

City Council Agenda Items  
and  
Contracts, Leases or Agreements

7/17/2012

City Council Meeting Date  
Agenda Items Only

Andrew Garner  
Submitted By

Planning  
Division

Development Services  
Department

Action Required:

ADM 12-4170: Administrative Item (UDC SECTION 154.03(C)(2)): Submitted by the CITY PLANNING DIVISION to repeal UDC section 154.03(C)(2).

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
Account Number	\$ -	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

*Jim C. Pate*  
 Department Director 06-21-2012 Previous Ordinance or Resolution # \_\_\_\_\_  
*A large rewrite was needed.* Date  
*JK*  
 City Attorney June 25, 2012 Original Contract Date: \_\_\_\_\_  
 Date Original Contract Number: \_\_\_\_\_

*Marsla Hestwood*  
 Finance and Internal Services Director 6/25/12 Date  
 Received in City Clerk's Office 06-22-12 A09:29 RCVD  
*King J.*

*Don Mann*  
 Chief of Staff 6/26/12 Date  
 Received in Mayor's Office  
 ENTERED 6/25/12  
 711

*Leonell Jaylan*  
 Mayor 6/26/12 Date

Comments:

## CITY COUNCIL AGENDA MEMO

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**To:** Mayor Jordan, City Council

**Thru:** Don Marr, Chief of Staff

**From:** Jeremy Pate, Development Services Director

**Date:** June 20, 2012

**Subject:** ADM 12-4170 Repeal UDC Section 154.03(C)(2) Petition opposed to rezoning

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### **BACKGROUND:**

Chapter 154.03(C)(2) states that if a certain number of property owners have signed a petition opposed to a rezoning, then the rezoning cannot become effective except by a three-fourths vote of the City Council. This code section appears to have been enacted with all other zoning and development code sections for the City during a Special Meeting of the City Board of Directors on June 29, 1970. The City Attorney does not believe this section of the code has ever been used in an attempt to require a super majority vote. Further, the City Attorney believes that this code section is illegal because it is beyond our statutory power. A memo from the City Attorney is attached.

### **RECOMMENDATION:**

Staff recommends approval of an ordinance to amend the Unified Development Code to repeal Section 154.03(C)(2).

### **BUDGET IMPACT:**

None.

## CHAPTER 154: AMENDMENTS

### 154.03 Private Parties/Zoning Amendment

(A) *Petition.* Any private party or parties desiring an amendment to Chapter 160, upon payment of the appropriate fee, shall submit to the Planning Commission a petition giving the following information:

- (1) Legal description of the property involved;
- (2) Zoning classification request for the property; and,
- (3) Statement explaining why the proposed changes will not conflict with the surrounding land uses.

(B) *Action by Planning Commission.* The Planning Commission may take one of the following actions:

- (1) *Approval.* The proposed amendment may be approved as presented.
- (2) *Approval in modified form.* Approved in modified form by a majority of the Planning Commission and recommended for adoption by the City Council with the reasons for such recommendations stated in writing.
- (3) *Disapproval.* If the Planning Commission disapproves a proposed amendment, the reason for such disapproval shall be given in writing to the petitioner.
- (4) *Neither approves nor disapproves.* If the Planning Commission neither approves nor disapproves a proposed amendment within 45 days after the public hearing the action on such amendment by said Planning Commission shall be deemed favorable; this period may be further extended by vote of the Planning Commission if all the parties involved agree in writing to an extension.

(C) *Action by the City Council.*

- (1) *Action.* The City Council, may take one of the following actions:
  - (a) *Approval.* The City Council, by majority vote, may by ordinance adopt the recommended amendment submitted by the Planning Commission.
  - (b) *Modify and adopt.* By ordinance, may modify and adopt the proposed amendment.

(c) *Return to Planning Commission.* By resolution, may return the proposed amendment to the Planning Commission for further study and recommendation.

~~(2) *Vote.* When a proposed amendment affects the zoning classification of property, and in case a protest against such change is signed by the owners of 20% or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 300 feet from the street frontage of such opposite lots, then such amendments shall not become effective except by the favorable vote of three-fourths of the City Council.~~

(D) *Re-petitions for amendment.* No application for zoning amendments will be considered by the Planning Commission within 12 months from the date of final disapproval of a proposed amendment unless there is evidence submitted to the Planning Commission which justifies reconsideration.

(E) *Withdrawal.*

- (1) *Before publication.* A petition for amendment may be withdrawn at any time before publication of the notice and posting signs for the public hearing.
- (2) *After publication and posting of notice.* After the publication and posting of notice, the petition may be withdrawn at the discretion of the Planning Commission. If the petition is permitted to be withdrawn after the public hearing, it shall be in the Planning Commission's discretion whether or not a petition affecting part or all of the same property may be refiled sooner than one year from the date of withdrawal.

(Code 1965, App. A., Art. 12(1); Ord. No. 1747, 6-29-70; Ord. No. 2538, 7-3-79; Code 1991, §160.156; Ord. No. 2716, §1, 6-15-93; Ord. No. 3925, §7, 10-3-95; Ord. No. 4100, §2 (Ex. A), 6-16-98)

**Cross reference(s)**—Notification and Public Hearings, Ch. 157.

**154.04-154.99 Reserved**



Departmental Correspondence



www.accessfayetteville.org

LEGAL  
DEPARTMENT

TO: Mayor Jordan  
City Council

Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

CC: Andrew Garner, Senior Planner – Current Planning  
Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney

DATE: June 18, 2012

RE: Update on §154.03 (C)(2) Petition opposed to rezoning

**HISTORY**

My research reveals that this code section was enacted along with all other zoning and development code sections for the City during a Special Meeting of the City Board of Directors on June 29, 1970. The Board of Directors suspended the rules to get to the third and final reading at this Special Meeting. The minutes do not reflect any discussion or questions before Ordinance No. 1747 was passed unanimously. Current Code §154.03 (C) was on pages 85 and 86 of Ordinance No. 1747. During my six plus years as an Alderman and eleven plus years as City Attorney, I do not believe this section has ever been used in an attempt to require a super majority vote. I do not believe the City Board of Directors then nor the City Council now could require such a three-fourths vote to rezone property because it is probably beyond our statutory power to do so. Therefore I recommend the repeal of this probably illegal subsection of the UDC.

A.C.A. §14-55-203 **Voting requirements for passage** -- **Effective dates** is the general state statute detailing how many votes are needed to pass an Ordinance or resolution: "To pass any bylaw, ordinance, resolution, or order, a concurrence of a majority of a whole number of members elected to the council shall be required." There are a few specific exemptions to this rule (for example a two-thirds vote is required to pass a business license tax).

The state statutes are clear that an amendment to the zoning of a district shall be “by a majority vote of the city council.” A.C.A. §14-56-423. Can the Board of Directors or City Council place more strenuous requirements for passage of a zoning amendment than specified in state law? I do not think so.

“**[4-6]** Cities have no inherent authority to enact legislation. That authority is dependent upon the Constitution and the General Assembly. Municipal zoning authority is conferred solely by state enabling legislation. **Failure to comply with mandatory procedural requirements of the enabling statute renders a zoning ordinance invalid.**” *Brooks v. City of Benton*, 308 Ark. 571, 826 S.W. 2d 259, 261 (1992) (Citations omitted). (emphasis added)

Arkansas Attorney General David Pryor opined in Opinion NO. 2002-132: **“a municipality may not, by the adoption of procedural rules, deviate from the requirement of state law.** The procedure for the passage of municipal ordinances is a state, rather than a municipal affair.” (emphasis added).

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

**AN ORDINANCE TO AMEND §154.03 PRIVATE PARTIES/ZONING AMENDMENT TO CLARIFY THE POWERS OF THE PLANNING COMMISSION AND CITY COUNCIL WHEN A PROPERTY OWNER SEEKS REZONING**

**WHEREAS**, the provision of §154.03 **Private Parties/Zoning Amendment** relating to the Planning Commission should clarify that it cannot approve a rezoning request, but only recommend approval to the City Council; and

**WHEREAS**, subsection (C) should be repealed as it does not comply with statutorily required procedures for approving a rezoning request.

**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 repeals §154.03 (B) of the Unified Development Code and enacts a replacement §154.03 (B) as shown below:

“§154.03 (B) *Action by Planning Commission.*

- (1) The Planning Commission may forward the rezoning request as submitted or amended by the Planning Commission to the City Council with a recommendation of approval.
- (2) The Planning Commission may disapprove the rezoning request so that the rezoning request will not be considered by the City Council unless the applicant properly appeals.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby repeals §154.03 (C) and enacts a new (C) as shown below:

*“(C) Action by the City Council.*

- (1) The City Council may by majority vote approve and enact the rezoning ordinance as recommended by the Planning Commission or as requested by the applicant who has properly appealed the Planning Commission’s denial of the requested rezoning.
- (2) The City Council may amend the proposed rezoning request and approve such amended rezoning ordinance by majority vote.
- (3) The City Council may refuse to approve the rezoning request which is thereby denied.
- (4) The City Council can by motion return the proposed rezoning to the Planning Commission for further study and recommendation.

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

APPROVED:

ATTEST:

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

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

