

AGENDA REQUEST FORM


FOR: Council Meeting of October 6, 2020

FROM: City Attorney Kit Williams

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

AN ORDINANCE TO ACCEPT A DEED TO THREE DOWNTOWN OFF-STREET PARKING LOTS, TO APPROVE A FINAL REPORT OF THE OFF-STREET PARKING DEVELOPMENT DISTRICT NO. 1 OF FAYETTEVILLE, ARKANSAS, TO ACCEPT ALL REVENUES AND MONEY REMAINING WITHIN THE DISTRICT'S POSSESSION, AND TO DISSOLVE THIS DISTRICT

APPROVED FOR AGENDA:



City Attorney Kit Williams

September 23, 2020
Date



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: Lioneld Jordan, Mayor
City Council

CC: Kara Paxton, City Clerk/Treasurer
Susan Norton, Chief of Staff
Paul Becker, Finance Director

FROM: Kit Williams, City Attorney

DATE: September 23, 2020

**RE: Dissolution of Off-Street Parking Development District Number 1
of the City of Fayetteville, Arkansas**

HISTORY OF THE OFF-STREET PARKING DEVELOPMENT DISTRICT NUMBER 1

On November 18, 1976, a Petition from owners of a majority in assessed value of the property in the Off-Street Parking Development District was submitted to the City to request formation of the District pursuant to A.C.A. § 14-88-203 with the express and limited purpose for “(t)he construction of facilities for the off-street parking of vehicles, that said facilities be constructed at such locations as the Commissioners deem necessary in order to provide off-street parking within the proposed local improvement district . . . for the benefit of the district. . . .”

By Ordinance No. 2292 of December 7, 1976, the Fayetteville Board of Directors recognized and approved the submitted Petition and established the “Off-Street Parking Development District Number 1 of the City of Fayetteville, Arkansas, and (appointed) Pearl Clinehens, Frank W. Lewis,

and Dr. C. Garland Melton, Jr...Commissioners, who shall compose the Board of Improvement for said District." The City Board of Directors expressly limited the powers and purpose of the Off-Street Parking Development District to the "purpose of constructing facilities for the off-street parking of vehicles . . .for the benefit of the District . . ." Ordinance No. 2292, December 7, 1976. Although the statute would have allowed a city to grant other powers to a development district (to build streets, sewers, etc.), neither the petitioners who sought to have the District created nor the Fayetteville Board of Directors who created the District provided any authority but to construct and maintain off-street parking facilities.

This Off-Street Parking Development District was very successful in obtaining property and providing several off-street parking lots to alleviate the lack of adequate parking that had been choking the life out of the Downtown Square. Much of the Downtown's rejuvenation and current economic activity and prosperity can be attributable to the leadership, vision and financial commitment of the Off-Street Parking Development District.

When the City purchased one of the Off-Street Parking Development District's parking lots north of Rock Street and between Block and East Avenues in the late 90's in order to build the Fayetteville Town Center and its parking deck, the Off-Street Parking Development District was able to pay off most if not all of its outstanding bonds which had financed the purchases and development of the off-street parking lots. Since that time the Off-Street Parking Development District has used the parking revenue from its remaining lots for maintenance and improvements to its remaining three parking lots and accumulated some reserves for unanticipated future expenses.

Recently, the Off-Street Parking Development District Board of Commissioners successfully completed renovations and improvements to two of its remaining public parking lots. These improvements have concluded the Off-Street Parking District's plans and objectives so that this development district has now fulfilled its purposes and should be dissolved and the Commissioners discharged from further duties related to the District's affairs.

The off-street parking lots were purchased by the Downtown Off-Street Parking District from assessments of property owners in the downtown area because the lack of sufficient customer, client and employee parking in the downtown area was choking off businesses and offices and hurting residents when commercial parkers used residential street parking needed for the residents and their visitors. These off-street parking lots are basically being held in trust by the Board for the benefit of the property owners who were assessed for their purchase. Downtown parking is not needed any less now that Fayetteville has over 80,000 residents than it did when we had less than 40,000. Whether it be the District or the City who owns the parking lots, these public parking spaces must be conserved or replaced in any new development.

DISSOLUTION OF OFF-STREET PARKING DISTRICT

The best course is for the City Council to pass an ordinance based upon a Resolution of the Board of Directors of the Off-Street Parking Development District No. 1 to voluntarily dissolve the District. I have attached this Resolution recently passed by the District's commissioners. The District would as its last item of business, convey its three existing parking lots to the City and pay to the City all remaining surplus revenue. This revenue is the result of payments to the Board by the City of the parking lot revenue derived from the District's parking lots minus the management costs of the City.

The revenue so transferred to the City should be placed into the Parking Division's budget and designated for use **only** within the District's boundaries for any needed maintenance or improvements of parking facilities. A.C.A. § 14-88-602 **Authority to wind up affairs** would seemingly provide express directions on how and when to dissolve an improvement district. Unfortunately, it has two conditions "boundaries coextensive with the city" and "which still hold title to lands purchased at foreclosure sale for delinquent taxes" which do not apply to the Off-Street Parking Development District. The other conditions: "which have paid their bonds and other obligations and have levied no tax for the past five (5) years" have been met by the Off-Street Parking Development District

and appear much more relevant to whether the district “may proceed to wind up their affairs as set forth in this subchapter.”

Therefore, I believe we should look at Subchapter 6 **Dissolution of Districts** of Chapter 88 **Municipal Improvement Districts Generally** for guidance on the proper procedure on how to dissolve and wind up the affairs of the Off-Street Parking Development District.

Pursuant to A.C.A. § 14-88-603 **Procedures and final report**:

“(a) The commissioners on the board of a municipal improvement district shall execute a deed in favor of the city conveying all real estate as to which it holds title...and shall pay to the city all funds which it has on hand.

(b) The commissioners shall then file with the city or town council a final report bringing up to date its receipts and disbursements since the last annual report...

(d) If the city or town council approves the report, the commissioners shall stand discharged from their duties ...”

Strangely, A.C.A. § 14-88-604 **Conveyances of lands** gives conflicting instructions on how to convey land owned by the Off-Street Parking Development District. It says: “All conveyances which are necessary as to lands to which a municipal improvement district holds title **shall be executed under the hand of the mayor** or acting mayor. The city or town seal shall be attached hereto, which shall be attested by the city or town clerk.” (emphasis added). As quoted earlier, the immediately preceding code section states that the “**commissioners**...shall execute a deed in favor of the city conveying all real estate....”

My proposed “solution” to these conflicting statements about who should sign the deeds conveying the property to the City was to have the Commissioners sign the deed and have the Mayor sign below the Commissioners as agreeing to the conveyance with the Mayor’s signature attested by City Clerk Kara Paxton.

The City has now received the Off-Street Parking Development District No. 1's approved and signed Resolution and deed. Therefore, I am presenting an Ordinance to the City Council dissolving the District, thanking and releasing all board members from any further responsibilities, and authorizing the Mayor to accept the deed and remaining monetary assets from the District. The Mayor will then also sign the deed conveying all three remaining parking lots to the City and accept all remaining revenue to be used exclusively for parking expenses incurred within the Off-Street Parking District's borders.

AFTER THE CITY RECEIVES OWNERSHIP OF THE OFF-STREET PARKING DEVELOPMENT DISTRICT'S PARKING LOTS

The three remaining off-street parking lots which will be conveyed to the City were all purchased by the District through taxes on the property owners of the District for the specific purposes of providing off-street parking to benefit all of the property owners financing this acquisition. Accordingly, these three parking lots come with strings attached and should not be considered as available for sale or use any way the City Council might choose.

I believe it would be legally suspect to use any of these lots in a way that would reduce their currently available public parking capacities. Even when the City purchased the Parking District's lot north of Rock Street, the public parking available on that lot which was lost to the Town Center building was more than made up by the Town Center's parking deck which is usually available to the public at large. Any other proposed use of the three other parking lots would similarly need to maintain at least the same number of public parking spaces for customers, tenants and employees of property owners in the district. However, the City owns other parking lots downtown that do not have such restrictions and can be developed by the City Council even if such development reduces the amount of public parking.

A RESOLUTION TO DISSOLVE THE OFF-STREET PARKING DEVELOPMENT DISTRICT NUMBER 1 OF THE CITY OF FAYETTEVILLE, ARKANSAS, TO CONVEY ALL REMAINING PARKING LOTS TO THE CITY OF FAYETTEVILLE AND TO PAY ALL REMAINING REVENUE TO THE CITY OF FAYETTEVILLE

WHEREAS, upon Petition from the owners of a majority in assessed value of the property in the Off-Street Parking Development District No. 1 of Fayetteville, Arkansas to establish such District, the Fayetteville Board of Directors passed Ordinance No. 2292 on December 7, 1976, and established said District; and

WHEREAS, the District through its board of Directors used revenues from the property owners to successfully build sufficient off-street parking to rejuvenate the downtown area for improved commerce, office and residential uses; and

WHEREAS, the Board of the Off-Street Parking Development District has successfully paid all of the bonds used to acquire and develop off-street parking and has not needed any further assessments for over ten years; and

WHEREAS, the Board has recently completed renovations and improvements to its three remaining parking lots and now has decided it should now dissolve the District, convey the three parking lots to the City and pay to the City all remaining money it has accumulated from parking revenue over the years.

NOW, THEREFORE, BE IT RESOLVED BY THE OFF-STREET PARKING DEVELOPMENT DISTRICT NUMBER 1 OF THE CITY OF FAYETTEVILLE, ARKANSAS

Section 1: The Board of Directors of the Off-Street Parking Development District Number 1 of the City of Fayetteville, Arkansas hereby dissolves the District and authorizes its chairman, Greg Lee, to sign a deed conveying the three remaining parking lots to the City of Fayetteville, pay over to the City of Fayetteville all revenue remaining in the accounts or under the control of the District, and do any and all things necessary to complete the dissolution of the District.

PASSED and APPROVED this 17th day of August, 2020

APPROVED:

By: 
Greg Lee

Chair of the Off-Street Parking Development District Number 1
of the City of Fayetteville, Arkansas

Off Street Parking Development District #1
Balance Sheet
As of July 31, 2020

	Jul 31, 20
ASSETS	
Current Assets	
Checking/Savings	
Arvest	74,225.05
Total Checking/Savings	74,225.05
Other Current Assets	
1st Security Bank - CD 172369	52,332.04
Bank of Fayetteville CD 26680	90,297.41
Chambers Bank CD 15100735	109,048.39
Chambers Bank CD 6679100	47,996.81
First State Bank CD 56888	114,190.30
First State Bank CD 56889	103,359.70
Signature Bank CD 100014	51,826.55
Signature Bank CD 102071	28,357.96
Signature Bank CD 105105	53,997.68
Total Other Current Assets	651,406.84
Total Current Assets	725,631.89
Fixed Assets	
Improvements	283,643.38
Total Fixed Assets	283,643.38
Other Assets	
Accumulated Depreciation - Impr	-114,731.38
Land	431,281.27
Total Other Assets	316,549.89
TOTAL ASSETS	1,325,825.16
LIABILITIES & EQUITY	
Equity	
Fund Balance	748,391.53
Net Assets inv In Capital Asset	431,281.27
Unrestricted Net Assets	121,552.73
Net Income	24,599.63
Total Equity	1,325,825.16
TOTAL LIABILITIES & EQUITY	1,325,825.16

Off Street Parking Development District #1
Profit & Loss
 January through December 2019

	Jan - Dec 19
Ordinary Income/Expense	
Income	
Investments	
Interest-Savings, Short-term CD	
Interest - Checking	1,916.34
Interest-Savings, Short-term CD - O...	7,310.87
Total Interest-Savings, Short-term CD	9,227.21
Total Investments	9,227.21
Program Income	
Parking Revenue	31,455.20
Total Program Income	31,455.20
Total Income	40,682.41
Expense	
Contract Services	
Accounting Fees	3,000.00
Total Contract Services	3,000.00
Total Expense	3,000.00
Net Ordinary Income	37,682.41
Net Income	37,682.41

Off Street Parking Development District #1
Profit & Loss
January through July 2020

	<u>Jan - Jul 20</u>
Ordinary Income/Expense	
Income	
Investments	
Interest-Savings, Short-term CD	
Interest - Checking	110.74
Interest-Savings, Short-term CD - O...	<u>2,757.22</u>
Total Interest-Savings, Short-term CD	<u>2,867.96</u>
Total Investments	2,867.96
Program Income	
Parking Revenue	<u>21,731.67</u>
Total Program Income	<u>21,731.67</u>
Total Income	<u>24,599.63</u>
Net Ordinary Income	<u>24,599.63</u>
Net Income	<u><u>24,599.63</u></u>