which the use is proposed. Renters with separate addresses shall be notified by first class letter addressed to the "current resident" to each address found in the City's address point file."

If this language is satisfactory, a Council Member will need to move to amend the currently proposed language to this amended version at the City Council meeting. If anyone desires different language, please consult with Garner or me.