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:

[Signature]
Council Member Teresa Turk

[Signature]
City Attorney Kit Williams

Date: 7/1/2020

Date: July 2, 2020
TO: Mayor Jordan  
City Council  

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

FROM: Kit Williams, City Attorney  

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 uncontroverted 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 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.

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 request 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., §8; 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)
Departmental Correspondence

Office of the City Attorney

TO: Mayor Jordan
    City Council

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

FROM: Kit Williams, City Attorney

DATE: July 20, 2020

RE: Amendments Proposed for §155.04 Alderman Appeal on Behalf of Resident and Section 155.05 Appeals From Planning commission Decisions

Section 155.04 Changes

I do not have a “strike through and underline add” history for §155.04, and it would not be very informative if I did. First, I wanted to change “Alderman” to “Council Member” in both the title and body of §155.04.

Second, a Council Member is needed to assist a resident to appeal an approval of a project or application by the Planning Commission. The applicant (or owner of record) can appeal a denial for itself.

Third, upon the request and/or agreement of City Engineer Chris Brown and Development Services Garner Stoll, vacations should now go directly to the City Council, and thus should not be included in either §155.04 or §155.05.

Fourth, appeals of other development decisions in addition to large scale developments and subdivisions such as large and small site improvement plans should be referenced and included for appeal rights which I did in both §155.04 and §155.05.

Fifth, I included the new language: “Variances, compliance with applicable design standards (not just Commercial Design Standards), tree preservation plan and conditions of approval” needed to clearly group with the final approval/disapproval decision to avoid multiple appeals over the same development proposal.

Section 155.05 Changes

Planned Zoning Districts used to be a hybrid encompassing not only rezoning, but development approval. This was changed years ago to be strictly a zoning decision. Therefore, I removed Planned Zoning District as it is now included within and covered by “Rezoning.”
I added the Planning Commission’s decision on the constitutionality of the required dedications pursuant to Rough Proportionality of the impact of such development upon the City ‘s infrastructure needs (155.06(c)) if an owner of record or applicant wanted to appeal that decision to the City Council.

I expanded (e) “Large Scale Development” to add small site and large site improvement plans which can be appealed to and decided by the Planning Commission. Vacations were removed since they would go directly to the City Council so no appeal from the Planning Commission could occur.

I expanded subsection (2) “Conditions of Approval” to also include adverse variance decisions, all design standards (not just commercial design standards), tree preservation requirements and conditions of approval.

Finally, I complied with Council Member Turk’s request in (3) to reduce the number of Council Members needed to appeal the Planning Commission’s decision on a conditional use from three to two.

Please let me know if you have any further questions about these proposed changes.
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.


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)
ORDINANCE NO. ____________

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

WHEREAS, conditional use request decisions by the Planning Commission should be able to be appealed for City Council review by one Council Member elected as the Ward representative in which the property which is subject to the condition use request is located and one other Council Member; and

WHEREAS, the term Alderman should be replaced with Council Member and this section should be clarified so that a Council Member would be able to appeal a subdivision or development approved by the Planning Commission on behalf of a resident to the City Council.

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 § 155.04 Alderman Appeal On Behalf of Resident by repealing it and by replacing “Alderman” with “Council Member” and enacting the following:

“155.04 Council Member Appeal On Behalf of Resident
A Council Member may bring an appeal on behalf of any resident of the city of a decision by the Planning Commission to approve subdivision requests (plats, lot splits), and development requests (large scale developments and large or small site improvement plans). Variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealed as part of the approval of a development proposal.”

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby amends § 155.05 Appeals From Planning Commission Decision (A) Appeals to City Council by deleting this in their entirety and enacting a replacement (A) as follows:

“(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 procedure set forth in § 155.02:
(a) Annexation
(b) Rezoning
(c) Required Dedication and improvements of § 155.06 (C)
(d) Subdivision (plats, lot splits, lot line adjustments)
(e) Development (large scale development, large and small site improvement plans)
(2) Conditions of Approval/Variances, etc. An owner of record may appeal the conditions of approval determined by the Planning Commission and any adverse decision by the Planning Commission concerning applicable design standards, tree preservation requirements, streamside protection requirements and variance requests as part of the conditions of an approved development request or the denial of such development request.

(3) Conditional Use Request. Two Council Members, one of whom must reside in the affected ward, may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.”

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

APPROVED: 

ATTEST:

By: LIONELE JORDAN, Mayor

By: KARA PAXTON, City Clerk/Treasurer
Kyle,

Thank you for your email regarding AMEND § 155.04 ALDERMAN APPEAL. Per your request our office will add the below minutes to this item as additional information.

2001-09-04 Pages 2-4  
2001-07-17 Pages 2-3 
2001-07-03 Pages 7-9

Thank you,

Kara Paxton
City Clerk Treasurer
City of Fayetteville, Arkansas
kapaxton@fayetteville-ar.gov
T 479.575.8323

From: Kyle Smith <citycouncil@kyle4fay.org>
Sent: Tuesday, July 21, 2020 8:17 PM
To: CityClerk <cityclerk@fayetteville-ar.gov>
Subject: Minutes of Appeals Ordinance 4334

CAUTION: This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Kara,

Here are the segments of minutes regarding the passage of "Appeal" Ordinance 4334 that are relevant to our current item 2020-0571. I have not attached them here, but I had them up so I included links (if they work). Would you please add this history to the packet and distribute it to the Council for the next meeting?

2001-09-04 Pages 2-4  
2001-07-17 Pages 2-3
Thank you!

Kyle Smith
Council Member
Ward 4 Position 2
City of Fayetteville, Arkansas
citycouncil@kyle4fay.org
479.274.8881
Facebook | Twitter | Website
Mr. McKinney stated that was a factor in the equation. It was not just the direct income by payment of lease holding, they also had to look at the side benefit that this business provided to their traffic count the tower. It would affect them next year.

Alderman Thiel stated she thought this was a win win situation and in the long run would pay for itself.

Alderman Trumbo moved to approve the resolution. Alderman Thiel seconded the motion. Upon roll call the motion carried by a vote of 6-1-0, Jordan voting nay.

RESOLUTION 96-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was left on the first reading at the June 19, 2001 meeting.

Alderman Trumbo moved to suspend the rules and go to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time. He reminded the council that they might want to have a motion to delete section two.

Alderman Trumbo moved to delete section two, emergency clause. Alderman Jordan seconded the motion.

Ms. Paula Marinoni, an area resident, stated this had come out of a request from Central United Methodist Church for a parking lot. Preservationists and neighbors had opposed this. The church had a plan which had been approved in 1995 which had not been taken into consideration. The request had been voted in at Planning Commission. Alderman Davis and Trumbo had brought this forward for consideration. There was a State law which determined that Conditional Uses went from the Planning Commission to Circuit Court. This had always been the law, as far as she knew. Everyone else that had come before had been told their only opinion was to take it to Circuit Court. She had been told this five years ago. She could not believe that they could not take it to City Council. A citizen should have the right to appeal to their own governing body before taking it to Circuit Court. Five years ago when she questioned this, she had been told by State Representative Sue Madison that this was an old law and should be changed, but it was the law. That was the way it had always been presented to other entities who wanted to challenge. She did not think that they had the authority to pass the ordinance. The city attorney had sited other ordinances in Arkansas where other cities had appealed their conditional uses to the city council. Just because someone else was doing something did not make it legal. The fact that no one had ever challenged them did not make it right. She questioned what the State Law was. After the last meeting, she contacted their
State Representative, Jan Judy, and asked her for an Attorney General opinion. She presented the request to the Attorney General. The request had been assigned to an attorney who would work on this. It had a rush on it. She asked them to leave the item on this reading and/or table it until the opinion came in. She did not believe the opinion would be in before the two weeks. This was not an emergency and they had the time to wait. She had also asked in the opinion if they could use the city trolley to help with the churches on Sundays and the merchants on Dickson Street and downtown.

Mr. Richard Maynard, an area resident, stated he was concerned about this because it changed something that was not a policy decision. He did not think it was the no brainer that it appeared to be. It was a burden that they would be taking on. This was not a policy decision. It was someone asking the city for a break. He did not see any problem with the process ending at Planning Commission. He could see some problems with this being an appeal. This was basically, just taking a second look at it. If it was an appeal, they would not be just looking at the whole thing again, but they would be looking at on whether the findings of fact were followed. He thought that would put the burden on whoever was appealing that they had to come to them with specific fault in the findings and fact. It would get rid of frivolous appeals. He did not believe he would have a problem finding three aldermen to appeal the decision for him, however, if they had point out where they went wrong and where they disagreed with their finding of fact. He encouraged them to have stricter guidelines. As a citizen, he was afraid they were getting into micro managing. They things he would rather them micro manage was their money. He saw many things put on the consent agenda for large sums of money that he was not sure why they were on there. His concern was that once they had a contentious conditional use appeal more things would be put on the consent agenda. He felt they were taking on a lot of work.

Alderman Trumbo stated that when he called the other cities which did appeal their conditional uses to the city council, he had asked the kinds and volumes. They had replied that they were rare.

Mr. Huge Ernest, Urban Development Director, stated the city of Little Rock had very few appeals and they were usually regarding the use of manufactured homes.

Mr. Maynard stated he felt the Planning Commission looked at the Conditional Uses more carefully than they did the rezoning, which automatically came to them.

Alderman Santos stated he had assumed that with the appeal they would have to cite specific ordinances or things from the general plan that showed where the Planning Commission decision was not in line.

Mr. Williams stated he had placed this within the same paragraph that allowed the decision of the Planning Commission to be appealed to the City Council. All of the other provisions allowed an alderman to appeal the decision of the Planning Commission. There was nothing in here that
required any particular thing to be cited beyond what was already in the appeals section. In reference to comments made earlier from Ms. Marinoni he quoted from the State Law regarding the functions of the Board of Adjustments and not the Planning Commission regarding the appeal of variances. Variances from the Board of Adjustments had to be appealed to the Circuit Court. Under another statute they were given the authority to change their ordinances.

THE ORDINANCE WAS LEFT ON THE SECOND READING.

NEW BUSINESS

ZONING DISTRICTS: An ordinance amending Chapter 160, Zoning Districts, and Chapter 161, Zoning Regulations, of the Unified Development Ordinance to include additional multi-family zoning districts, RMF-6, RMF-12, and RMF-18.

Mr. Williams read the ordinance for the first time.

Alderman Santos moved to suspend the rules and move to the second reading. Alderman Davis seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams read the ordinance for the second time.

Alderman Davis moved to suspend the rules and move to the third and final reading. Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.

Mr. Williams stated the Council did pass this ordinance several months ago, but the ordinance did not have the proper definitions. They had to go back and put the proper definitions in.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

ORDINANCE 4325 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

SKATE PARK: A resolution authorizing the Parks and Recreation Division to apply for up to $200,000 (50/50 matching funds) in grant money for the development of a skate park.

Mr. Eric Schuldt, Parks and Recreation, stated the Skate Park idea had been brought up years ago. The Parks and Recreation had been working on it for two and a half years. It was originally in the CIP for 2000. They had $75,000 allocated to start that project. Staff knew at that time they would need more funds at a future date. Until they got to the community involvement process and a consultant hired they did not know the direction to go. There were many different ways to build a park. They could build a wood, steel or concrete park. They had formed a subcommittee. The subcommittee recommended a concrete park. It was traditionally what was being built. It was the
WOMEN'S SHELTER: A resolution approving a lease agreement with the Project for Victim's of Family Violence, to lease city land for the construction of a new Battered Women's Shelter.

RESOLUTION 104-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

LOCAL LAW ENFORCEMENT BLOCK GRANT: A resolution approving the application for the 2001 Local Law Enforcement Block Grant in the amount of $36,058.00. The total project is $40,065.00 and requires a 10% City match of $4,007.00. This grant will be used for the purchase of video equipment to place in patrol cars.

RESOLUTION 105-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Zurcher moved to approve the consent agenda. Alderman Santos seconded the motion. Upon roll call the motion carried unanimously.

Mr. Gary Lowery, an area resident, stated July 1, 1991, the City passed a pass through fee of fifteen cents per month to the water customers for the Federal Safe Drinking Water Act, Act 1053. In 1993 this provision was increased on June 20, 1993, by ten cents. That increase now, accumulatively, is twenty-five cents. It was not a pass through resolution of twenty-five cents that they should be discussing, it should be a pass through increase of ten cents, not twenty-five cents. It should be an inclusion of the fifteen cents plus the ten cents, which would be twenty-five cents. They were making a pass through of twenty-five cents. The city had neglected State law for ten years by not having it printed on the water bills.

OLD BUSINESS

APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional use. The ordinance was amended and left on the second reading at the July 3, 2001 meeting.

Mr. Williams read the ordinance for the third time.

Alderman Davis asked if they had heard anything back from the Attorney General's office.

Mr. Williams stated he had called the Attorney General's office to see where the request was. The person who did their zoning opinions was on vacation and would not be back until the first of August. They could not assure him that they would have an opinion by the seventh. He did not when they would have an opinion back to him.

Mr. Mort Gitelman, 1229 West Lake Ridge Drive, stated he had served eighteen years on the City Planning Commission during the late 1960 through the mid 1980's. About thirty years ago they did a major revision of the Fayetteville Zoning Ordinance. They had debated the suitability of appeals
and conditional use permits from the Planning Commission to the City Council. He had been teaching land use law for thirty-six years, the vast majority of cities did not allow appeals from the Planning Commission on Conditional Use permits, but there was nothing in Arkansas law that prevented them from allowing such appeals if they wanted to amend the ordinance. There were a lot of good reasons not to. The basic reason is that if they understand the theory of the conditional use permit. It makes the Planning Commission an administrative agency of the city. The Planning Commission had approximately ten standards they were supposed to look to in whether or not to grant a conditional use permit. The Planning Commission was to apply those standards. Once they started allowing appeals of conditional use requests to the city council, they might be opening a box that they might not want to. They would encourage a lot of appeals. If they stopped to consider all the conditional uses allowed in the zoning ordinance, for example, home occupations and duplexes. Many of the conditional use requests were controversial. The incentive for the Planning Commission to not to devote full attention to resolving those issues at the administrative level, would mean that they would start coming to the council. The City of Little Rock did allow appeals to the city council. He did not believe the city staff and city attorney are very happy with the process down there. There was no appeal from the Board of Adjustments on variances. State law prohibits it. It was the same sort of thing. The Board of Adjustment hears the individual facts and cases and decided on whether or not to grant a variance. There was no appeal to the legislative body of the city. It went to court. He thought the conditional use permit was very much the same sort of thing. They should look at the Planning Commission as one of their administrative agencies that they had given them the power to apply those standards in the ordinance to individual requests. He stated it would be unwise to change the procedure. He was sure their meetings were long enough as it was. This did not mean the Planning Commission was always going to be right.

Alderman Thiel moved to table the item until they had a decision from the Attorney General. Alderman Zurcher seconded the motion. Upon roll call the motion carried unanimously.

ORDINANCE WAS TABLED.

NEW BUSINESS:

Mayor Coody stated the next three items were related to each other, but they would be addressing each one individually.

SPECIAL SALES TAX ELECTION: An ordinance calling a special election to decide whether or not to approve a three-fourths cent (7/4¢) sales and use tax to fund the issuance of not to exceed one hundred twenty-five million dollars of Capital Improvement Bonds to finance all or a portion of the acquisition, construction, reconstruction, extending, improving and equipping of wastewater treatment plants, sewerage and related facilities.

Mr. Williams read the ordinance for the first time.
protect and preserve what they had downtown.

Mrs. Bootsie Ackerman, DDEP, stated she hoped that they could use this information to overlay with the earlier data that they had when the stated the project to see how far that they had come in five years and help them plan the next five years.

CONSENT AGENDA

APPROVAL OF THE MINUTES: Approval of the minutes from the August 21, 2001 meeting.

SFCDC: A resolution approving the transfer of the property located at 1035 S. Washington Avenue from the City of Fayetteville to the South Fayetteville Community Development Corporation. The funding source for this property purchase was the 2001 HUD Community Development Block Grant.

RESOLUTION 120-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

ARVEST BANK: A resolution accepting a proposal from Arvest Bank to provide banking services for the City of Fayetteville for one year, renewable for four years.

RESOLUTION 121-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

GRANT ACCEPTANCE: A resolution accepting 2001 Local Law Enforcement Block Grant Award and agreement to the assurances and certifications and the approval of a budget adjustment.

RESOLUTION 122-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

AIRFIELD PAVEMENT REHABILITATION: A resolution accepting the low bid of $2,555,442.65 from McClinton-Anchor for the Airfield Pavement Rehabilitation Project. A 5% contingency fee is also included in the total cost of the project. The total project cost is $2,849,608; and approval of a budget adjustment.

RESOLUTION 123-01 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

Alderman Zurcher moved to approve the consent agenda. Alderman Jordan seconded. Upon roll call the motion carried unanimously.

OLD BUSINESS

CONDITIONAL USE APPEAL: An ordinance amending Chapter 155, Appeals, to allow an appeal by three aldermen of a decision by the Planning Commission to approve or deny a conditional
use. The ordinance was tabled on the third reading at the July 17, 2001 meeting until the Attorney General’s opinion was received.

Alderman Young stated there were two sides to this. His opinion and the majority of the people that he had spoken with believed that it would be best to have a recourse to the City Council.

Alderman Santos stated the only real complaint that he had heard was for the appeals to be based on specific finding by the Planning Commission. The way it had been explained to him was that it had to be a de novo appeal. They did not really consider anything that happened at the Planning Commission level.

Mr. Williams stated the other appeal to them were primarily were de novo, when they looked at the other three things that were allowed to be appealed. He thought they could set up the appeals any way they wanted to.

Alderman Young stated for practicality they probably needed to spell out the reasons for appeal.

Mr. Williams stated the Planning Commission had specific guidelines for Conditional uses. They could identify the ones that they disagreed with.

Ms. Paula Marinoni, an area resident, stated she had requested the Attorney General’s opinion through State Representative Jan Judy. She stated this had always been presented that this was the law and never before had there been an uproar because someone had been affected by it. She had seen this as an affront on those people who had been adversely affected by this in the past. Her original issue was that she felt it was inappropriate for two alderman from an outside ward to try and change the law because it affected one particular group when this had never been an issue before. Now that the opinion had come back in the favor that this is possible, she was glad. It should be possible for a citizen to appeal to the council and not have to go to Circuit Court. The nature of a conditional use, they were asking for a use in a ward or zone that is not normally accepted in that zoned. The people most likely affected are the people who would not have the means to go to Circuit Court. If they would consider at time the request for three aldermen to bring it forward. She did not want to see this being away to get around the Planning Commission. She suggested the aldermen appealing the conditional use should be from the ward affected, at the very least one person from that ward.

Alderman Zurcher moved to amend the ordinance requiring two of the three aldermen be from the Ward affected. Alderman Santos seconded.

Alderman Thiel stated she wanted to make this difficult. She had a lot of concerns and reservations about doing this. She did like the idea of requiring two aldermen from the ward affected.
Alderman Young stated there was a danger in making it too difficult.

Alderman Thiel stated the only reason she was supporting it was because she had seen where neighborhoods had been affected and they did not have the means to hire an attorney and fight. If they did not make it difficult, they would have every conditional use appeal. She felt this was taking power away from the Planning Commission.

Mr. Hugh Ernest, Urban Development Director, stated he had called Little Rock and asked them to check the number of appeals of conditional uses. Over a year period there had been twelve and fourteen. The majority of them were manufactured housing. It was a singular right of the applicant to make the appeal with no requirement to secure votes from any aldermen or active Board of Directors. He pointed out the use of appeal was not that common. If the Planning Commission did their job and followed the technical conditions that were required for a conditional use, it was usually apparent to the applicant that it was going to stand on its merit.

Alderman Santos stated he supported this because it made the City Council more responsive. It gave the people more of a chance. It made them more accountable to the people and having the two aldermen from the ward appeal the conditional use made them more accountable to the people of their ward. He added supporting this appeal did not mean that he would vote for it when it came before council. He was willing to listen.

Mayor Coody asked shall the amendment pass. Upon roll call the motion carried by a vote of 6-1-0. Trumbo voting nay.

Mr. Feinstein, an area resident, asked if they had an establishment that was moving from one area to another who would be the affected area.

Alderman Young stated it would be the land.

Mr. Feinstein asked why they were limiting it to only conditional uses.

Alderman Zurcher stated other appeals were allowed.

Mayor Coody asked shall the ordinance pass. Upon roll call the ordinance passed by a vote of 6-1-0. Trumbo voting nay.

ORDINANCE 4334 AS RECORDED IN THE OFFICE OF THE CITY CLERK.

NEW BUSINESS