



MEETING OF JANUARY 3, 2023

TO: Mayor Jordan and City Council
THRU: Susan Norton, Chief of Staff
Jonathan Curth, Development Services Director
FROM: Britin Bostick, Long Range Planning/Special Projects Manager
DATE: December 15, 2022
SUBJECT: **AMEND §157.05 CONDITIONAL USE PERMIT**

RECOMMENDATION:

AN ORDINANCE TO AMEND SUBSECTION (B) OF §157.05 **CONDITIONAL USE PERMIT** IN CHAPTER 157 **NOTIFICATION AND PUBLIC HEARINGS** OF THE UNIFIED DEVELOPMENT CODE TO REQUIRE PUBLIC NOTIFICATION WHEN THE DENIAL OF A CONDITIONAL USE PERMIT BY THE PLANNING COMMISSION IS APPEALED TO THE CITY COUNCIL

BACKGROUND:

Section 157.05 of the Unified Development Code specifies notification requirements for Conditional Use Permits (CUPs). Although the denial or partial denial of a Conditional Use Permit request by the Planning Commission may be appealed to the City Council, there is not currently a requirement for an appeal to the City Council, which requires a public hearing, to also have public notification.

On July 20, 2021 the Fayetteville City Council approved Ordinance No. 6459 amending Section 157.03 of the Unified Development Code (UDC) to require public notification when the denial of a rezoning request by the Planning Commission is appealed to the City Council. The notification requirements for this appeal are both written and posted notice, with posted notice required at least 15 days prior to the City Council meeting and written notice by first class mail to landowners and residents within 200 feet of the subject property. The proposed amendment would implement a similar requirement for the appeal of CUPs denied by the Planning Commission.

The City's Planning Commission considered 101 CUP applications in 2022, 70 of which were for Type 2 short-term rentals. 133 CUP applications have been submitted this year as of December 14, 2022. 8 CUP applications have been denied by the Planning Commission thus far in 2022, with 5 being appealed to the City Council.

DISCUSSION:

The purpose of this amendment is to add a requirement for public notification when the City Council holds a public hearing on the appeal of a denied CUP application. The initial public hearing for a CUP requires posted and written notification, which alerts neighbors to the consideration of a proposed use that may have impacts on adjacent or neighboring properties. The primary consideration for approval of a CUP is compatibility, and

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the public hearing plays a role in that consideration. In evaluating whether to remove the CUP requirement for Type 2 short-term rentals the Council has expressed a preference to retain the requirement, at least in residential zoning districts, for the purpose of the notification and public hearing requirements attached to that application. By requiring the same notification when a CUP denial is appealed, neighbors to the subject property have the opportunity to be made aware of the second public hearing on the item and comment if they choose.

The appeal of an approved CUP to the City Council would not require notification, consistent with the appeal notification requirement for rezonings. Should an applicant appeal a decision to deny a CUP, they would be responsible for the required notification. Should neighbors to the subject property appeal the approval of a CUP, notification would not be required.

When the Planning Commission considered the item in their December 12, 2022 meeting there was unanimous support for the item and Commissioner Garlock commented on the need for neighborhoods to be notified in the event a denied application was appealed. Commissioner Garlock then made the motion to recommend approval of the item, seconded by Commissioner Canada. A vote of 7-0-0 followed. No public comment was received either prior to or during the public hearing.

City staff and the Planning Commission recommend approval of an amendment to the Unified Development Code amending § 157.05, Conditional Use Permit in Chapter 157, Notification and Public Hearings to add § 157.05(B)(3) to require written and posted notification when a Planning Commission denial of a Conditional Use Permit application is appealed to the City Council.

BUDGET/STAFF IMPACT:

N/A

ATTACHMENTS: SRF, Proposed Ordinance – Exhibit “A”, Proposed Ordinance Amendment in Strikeout/Highlight

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EXHIBIT 'A'
ADM-2022-0060

157.05 - Conditional Use Permit

Notification of public hearings for conditional use permits shall occur as follows:

- (A) *Public Hearing Required.* A public hearing shall be held by the Planning Commission for consideration of a conditional use permit.
- (B) *Notice of Public Hearing.* The applicant shall provide the following notice:
 - (1) *Who Gets Notice.* Notice of the proposed action shall be given to all landowners and residents with separate addresses within 200 feet of the boundary line of the property on which the use is proposed. Residents with separate addresses shall be notified by first class letter addressed to the 'current resident' to each address found in the city's address point file.
 - (2) *Methods of Notice.* Notice shall be provided by the following methods, as required by this chapter:
 - (a) *Written Notice.* Written notice shall be provided at least fifteen (15) days prior to Planning Commission. Proof of notice shall be provided as required by this chapter.
 - (b) *Posted Notice.* The applicant shall post notice at least fifteen (15) days prior to the Planning Commission meeting. Proof of notice shall be provided as required by this chapter.
 - (3) *Appeal of Planning Commission Denial of Conditional Use Permit Request.* Applicants for a Conditional Use Permit denied by the Planning Commission must give both the written and posted notice of the appeal to the City Council as specified in this section at least fifteen (15) days prior to the City Council meeting. Proof of notice shall be provided as required by this chapter.
- (C) *Special Uses.* The following conditional use permits require more stringent notification. Applicants applying for consideration of the following uses must meet the following additional notification criteria:
 - (1) Dance halls; Facilities emitting odors and facilities handling explosives; wireless communication facilities; carnival, circus, amusement park or similar temporary open-air enterprise; outdoor music establishments; sexually oriented business;
 - (a) *Who Gets Notice.* All landowners within 500 feet of the boundary line of the property on which the use is proposed.

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(Code 1965, §18-15; Ord. No. 1685, 7-7-69; Ord. No. 1898, 1-16-73; Code 1991, §98.13; Ord. No. 3925, §1, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No 1779, 2-01-71; Ord. No. 5127, 4-1-08; Ord. No. 5183, 10-7-08; Ord. No. [6212](#), §§2, 3, 8-6-19)