

AGENDA REQUEST

12-30-11 P04:03 RCVD

**FOR: COUNCIL MEETING OF JANUARY 17, 2012**

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**FROM:**

**KIT WILLIAMS, CITY ATTORNEY**

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**ORDINANCE OR RESOLUTION TITLE AND SUBJECT:**


An Ordinance To Enact Into The Code Of Fayetteville §10.18 Authority And To Amend §150.03 Authority In The Unified Development Code

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**APPROVED FOR AGENDA:**

  
Development Services Director

01-03-2012  
Date

  
City Attorney

12-30-2011  
Date



  
Chief of Staff

1-4-2012  
Date

  
Mayor

1/4/12  
Date

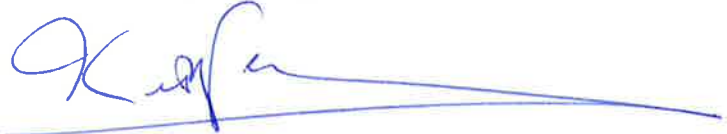
Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

TO: **Mayor Jordan**  
**City Council**

CC: **Jeremy Pate**, Development Services Director  
**Andrew Garner**, Senior Planner – Current Planning

FROM: **Kit Williams**, City Attorney



DATE: **December 30, 2011**

RE: **Adoption of Authority Section to ensure the Fayetteville Code is supported by all possible legal authority**

To ensure that all sections and regulations of the Code of Fayetteville (to include the Unified Development Code) are supported by all the possible constitutional and statutory authority available to city councils, I recommend that the City Council enact a new **Authority** section within both the Fayetteville Code's and the Unified Development Code's **General Provisions** Chapters. Although the City has not faced a challenge that City Council's power is limited to only a cited statutory authority, I believe we should prevent any such possibility by enacting the broadest statement of constitutional and statutory power for the City in the General Provisions of both the Code of Fayetteville and the Unified Development Code.

Such an enactment now is especially timely as the Arkansas Legislature this year amended the **Powers Over Municipal Affairs** subchapter of the **Government of Cities of the First Class** Chapter of the **Local Government** title. This subchapter has been referred to as the "Home Rule" statute, but has been of limited use because of judicial limitations imposed by the Arkansas Supreme Court known as "Dillon's Rule." Act 1187 of 2011 expressly rejected this limitation by adding subsection (b) to A.C.A. §14-43-602 which reads:

"(b) The rule of decision known as Dillon's Rule is inapplicable to the municipal affairs of municipalities."

*Black's Law Dictionary* defines "Dillon's Rule: as follows:

"The doctrine that a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the exercise of the unit of local government."

The legislative express rejection of the Dillon's Rule regarding application of the "Home Rule" statute has provided significantly more power and authority to city councils. The Arkansas Supreme Court sometimes ended its statement of Dillon's Rule by stating that "any substantial doubt about the existence of a power in a municipal corporation must be resolved against it." *White County v. Cities of Judsonia and Kensett*, 369 Ark. 151, 251 S.W. 3d 275, 279 (2007). This corollary to Dillon's Rule has also probably been abrogated by the express repeal of Dillon's Rule by Act 1187.

By enacting into the Code of Fayetteville the new authority granted to cities in Arkansas by Act 1187, we have an additional shield to protect our Fayetteville Code and U.D.C. from a legal attack claiming that the City Council has exceeded its powers when enacting any provision within our Fayetteville Code.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO ENACT INTO THE CODE OF FAYETTEVILLE §10.18  
**AUTHORITY** AND TO AMEND §150.03 **AUTHORITY** IN THE UNIFIED  
DEVELOPMENT CODE

**WHEREAS**, it is prudent to enact into the Code of Fayetteville including the Unified Development Code the increased powers granted by the State Legislature to Arkansas cities by its recent amendment of Title 14, Chapter 43, Subchapter 6 **Powers Over Municipal Affairs** which repealed the limitations on municipal authority within the *Dillon's Rule*; and

**WHEREAS**, a new code section should be enacted in Title 1, General Provisions of the Fayetteville Code to better identify the statutory and constitutional authority to support the City Council's power to enact the Fayetteville Code; and

**WHEREAS**, §150.03 **Authority** of the Unified Development Code should be amended to more fully cite the constitutional and statutory authority to support the City Council's power to enact the Unified Development Code of the Code of Fayetteville.

**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 enacts §10.18 **Authority** of the Code of Fayetteville as shown below:

**"§10.18 Authority**

"The provisions contained within the Code of Fayetteville including the Unified Development Code formerly, currently or hereinafter enacted are based upon, derive authority from and are enacted pursuant to any and all of the power and authority conferred upon cities by the Arkansas Constitution and by the Arkansas General Assembly through its statutes, including, but not limited to, all of Title 14 **Local Government** of the Arkansas Code specifically including but not limited to Subchapter 6, **Power Over Municipal Affairs** of Chapter 43 **Government of Cities of the First Class**, Chapter 54 **Powers of Municipalities**, Chapter 55 **Ordinances of Municipalities**, and

Chapter 56 **Building and Zoning Regulations**; Chapter 75, **Municipal Sales and Use Taxes** of Title 26 **Taxation**; Title 3, **Alcoholic Beverages** and any and all other state statutes or constitutional provisions that provide any authority to the City of Fayetteville to enact ordinances, codes, or regulations within or referenced by the Code of Fayetteville. No specific reference to authority within any code section excludes the general authority of all state law and this section.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §150.03 **Authority of the Unified Development Code** so that it will now repeat the exact language of the newly enacted §10.18 **Authority** shown above.

**PASSED** and **APPROVED** this 17<sup>th</sup> day of January, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

TITLE XV UNIFIED DEVELOPMENT CODE

**CHAPTER 150: GENERAL PROVISIONS**

**150.01 Title**

This title shall be known and may be cited as the Unified Development Code, Code of Fayetteville, and may be cited and abbreviated as "UDC."

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

**150.02 Purpose**

The UDC is adopted for the purpose of implementing the Comprehensive Land Use Plan and any other plans or policies adopted or amended by the City Council, in a manner that furthers the health, safety and general welfare of the people of the community and to provide uniform standards for the development of land and the installation of related improvements. The UDC sets forth the procedures, requirements, and minimum standards intended to promote an appropriate mix of land uses in an orderly manner; enhance aesthetic quality, moderate street congestion, secure safety from events such as fire, flood, erosion and landslides; prevent overcrowding of land; provide adequate light and air; and provide for circulation, recreation, and other public services and facilities. The UDC provides for, but is not limited to, development of land uses which protect established neighborhoods, and commercial and industrial districts; allows compatible infill of established areas; provides flexibility for mixing of uses to achieve traditional neighborhood developments; protects significant environmental resources; and makes a livable community.

(Code 1965, App. C, Art. 1, §A; Ord. No. 1750, 7-6-70; Code 1991, §158.02; Code 1965, §17B-14 Ord. No., 1893, 12-19-72; Code 1991, §160.001; Code 1965, App. A, Art. 13; Ord. No. 1747, 6-29-70; Code 1991, §150.02; Code 1965, §17B-14; Ord. No. 1893, 12-19-72; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4919, 9-05-06)

**150.03 Authority**

The provisions contained in the UDC are adopted pursuant to the authority conferred on the city by the General Assembly of the State of Arkansas, A.C.A. §14-54-103, General Powers of Cities and Towns; A.C.A. §14-54-104; Additional Powers of Cities of the First Class; and A.C.A. Title 14, Chapter 56, Municipal Building and Zoning Regulations--Planning; as amended.

(Code 1965, App. C, Art. I, §B; Ord. No. 1750, 7-6-70; Code 1991, §159.02; Ord. No. 4100, §2 (Ex. A), 6-16-98)

**150.04 Jurisdiction**

The city's planning jurisdiction is the area within the corporate boundaries as well as the area described in the planning area boundary description as filed with the City Clerk and Washington County Circuit Clerk's office. Such planning area boundary description may be modified from time to time in accordance with A.C.A. §14-56-413.

(Code 1965, App. C, Art. 1, §C; Ord. No. 1750, 7-6-70; Code 1991, §159.03; Ord. No. 3895, §1, 6-20-95; Code 1991, §163.04(A); Ord. No. 4100, §2 (Ex. A), 6-16-98).

**150.05 Relationship To Previous Development Ordinances**

The UDC shall be considered a restatement of previously adopted development ordinances and not a new enactment unless otherwise specifically provided. Any situation which was considered nonconforming under the ordinances previously in force does not achieve lawful, conforming status under this chapter merely by the repeal of the previous ordinances to enact the UDC.

(Ord. No. 4100, §2 (Ex. A), 6-16-98).

**150.06 Relationship To Other Provisions Of The Code Of Fayetteville**

The use of buildings and land shall be subject to all other applicable provisions of the *Code of Fayetteville* regardless of cross references within the UDC. Cross references to other provisions of the *Code of Fayetteville* are for the convenience of the reader. Lack of a cross reference shall not be construed as an indication that other provisions of the *Code of Fayetteville* do not apply.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

**150.07 Conflicts**

- (A) *UDC/other code requirements.* The provisions of the UDC shall be held to be minimum requirements. Where requirements of the UDC are at a variance with other requirements within the *Code of Fayetteville*, the highest or most restrictive requirements shall apply.
- (B) *UDC/UDC.* Where a conflict arises between one section of the UDC and another section of the UDC, the most stringent section shall apply.
- (C) *UDC/Comprehensive Land Use Plan.* The regulations contained herein are adopted giving due consideration to the Comprehensive Land Use Plan. Thus, the requirements of the UDC shall take precedence over the policies of the Comprehensive Land Use Plan. Any conflict therewith should not be considered basis for challenge.
- (D) *UDC/private agreements.* The UDC is not intended to abrogate any private agreements, deed restrictions, covenants, easements, or other private agreements on the use of land. Where the UDC is more restrictive or imposes higher standards than the private agreement, the UDC shall control. Where the provisions of a private