City of Fayetteville Staff Review Form

2021-0370

Legistar File ID

6/1/2021

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

Chris Brown	5/12/2021	ENGINEERING (621)
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

Appeal of a violation of Chapter 168 of the Unified Development Code for property located at 1333 S Dinsmore Trail, parcel number 765-14782-000 owned by Kara L Stratton for clearing and removal of woody vegetation within the streamside protection zone.

Budget Impact:

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

V20180321

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

The City Clerk of Fayetteville Arkansas
City Hall
113 W Mountain Street Room 308
Fayetteville, Ar 72701
Date: May 5, 2021

RE: Streamside Violation: Parcel #s 765-14782-000

APPEAL OF NOTICE OF VIOLATION – STOP WORK ORDER

COMES NOW, Kara Stratton, by and through her attorney Terry Harper, and for her Appeal of Notice of Violation – Stop work order states as follows:

1. Kara Stratton is the owner of record for the above-referenced parcel of land.

2. Kara Stratton received the above-referenced Notice of Violation – Stop Work Order no earlier than April 21, 2021.

3. A copy of the stop work order is attached hereto as Exhibit A.

4. This appeal is timely as May 5, 2021 is no more than the tenth working day since the receipt of the Notice as per City of Fayetteville Title XV Unified Development Code hereafter "UDC" 155.02(B)(1).

5. Per UDC 155.02 (A) Kara Stratton contends that this decision was in error for the following reasons:

   a. The photographs attached to the Violation Notice-Stop Work Order nor any attached documentation establish that the work occurred within a Streamside Protection Zone.

   b. The Stream which is allegedly protected by this Stop Work Order is not close enough to the work site so as to be subject to the requirements of UDC 168.12.

c. The area in which grading work subject to this Stop Work Order was initiated is not a streamside protection zone as defined by UDC 168.12(D) *et seq*.

d. The area in which grading work subject to this Stop Work Order was initiated is not within 25 feet landward from the top of the bank to any applicable waterway as defined in UDC 16.12(D)(1).

e. The area in which grading work subject to this Stop Work Order was initiated is not a "steep slope" so as to extend the minimum zone beyond the 25 feet landward from the top of the bank as outlined in UDC 168.12(D)(1).

f. The area in which grading work subject to this Stop Work Order was initiated is nearest to a portion of the waterway which is piped with a culvert and is therefore not subject to normal streamside regulations as stated in UDC 168.12(D)(3).

g. Neither the Protected Streams Map with the city of Fayetteville nor the Federal Emergency Management Agency floodway map, identify the work area as required to be a designated Streamside Protection Zone as required by UDC 168.12(C)(1) and (2). Maps of each are attached to this Appeal as Exhibits B and C.

h. None of the definitions or requirements laid out in UDC 148.12 are applicable to the worksite, so this Violation Notice – Stop Work Order is improper and should be lifted effective immediately.

6. This Appeal meets all requirements of UDC 155.02 (A)-(C) as to form, content, and timeliness.

WHEREFORE, Kara Stratton requests that the City Clerk fix a reasonable time for the hearing of this appeal and any and all other relief to which she may be entitled.

Respectfully submitted,
Kara Stratton,

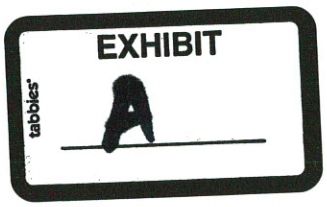
By: _____

Terry D. Harper, #89080
Taylor Law Partners, LLP
303 E. Millsap Road
P.O. Box 8310
Fayetteville, Arkansas 72703
Telephone: (479) 443-5222
Facsimile: (479) 443-7842
E-mail: tharper@taylorlawpartners.com

CITY OF
FAYETTEVILLE
ARKANSAS

NOTICE OF VIOLATION – STOP WORK ORDER

April 20, 2021



Kara Stratton
808 W Cleveland St
Fayetteville, AR 72701

RE: Streamside Violation: Parcel #s 765-14782-000
1333 S Dinsmore Trail

To whom it may concern,

It has come to our attention that grading activities including excavation and/or filling along with vegetation and tree removal have occurred on property owned by you, located 1333 S Dinsmore Trail (Parcel # 765-14782-000). These activities were documented on February 20, 2021 and included grading and tree removal in the Streamside Protection Zone. Per City of Fayetteville Title XV Unified Development Code, Chapter 168, these activities are not allowed within the streamside zones.

All grading work on this property must be stopped immediately. Proper erosion control measures must be installed to protect from sediment leaving this site. All disturbed areas must be revegetated and trees must be replanted to replace those that were removed. These items must be completed within 7 days of receipt of this notice. If action is not taken within 7 days, this violation will be forwarded to the City Prosecutor's office for prosecution.

If you feel this notice is in error, please contact our office immediately. This notice can also be appealed through the process stated in the attached Chapter 155 within 10 days of receipt of this notice.

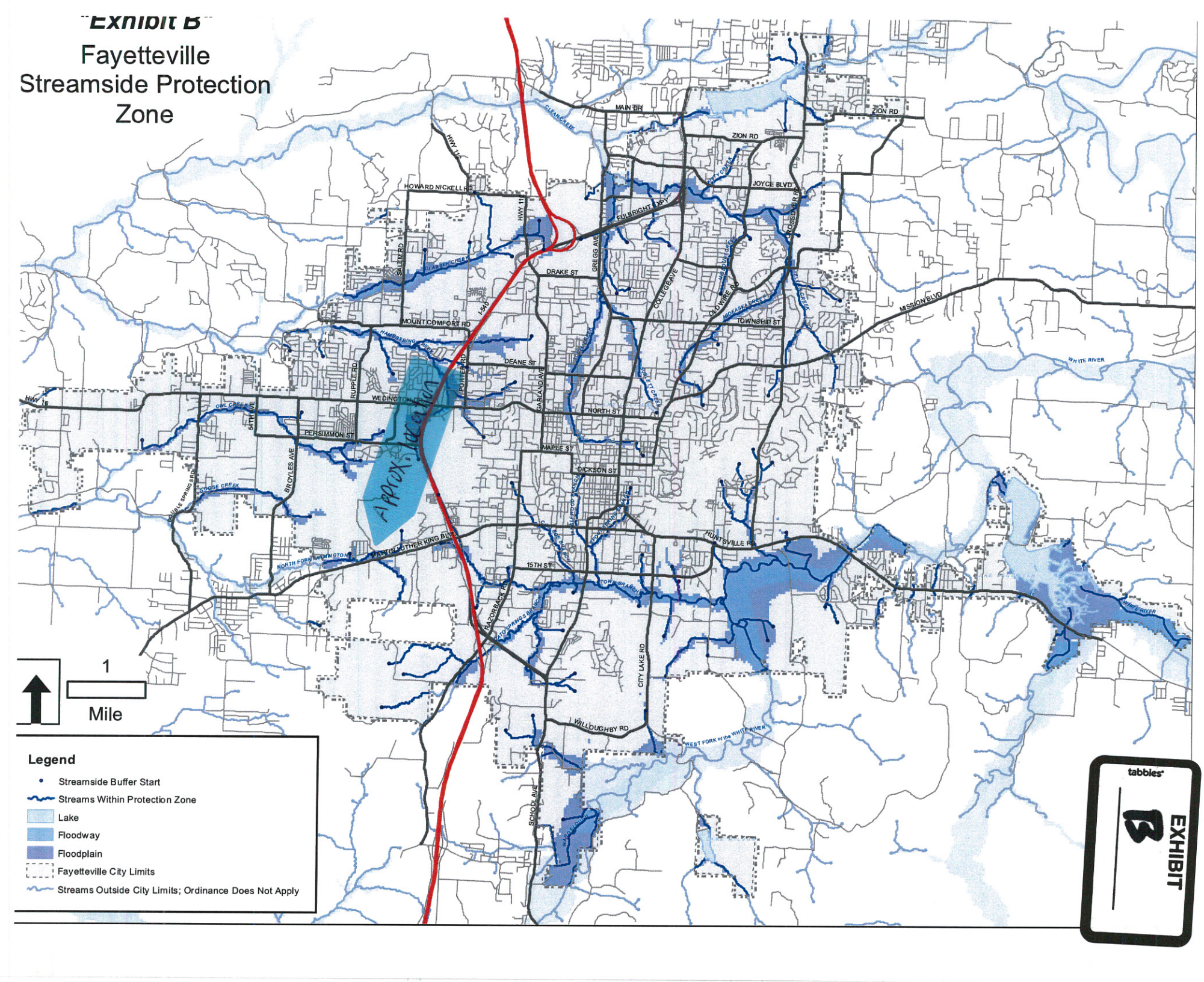
Sincerely,

Alan Pugh
Staff Engineer
Engineering Division
apugh@fayetteville-ar.gov
479-575-8208

Cc: Brian Thomas, City Prosecutor

Attachments: Photographs
Unified Development Code, Chapter 168: Flood Damage Protection
Unified Development Code, Chapter 153: Enforcement
Unified Development Code, Chapter 155: Appeals

Picture taken 04/20/2021


"Exhibit B"
Fayetteville
Streamside Protection
Zone
Approx. Location
1
Mile
Legend
Streamside Buffer Start
Streams Within Protection Zone
Lake
Floodway
Floodplain
Fayetteville City Limits
Streams Outside City Limits; Ordinance Does Not Apply
MAIN DR
ZION RD
JOYCE BLVD
HOWARD NICKELL RD
HWY 112
HWY 111
FULBRIGHT EXPY
CROSSOVER RD
SALEM RD
DRAKE ST
GREGG AVE
COLLEGE AVE
OLDWIRE RD
TOWNSHIP ST
MISSION BLVD
MOUNT COMFORT RD
I-540
DEANE ST
PORTER RD
GARLAND AVE
RUPPLE RD
WEDINGTON DR
HWY 16
NORTH ST
PERSIMMON ST
MAPLE ST
DICKSON ST
BROYLES AVE
HUNTSVILLE RD
MARTIN LUTHER KING BLVD
15TH ST
RAZORBACK RD
CITY LAKE RD
WILLOUGHBY RD
SCHOOL AVE
WHITE RIVER
WEST FORK of the WHITE RIVER
tabbies
EXHIBIT
B

National Flood Hazard Layer FIRMette

FEMA

94°13'5"W 36°3'19"N

94°12'28"W 36°2'50"N

0 250 500 1,000 1,500 2,000 Feet

1:6,000

Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

SPECIAL FLOOD HAZARD AREAS
- Without Base Flood Elevation (BFE) *Zone A, V, A99*
- With BFE or Depth *Zone AE, AO, AH, VE, AR*
- Regulatory Floodway

OTHER AREAS OF FLOOD HAZARD
- 0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainag areas of less than one square mile *Zone*
- Future Conditions 1% Annual Chance Flood Hazard *Zone X*
- Area with Reduced Flood Risk due to Levee. See Notes. *Zone X*
- Area with Flood Risk due to Levee *Zone D*

OTHER AREAS
- NO SCREEN Area of Minimal Flood Hazard *Zone X*
- Effective LOMRs
- Area of Undetermined Flood Hazard *Zone*

GENERAL STRUCTURES
- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

OTHER FEATURES
- 20.2 Cross Sections with 1% Annual Chance
- 17.5 Water Surface Elevation
- Coastal Transect
- 513 Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

MAP PANELS
- Digital Data Available
- No Digital Data Available
- Unmapped

N

The pin displayed on the map is an approximate point selected by the user and does not represe an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's baseman accuracy standards

The flood hazard information is derived d authoritative NFHL web services provided was exported on 5/5/2021 at 10:15 AM reflect changes or amendments subsequ time. The NFHL and effective informatio become superseded by new data over ti

This map image is void if the one or mo elements do not appear: basemap imag legend, scale bar, map creation date, co FIRM panel number, and FIRM effective unmapped and unmodernized areas ca regulatory purposes.

tabbies

EXHIBIT

CITY OF FAYETTEVILLE ARKANSAS

CITY COUNCIL MEMO

MEETING OF JUNE 1, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Chris Brown, Public Works Director
Kit Williams, City Attorney

FROM: Alan Pugh, Staff Engineer

DATE: May 10, 2021

SUBJECT: **Appeal of a violation of Chapter 168 of the Unified Development Code for property located at 1333 S Dinsmore Trail, parcel number 765-14782-000 owned by Kara L Stratton for clearing and removal of woody vegetation within the streamside protection zone.**

RECOMMENDATION:
Staff recommends denial of the appeal of a violation of Chapter 168 of the Unified Development Code for property located at 1333 S Dinsmore Trail, parcel number 765-14782-000 owned by Kara L Stratton for clearing and removal of woody vegetation within the streamside protection zone.

BACKGROUND:
On March 1, 2011, City Council approved ordinance number 5390 which established the streamside protection provisions contained within Chapter 168.12 of the unified development code (UDC). These regulations set forth criteria in order to help protect riparian areas throughout the City and in turn help protect our streams and waterbodies from increased pollutant runoff and streambank erosion.

As such, a portion of the requirements restrict modifications to these riparian areas by the removal of non-invasive woody vegetation along with grading and construction activities in close proximity to the stream. This area, generally referred to as the streamside protection zones, is a total of 50 feet in width as measured from the top of bank of the stream unless steep slopes, those in excess of 15%, exist wherein the total streamside protection zone width becomes 70' as measured from the top of bank.

DISCUSSION:
On April 19, 2021 staff received notification that the area on the afore mentioned property was being cleared. Subsequently staff traveled to the site on April 20, 2021 and witnessed clearing that had recently occurred in close proximity to the stream along with a pile of brush remaining from the clearing. This clearing had occurred in close proximity to the stream, approximately 20-30 feet depending where onsite measurements are taken. A violation notice was subsequently issued as non-invasive woody vegetation had been removed from the streamside

protection zones and some grading had taken place as evidenced by the photos taken while onsite.

On April 27, 2021 staff received a call from Mr. Ron Stratton to discuss the violation notice. He indicated that he intended to construct a home on the parcel. However, he was reminded that based on conversations he had with staff previous to the violation on the property, a variance from streamside protection would be required for any development to take place on the property. He advised that submittal of a site plan for a building permit was imminent so staff advised that the violation could potentially be dealt with through the variance process. At that point he was advised to go ahead and submit the site plan for review and further direction. This was also reiterated in an email to Mr. Stratton sent that same day and attached herein for reference.

On May 6, 2021 staff was alerted that the violation notice was being appealed. At that time, staff visited the site again to ensure no additional clearing had taken place and to further document the nature of the violation. During the visit slopes in excess of 30% were recorded in an area of the waterside zone which would indicate the overall width of the streamside zone should in fact be 70 feet in width.

Staff feels that the evidence presented supports the appropriate use of the notice of violation for grading and non-invasive woody vegetation removal within the streamside protection zones as set forth in Chapter 168.12 of the UDC. If the appeal is denied, staff will continue to work with the property owner to ensure the appropriate plans and potential variances are submitted for review and approval. If the owner fails to submit plans for the property in a timely fashion, staff will pursue further enforcement measures outlined in the original violation notice.

BUDGET/STAFF IMPACT:
None

Attachments:
Notice of Violation with Photos
Additional Photos

CITY OF FAYETTEVILLE ARKANSAS

NOTICE OF VIOLATION – STOP WORK ORDER

April 20, 2021

Kara Stratton
808 W Cleveland St
Fayetteville, AR 72701

RE: Streamside Violation: Parcel #s 765-14782-000
1333 S Dinsmore Trail

To whom it may concern,

It has come to our attention that grading activities including excavation and/or filling along with vegetation and tree removal have occurred on property owned by you, located 1333 S Dinsmore Trail (Parcel # 765-14782-000). These activities were documented on February 20, 2021 and included grading and tree removal in the Streamside Protection Zone. Per City of Fayetteville Title XV Unified Development Code, Chapter 168, these activities are not allowed within the streamside zones.

All grading work on this property must be stopped immediately. Proper erosion control measures must be installed to protect from sediment leaving this site. All disturbed areas must be revegetated and trees must be replanted to replace those that were removed. These items must be completed within 7 days of receipt of this notice. If action is not taken within 7 days, this violation will be forwarded to the City Prosecutor's office for prosecution.

If you feel this notice is in error, please contact our office immediately. This notice can also be appealed through the process stated in the attached Chapter 155 within 10 days of receipt of this notice.

Sincerely,

Alan Pugh
Staff Engineer
Engineering Division
apugh@fayetteville-ar.gov
479-575-8208

Cc: Brian Thomas, City Prosecutor

Attachments: Photographs
Unified Development Code, Chapter 168: Flood Damage Protection
Unified Development Code, Chapter 153: Enforcement
Unified Development Code, Chapter 155: Appeals

Picture taken 04/20/2021

2021/04/20

2021/04/20

168.12 - Streamside Protection Zones

(A) *Streamside Best Management Practices Manual.* The City of Fayetteville's *Streamside Best Management Practices Manual,* which may be administratively changed by the City Engineer, shall be used in support of this chapter to explain specific objectives and principles.

(B) *Applicability.* This ordinance shall apply to all land within the streamside protection zones, except for as provided below:

(1) Undeveloped lots created by a lot split, concurrent, or final plat application, which was submitted or approved prior to the effective date of this ordinance, are exempt from the requirements of this section for the following time periods:

(a) Twenty-four (24) months from the effective date of this ordinance for lots ½ acre or less;

(b) Eighteen (18) months from the effective date of this ordinance for lots greater than ½ acre but less than 1 acre; or

(c) Twelve (12) months from the effective date of this ordinance for lots 1 acre or greater.

(2) A preliminary plat which was submitted or approved prior to the effective date of this ordinance shall be exempt from the requirements of this section, provided the time periods listed herein shall be in force from the date of final plat approval.

(3) A use and/or activity permitted by an unexpired building permit, which was approved prior to the effective date of this ordinance, is exempt from this ordinance.

(C) *Establishment of Designated Surface Waters.* The streamside protection zones shall apply to all surface waters meeting any one of the following criteria:

(1) All surface waters identified on the adopted Protected Streams Map, including any pond, lake or reservoir located within the natural drainage way of said surface water; or

(2) Any surface water where a floodway has been established by the Federal Emergency Management Agency (FEMA).

(D) *Streamside Protection Requirements.* The streamside protection zones shall be established as follows:

(1) *Zone 1: Waterside Zone.* The waterside zone shall extend a minimum of 25 feet landward from the top of bank in each direction, measured horizontally on a line perpendicular to the top of bank and includes the surface water.

(a) *Steep Slope.* Slope shall be calculated at the upstream and downstream property lines for every property. Properties with more than 100 feet of stream frontage shall require additional slope calculations at 100-foot increments, beginning at the upstream property line and ending at the downstream property line. When slope calculations are equal to or greater than 15%, the width of the waterside zone shall be extended by an additional 20 feet at that point. The boundary width determined at each designated slope measurement point shall be connected by a continuous line to form the boundary of the waterside zone (illustrations available in the *Best Management Practices Manual*).

(2) *Zone 2: Management Zone.* The management zone shall begin at the outer edge of the Waterside Zone and extend landward 25 feet as measured horizontally on a line perpendicular to Zone 1. The combined width of Zones 1 and 2 shall be no less than 50 feet from the top of bank on all sides of the surface water.

(a) *Floodway.* Where the floodway extends beyond the edge of the management zone boundary, said boundary shall be adjusted so that the zone consists of the extent of the floodway as designated by the most recently adopted FEMA Flood Insurance Rate Map (FIRM).

(3) *Piped Streams*. When reviewing any development, grading or building permit application, the City Engineer may determine that normal streamside protection regulations shall not be applicable to that portion of a stream that has been piped or enclosed within a culvert or similar conduit prior to the adoption of this ordinance.

(4) *Daylighting.* Streams enclosed prior to the effective date of this ordinance and subsequently daylighted shall only require a 5-foot setback measured from the established top of bank. Daylighted streams shall be maintained in a natural state by the property owner, who shall also be responsible for monitoring and controlling trash, litter and pollutants.

(E) *Regulated Uses, Structures and Activities Within the Streamside Protection Zones.*

(1) The following are permitted within the designated streamside zone, subject to the requirements of this section, the Flood Damage Prevention Code, and all applicable requirements of the City of Fayetteville. Where a use is not listed, but is similar to a permitted use and is in keeping with the purpose of the streamside protection zones, the City Engineer may determine the use to be allowed. All other uses shall be prohibited.

(a) *Zone 1: Waterside Zone.* The following may be permitted in the waterside zone, provided the standards of the *Streamside Best Management Practices Manual* shall be followed where applicable and that these uses and any necessary construction is designed and built to minimize the impact upon streamside areas and minimize any excavation or filling that will only be allowed by express authorization of the City Engineer. All construction, grading, excavation or filling must also fully comply with all necessary local, state and federal permits.

(i) Open space uses that are primarily passive in character including: preserves, fishing areas and docks, parkland, and natural trails.

(ii) Streambank restoration or stabilization.

(iii) Water quality monitoring, education and scientific studies.

(iv) Revegetation and reforestation.

(v) Dam maintenance.

(vi) Paved trails or other impervious surfaces not exceeding 12 feet in width when the City Engineer determines that there is no practical and feasible alternative. Such area may not be used to park vehicles.

(vii) Stream crossings, including driveways, roadways, trails, or railroads when the City Engineer determines there is no practical and feasible alternative.

(viii) Maintenance and upgrades of existing utility facilities.

(ix) New utility facilities when the City Engineer determines there is no practical and feasible alternative.

(x) Management of lawns and gardens.

(xi) Removal of dead vegetation, pruning for reasons of public safety, removal of invasive species.

(xii) Application of any fertilizer, herbicide, pesticide, or insecticide shall be allowed only if their harmful effect on water quality is prevented by ensuring no over-application or misapplication occurs.

(xiii) Maintenance of drainage capacity in the channel including tree and sediment removal.

(xiv) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative.

(b) *Zone 2: Management Zone.*

(i) New stormwater conveyances when the City Engineer determines that there is no practical and feasible alternative and provided the standards of the *Streamside Best Management Practices Manual* shall be followed.

(ii) All uses within the waterside zone with the exception of stormwater conveyances, provided that compliance with the standards of the *Streamside Best Management Practices Manual* are not required but encouraged.

(iii) Accessory structures without a foundation and no larger than 150 square feet, including storage sheds, playground equipment, gazebos, decks, etc.

(iv) Active recreational uses.

(2) Establishment of the following uses/activities after the effective date of this ordinance shall be prohibited in both streamside protection zones, except where necessary to allow an activity permitted by Section (E)(1).

(a) Grading, dredging, dumping, filling, or similar construction activities.

(b) Landfills, junkyards, salvage yards.

(c) Clearing of non-invasive woody vegetation.

(d) Storage of hazardous materials or chemicals unless within waterproof containers and within a structure.

(e) Parking lots.

(f) Buildings and accessory structures with a building footprint larger than 150 square feet.

(g) Parking or storage of motor vehicles.

(h) Septic systems and/or lateral lines.

(i) In-ground pools.

(j) Animal feedlots or kennels.

(k) Housing, grazing or other maintenance of livestock.

(l) Land application of biosolids.

(F) *Existing Land Use Exemptions.* The following activities and structures are allowed to continue within the streamside protection zones, provided that the provisions of the Flood Damage Prevention Code and all other applicable regulations shall be enforced.

(1) *Existing Uses.* Existing uses shall be permitted to continue in their present state, but may not be enlarged, extended, or moved within the streamside protection zones. A use or activity shall be existing if it is present and ongoing within the streamside protection zones as of the effective date of this ordinance. Uses and activities cease to be existing under the following conditions:

(a) *Agricultural and Animal Husbandry Activities.* The activities cease to be existing when the area on which they were conducted has been converted to a nonagricultural use or has lain idle for more than eighteen (18) consecutive months.

(b) *All Other Uses.* This ordinance shall apply when an existing use is converted to another use.

(2) *Existing Principal Structures.*

(a) *Reconstruction Within Existing Footprint.* Existing principal structures as of the effective date of this ordinance may be redeveloped or reconstructed within the same footprint.

(b) *Minor Alterations*. Minor alterations or additions to an existing structure, such as an awning or deck, shall also be permitted, provided the modifications do not extend more than 10 feet further toward the surface water than the original foundation of the principal structure, and do not extend into the waterside zone.

(c) *Berm to Prevent Flooding.* If a principal structure has suffered flooding from a stream, the owner may construct a berm to protect the principal structure if approved by the City Engineer as to the berm's location, size and composition. Revegetation of the disturbed area and berm shall be in accordance with the *Best Management Practices Manual.*

(3) *Emergencies.* Actions taken under emergency conditions, either to prevent imminent harm or danger to persons, or to protect property from imminent danger of fire, violent storms, or other hazards.

(G) *Development Application Procedures.*

(1) All persons required to submit an application pursuant to Chapter 166 of the City's Unified Development Code shall also show the location and type of surface water, the top of bank, Zone 1: Waterside Zone and Zone 2: Management Zone boundaries, and slope, when any portion of the property being developed falls within the streamside protection zones. The same shall also be identified for building, moving, demolition and grading permits.

(2) An applicant may request that the city's Floodplain Administrator perform a site visit to view conditions on site with the applicant to assist in making a determination of top of bank location and widths of the waterside zone and management zone.

(3) A final determination of any boundary shall be made by the City Engineer or designated representative, where there is question as to its location or width.

(H) *Streamside Protection Measures and Construction.*

(1) Prior to any land clearing or soil disturbing activity, the streamside protection zone boundaries shall be clearly delineated on site by the applicant, and such delineation shall be maintained throughout construction activities.

(2) A site inspection followed by periodic inspections during construction will be conducted by the City Engineer or designated representative to ensure compliance with the streamside protection zone ordinance.

(3) Streamside protection zones shall be protected from construction activity except where necessary to allow an activity permitted by Section (E)(1). To prevent impacts, construction vehicle access is prohibited in the streamside protection zones except at permitted crossings. Storage of construction vehicles, materials, debris, spoils or equipment is prohibited in the streamside protection zones. Before commencing any construction activity, the applicant shall install silt fencing on the site at the outer edge of the management zone or as directed by the City Engineer. The City Engineer may require other protective measures based upon the individual characteristics of the site and the proposed construction methods. If the required barriers surrounding the streamside protection zones are not adequately maintained during construction, the City Engineer shall prescribe remedial measures, and may issue a stop work order in accordance with §153.07. All remedial measures shall be completed within the specified amount of time and shall be considered prior to granting final plat approval or issuing a certificate of occupancy.

(Ord. No. 5390, 3-1-11)

CHAPTER 153: - ENFORCEMENT

153.01 - Complaints

All complaints of violations of the UDC may be submitted in writing to the appropriate administrator and shall state the location and the nature of the alleged violation. Upon receipt, the alleged violation shall be investigated and appropriate action taken.

(Code No. 1965, App. A., Art. 14; Ord. No. 1747, 6-29-70; Code 1991, §160.198; Ord. No. 4100, §2 (Ex. A.), 6-16-98)

153.02 - Right Of Entry And Inspection

(A) *Tree Preservation and Protection.* The Landscape Administrator shall have the right to inspect the sites within the city involving tree preservation plans, tree preservation in rights-of-way and public grounds, significant trees that constitute a hazard or a threat, and trees involving variance requests, or as otherwise required under the Code of Fayetteville.

(B) *Physical Alteration of Land.* In applying for a grading permit, the applicant shall be deemed to have consented to an inspection to determine whether construction is proceeding according to the grading plan.

(C) *Manufactured homes.* The Health Officer shall have the power to enter at reasonable times upon any manufactured home park for the purpose of inspecting and investigating conditions relating to the enforcement of Chapter 175, or of regulations promulgated thereunder.

(Code 1965, §13B-6; Ord. No. 1859, 3-20-72; Code 1991, §§156.071(B), 161.14, 162.08; Ord. No. 3551, 6-4-91; Ord. No. 3699, §8, 4-20-93; Ord. No. 3901, §1, 7-5-95; Ord. No. 4100, §2 (Ex. A.), 6-16-98)

153.03 - Liability

(A) *Owner of Record.* The owner of record of any real property or appurtenance thereto, who participates in, assists, directs, creates, or maintains any situation in violation of the UDC may be held liable for the penalties or remedies ascribed herein.

(B) *Others.* Tenants, occupants, architects, builders, contractors, agents or other persons, who participate in, assist, direct, create, or maintain any situation in violation of the UDC may be held liable for the penalties or remedies ascribed herein.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.04 - Notice Of Violation

(A) *Content.* When an owner or other person participates in, assists, directs, creates, or maintains any situation in violation of the UDC, a notice of violation shall immediately be issued to the person liable and shall contain the following:

(1) The name of person liable (owner of record or others).

(2) The street address, when available, or a description of the building, structure, or land where the violation is occurring.

(3) A statement specifying the nature of the violation.

(4) A description of the remedial actions necessary to bring the development activity into compliance with the UDC, and a time schedule for the completion of such remedial actions.

(5) A statement of the penalty, or penalties that shall or may be assessed against the person(s) to whom the notice is directed.

(6) A statement that an appeal may be filed.

(B) *Service.* The violation notice shall be served either personally or by certified mail, postage prepaid, return receipt requested.

(Code 1965, §17B-7(a); Ord. No. 1893, 12-19-72; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3298, 10-6-87; Code 1991, §§158.34, 163.12; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.05 - Emergencies

If a violation exists that poses a danger to the public health, safety, or welfare, or which requires immediate action to prevent irreparable damage, the city may invoke any of the penalties, remedies, revocation of permits or stop work orders as authorized by the UDC without service of a written notice.

(Code 1991, §163.12 (A); Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.06 - Remedial Work

(A) *Remedial Work.*

(1) *General.* When a violation notice has been served, remedial work shall begin, as directed, within forty-eight (48) hours.

(2) *Signs.* When a violation notice has been issued, the sign shall be removed within 30 days.

(B) *Lien.* If remedial work is not undertaken and completed as described in the violation notice, within the prescribed time period, the city is hereby authorized to enter upon the property and take necessary actions to correct or remove the conditions described in the notice. The costs of correcting said condition shall be charged to the owner, and the city shall have a lien against such property for such costs.

(C) *Permit Revocation.* If remedial work is not undertaken as directed by the violation notice, any or all development related permits may be revoked.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.07 - Stop Work Order

(A) *Remedial Work.*

(1) A stop work order may be issued if remedial work is not being undertaken.

(2) When the city has performed remedial work, a stop work order shall be issued and shall remain in effect until payment has been received for the work performed.

(B) *Failure to Obtain Permit or Plan.* A stop work order may be issued for all work being performed without required permits or plans.

(C) *Noncompliance/Tree Preservation Plan.* The Landscape Administrator may issue a stop work order directing the parties involved to cease and desist all work which does not comply with the tree preservation plan.

(Code 1991, §§161.20(A), (B), 163.12(A)(2); Ord. No. 3551, 6-4-91; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4113, §1, 8-18-98)

153.08 - Miscellaneous Remedies

(A) *Garage Sale Signs.* Any signs not removed the following day or located in the public right-of-way may be removed by the city staff and for any such removal; a collection fee of up to $25.00 per sign shall be imposed.

(B) *Occupancy Without Certificate of Occupancy.* The Building Official shall have the right, after notice is given, to disconnect the water service to a building, if occupied before a certificate of occupancy is issued or if all law, ordinances, and code violations are not remedied and inspected as approved.

(C) *Noncompliance with Tree Preservation and Protection Standards, Specifications and Guidelines.* Noncompliance with the standards, specifications and guidelines outlined herein, as well as those set forth in the City of Fayetteville Tree Preservation, Protection and Landscape Manual, shall result in the following actions being taken:

(1) *First Violation.* Warning issued and repeat educational workshop.

(2) *Second Violation.* Suspension of certificate for thirty (30) days.

(3) *Third Violation.* Revocation of certificate.

Should a violation result in the revocation of an individual's certificate, such individual shall have the right to reapply for a commercial tree pruner/service certificate after thirty (30) days. Attendance at the educational workshop is required prior to reissue of such certificate.

(D) *Subdivision Regulations.* In order to carry out the purposes of these regulations and to assure an orderly program of development after the effective date of these regulations:

(1) *Plat Not Accepted for Filing.* No plat of any tract of land within the planning area jurisdiction of the Planning Commission shall be accepted by the County Recorder for filing unless the plat has been approved by the Planning Commission.

(2) *No Metes and Bounds Conveyance.* No conveyance by metes and bounds of tracts coming under the definition of subdivision without compliance with the applicable provisions of §166, or amendments thereto, shall be permitted. This provision is aimed at preventing any attempt to circumvent these regulations by conveying by metes and bounds without taking the necessary steps for filing an approved plat.

(3) *No Dedication of Streets.* No dedication of streets shall be accepted by the city unless the use of the adjoining affected land is shown. If the purpose of opening the street is to make the affected land available for sale as a subdivision, the street may not be accepted until accompanied by the required plat.

(4) *No Building Permit.* No building permit shall be issued for construction of any building, no person, firm, or corporation shall sell or offer for any lot, no water, sewer, gas, or electric service shall be extended to serve any structure on any lot, nor shall any land be accepted for dedication by the County Recorder unless:

(a) The lot, building, or structure was established before July 6, 1970.

(b) The lot is part of a subdivision approved by the Planning Commission.

(c) A variance has been granted under the provisions of Chapter 156.

(E) *Sexually Oriented Business.* A person who operates or causes to be operated a sexually oriented business in violation of §163.12 will be subject to a suit for injunction as well as prosecution for criminal violations.

(F) *Manufactured Homes and Manufactured Home Parks.*

(1) *Inspection/Notice.* Whenever, upon inspection of any manufactured home park, the enforcement officer finds that conditions or practices exist which are in violation of any provision of Chapter 175, the enforcement officer shall give notice in accordance with Chapter 157. At the end of the specified period, the enforcement officer shall reinspect such manufactured home park, and if such conditions or practices have not been corrected, he shall suspend the applicable permit or permits and give notice to the person to whom the permit is issued. Upon receipt of notice of suspension, regardless of whether a building permit or an operator's permit may be involved, the operator of such manufactured home park shall cease operation of such park.

(2) *Emergency Order.*

(a) When the Health Officer finds that an emergency exists which requires immediate action to protect the public health, he/she may, without notice of hearing, request the enforcement officer to issue an order reciting the existence of such an emergency and requiring that such action be taken as he/she may deem necessary to meet the emergency including the suspension of the permit. Notwithstanding any other provisions of Chapter 175, such order shall be effective immediately.

(b) Any person to whom such an order is directed shall comply therewith immediately.

(G) *Signs.*

(1) *Removal of Nonconforming, Dilapidated or Dangerous Signs.*

(a) If the Zoning and Development Administrator shall find that any sign or the sign supporting structure is unsafe or insecure, is a menace to the public, is abandoned or maintained in a dilapidated condition, or has been constructed or is being maintained in violation of the provisions of Chapter 174 or other provisions of the Unified Development Code, the Administrator shall give written notice of the violation or problem to the sign permittee or owner of the property on which the sign is located. The notice shall require removal of the sign and/or structure within seven (7) days. If the permittee or owner fails to remove or alter the sign or sign supporting structure so as to comply with the standards set forth in Chapter 174 within seven (7) days of the receipt of said notice, the city may remove or alter such sign or sign supporting structure to comply with the Unified Development Code. All expense incidental to such removal or alteration shall be charged to the owner of the property upon which the sign is or was located and shall constitute a lien upon the property.

(2) *Summary Removal of Signs and sign Supporting Structures Which Constitute an Immediate and Substantial Peril.*

(a) The Zoning and Development Administrator may cause any sign or sign supporting structure which is an immediate and substantial peril to persons or property to be removed summarily without notice. Such signs or other sign supporting structures are hereby declared to be a public nuisance. When any sign or sign supporting structure is removed summarily without notice, the owner or lessee thereof shall have the right to be heard at the post-seizure administrative hearing before the Planning Commission to determine whether there was probable cause to remove the sign summarily.

(b) The Planning Commission may affirm the Zoning and Development Administrator's decision and place a lien upon the property for the city's expense in removing the sign and/or structure or it may order the city to replace the sign and/or structure at the city's expense if it determines that there was no substantial and immediate peril justifying summary removal of the sign or sign structure.

(3) *Removal of Sign After Business Cessation for Sixty (60) days.*

(a) If a property owner fails to remove the sign and/or nonconforming sign supporting structure of the business that has ceased operation for a period of time in excess of sixty (60) days, the Zoning and Development Administrator shall issue a written notice to the sign permittee and to the property owner, which notice shall state that such sign and/or nonconforming sign supporting structure must be removed within seven (7) days. If the sign permittee owner or

property owner fails to comply with such written notice to remove, the Zoning and Development Administrator is hereby authorized to cause removal of such sign and/or nonconforming sign supporting structure, and any expense incidental to such removal shall be charged to the owner of the property upon which the sign and/or nonconforming sign supporting structure is located and shall constitute a lien upon the property.

(H) *Sidewalks.* If the owner of any property shall fail, or refuse to comply with the provisions of §171.12, the city may contract with some suitable person for the construction, reconstruction, or repair of such sidewalk, on the best terms that can be made, after giving reasonable notice to such owner or the agent in charge of said property of an intention to do so, and the city may pay said person for said construction, reconstruction, or repairing the same. The amount so paid by the city, together with 6% penalty added thereto, shall constitute a charge against the owner of said property and shall be a lien of said property from the date of the commencement of said work.

(I) *Zoning.* Noncompliance with the provisions of Chapters 160 through 161 shall result in the following actions being taken:

(1) *Notification.* A notice of violation shall be made in accordance to §153.04 Notice of Violation.

(2) *Prosecutor's Office.* Should noncompliance continue after initial notification, the Zoning and Development Administrator shall forward the violation to the Prosecutor's Office for further action.

(Code 1965, §§13A-42, 17B-4(c), 17B-7(a), App. C., Art. V. §D; Ord. No. 1509, 8-8-66; Ord. No. 1847, 1-17-72; Ord. No. 1893, 12-19-72; Ord. No. 2790, 1-18-82; Ord. No. 2934, 8-2-83; Ord. No. 2948, 9-20-83; Ord. No. 3298, 10-6-87; Code 1991, §§156.019, 158.135, 159.67, 118.04; Ord. No. 4024, §5, 3-18-97; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4972, 1-16-07; Ord. No. 5296, 12-15-09).

153.09 - Appeals

See Chapter 155, Appeals.

153.10 - Penalty

(A) *General Penalty.*

(B) *Other Lawful Action.* Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation of the UDC.

(Code No. 1965, §§1-5, 17B-13, 18-47; Ord. No. 1725, 1-8-70; Ord. No. 1893, 12-19-72; Ord. No. 2128, 7-15-75; Ord. No. 2647, 7-15-80; Ord. No. 2655, 8-5-80; Ord. No. 2725, 5-19-81; Code 1991, §§98.99(A), (B), 158.99, 161.18, 162.99, 163.12; Ord. No. 3551, 6-4-91; Ord. No. 3699, §12, 4-20-93; Ord. No. 3895, §1, 6-20-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

153.11—153.99 - Reserved

CHAPTER 155: - APPEALS

155.01 - Circuit Court

Unless set forth otherwise below, all appeals from final actions taken by the City Council, Planning Commission, Board of Adjustment, Construction Board of Adjustment and Appeals, and the Zoning and Development Administrator shall be taken to the Circuit Court of Washington County.

(Code 1965, App. A., Art. 9(6); Ord. No. 1747, 6-29-70; Ord. No. 2323, 4-5-77; Ord. No. 2538, 7-3-79; Code 1991, §160.175; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04))

155.02 - Form/Time/Place

Unless an appeal is filed with the court, the following requirements shall be met:

(A) *Form.* All appeals shall be submitted in writing referencing the applicable UDC section(s) and setting out the reasons the applicant contends the decision was in error.

(B) *Time.*

(1) *Appeals*. Appeals shall be submitted within ten (10) working days from the date of the final action taken.

(2) *Hearings.* The entity hearing the appeal shall fix a reasonable time for hearing an appeal.

(C) *Place.* Appeals shall be filed with the following:

(1) *City Clerk.* Appeals made to the City Council shall be filed with the City Clerk.

(2) *Zoning and Development Administrator.* Appeals made to the Planning Commission or Board of Adjustment shall be filed with the Zoning and Development Administrator.

(3) *Building Safety Division Director.* Appeals made to the Board of Adjustment, [for inspecting purposes] shall be filed with the Building Safety Division Director.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4652, 12-07-04)

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 - 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.

(Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 5296, 12-15-09; Ord. No. 6342 , §1, 8-4-2020)

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 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);

(f) Vacations of street right-of-way.

(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.* Three Council Members may in unison appeal a decision of the Planning Commission approving or denying a conditional use request.

(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; Ord. No. 6342 , §2, 8-4-2020)

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 (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 ten (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 ten (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.

(d) Any staff recommendation to approve or deny some or all of a requested street right-of-way vacation shall be considered by the Planning commission with recommendations to the City Council.

(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.

(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 (Exh. 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; Ord. No. 6343 , §1(Exh. A), 8-4-2020)

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 (Exh. 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 (Exh. A), 6-16-98; Ord. No. 4652, 12-07-04).

155.08 - Appeals From The Construction Board Of Adjustments And Appeals

If the Construction Board of Adjustments and Appeals refuses to extend a building permit pursuant to §173.02 (B)(8) or to issue a new building permit for property for which a building permit has expired pursuant to §173.02 (B)(8), the owner may appeal to the City Council.

(Ord. No. 5019, 5-15-07)

155.09—155.99 - Reserved

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