

**AGENDA REQUEST FORM**


**FOR: Council Meeting of July 21, 2020**

**FROM: Council Member Teresa Turk**

**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**

AN ORDINANCE TO AMEND SECTION 155.04 ALDERMAN APPEAL ON BEHALF OF RESIDENT TO USE THE PROPER TERM "COUNCIL MEMBER" AND CLARIFY WHEN APPEALS CAN BE MADE AND TO AMEND § 155.05 APPEALS FROM PLANNING COMMISSION DECISIONS (A) APPEALS TO CITY COUNCIL (3) CONDITIONAL USE REQUEST TO REDUCE THE REQUIRED NUMBER OF COUNCIL MEMBERS NEEDED FOR AN APPEAL TO TWO

**APPROVED FOR AGENDA:**

  
\_\_\_\_\_  
Council Member Teresa Turk

7/2/2020  
Date

  
\_\_\_\_\_  
City Attorney Kit Williams

July 2, 2020  
Date



OFFICE OF THE  
CITY ATTORNEY

## DEPARTMENTAL CORRESPONDENCE



**Kit Williams**  
*City Attorney*

**Blake Pennington**  
*Assistant City Attorney*

**Jodi Batker**  
*Paralegal*

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

**CC: Susan Norton, Chief of Staff**  
**Garner Stoll, Development Services Director**

**FROM: Kit Williams, City Attorney**

A handwritten signature in blue ink, appearing to read "Kit Williams", written over a horizontal line.

**DATE: July 6, 2020**

**RE: Appeals From Planning Commission Decisions**

Council Member Turk requested that I draft an ordinance to reduce the number of Council Members needed to appeal a Conditional Use Permit to the City Council from three to two.

About the same time City Engineer Chris Brown and Developmental Services Director Garner Stoll questioned the need or advantage of sending vacations of utility or access easements including rights of way through the Planning Commission. The Planning Department ensures all vacation requests have gotten all necessary agreements from all utility and/or adjoining or affected neighboring properties before being presented to the Planning Commission. The Planning Department's review and recommendation for the granting or denying of vacation request will now go directly to the City Council which can save an applicant for the almost always uncontroversial easement vacation substantial time.

Reducing the number of Council Members needed to sponsor an appeal of an approved Conditional Use Permit brings this section closer to the usual rule that a single Council Member may appeal an approval of a development project by the Planning Commission to the City Council. The much higher bar for an appeal of a Conditional Use Permit was enacted around 18 years ago when the first appeal of a Conditional Use was

authorized by the City Council over a controversial issue. The high standard was imposed as a compromise to no appeal at all to the City Council. A decision granting a Conditional Use Permit can be appealed to Circuit Court for a brand new hearing with the jury sitting with the same powers and discretion possessed by the Planning Commission. Most jurors would not even be Fayetteville citizens, so I would be concerned what their decision might be. Therefore, I believe allowing an appeal of approved Conditional Use Permit to the City Council by an easier means (two Council Members rather than three Council Members) is probably advisable. Appeals by the applicant or developer are always allowed without Council Member assistance.

We also cleared up the current law by using the proper title of "Council Member." We also expressly clarified that variances, compliance with design standards, etc. would be appealed as part of the final development approval or rejection, rather than individually during the development review process. Individual appeals and reviews could clog up and delay the development review process with multiple appeals of different variances, compliance with design standards, etc. before the actual project had been approved or rejected by the Planning Commission. Avoiding such multiple delaying appeals is why most appeals in Circuit Court come only after a final decision of the entire case.

155.03

FAYETTEVILLE CODE OF ORDINANCES  
TITLE XV UNIFIED DEVELOPMENT CODE

**155.03 Stay**

An appeal shall stay all proceedings in furtherance of the action appealed from unless the person in charge of administration of the chapter certified that a stay would, in their opinion cause imminent peril to life or property.

(Code 1965, App. A., Art. 13(3); Ord. No. 1747, 6-29-70; Code 1991, §160.173; Ord. No. 4100, §2 (Ex. A), 6-16-98)

**155.04 Alderman Appeal On Behalf Of Resident**

An alderman may bring an appeal on behalf of any resident of the city a decision by the Planning Commission to approve or deny the requests as set forth below.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09)

**155.05 Appeals From Planning Commission Decisions**

(A) *Appeals to City Council.*

(1) Owners of record of the property being considered may appeal a decision by the Planning Commission to deny the following requests, in accordance with the procedures set forth in §155.02.

- (a) Annexation
- (b) Rezoning
- (c) Planned Zoning District
- (d) Subdivision (preliminary plat, final plat, concurrent plat, lot split)
- (e) Large scale development
- (f) Vacation of utility easement, access easement, public right-of-way
- (g) Commercial Design Standards
- (h) Tree Preservation Plan
- (i) Variances and waivers of the UDC

(2) *Conditions of Approval.* An owner of record may appeal the conditions of approval determined by the Planning Commission for any of the requests listed in (A)(1).

(3) *Conditional Use Request.* Three (3) aldermen, two (2) of whom must reside in the effected ward, may in unison appeal a decision by the Planning Commission approving or denying a conditional use request.

(B) All other decisions by the Planning Commission must be appealed to Circuit Court.  
(Code 1965, §13A-40, App. C., Art. II, Art. V., §B; Ord. No. 1509, 8-8-66; Ord. No. 1750, 7-6-70; Code 1991, §§156.017, 159.12, 159.54(F)(1), (2), 159.66; Ord. No. 3781, §1, 4-19-94; Ord. No. 3925, §6, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4334, 9-4-01; Ord. No. 4340, 10-2-01)