

ORDINANCE NO. 5822

AN ORDINANCE REPEALING ORDINANCE NO. 5753 AND AMENDING ORDINANCE NO. 5715 TO INCLUDE AN EXEMPTION FOR CERTAIN LAND DIVISION PLATS; AND OTHER PURPOSES.

WHEREAS, Ordinance No. 5715, also known as the City of Hot Springs Subdivision Ordinance, was adopted March 3, 2009 establishing rules, regulations and criteria for development of subdivisions and land division within the City of Hot Springs, Arkansas and its Extra Territorial Jurisdiction; and

WHEREAS, Standards implemented by Ordinance No. 5715 were imposed after-the-fact and proved impractical; and that

WHEREAS, In accordance with A.C.A 14-56-417(b)(2)(A) these rules established regulations governing parcel splits, which is the dividing of an existing lot or parcel into two (2) or more lots or parcels, requiring City of Hot Springs Planning Commission approval; and

WHEREAS, Divisions were routinely established by public record prior to June 1, 2011, without having been approved by the City of Hot Springs Planning Commission that had the effect of separating existing lots or parcels into two (2) or more lots or parcels; and

WHEREAS, The City of Hot Springs Subdivision Ordinance included certain situations of land division that are exempt from these rules and regulations; and

WHEREAS, the City of Hot Springs Planning Commission, at its legally advertised public hearing on April 14, 2011 recommends that the City of Hot Springs Subdivision Ordinance be amended to include an exemption for all lots of record existing prior to June 1, 2011.

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Hot Springs, Arkansas:

SECTION 1. That Ordinance 5753 is hereby repealed in its entirety.

SECTION 2. That this ordinance amends Ordinance 5715 by including an exemption for lots of record as follows:

Hot Springs Code 16-4-9(e)(3) Lots of Record.

SECTION 3. That this ordinance further amends Ordinance 5715 by amending the definition of Lot of Record as Follows:

Hot Springs Code 16-4-90 Definitions - Lot of Record: Any tract, lot or parcel or legally describable ownership established by public record such as a recorded deed or plat, or a recorded or unrecorded contract for deed, signed and notarized existing prior to June 1, 2011. An easement shall not constitute a lot of record.

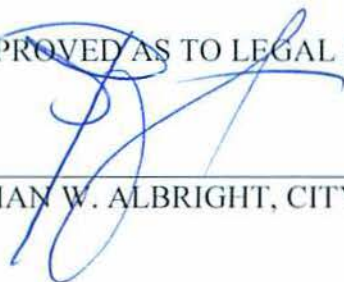
SECTION 4. Any ordinance or parts of ordinance, resolution, rule, or regulation, or standard in conflict herewith are hereby repealed to the extent of such conflict, but not limited to Ordinance 5753 in its entirety.

SECTION 5. That Ordinance 5715 of the City of Hot Springs, Arkansas is hereby amended to the extent necessary to include these amendments.

PASSED: June 7, 2011

ATTEST: 
LANCE SPICER, CITY CLERK

APPROVED: 
RUTH CARNEY, MAYOR

APPROVED AS TO LEGAL FORM:

BRIAN W. ALBRIGHT, CITY ATTORNEY

June 7, 2011

BOARD ACTION REQUEST

O-11-13

DISTRICT: <input type="checkbox"/> 1	<input type="checkbox"/> 2	<input type="checkbox"/> 3	<input type="checkbox"/> 4	<input type="checkbox"/> 5	<input type="checkbox"/> 6	<input checked="" type="checkbox"/> City Wide	<input checked="" type="checkbox"/>
ETJ							

Date Submitted: 4/21/2011	Type of Action Requested: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Formal Action/Motion <input type="checkbox"/> Other	Subject: Ordinance amending the Subdivision Code regarding Lots of Record
Date Action Requested: 06/07/2011		

RECOMMENDATION: Approve an Ordinance to repeal Ordinance 5753 and to amend the Subdivision Code to establish a definite point in time (June 1, 2011) for Lots of Record whereby failure to follow the law governing land division could be forgiven.

PLANNING COMMISSION ACTION: Planning Commission advertised and considered testimony at a Public Hearing held April 14, 2011. Several dozen people attended the hearing. There was no testimony for or against. By unanimous vote Planning Commission recommends that the Board of Directors approve the ordinance amendment.

SUMMARY: The proposed ordinance does not impose additional approval and recording requirements. The proposal does codify Planning Commission's 2006 policy establishing a bright line for its staff when administering subdivision and permit requirements. This proposed ordinance applies citywide in all districts and within the planning area to recorded but unapproved land divisions established by public record before June 1, 2011.

The proposed amendment would:

1. Repeal Ordinance 5753.
2. Insert - HSC 16-4-9(e) (3) Lots of Record.
3. Amend - HSC 16-4-90 Definitions to read "Lot of Record: Any tract, lot or parcel or legally describable ownership established by public record such as a recorded deed or plat or a contract for deed signed and notarized existing prior to June 1, 2011. An easement shall not constitute a lot of record."

HISTORY: Planning Commission previously considered the proposed ordinance at a public hearing June 10, 2010 and unanimously recommended adoption to the Board of Directors. The Board of Directors failed to consider the item when it was presented on their agenda subsequently. The Board of Directors in a joint work session with Planning Commission on March 22, 2011, by consensus indicated to Planning Commission that they would like the Ordinance to be presented to them in May for public hearing and consideration. The proposed date for existing lots has been changed to June 1, 2011 accordingly.

Sec. 16-4-8 of the Hot Springs Code states: "The arrangement of land parcels in the community for residential, commercial and industrial uses and for streets, alleys, schools, parks and other public purposes will determine to a large degree the conditions of health, safety, economy and amenity that prevail in the urban area. The quality of these conditions is of public interest."

Arkansas Code Annotated (ACA) Sec. 14-56-401 through Sec. 14-56-426 (Municipal Planning) authorizes municipalities meeting certain criteria to adopt a Subdivision Code and to enforce subdivision regulations within the city limits and within its territorial jurisdiction (also called "planning area" or ETJ"). Hot Springs Ordinance 5715, adopted March 3, 2009 is the Hot Springs Subdivision Ordinance.

Sec. 16-4-7 defines requirements for amendments to be made by planning commission: "These regulations may be amended at any time after the planning commission has held a public hearing on the proposed amendments as required by state law. At or after such public hearing, the planning commission may recommend to the board of directors the adoption of such amendments. The board of directors may accept, modify or deny such amendment recommendations. All amendments shall be approved by ordinance of the board of directors."

Planning Commission, at their December, 2009 meeting, recommended that the Board of Directors adopt an ordinance establishing a new code section (Ordinance 5753 was adopted January 5 2010) as follows:

"16-4-9(e) The division of a lot, tract, or parcel of land that existed prior to January 1, 2006, effective date of Planning Commission policy adopted June 8, 2006 and that was not previously exempted under any previous subdivision regulations, where no more than one (1) additional lot, tract, or parcel is created, provided the threshold requirements set forth in HSC 16-4-45(c) are met. Any further division of the lot, tract, or parcel, including any remainder parcel or tract, shall be platted in conformance with the requirements of these regulations"

After adoption Staff identified weaknesses with the new code section. Certain threshold requirements were not in effect between January 1, 2006 and March 3, 2009 and the new code section imposes these requirements after-the-fact. If the threshold requirements were met then approval of such land divisions would be implied without complete review. The current proposed amendment exempts all land divisions as being Lots of Record without the implication of approval where Planning Commission was denied the opportunity for review of the division facts.

Subdivision is the "division of any tract or parcel of land in one (1) or more lots, building sites, or other divisions for the purpose, whether immediate or future, or sale, lease, rent or building development, and shall include all divisions of land involving the need for new access, a new street or a change in existing streets" with certain exclusions (HSC Sec, 16-4-90, Definitions.)


Sec. 16-4-11(a) of the Hot Springs Code (HSC) states "No subdivision plat of any tract of land within the planning area boundary of the planning commission shall be accepted by the county circuit clerk for filing of record until the plat has been approved as per Arkansas Code Annotated (ACA) Sec. 14-56-417(c) (Acceptance of plats). In this regard, no subdivision plat or any part thereof shall be recorded prior to obtaining final plat approval from the planning department, nor shall the developer convey title to any lot or lots before obtaining final plat approval and recording of the final plat with the Garland County Circuit Clerk. The filing of metes and bounds legal descriptions for any property or parcel contained within an active preliminary plat is hereby strictly prohibited."

Until 2006, enforcement of HSC Sec. 16-4-11(a) by the City of Hot Springs was inconsistent. The Garland County Circuit Clerk, as a matter of course, has recorded lot split surveys and deeds that divide land without the required approval. In 2006 Planning Commission recognized a need to establish a definite point in time whereby failure to follow the law could be forgiven by adopting an administrative policy. At this time, Planning Commission seeks formal codification of their 2006 administrative policy by establishing that date as June 1, 2011 by ordinance.

FINDINGS: The Subdivision ordinance can be amended subject to HSC Sec. 16-4-7. Sec. 16-4-8 acknowledges that the arrangement of land parcels and access thereto is of public interest. Unapproved land divisions provide no opportunity for planning commission or staff review as authorized by ACA and as mandated by HSC 16-4-9, thereby compromising health, safety, economy and public interest. The requirements of HSC and ACA are met.

FISCAL IMPACT: The ordinance has no direct fiscal impact to the City.

ALTERNATIVES: Amend or do not approve the ordinance.

Prepared by:	Approved by:
<u>/s/Kathleen Sellman</u>	
Kathleen A. Sellman	Lance Hudnell
Planning & Development Director	City Manager