



CITY OF  
**FAYETTEVILLE**  
**ARKANSAS**

## **CITY COUNCIL MEMO**

### **MEETING OF MAY 18, 2021**

**TO:** Mayor and City Council

**THRU:** Susan Norton, Chief of Staff

**FROM:** Jonathan Curth, Development Services Director

**DATE:** May 14, 2021

**SUBJECT: Amendment to §155.04 Council Member Appeal on Behalf of Resident**

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### **RECOMMENDATION:**

Development Services staff were asked to comment on the attached amendment to §155.04, Council Member Appeal on Behalf of Residents. Whereas the existing appeals process serves an important role in due process, staff recommends against the current proposal for the following reasons:

- Planning Commissioners hold specialized knowledge in matters of zoning and development that Councilmembers may not possess.
- The increased potential for an appeal erodes the Commission's authority.
- The breadth of potential appeals is expansive and may lead to redundant or duplicative hearings.
- Ordinance amendments may more-fully resolve a City Council policy concern where an appeal addresses the result of the existing ordinance.
- Appeals add time and risk to development proposals in an extended period of housing shortage.
- The Planning Commission is appointed, affording it an apolitical perspective.

### **BACKGROUND:**

At the May 11, 2021 City Council Agenda Session, Councilmember Turk introduced an amendment to Unified Development Code, §155.04, Council Member Appeal on Behalf of Residents. This amendment will expand the scope under which a Councilmember can appeal a Planning Commission action on behalf of one resident to include anything. Currently, appeals of Planning Commission decisions by a Councilmember on behalf of a resident revolve around an overall development approval. This includes the project itself along with any associated variances, conditions of approval, compliance with design standards, and tree preservation plans. The current language was enacted in 2020. This amendment was brought forward by the City Attorney in concert with Councilmember Turk to address the broader §155, Appeals chapter of the Unified Development Code, with an emphasis on lowering the barrier to appealing conditional use permits approved by the Planning Commission.

**DISCUSSION:**

A Planning Commission serves many purposes, some enshrined in state statute or local ordinance, and some inherent to its character and make-up. From the state level, a Planning Commission is charged with preparing municipal land use plans, administering planning regulations, making recommendations to the municipality's legislative body, the City Council in Fayetteville's case, and proposing ordinance amendments to that same body. Fayetteville does not confer any additional authority to its Planning Commission, instead deferring to state statute. In this capacity, a Planning Commission is integral to the planning and development process.

With this in mind, staff finds five main issues with the proposed amendment. The first is regarding the technical proficiency that Commissioners possess. Whether they are design and development professionals or laypeople, Commissioners possess or develop a degree of planning expertise that affords them the capacity to make informed, objective decisions founded in Fayetteville's plans and ordinances. While knowledgeable in an enormous range of issues related to municipal governance, the City Council's broad remit does not afford its members the same degree of focus that Commissioners possess.

Secondly, and in a similar vein, is the issue of roles and expectations. Where the City Council are Fayetteville's policy makers, the Planning Commissioners are administrators and enforcers of adopted plans and codes. In this capacity, the Commission is the primary body hearing and weighing public input in land use matters. An amendment to broaden the authority of one Councilmember to appeal a Planning Commission decision takes what should be a rare occurrence, and increases its potential frequency. This begins to blur the distinct roles between Council and Commission, creating a default potential for duplicative hearings to become the norm. This erodes the Commission's effectiveness, rewarding applicants and residents who seek to circumvent it as a fundamental element of municipal government while consuming Council agenda time.

Third includes the proposed amendment's scope and its impacts, both intentional and unintentional, on development and process. The current due process provides a series of opportunities for the relief of applicants and residents, ranging from multiple public hearings to appeals of specific staff and Commission decisions. Administrative decisions can be appealed to the Planning Commission or Board of Adjustment and Planning Commission development approvals may be appealed to the City Council. Amending the Unified Development Code to allow appeal of all Planning Commission actions does not just extend Council authority over a small number of additional decisions, but every determination that the Planning Commission currently hears, whether broad, such as an interpretation of Planning, Engineering, and Forestry staff, or specific, like a decision on parkland dedication. This ranges widely, and includes easement dedications, street improvements, grading standards, water and sewer systems, storm drainage systems, floodplain regulations, streamside protection zones, landscaping, and tree preservation.

Expanding on this, a fourth point is to consider the context in which the amendment is being proposed. Fayetteville is growing and the need for additional housing and services is increasingly acute. Fayetteville already has amongst the highest development standards in the

state of Arkansas, with commiserate costs in time and money. While not deferring to the interests and profit motive of developers, a primary concern of Development Services staff is providing a degree of predictability and standard process to applicants. An appeal, or even the potential for one, is a significant unknown that interjects an indeterminate, additional amount of time in to a project's review with an unknown outcome.

Lastly, beyond its statutory power and duties, a Planning Commission is critical for its apolitical, long-range perspective. As appointees of the elected City Council, Commissioners do not represent any particular person, business, or group within Fayetteville. Instead, the Commission is loosed from the day-to-day interests of individual constituents, along with many aspects of the municipal budget, lawmaking, and operations.

In-lieu of heightening the potential for appeals, staff recommends two alternatives. One alternative is to address an ordinance rather than its implementation. If the Council's concern is a flawed ordinance and its implementation, that law ought to be changed, as is the legislative authority of the City Council.

A second alternative is for the City Council and Planning Commission to pursue an active, regular schedule of communication. Where staff currently serves the role of messenger between the Commission and Council, including the potential to inadvertently misrepresent comments or intentions, having an annual or semi-annual joint meeting of Commissioners and Councilmembers provides an opportunity to review progress towards planning goals and establish a consensus work plan. Through this, an open, two-way dialogue may occur to build understanding and mutually supportive efforts.

**Attachments:**

- §155.04 Amendment Memo
- §155.04 Amendment Ordinance

TO: Mayor Jordan and City of Fayetteville City Council  
FROM: Teresa Turk, Ward 4 Position 1 City Council Member  
DATE: April 13, 2021  
SUBJECT: Amendments to the Section 155.04 of the Unified Development Code

I am submitting an ordinance to expand the “Appeals” Section 155.04 of the City of Fayetteville’s Unified Development Code (UDC) code to allow city council members on behalf of citizens to appeal any decision not already identified as an appealable action to the City Council for consideration.

This amendment to the Appeals section will allow a city council member on behalf of a citizen to appeal any Planning Commission decisions or recommendations that are not already provided for in Section 155.04. Providing the ability of citizens appeal is a cornerstone of our democracy and transparent governance in the City of Fayetteville.

Planning Commission members are not elected officials but are appointed by the City Council to provide recommendation and guidance to citizens and the City Council when making critical decisions ranging from rezoning to conditional use permits to accepting parkland donation. As such all decisions should be appealable to the City Council who are elected officials and accountable to the Fayetteville voters.



Legislation Text

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**File #: 2021-0287, Version: 1**

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**AMEND §155.04 COUNCIL MEMBER APPEAL ON BEHALF OF RESIDENT:**

AN ORDINANCE TO AMEND §155.04 **COUNCIL MEMBER APPEAL ON BEHALF OF RESIDENT** TO PROVIDE FOR AN APPEAL OF EVERY PLANNING COMMISSION DETERMINATION OR DECISION INVOLVING DEVELOPMENT OR OTHER PROVISION WITHIN THE *UNIFIED DEVELOPMENT CODE*

**WHEREAS**, a City Council Member, upon behalf of a City resident, should be able to appeal every Planning Commission decision or determination related to development of other provision within the *Unified Development Code* 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 by repealing it in its entirety and enacting the following to replace the language as follows:

“A Council Member may bring an appeal on behalf of any resident of the city of any decision or determination by the Planning Commission related to development or other provision within the *Unified Development Code* to the City Council. Planning Commission decisions that are part of the development process such as: parkland dedication or money in lieu decisions, variances, compliance with applicable design standards, tree preservation plans and conditions of approval for any development shall be appealable as part of the approval of a development proposal and may not be appealed until that time.”