

AGENDA REQUEST FORM


FOR: Council Meeting of July 21, 2020

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

**AN ORDINANCE TO AMEND § 155.06 APPEALS FROM STAFF
INTERPRETATIONS AND ACTIONS TO DIRECT MORE APPEALS TO THE
PLANNING COMMISSION RATHER THAN TO THE CITY COUNCIL**

APPROVED FOR AGENDA:



City Attorney Kit Williams

July 2, 2020
Date



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

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 Jonathan Curth, Development Manager

FROM: Kit Williams, City Attorney

[Handwritten signature of Kit Williams]

DATE: July 3, 2020

RE: Amendments to §155.06 Appeals for Staff Interpretation/Actions

I am charged with administering and interpreting Chapter 155 of the Unified Development Code. After Council Member Teresa Turk requested an amendment of the number of Council Members necessary for an appeal of a Conditional Use from 3 down to 2, I examined other sections in this Chapter.

I noticed outdated titles: "Zoning and Development Administrator" which had been replaced with "Planning Director" years ago (but not in the U.D.C.) and has been changed again to "Development Review Manager." I also needed to change "Alderman" to "Council Member."

Beyond using the current correct titles, I noted some other amendments were needed. City Engineer Chris Brown and Development Services Director Garner Stoll agreed that vacations of right of way and easements had to always eventually be decided by the City Council and were usually very routine and uncontroversial. Therefore, I eliminated their (almost meaningless) route through the Planning Commission before getting to the City Council. This will also save applicants for vacations up to a month.

On the other hand, there were several appeals of staff interpretations that were supposed to go directly to the City Council that really should go to the Planning Commission. For example; "An interpretation or decision of the Zoning and Development Administrator regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting" would skip the Planning Commission and go directly to the City Council. I am not sure why the Planning Commission was ever supposed to be skipped for "development matters." The same is true of the City Engineer's interpretation of "development matters." I thus rewrote this section to send most development matters' decisions to the Planning Commission.

Current law - highlighted changes

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

— Part of zoning

(d) Subdivision (preliminary plat, final plat, concurrent plat, lot split)

(e) Large scale development → expanded

(f) Vacation of utility easement, access easement, public right-of-way

(g) Commercial Design Standards

— only as part of development plan
only as part of development plan

(h) Tree Preservation Plan

(i) Variances and waivers of the UDC

out →

expanded, but appealed only as part of

(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).

final development plan

(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)

155.06 Appeals From Staff Interpretations/Actions

(A) *Appeals to City Council.* The following staff interpretations/actions may be appealed to the City Council by an owner of record of the property in question or an alderman on behalf of a resident of the city:

(1) **Zoning and Development Administrator**. → *appeals to Planning Commission*

(a) *Design Overlay District requirements.* The decision of the **Zoning and Development Administrator** not to exempt property from the Design Overlay District requirements as allowed in §161.28(G).

(b) *Development Matters.* An interpretation or decision of the **Zoning and Development Administrator** regarding development matters, including subdivisions, large scale developments, parking and loading, and outdoor lighting may appeal.

(2) *City Engineer.*

(a) *Stormwater, Drainage, and Erosion Control Requirements.* The decision of the City Engineer to issue a violation notice *or stop work order* related to these requirements.

(b) *Development Matters.* An interpretation or decision of the City Engineer regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems may appeal.

(c) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the City Council shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.

(d) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.

(3) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(4) *Impact Fee Administrator.* Any person aggrieved by any decision of the Impact Fee Administrator made in the enforcement or administration of Chapter 159 Fees.

(B) *Appeals to the Board of Adjustment.* The following interpretations and decisions may be appealed by an owner of record of the property in question or an alderman on behalf of a resident of the city to the Board of Adjustment:

(1) **Zoning and Development Administrator—Zoning.** An interpretation or decision of the **Zoning and Development Administrator** regarding zoning matters may appeal.

(2) *Building Safety Division Director—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Division Director, made in the administration of Airport Zone, Chapter 165, may appeal.

(C) *Appeals to the Planning Commission.*

(1) Required Dedications and Improvements.

- (a) An owner or developer who is aggrieved by the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement, which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, subdivision, building permit, lot split, development permit, or otherwise within 10 days of notification of such development requirements. The appeal must be presented to the Planning Division in writing and state the grounds, or reasons for the appeal.
- (b) The Planning Commission shall determine after public hearing whether the required dedications and improvements meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(2) Administrative Approvals.

- (a) A resident of the city or an owner/developer who is aggrieved by a decision of the Zoning and Development Administrator regarding development matters that are approved administratively, as required by Chapter 166.02 (C) may appeal the decision to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:
 - (i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.
 - (ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.
 - (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.

- (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
 - (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
 - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
- (D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.
- (Code 1965, §17B-11.2(d), (e), App. A., Art. 10(6), 19(2), App. B, §III, App. C., Art. 10(6), 19(2), App. B, §III, App. C., Art. V, §A; Ord. No. 1747, 6-29-70; Ord. No. 1750, 7-6-70; Ord. No. 2109, 6-375; Ord. No. 2252, 7-6-76; Ord. No. 2538, 7-3-79; Ord. No. 2585, 12-4-79; Ord. No. 2697, 1-20-81; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-14-88; Code 1991, §§150.03, 158.67(B), 158.68(A), (B), 159.65, 160.048, 160.172, 160.176(A), (B), 161.11, 162..03(B), (C), 163.10(D); Ord. No. 3551, 6-4-91; Ord. No. 3587, §1, 1-7-92; Ord. No. 3699, §3, 4-20-93; Ord. No. 3716, §2, 6-15-93, Ord. No. 3806, §1, 6-28-94; Ord. No. 3895, §1, 6-20-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3901, §1, 7-5-95; Ord. No. 3925, §7, 10-3-95; Ord. No. 3963, §9, 4-16-96; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4368, §2, 2-5-02; Ord. No. 4377, §§1, 2, 3-5-02; Ord. No. 4652, 12-07-04; Ord. No. 5206, 12-16-08; Ord. No. 5296, 12-15-09; Ord. 5390, 3-1-11)

155.07 Appeals To The Housing Board—Mobile Homes And Mobile Home Parks

- (A) *Permit Denied.* Any person whose application for a permit under Chapter 175 has been denied may request and shall be granted a hearing on the matter before the Housing Board.
 - (B) *Permit Suspended.* Any person whose permit has been suspended, or who has received notice from the enforcement officer that his permit will be suspended unless certain conditions or practices at the mobile home park are corrected, may request and be granted a hearing on the matter before the Housing Board.
 - (C) *Petition Deadline.* When no petition for hearing shall have been filed within ten (10) days following the day on which notice of suspension was served, such permit shall be deemed to have been automatically revoked at the expiration of such ten (10) days.
- (Code 1965, §17B11.2(e); Ord. No. 2109, 6-3-75; Ord. No. 2583, 12-4-79; Ord. No. 3152, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3153, 11-19-85; Ord. No. 3340, 3-15-88; Code 1991, §158.67; Ord. No. 4100, §2 (Ex. A), 6-16-98)
- (Code 1965, §§13A-40, 13A-43; Ord. No. 1509, 8-8-66; Code 1991, §§156.017, 156.029; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04).

ORDINANCE NO. _____

AN ORDINANCE TO AMEND § 155.06 APPEALS FROM STAFF INTERPRETATIONS/ACTIONS TO DIRECT MORE APPEALS TO THE PLANNING COMMISSION RATHER THAN TO THE CITY COUNCIL

WHEREAS, most appeals of staff interpretations of development issues should be directed first to the Planning Commission for review before a later appeal by the applicant or City Council Member can appeal the issue to the City Council; and

WHEREAS, a violation notice or stop work order issued by the City Engineer should continue to be appealed directly to the City Council because of the potential monetary impact of such notice or order; and

WHEREAS, an appeal of an impact fee decision by the Impact Fee Administrator should be included in the overall consideration of the rough proportionality of the impact of the development, but any recommendations by the Planning Commission to reduce any impact fees must be approved by the City Council. Reductions of other exactions do not need City Council approval unless properly appealed.

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 § 155.06 **Appeals From Staff Interpretations/Actions** by repealing it in its entirety and enacting a replacement § 155.06 as attached as Exhibit A to this ordinance.

PASSED and APPROVED this 21st day of July, 2020.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
KARA PAXTON, City Clerk/Treasurer

155.06 - Appeals From Staff Interpretations And Actions

(A) Appeals to City Council.

(1) The City Engineer's decision to issue a violation notice or stop work order may be appealed to the City Council by an owner of record of the property in question or a council member on behalf of a resident of the city.

(2) The Development Review Manager's decision to deny a vacation of any public easement or right-of-way (whether constructed or not) or portion thereof may be appealed by the owner of record of the property.

(B) Appeals to the Board of Adjustment. The following interpretations and decisions may be appealed by an owner of record of the property in question or a council member on behalf of a resident of the city to the Board of Adjustment:

(1) *Development Review Manager—Zoning.* An interpretation or decision regarding zoning matters.

(2) *Building Safety Officer—Airport Zone.* Any person aggrieved, or any taxpayer affected by any decision of the Building Safety Officer, made in the administration of Airport Zone, Chapter 165.

(C) Appeals to the Planning Commission.

(1) Development Review Manager's Required Dedications and Improvements.

(a) An owner or developer who is aggrieved by the Development Review Manager's interpretation of the requirements of the Unified Development Code for land, right-of-way or easement dedications, construction of on-site or off-site improvements, or payments in lieu of any dedication or improvement (including impact fees), which are in excess of the "rough proportionality" of the impact of the development upon the city's infrastructure or services may appeal such requirement to the Planning Commission as a part of the submission of the preliminary plat, large scale development, large or small site improvement plans, subdivision, building permit, lot split, other development permit, or otherwise within 10 working days of the final development approval that included the disputed exactions. The appeal must be presented to the Planning Division in writing and state the grounds or reasons for the appeal.

(b) The Planning Commission shall determine after public hearing whether the required dedications, improvements, and fees meet the "rough proportionality" of the impact of the development on city infrastructure and services. If the requirements are in excess of the "rough proportionality," the Planning Commission is empowered to modify or reduce such requirements to achieve "rough proportionality."

(c) Any potential reduction of impact fees must be approved by the City Council.

(2) Administrative Approvals and interpretations by Development Review Manager

(a) A resident of the city or an owner/developer who is aggrieved by a decision of the Development Review Manager regarding development matters that are approved administratively {as required by Chapter 166.02(C)} may appeal the final development approval decision affected by this matter to the Planning Commission. The appeal shall be submitted in writing to the Planning Division within 10 working days of the final decision. The appeal shall be limited to the applicable approval or denial criteria as follows:

(i) The development plan is not submitted in accordance with the requirements of Chapter 166 of the Fayetteville Unified Development Code.

(ii) The proposed development would violate a city ordinance, a state statute, or a federal statute.



- (iii) The developer refuses to dedicate the street right-of-way, utility easements or drainage easements required by Chapter 166 of the Fayetteville Unified Development Code.
 - (iv) The proposed development would create or compound a dangerous traffic condition. For the purpose of this section, a dangerous traffic condition shall be construed to mean a traffic condition in which the risk of accidents involving motor vehicles is significant due to factors such as, but not limited to, high traffic volume, topography, or the nature of the traffic pattern.
 - (v) City water and sewer is not readily available to the property within the large scale development or preliminary plat and the developer has made no provision for extending such service to the development.
 - (vi) The developer refused to comply with UDC Ch. 166 pertaining to required on-site and off-site improvements.
- (b) The appellant must include in the letter of appeal the specific code section with which the development application does not comply.
 - (c) The Planning Commission shall determine after public hearing whether the interpretation or discretionary decision should be upheld or modified in part or in whole.
- (3) City Engineer and Flood Plain Administrator
- (a) *Development Matters.* An interpretation or decision of the City Engineer or Floodplain Administrator regarding development matters, including grading, drainage, water and sanitary sewer systems, and storm drainage systems.
 - (b) *Floodplain Regulations.* The decision of the Floodplain Administrator, provided that the Planning Commission shall hear and decide an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of Chapter 168.
 - (c) *Streamside Protection Zones.* An interpretation or decision of the City Engineer concerning the regulated uses, structures and activities, streamside boundary location or land use exemptions.
- (4) Development Review Manager's Interpretation or Decision of other Development Matters.
- An interpretation or decision of the Development Review Manager regarding development matters including subdivisions, large scale developments, parking and loading, outdoor lighting, compliance with applicable design standards, or any other development matters.
- (5) *Urban Forester—Landscape and Tree Preservation and Protection requirements.* Decisions of the Urban Forester related to landscape and tree preservation and protection requirements.

(D) *Appeals to the Construction Board of Adjustment and Appeals.* When the administrative authority under Chapter 173 shall disapprove an application, or the applicant is aggrieved by the interpretation of the administrative authority, the applicant may appeal the decision to the Construction Board of Adjustment and Appeals.