



113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

**Ordinance: 6061**

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**File Number: 2018-0202**

**ADM 18-6130 (UDC AMENDMENT CHAPTERS 156, 166, AND 169: SEQUENCE OF GRADING PERMITS):**

AN ORDINANCE TO AMEND § 156.04 - PHYSICAL ALTERATION OF LAND AND STORMWATER DRAINAGE AND EROSION CONTROL OF CHAPTER 156 **VARIANCES**; § 166.02 - DEVELOPMENT REVIEW PROCESS OF CHAPTER 166 **DEVELOPMENT**; AND VARIOUS SECTIONS OF CHAPTER 169 **PHYSICAL ALTERATION OF LAND** OF THE FAYETTEVILLE UNIFIED DEVELOPMENT CODE TO CLARIFY THE APPROVAL PROCESS FOR GRADING PERMITS, TO GENERALLY REQUIRE DEVELOPMENT APPROVAL PRIOR TO THE ISSUANCE OF GRADING PERMITS, TO MAKE ADMINISTRATIVE CHANGES, AND TO PASS AN EMERGENCY CLAUSE

**WHEREAS**, the Unified Development Code currently allows grading permits to be issued prior to development approval; and

**WHEREAS**, this has resulted in a loophole that has allowed site grading without staff or the Planning Commission reviewing plans for conformance with all Unified Development Code requirements; and

**WHEREAS**, clarification of code sections pursuant to their stated intent and purpose strengthens the development review process;

**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 §156.01 by inserting the following language at the beginning of the section: "A variance of the requirements of §§ 166.02 and 169.03 requiring development approval prior to issuance of grading permit may be granted by the Planning Commission subject to the General Requirements of § 156.03."

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §166.02(D)(2) by repealing the title of the subsection and replacing it with “*Preliminary Plat, Large Scale Development and Small or Large Site Improvement Plans.*”

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §169.01(B) by replacing “and cutting (or similar activities)” with “excavation, or land alteration of any kind.”

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby repeals § 169.03 - Permits Required/Exceptions and enacts a replacement § 169.03 as follows:

*(B) Permit Required. Unless exempted by §169.03(C), all grading, clearing, filling, excavation, or land alteration of any kind shall require:*

- (1) Prior development approval as specified in Chapter 166, except for general grading to an existing developed site that does not impact trees or floodplains and does not significantly alter the natural landform;
- (2) A grading permit pursuant to this chapter; and
- (3) An Arkansas Department of Environmental Quality Stormwater Construction Permit and incorporated Stormwater Pollution Prevention Plan, if required by state law.

*(C) Residential Grading Permit Required.* When located within the Hillside/Hilltop Overlay District boundaries:

- (1) Construction of up to two (2) single-family residences or a duplex on a single lot shall require a grading permit;
- (2) Residential building additions of 2,000 square feet or more on a single lot shall require a grading permit;
- (3) Residential building additions of less than 2,000 square feet where associated land alteration activities are not beyond the scope of what is necessary to construct said addition and no trees are impacted do not require a grading permit;
- (4) Parcels of land divided by the Hillside/Hilltop Overlay District boundary shall only be subject to the requirements of this chapter on that portion of land lying within the boundary.

*(D) Exceptions to Permit Requirements.* Grading permits are not required for the following:

- (1) *Excavation Below Finished Grade.* Excavations below finished grade for basements, swimming pools, hot tubs, septic systems, retaining walls under 4 feet in height, and like structures authorized by a valid building permit.

- (2) Cemetery graves.
- (3) *Refuse Disposal*. Refuse disposal sites controlled by other regulations.
- (4) *Single Family/Duplex*. Construction of up to two (2) single-family residences on a single lot, or duplex unless located within the Hillside/Hilltop Overlay District per §169.03(B) above.
- (5) *Building Additions*. Building additions of less than 2,000 square feet unless located within the Hillside/Hilltop Overlay District per §169.03(B) above.
- (6) Other minor fill, clearing or grading for maintenance purposes such as landscaping, yard grading, maintenance, farming, gardens, and similar activities.

(E) *Grading Permit Application and Approval*. No grading permit shall be issued until the grading plan, endorsed by a landscape architect, or engineer licensed in the state of Arkansas, is approved by the City Engineer. A separate permit shall be required for each site. Grading permits may be issued jointly for parcels of land that are contiguous, so long as erosion control measures are in place until project completion. Any application for a required grading permit under this chapter shall be submitted concurrently with the application and calculations for a drainage permit if such a drainage permit is required by §170.03. Tree Preservation and Protection is required in accordance with Chapter 167.

(F) *Permit Posted*. A copy of the grading permit cover page shall be posted at or near the street right-of-way line and shall be clearly visible from the street.”

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby amends § 169.04 by replacing each instance of “minimal” with “minimum” in the section title, introductory paragraph, and subsection (A), by replacing “Ordinance No. XXXX” with “Ordinance No. 5702” in subsection (A), and by inserting the following after the first sentence in subsection (F): “All necessary modifications to stormwater best management practices should be immediately implemented in order to prevent further track-out.”

Section 6: That the City Council of the City of Fayetteville, Arkansas hereby amends § 169.06 - Land Alteration Requirements by repealing §169.06(C)(2) and enacting a replacement § 169.06(C)(2) as follows: “(2) *Maximum Length*. The maximum length of any cut or fill slope without a terrace (as described in § 169.06(D) and (E) below) shall be 100 feet as measured along the ground. The terrace shall be at least 6 feet wide.”; by inserting “designated protected streams;” before “established TMDL water bodies” in subsection (F)(3); by striking “in accordance with” in subsection (G) and replacing it with “equal to”; and by striking “a registered professional engineer” in subsection (H)(1) and replacing it with “an Arkansas registered professional engineer.”

Section 7: That the City Council of the City of Fayetteville, Arkansas hereby amends § 169.07(A) Grading Plan by striking “at a scale no smaller than 1 inch equals 50 feet” in subsection (1); by repealing subsection (5) and replacing it with “Engineer/Architect. Seal of an Arkansas registered engineer or landscape architect certifying that the plan complies with the chapter.”; by repealing subsection (11) and replacing it with “*Acreage*.”

Total project acreage and disturbed area.”; by inserting “in accordance with the Drainage Criteria Manual” at the end of subsection (12); by inserting “, including final cover type” at the end of subsection (14); and by replacing “straw bales” with “silt fences” and replacing “brush check dams” with “rock check dams” in subsection (16).

Section 8: That the City Council of the City of Fayetteville, Arkansas hereby amends § 169.08 - Grading Plan Submittal by repealing subsection (A) and enacting a replacement (A) as follows: “*Preliminary Grading Plan.* A preliminary grading plan shall be submitted at the time of preliminary plat submission for subdivisions or plat submission for large scale developments and site improvement plans, whichever is applicable.”; by inserting “and receive a residential grading permit prior to building permit” at the end of subsection (B); and by repealing subsection (D) in its entirety.

Section 9: That the City Council of the City of Fayetteville, Arkansas hereby amends § 169.09 - Minor Modifications by repealing the last sentence and replacing it with “When applicable, major modifications must be approved through the City planning process.”

Section 10: That the City Council of the City of Fayetteville, Arkansas hereby determines that this ordinance should become effective without delay because improper early grading, which could cause large drainage and erosion problems and irresponsible tree loss, would endanger the peace, health, and safety of Fayetteville citizens. Therefore, the City Council hereby declares an emergency exists such that this ordinance shall become effective immediately upon its passage and approval.

PASSED and APPROVED on 4/17/2018

Approved:

  
Lioneld Jordan, Mayor

Attest:

  
Sondra E. Smith, City Clerk Treasurer

