

Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright Nancy.cartwright@outlook.com

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Wed, May 10, 2023, 5:18 PM



harrison_zoning_code_august_2022.pdf 163 KB

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 9:43 AM

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Re: Info Request

From: Linda Dewald hotride7o9@gmail.com

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 11, 2023, 6:49 PM

Thank you Nancy

On Thu, May 11, 2023 at 1:58 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

After our call this morning, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.

Nancy Cartwright
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Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Meeting Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 8:00 AM

Good morning, Dr. Lewis. I was unavailable yesterday, but understand you have submitted a request for information regarding the event I conducted Monday evening at city hall. I have not yet received a copy of your request and do not offer to assume, but I was told it is a request for any training materials. I offer that your request may not provide sufficient information to address your concerns regarding the legal training event and the City's consideration of the pending application by Green Digital. **I am not suggesting a meeting would substitute for response to a valid FOIA request, but hope that I can provide a less formal avenue for you to receive information.**

I can make myself available to meet with you at city hall today. I will give you a call later this morning to check your availability.

Thank you.

Nancy Cartwright

Fwd: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Date: Sun, May 7, 2023, 6:41 PM

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>

Date: May 7, 2023 at 6:21:43 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!

Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM

To: Jason Carter <jason@carterlaw.us>

Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.


Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Info Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 1:58 PM

 HRO GD Legal Meeting info request memo.pdf 1,020 KB
ATT00001.txt <1 KB


After our call this morning, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.

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From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Mon, May 8, 2023, 4:36 PM

 harrison_zoning_code_august_2022.pdf 167 KB
ATT00001.txt <1 KB

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.

FW: Legal Educational Meeting

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Fri, May 5, 2023, 4:37 PM

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>

Sent: Thursday, May 4, 2023 4:47 PM

To: WADE PHILLIPS <wphillips@harrisonar.gov>

Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

Nancy Cartwright

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

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P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
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Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

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Attorney at Law
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harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Bethany Marcum bmarcum@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov

Date: Mon, May 8, 2023, 1:01 PM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisonsdaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be

better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

Re: Education meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Thu, May 4, 2023, 11:12 PM

Ok. If any aren't able- we can set a second meeting for them. Thx

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

On May 4, 2023, at 10:57 PM, Christeen Waters <cwaters@harrisonar.gov> wrote:

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thanks,

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:02 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the

manner they believe best serves the community.

Re: Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Cc: Bethany Marcum bmarcum@harrisonar.gov

Date: Mon, May 8, 2023, 11:03 AM

I need to know. I've put my morning at a halt for this.

Do you want me to make a statement to HDT?

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:44 AM, Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. **Do you want me to make a statement to HDT?**

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Legal Education Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Wade Phillips wphillips@harrisonar.gov,
Luke Feighert cfo@harrisonar.gov

Date: Thu, May 4, 2023, 2:57 PM

All P & Z commissioners

All Council

Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting.

There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879

Mobile 870-715-7988

**2019 Ark. 222
578 S.W.3d 276**

**CITY OF FORT SMITH, a Municipal Corporation; Keith Lau, in
His Official Capacity as a City Director of the City of Fort Smith;
Mike Lorenz, in His Official Capacity as a City Director of the City
of Fort Smith; and Andre Good, in His Official Capacity as a City
Director of the City of Fort Smith, Appellants**

v.

Bruce WADE, Appellee

No. CV-18-351

Supreme Court of Arkansas.

**Opinion Delivered: June 20, 2019
Rehearing Denied August 1, 2019**

Daily & Woods, PLLC, Fort Smith, by: Jerry L. Canfield and Wyman R. Wade, Jr., for appellants.

McCutchen & Sexton, Fort Smith, by: Joey McCutchen, for appellee.

Courtney Hudson Goodson, Associate Justice

Appellants City of Fort Smith and city directors Keith Lau, Mike Lorenz, and Andre Good (the City) appeal the circuit court's order granting appellee Bruce Wade's motion for summary judgment and finding that the City violated the open-meeting provisions of the Arkansas Freedom of Information Act (FOIA) when three of the city directors and the city administrator exchanged emails relating to city business. For reversal, the City argues that (1) emails cannot constitute a meeting because neither the Arkansas General Assembly nor this court has ever expressly stated that a meeting can be constituted by email, and (2) even if email can in some cases constitute a meeting, the content of the emails here was merely background information provided in advance of subsequent public meetings. We reverse and remand.

I. Factual Background

On January 9, 2017, Fort Smith hired Nathaniel Clark as its police chief. Clark was given a mandate to diversify employment in the police department. Fort Smith has established a Civil Service Commission (CSC). Fort Smith's CSC rules require an applicant for sergeant to have served five years on the Fort Smith police force, with additional years of service being required for higher ranking appointments. Clark sought to change CSC rules

to allow for appointment of external candidates to openings for the rank of sergeant and higher.

[578 S.W.3d 278]

A CSC meeting was scheduled for May 22, 2017, to consider Clark's proposed changes. Good sent a May 21, 2017 email to city administrator Carl Geffken and the city directors email group complaining that the Fraternal Order of Police was threatening a no-confidence vote in Clark, and that the chief, not the CSC, needed to make staffing decisions. Good also wrote that if the CSC considered the no-confidence vote, the CSC should be dissolved. The CSC did not adopt any rule changes at its May 22 meeting. Geffken sent a May 22 email to the board stating that the CSC chair was willing to consider "more narrow language to allow external applicants," but that he was not in favor of a "more restrictive policy." Good responded to Geffken's email agreeing that he was not in favor of a more restrictive policy, and Lorenz responded that he agreed "100% with you both!" The day after the CSC meeting, Good sent an email to Geffken sharing his notes and observations of the CSC meeting and stating his opinion that "it is in our best interest to dissolve our Civil Service Commission as quickly as possible."

On May 30, 2017 Geffken sent all the directors an email outlining four possible options in light of the CSC's refusal to change the rules: (1) do nothing, (2) pass a non-binding resolution showing the board's support for external candidates, (3) increase the size of the CSC, or (4) dissolve the CSC. Lorenz responded and suggested that the second option would be a start, but he also wrote that he was not sure he understood the CSC's function and that he believed that the human-resources department could handle CSC issues. Good responded with a May 31 email stating that, essentially, the board of directors should do whatever was necessary to give Clark more freedom to hire external applicants. Good suggested possible dissolution of the CSC. The proposed rule changes were discussed at length at a regular board meeting on June 6, 2017. The board adopted a non-binding resolution to support the changes that Clark sought.

On June 21, Wade filed a complaint against Fort Smith only alleging that the Fort Smith board of directors is bound by the open-meetings provisions of FOIA. Arkansas Code Annotated § 25-19-106 requires that notification of public meetings be given to certain people and entities, including those, like Wade, who request such notice. Wade alleged that the emails from May 21, through May 31, 2017, were "meetings" that violated the open-meeting provisions of FOIA.

Wade's attorney proposed a settlement whereby an agreed order would be entered in which Fort Smith would concede that the May 21-31 emails violated FOIA, and the court would order that future informal meetings, including by email, would not occur without notice when one or more board members make a proposal for board action and either (1) that board member requests support, or (2) one or more board members express support.

On August 9, Geffken emailed the proposed settlement to the board, and Lau emailed his opposition. An hour later, Good emailed his agreement with Lau. Two days later, Lorenz emailed his opposition. The proposed settlement was discussed at a September 12, 2017 public-study meeting, but it was not adopted. Wade amended his complaint to add Lau, Lorenz, and Good as defendants and argued that their responses to Geffken's email constituted an additional FOIA violation.

The parties filed cross-motions for summary judgment. On January 4, 2018, the circuit court granted Wade's motion. The City filed its notice of appeal on January 30. The court allowed Wade to file a motion for attorney's fees and costs. Wade filed an amended bill of costs waiving all

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claims except for \$ 172.50 for filing and summons fees, which the court granted. On February 26, the City filed a second notice of appeal.

II. *Standard of Review*

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, responses to requests for admission, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Cannady v. St. Vincent Infirmary Med. Ctr.*, 2018 Ark. 35, 537 S.W.3d 259. On appeal, this court determines if summary judgment was appropriate based on whether the evidentiary items presented by the moving party leave a material question of fact unanswered. *Id.* This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* We review questions of law de novo. *Miracle Kids Success Acad., Inc. v. Maurras*, 2019 Ark. 146, 573 S.W.3d 533.

III. *Analysis*

A. Email as a Potential Meeting

The City first argues that (1) neither the General Assembly nor this court has ever equated email with FOIA meetings, and (2) the constitutional infirmities created by the circuit court's declarations should be avoided by reversing the circuit court's order. Essentially, the City argues that because FOIA does not include language that a public meeting can be constituted by electronic communication, this court should establish a bright-line rule that FOIA's reach does not extend to email. We disagree.

In relevant part, Arkansas Code Annotated § 25-19-106 provides as follows:

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

Ark. Code Ann. § 25-19-106(a) – (b)(1)(2) (Supp. 2017).

The City acknowledges that we have said that a FOIA meeting may occur even in the absence of an actual gathering of members in the case of a telephone poll or when serial third-party contact is made to obtain approval of action. *See Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004) (holding that one on one meetings, including telephone conversations, between the administrator and city directors to obtain a decision on a property purchase were informal meetings subject to FOIA); *Rehab. Hosp. Servs. Corp. v. Delta-Hills Health Sys. Agency, Inc.*, 285 Ark. 397, 687 S.W.2d 840 (1985) (holding

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that a telephone poll with proper notice may be an acceptable type of open meeting).

The City argues that emails cannot constitute a meeting because the General Assembly amended FOIA by Act 1653 of 2001 to include "electronic or computer-based information" as "public records" pursuant to Arkansas Code Annotated § 25-19-103 but expressed no intention at that time that electronic communications can constitute a public meeting. However, we decided *Harris* after that amendment, and in the fifteen years since the General Assembly has not enacted legislation to change our interpretation that telephone conversations can, in some cases, constitute a meeting. The General Assembly is presumed to be familiar with this court's interpretations of its statutes, and if it disagrees, it can amend these statutes. *Air Evac EMS, Inc. v. US Able Mut. Ins. Co.*, 2017 Ark. 368, 533 S.W.3d 572. FOIA does not include "telephone communications" in its definition of a public meeting, but the General Assembly has not amended the statute post-*Harris*. We do not see any material difference between the use of email exchanges to conduct public business and telephone conversations to conduct public business. For the same reasons, the application of FOIA's public meeting provisions to emails does not present either a separation of power issue or constitutional issue any more than the telephone calls at issue in *Harris*.

We liberally construe FOIA to accomplish its broad and laudable purpose that public business be performed in an open and public manner. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671. We therefore have no difficulty in concluding that FOIA's open-meeting provisions apply to email and other forms of electronic communication between governmental officials just as surely as they apply to in-person or telephonic conversations. It is unrealistic to believe that public business that may be accomplished via telephone could not also be performed via email or any other modern means of electronic communication. Neither this court nor the General Assembly can be expected to list all such communication methods or anticipate others yet to emerge. Exempting electronic communication would allow governmental officials who are so inclined to make decisions in secret, leave the public in the dark, and subvert the purpose of FOIA's open-meeting provisions.

B. Content of the Emails

Although we hold that email communication is subject to FOIA's open-meeting provisions, that does not end our analysis. The City argues that even if email communication can qualify as a meeting, the emails in this instance were only "background information," and "non-decisional" information sharing. In *McCutchen*, the city director provided five of the seven board

members with a copy of a proposed ordinance and recommended its passage. Some board members voluntarily stated their positions to the city director. We stated that

[w]e recognize that Kelly recommended in the memorandum that Board members pass the proposed ordinance and that some Board members voluntarily stated their positions to Kelly, but Kelly did not solicit responses from Board members in the memorandum, and there is no evidence that the issue was discussed or debated prior to the study session. Furthermore, there is no evidence that the Board members exchanged any correspondence about the memorandum. We hold that the circuit court did not err in concluding that Kelly did not violate the open-meetings provision of the FOIA when he presented to

[578 S.W.3d 281]

individual Board members, in advance of a study session, a memorandum expressing his opinion on a proposed ordinance that might come before the Board.

McCutchen , 2012 Ark. 452 at 12, 425 S.W.3d at 679.

This case is analogous to *McCutchen* in that no response was solicited. No board member responded to either Good's May 21 email or his May 23 notes on the CSC meeting. Good and Lorenz responded to Geffken's May 22 email, and only Good and Lorenz responded to Geffken's May 30 email advising the board of its options. No decision was made, and the board discussed the proposed CSC rule change at its June 6, 2017 public meeting.

Likewise, the August emails regarding the settlement proposal show that no decision was made through the use of email. Geffken sent an email to the board with his recommendations on the settlement proposal and received three unsolicited responses. The issue was discussed at a public-study meeting and because no two board members asked for the settlement to be placed on the agenda for action, the settlement was rejected. The facts here are distinguishable from those in *Harris and Rehab Hosp. Servs. Corp.* in that no decision was either sought or made. Rather, like the communication in *McCutchen* , the emails here contain information, a recommendation, and unsolicited responses with no decision. As in *McCutchen* , the communication does not violate the open-meeting provisions set forth in Arkansas Code Annotated § 25-19-106, and we reverse and remand this matter to the circuit court for the entry of an order consistent with this opinion.

Reversed and remanded.

Hart, Wood, Wynne, and Womack, JJ., concur in part and dissent in part.

Josephine Linker Hart, Justice, concurring in part and dissenting in part.

This case involves an email group composed of all seven members of the City of Fort Smith Board of Directors. The email address which disseminates an email to all members of the Fort Smith Board of Directors is BoardofDirectors@fortsmithar.gov. It is not disputed that the email exchanges that underlie this lawsuit concerned proposals for altering or scrapping the city's civil service commission.

In *El Dorado v. El Dorado Broad. Co.*, 260 Ark. 821, 824, 544 S.W.2d 206, 207 (1976), this court defined an "informal meeting" as "any group meeting called by the mayor or any member of the city council at which members of the city council, less in number than a quorum meet for the purpose of discussing or taking any action on any matter on which foreseeable action will be taken by the city council." Furthermore, in *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004), this court held that telephone communication between city officials and board members where official business was discussed could constitute a public meeting. These two cases lead to the inevitable conclusion that communication via the email group are "public meetings" for the purposes of the Arkansas Freedom of Information Act (FOIA).

It is undisputed that the emails were disseminated to all of the Fort Smith Board of Directors and that the purpose of the emails in question were to discuss official city business. Further, there is nothing inherent in email that would distinguish it from the telephone contact in *Harris*. Like a phone call, an email is a nearly instant communication via an electronic medium. The fact that emails can also be considered public records is a red herring. The fact that emails can be archived allow them to

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be both the communication and the record of that communication.

Because the FOIA is remedial legislation, it must be liberally construed to accomplish its purpose. *Eldorado Broad. Co.*, *supra*. The purpose of FOIA is clearly stated in the act itself:

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making

public policy. Toward this end, this chapter is adopted, making it possible for them or their representatives to learn and to report fully the activities of their public officials.

Ark. Code Ann. § 25-19-102. Accordingly, I join the majority in concluding that emails between public officials constitute a "public meeting" as contemplated by FOIA's open-meeting provision.

However, today's majority opinion ultimately fails to advance the clearly stated purpose of the FOIA. In its fact-finding, the majority has adopted a test for determining whether email exchanges constitute a public meeting that will render its conclusion that emails can constitute a public meeting illusory. Perhaps unwittingly, the majority has imposed a requirement that, to constitute a meeting, an email must: (1) directly solicit a response; (2) render a decision; and (3) involve more than three-sevenths of a city's board of directors. Worse still, these determinations will almost certainly require a lawsuit to resolve.

Contrary to the majority's assertions, the case before us is not all analogous to *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671. Whereas the case before us involves an email group, *McCutchen* concerned a delivery of documents, including a draft ordinance to several of Fort Smith's directors. During the delivery of these documents to individual directors, the city administrator discussed the contents of the packet. Importantly, the *McCutchen* court noted

Prior to each meeting, each member of the Board is provided an agenda and informational package of documents containing a briefing report for each item and a draft resolution or ordinance for each item. After delivery to the Board members, the information packets, as public documents, are made available to any member of the press or public who requests a copy. The documents are also available on the City's website.

Accordingly, the information delivered by the city administrator was made available to the public as a matter of course. This included the city administrator's recommendation that the new ordinance be adopted. The holding in *McCutchen* was therefore very limited: the administrator's one-on-one lobbying for the adoption of the ordinance was held not to be a "public meeting."

The *McCutchen* court stated:

We recognize that Kelly [the city administrator] recommended in the memorandum that Board members pass the proposed

ordinance and that some Board members voluntarily stated their positions to Kelly, but Kelly did not solicit responses from Board members in the memorandum, and there is no evidence that the issue was discussed or debated prior to the study session. Furthermore, there is no evidence that the Board members exchanged any correspondence about the memorandum. We hold that the circuit court did not err in concluding that Kelly did not violate the open-meetings provision of the FOIA when he presented to individual Board members, in advance of a study session, a memorandum expressing his opinion on a proposed

[578 S.W.3d 283]

ordinance that might come before the Board.

Again, it is noteworthy that the memorandum was made available to the public through FOIA.

In the case before us, the email group was established to discuss public business, which the directors obviously did. Today's majority opinion denies the electorate in Fort Smith insight into the performance of its elected officials and allows those public officials to make their decisions in secret. Secrecy is poison to democracy. On this point, I respectfully dissent.

Robin F. Wynne, Justice, concurring in part and dissenting in part.

I agree with the majority that FOIA's open-meeting provisions apply to exchanges via e-mail. However, I believe that appellants engaged in a group discussion of public business over email that violated the open-meeting provisions. Accordingly, I respectfully concur in part and dissent in part.

The purpose of FOIA is to ensure that citizens of the State of Arkansas are aware of the activities of their public officials through the requirement that "public business be performed in an open and public manner." Ark. Code Ann. § 25-19-102 (Repl. 2014). To that end, all meetings, formal or informal, of certain public entities, including governing bodies of municipalities, are required to be public. Ark. Code Ann. § 25-19-106(a) (Repl. 2014). We have held that FOIA is to be liberally interpreted to accomplish the purpose of promoting free access to public information. *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

The majority relies on *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671, in reversing the decision of the circuit court. In that case, the city administrator delivered an informational memorandum that expressed

his opinion on a proposed ordinance to five of the seven board members prior to a study session at which the ordinance was to be discussed. The administrator also spoke individually with the members about the ordinance. We held that the activities of the city director did not violate the open-meeting provision of FOIA. However, the holding rested on the fact that there was no evidence that the issue was discussed or debated by the board members prior to the study session, nor was there any evidence that the board members exchanged correspondence about the memorandum.

Here, in contrast, Board members actively lobbied for specific action on business before the Board in emails that were sent to every Board member. The discussion by the Board members in a nonpublic forum makes this case clearly distinguishable from *McCutchen*. The fact that the responses by certain members were not solicited by the city administrator is immaterial. FOIA applies to the discussion of government business by a municipal governing body. See *Mayor & City Council of El Dorado v. El Dorado Broad. Co.*, 260 Ark. 821, 824, 544 S.W.2d 206, 207 (1976) ("We can think of no reason for [FOIA] specifying its applicability to informal meetings of governmental bodies unless it was intended to cover informal but unofficial group meetings for the discussion of governmental business as distinguished from those contacts by the individual members that occur in the daily lives of every public official."). Because the Board discussed public business in a nonpublic forum, the majority is mistaken in reversing the decision of the circuit court.

For these reasons, I concur in part and dissent in part.

Shawn A. Womack, Justice, concurring in part and dissenting in part.

I agree with the majority that, based on the facts specific to this case, the emails

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exchanged here clearly do not establish a meeting for the purposes of the FOIA. However, I believe that the majority goes further than is necessary to decide this case by judicially expanding the legislatively adopted definitions in the FOIA.

The General Assembly has adopted a broad definition of "public records" that unquestionably encompasses emails as public records. Ark. Code Ann. § 25-19-103(7)(A). However, the definition of "public meetings" in the FOIA does not provide the same affirmative textual clarity to support a definitive conclusion that emails can constitute a public meeting, as the majority has held here. Ark. Code Ann. §§ 25-19-103(6) and 25-19-106.

The majority concedes that the FOIA does not include email communications in its definition of a public meeting. Further, the General Assembly has had the opportunity to amend the definition of a public meeting to include email communication and it has not done so. While there may very well be legitimate policy reasons to include emails and other electronic communications in the public meeting definition as technology advances, our role as judges is to determine what the law is, not what the law should be. For this reason, I concur in part and dissent in part.

Wood, J., joins.

Re: More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 10:39 AM

Thank you.

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

> On May 8, 2023, at 10:33 AM, Jason Carter <jason@carterlaw.us> wrote:

>

> There is no "secret" meeting. You have scheduled legal training for select city officials that is not open to the public. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although you are offering the training session for the invited officials who wish to attend, attendance is not mandatory.

>

> Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

>

>

> -----Original Message-----

> From: Nancy Cartwright <ncartwright@harrisonar.gov>

> Sent: Monday, May 8, 2023 9:43 AM

> To: Jason Carter <jason@carterlaw.us>

> Subject: More

>

> Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

>

> Nancy Cartwright

> City Attorney

> P.O. Box 1715

> Harrison, AR 72602-1715

> Tel 870-517-5879

> Mobile 870-715-7988

>

Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright Nancy.cartwright@outlook.com

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Wed, May 10, 2023, 5:18 PM



harrison_zoning_code_august_2022.pdf 163 KB

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

Re: Questions — City of Harrison

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Sun, May 7, 2023, 8:39 PM

Will do.

On Sun, May 7, 2023 at 8:18 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Please give me an early heads up if you decide to cancel the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 7, 2023, at 7:53 PM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright
<ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879

Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>
Date: May 7, 2023 at 6:21:43 PM CDT
To: Nancy Cartwright <ncartwright@harrisonar.gov>
Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019).

Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training.

(3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM
To: Jason Carter <jason@carterlaw.us>
Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney

P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



Re: Info Request

From: Linda Dewald hotride7o9@gmail.com

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 11, 2023, 6:49 PM

Thank you Nancy

On Thu, May 11, 2023 at 1:58 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

After our call this morning, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.


Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Fwd:

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Tue, May 9, 2023, 4:55 PM

 text_0.txt <1 KB

----- Forwarded message -----

From: **Jerry Jackson** <mayor@harrisonar.gov>

Date: Tue, May 9, 2023 at 3:36 PM

Subject: Fwd:

To: Christeen Waters <hr@harrisonar.gov>

Please send to Nancy

----- Forwarded message -----

From: <8703916841@vzwpix.com>

Date: Tue, May 9, 2023 at 3:22 PM

Subject:

To: <8704161099@vzwpix.com>, <8707544073@vzwpix.com>, <mayor@harrisonar.gov>

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Fwd: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Date: Sun, May 7, 2023, 6:41 PM

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Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

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Date: May 7, 2023 at 6:21:43 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: RE: Questions — City of Harrison

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Hang in there!

Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM

To: Jason Carter <jason@carterlaw.us>

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Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

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WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.


1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

harrison_zoning_code_august_2022

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Mon, May 8, 2023, 4:36 PM

 harrison_zoning_code_august_2022.pdf 167 KB

ATT00001.txt <1 KB

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.

Re: Education meeting

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Fri, May 5, 2023, 10:20 AM

I will try and get a good count for Monday's meeting. And try to get a count on who needs a different session.

On Thu, May 4, 2023 at 11:12 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Ok. If any aren't able- we can set a second meeting for them. Thx

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

On May 4, 2023, at 10:57 PM, Christeen Waters <cwaters@harrisonar.gov> wrote:

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715

Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--
Thanks,
Christeen Waters

--
Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
 4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
 5. **Planning Commission Action.**
 - (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
 - (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.
- C. Standards for Approval.** In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.
1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
 2. The proposed land use shall be compatible with other area properties located near it.
 3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
 4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
 5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
 6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
 7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
 8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
 9. Open space located on the proposed use shall be maintained by the owner/developer.
 10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
 11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
 12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.
- D. Amendments.** Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

From: Nancy Cartwright ncartwright@harrisonar.gov

To: jayc@harrisondaily.com

Date: Mon, May 8, 2023, 11:40 AM

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

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Re: Education meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Thu, May 4, 2023, 11:12 PM

Ok. If any aren't able- we can set a second meeting for them. Thx

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

On May 4, 2023, at 10:57 PM, Christeen Waters <cwaters@harrisonar.gov> wrote:

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thanks,

Fwd: Legal Educational Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:01 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Wade Phillips <wphillips@harrisonar.gov>

Date: May 5, 2023 at 4:37:16 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: FW: Legal Educational Meeting

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>

Sent: Thursday, May 4, 2023 4:47 PM

To: WADE PHILLIPS <wphillips@harrisonar.gov>

Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Re: Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Cc: Bethany Marcum bmarcum@harrisonar.gov

Date: Mon, May 8, 2023, 11:03 AM

I need to know. I've put my morning at a halt for this.

Do you want me to make a statement to HDT?

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:44 AM, Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. **Do you want me to make a statement to HDT?**

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



**2019 Ark. 222
578 S.W.3d 276**

**CITY OF FORT SMITH, a Municipal Corporation; Keith Lau, in
His Official Capacity as a City Director of the City of Fort Smith;
Mike Lorenz, in His Official Capacity as a City Director of the City
of Fort Smith; and Andre Good, in His Official Capacity as a City
Director of the City of Fort Smith, Appellants**

v.

Bruce WADE, Appellee

No. CV-18-351

Supreme Court of Arkansas.

**Opinion Delivered: June 20, 2019
Rehearing Denied August 1, 2019**

Daily & Woods, PLLC, Fort Smith, by: Jerry L. Canfield and Wyman R. Wade, Jr., for appellants.

McCutchen & Sexton, Fort Smith, by: Joey McCutchen, for appellee.

Courtney Hudson Goodson, Associate Justice

Appellants City of Fort Smith and city directors Keith Lau, Mike Lorenz, and Andre Good (the City) appeal the circuit court's order granting appellee Bruce Wade's motion for summary judgment and finding that the City violated the open-meeting provisions of the Arkansas Freedom of Information Act (FOIA) when three of the city directors and the city administrator exchanged emails relating to city business. For reversal, the City argues that (1) emails cannot constitute a meeting because neither the Arkansas General Assembly nor this court has ever expressly stated that a meeting can be constituted by email, and (2) even if email can in some cases constitute a meeting, the content of the emails here was merely background information provided in advance of subsequent public meetings. We reverse and remand.

I. Factual Background

On January 9, 2017, Fort Smith hired Nathaniel Clark as its police chief. Clark was given a mandate to diversify employment in the police department. Fort Smith has established a Civil Service Commission (CSC). Fort Smith's CSC rules require an applicant for sergeant to have served five years on the Fort Smith police force, with additional years of service being required for higher ranking appointments. Clark sought to change CSC rules

to allow for appointment of external candidates to openings for the rank of sergeant and higher.

[578 S.W.3d 278]

A CSC meeting was scheduled for May 22, 2017, to consider Clark's proposed changes. Good sent a May 21, 2017 email to city administrator Carl Geffken and the city directors email group complaining that the Fraternal Order of Police was threatening a no-confidence vote in Clark, and that the chief, not the CSC, needed to make staffing decisions. Good also wrote that if the CSC considered the no-confidence vote, the CSC should be dissolved. The CSC did not adopt any rule changes at its May 22 meeting. Geffken sent a May 22 email to the board stating that the CSC chair was willing to consider "more narrow language to allow external applicants," but that he was not in favor of a "more restrictive policy." Good responded to Geffken's email agreeing that he was not in favor of a more restrictive policy, and Lorenz responded that he agreed "100% with you both!" The day after the CSC meeting, Good sent an email to Geffken sharing his notes and observations of the CSC meeting and stating his opinion that "it is in our best interest to dissolve our Civil Service Commission as quickly as possible."

On May 30, 2017 Geffken sent all the directors an email outlining four possible options in light of the CSC's refusal to change the rules: (1) do nothing, (2) pass a non-binding resolution showing the board's support for external candidates, (3) increase the size of the CSC, or (4) dissolve the CSC. Lorenz responded and suggested that the second option would be a start, but he also wrote that he was not sure he understood the CSC's function and that he believed that the human-resources department could handle CSC issues. Good responded with a May 31 email stating that, essentially, the board of directors should do whatever was necessary to give Clark more freedom to hire external applicants. Good suggested possible dissolution of the CSC. The proposed rule changes were discussed at length at a regular board meeting on June 6, 2017. The board adopted a non-binding resolution to support the changes that Clark sought.

On June 21, Wade filed a complaint against Fort Smith only alleging that the Fort Smith board of directors is bound by the open-meetings provisions of FOIA. Arkansas Code Annotated § 25-19-106 requires that notification of public meetings be given to certain people and entities, including those, like Wade, who request such notice. Wade alleged that the emails from May 21, through May 31, 2017, were "meetings" that violated the open-meeting provisions of FOIA.

Wade's attorney proposed a settlement whereby an agreed order would be entered in which Fort Smith would concede that the May 21-31 emails violated FOIA, and the court would order that future informal meetings, including by email, would not occur without notice when one or more board members make a proposal for board action and either (1) that board member requests support, or (2) one or more board members express support.

On August 9, Geffken emailed the proposed settlement to the board, and Lau emailed his opposition. An hour later, Good emailed his agreement with Lau. Two days later, Lorenz emailed his opposition. The proposed settlement was discussed at a September 12, 2017 public-study meeting, but it was not adopted. Wade amended his complaint to add Lau, Lorenz, and Good as defendants and argued that their responses to Geffken's email constituted an additional FOIA violation.

The parties filed cross-motions for summary judgment. On January 4, 2018, the circuit court granted Wade's motion. The City filed its notice of appeal on January 30. The court allowed Wade to file a motion for attorney's fees and costs. Wade filed an amended bill of costs waiving all

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claims except for \$ 172.50 for filing and summons fees, which the court granted. On February 26, the City filed a second notice of appeal.

II. *Standard of Review*

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, responses to requests for admission, and affidavits show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Cannady v. St. Vincent Infirmary Med. Ctr.*, 2018 Ark. 35, 537 S.W.3d 259. On appeal, this court determines if summary judgment was appropriate based on whether the evidentiary items presented by the moving party leave a material question of fact unanswered. *Id.* This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.* We review questions of law de novo. *Miracle Kids Success Acad., Inc. v. Maurras*, 2019 Ark. 146, 573 S.W.3d 533.

III. *Analysis*

A. Email as a Potential Meeting

The City first argues that (1) neither the General Assembly nor this court has ever equated email with FOIA meetings, and (2) the constitutional infirmities created by the circuit court's declarations should be avoided by reversing the circuit court's order. Essentially, the City argues that because FOIA does not include language that a public meeting can be constituted by electronic communication, this court should establish a bright-line rule that FOIA's reach does not extend to email. We disagree.

In relevant part, Arkansas Code Annotated § 25-19-106 provides as follows:

(a) Except as otherwise specifically provided by law, all meetings, formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and school districts and all boards, bureaus, commissions, or organizations of the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds, shall be public meetings.

(b)(1) The time and place of each regular meeting shall be furnished to anyone who requests the information.

(2) In the event of emergency or special meetings, the person calling the meeting shall notify the representatives of the newspapers, radio stations, and television stations, if any, located in the county in which the meeting is to be held and any news media located elsewhere that cover regular meetings of the governing body and that have requested to be so notified of emergency or special meetings of the time, place, and date of the meeting. Notification shall be made at least two (2) hours before the meeting takes place in order that the public shall have representatives at the meeting.

Ark. Code Ann. § 25-19-106(a) – (b)(1)(2) (Supp. 2017).

The City acknowledges that we have said that a FOIA meeting may occur even in the absence of an actual gathering of members in the case of a telephone poll or when serial third-party contact is made to obtain approval of action. *See Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004) (holding that one on one meetings, including telephone conversations, between the administrator and city directors to obtain a decision on a property purchase were informal meetings subject to FOIA); *Rehab. Hosp. Servs. Corp. v. Delta-Hills Health Sys. Agency, Inc.*, 285 Ark. 397, 687 S.W.2d 840 (1985) (holding

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that a telephone poll with proper notice may be an acceptable type of open meeting).

The City argues that emails cannot constitute a meeting because the General Assembly amended FOIA by Act 1653 of 2001 to include "electronic or computer-based information" as "public records" pursuant to Arkansas Code Annotated § 25-19-103 but expressed no intention at that time that electronic communications can constitute a public meeting. However, we decided *Harris* after that amendment, and in the fifteen years since the General Assembly has not enacted legislation to change our interpretation that telephone conversations can, in some cases, constitute a meeting. The General Assembly is presumed to be familiar with this court's interpretations of its statutes, and if it disagrees, it can amend these statutes. *Air Evac EMS, Inc. v. US Able Mut. Ins. Co.*, 2017 Ark. 368, 533 S.W.3d 572. FOIA does not include "telephone communications" in its definition of a public meeting, but the General Assembly has not amended the statute post-*Harris*. We do not see any material difference between the use of email exchanges to conduct public business and telephone conversations to conduct public business. For the same reasons, the application of FOIA's public meeting provisions to emails does not present either a separation of power issue or constitutional issue any more than the telephone calls at issue in *Harris*.

We liberally construe FOIA to accomplish its broad and laudable purpose that public business be performed in an open and public manner. *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671. We therefore have no difficulty in concluding that FOIA's open-meeting provisions apply to email and other forms of electronic communication between governmental officials just as surely as they apply to in-person or telephonic conversations. It is unrealistic to believe that public business that may be accomplished via telephone could not also be performed via email or any other modern means of electronic communication. Neither this court nor the General Assembly can be expected to list all such communication methods or anticipate others yet to emerge. Exempting electronic communication would allow governmental officials who are so inclined to make decisions in secret, leave the public in the dark, and subvert the purpose of FOIA's open-meeting provisions.

B. Content of the Emails

Although we hold that email communication is subject to FOIA's open-meeting provisions, that does not end our analysis. The City argues that even if email communication can qualify as a meeting, the emails in this instance were only "background information," and "non-decisional" information sharing. In *McCutchen*, the city director provided five of the seven board

members with a copy of a proposed ordinance and recommended its passage. Some board members voluntarily stated their positions to the city director. We stated that

[w]e recognize that Kelly recommended in the memorandum that Board members pass the proposed ordinance and that some Board members voluntarily stated their positions to Kelly, but Kelly did not solicit responses from Board members in the memorandum, and there is no evidence that the issue was discussed or debated prior to the study session. Furthermore, there is no evidence that the Board members exchanged any correspondence about the memorandum. We hold that the circuit court did not err in concluding that Kelly did not violate the open-meetings provision of the FOIA when he presented to

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individual Board members, in advance of a study session, a memorandum expressing his opinion on a proposed ordinance that might come before the Board.

McCutchen , 2012 Ark. 452 at 12, 425 S.W.3d at 679.

This case is analogous to *McCutchen* in that no response was solicited. No board member responded to either Good's May 21 email or his May 23 notes on the CSC meeting. Good and Lorenz responded to Geffken's May 22 email, and only Good and Lorenz responded to Geffken's May 30 email advising the board of its options. No decision was made, and the board discussed the proposed CSC rule change at its June 6, 2017 public meeting.

Likewise, the August emails regarding the settlement proposal show that no decision was made through the use of email. Geffken sent an email to the board with his recommendations on the settlement proposal and received three unsolicited responses. The issue was discussed at a public-study meeting and because no two board members asked for the settlement to be placed on the agenda for action, the settlement was rejected. The facts here are distinguishable from those in *Harris and Rehab Hosp. Servs. Corp.* in that no decision was either sought or made. Rather, like the communication in *McCutchen* , the emails here contain information, a recommendation, and unsolicited responses with no decision. As in *McCutchen* , the communication does not violate the open-meeting provisions set forth in Arkansas Code Annotated § 25-19-106, and we reverse and remand this matter to the circuit court for the entry of an order consistent with this opinion.

Reversed and remanded.

Hart, Wood, Wynne, and Womack, JJ., concur in part and dissent in part.

Josephine Linker Hart, Justice, concurring in part and dissenting in part.

This case involves an email group composed of all seven members of the City of Fort Smith Board of Directors. The email address which disseminates an email to all members of the Fort Smith Board of Directors is BoardofDirectors@fortsmithar.gov. It is not disputed that the email exchanges that underlie this lawsuit concerned proposals for altering or scrapping the city's civil service commission.

In *El Dorado v. El Dorado Broad. Co.*, 260 Ark. 821, 824, 544 S.W.2d 206, 207 (1976), this court defined an "informal meeting" as "any group meeting called by the mayor or any member of the city council at which members of the city council, less in number than a quorum meet for the purpose of discussing or taking any action on any matter on which foreseeable action will be taken by the city council." Furthermore, in *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004), this court held that telephone communication between city officials and board members where official business was discussed could constitute a public meeting. These two cases lead to the inevitable conclusion that communication via the email group are "public meetings" for the purposes of the Arkansas Freedom of Information Act (FOIA).

It is undisputed that the emails were disseminated to all of the Fort Smith Board of Directors and that the purpose of the emails in question were to discuss official city business. Further, there is nothing inherent in email that would distinguish it from the telephone contact in *Harris*. Like a phone call, an email is a nearly instant communication via an electronic medium. The fact that emails can also be considered public records is a red herring. The fact that emails can be archived allow them to

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be both the communication and the record of that communication.

Because the FOIA is remedial legislation, it must be liberally construed to accomplish its purpose. *Eldorado Broad. Co.*, *supra*. The purpose of FOIA is clearly stated in the act itself:

It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making

public policy. Toward this end, this chapter is adopted, making it possible for them or their representatives to learn and to report fully the activities of their public officials.

Ark. Code Ann. § 25-19-102. Accordingly, I join the majority in concluding that emails between public officials constitute a "public meeting" as contemplated by FOIA's open-meeting provision.

However, today's majority opinion ultimately fails to advance the clearly stated purpose of the FOIA. In its fact-finding, the majority has adopted a test for determining whether email exchanges constitute a public meeting that will render its conclusion that emails can constitute a public meeting illusory. Perhaps unwittingly, the majority has imposed a requirement that, to constitute a meeting, an email must: (1) directly solicit a response; (2) render a decision; and (3) involve more than three-sevenths of a city's board of directors. Worse still, these determinations will almost certainly require a lawsuit to resolve.

Contrary to the majority's assertions, the case before us is not all analogous to *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671. Whereas the case before us involves an email group, *McCutchen* concerned a delivery of documents, including a draft ordinance to several of Fort Smith's directors. During the delivery of these documents to individual directors, the city administrator discussed the contents of the packet. Importantly, the *McCutchen* court noted

Prior to each meeting, each member of the Board is provided an agenda and informational package of documents containing a briefing report for each item and a draft resolution or ordinance for each item. After delivery to the Board members, the information packets, as public documents, are made available to any member of the press or public who requests a copy. The documents are also available on the City's website.

Accordingly, the information delivered by the city administrator was made available to the public as a matter of course. This included the city administrator's recommendation that the new ordinance be adopted. The holding in *McCutchen* was therefore very limited: the administrator's one-on-one lobbying for the adoption of the ordinance was held not to be a "public meeting."

The *McCutchen* court stated:

We recognize that Kelly [the city administrator] recommended in the memorandum that Board members pass the proposed

ordinance and that some Board members voluntarily stated their positions to Kelly, but Kelly did not solicit responses from Board members in the memorandum, and there is no evidence that the issue was discussed or debated prior to the study session. Furthermore, there is no evidence that the Board members exchanged any correspondence about the memorandum. We hold that the circuit court did not err in concluding that Kelly did not violate the open-meetings provision of the FOIA when he presented to individual Board members, in advance of a study session, a memorandum expressing his opinion on a proposed

[578 S.W.3d 283]

ordinance that might come before the Board.

Again, it is noteworthy that the memorandum was made available to the public through FOIA.

In the case before us, the email group was established to discuss public business, which the directors obviously did. Today's majority opinion denies the electorate in Fort Smith insight into the performance of its elected officials and allows those public officials to make their decisions in secret. Secrecy is poison to democracy. On this point, I respectfully dissent.

Robin F. Wynne, Justice, concurring in part and dissenting in part.

I agree with the majority that FOIA's open-meeting provisions apply to exchanges via e-mail. However, I believe that appellants engaged in a group discussion of public business over email that violated the open-meeting provisions. Accordingly, I respectfully concur in part and dissent in part.

The purpose of FOIA is to ensure that citizens of the State of Arkansas are aware of the activities of their public officials through the requirement that "public business be performed in an open and public manner." Ark. Code Ann. § 25-19-102 (Repl. 2014). To that end, all meetings, formal or informal, of certain public entities, including governing bodies of municipalities, are required to be public. Ark. Code Ann. § 25-19-106(a) (Repl. 2014). We have held that FOIA is to be liberally interpreted to accomplish the purpose of promoting free access to public information. *Harris v. City of Fort Smith*, 359 Ark. 355, 197 S.W.3d 461 (2004).

The majority relies on *McCutchen v. City of Fort Smith*, 2012 Ark. 452, 425 S.W.3d 671, in reversing the decision of the circuit court. In that case, the city administrator delivered an informational memorandum that expressed

his opinion on a proposed ordinance to five of the seven board members prior to a study session at which the ordinance was to be discussed. The administrator also spoke individually with the members about the ordinance. We held that the activities of the city director did not violate the open-meeting provision of FOIA. However, the holding rested on the fact that there was no evidence that the issue was discussed or debated by the board members prior to the study session, nor was there any evidence that the board members exchanged correspondence about the memorandum.

Here, in contrast, Board members actively lobbied for specific action on business before the Board in emails that were sent to every Board member. The discussion by the Board members in a nonpublic forum makes this case clearly distinguishable from *McCutchen* . The fact that the responses by certain members were not solicited by the city administrator is immaterial. FOIA applies to the discussion of government business by a municipal governing body. *See Mayor & City Council of El Dorado v. El Dorado Broad. Co.* , 260 Ark. 821, 824, 544 S.W.2d 206, 207 (1976) ("We can think of no reason for [FOIA] specifying its applicability to informal meetings of governmental bodies unless it was intended to cover informal but unofficial group meetings for the discussion of governmental business as distinguished from those contacts by the individual members that occur in the daily lives of every public official."). Because the Board discussed public business in a nonpublic forum, the majority is mistaken in reversing the decision of the circuit court.

For these reasons, I concur in part and dissent in part.

Shawn A. Womack, Justice, concurring in part and dissenting in part.

I agree with the majority that, based on the facts specific to this case, the emails

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exchanged here clearly do not establish a meeting for the purposes of the FOIA. However, I believe that the majority goes further than is necessary to decide this case by judicially expanding the legislatively adopted definitions in the FOIA.

The General Assembly has adopted a broad definition of "public records" that unquestionably encompasses emails as public records. Ark. Code Ann. § 25-19-103(7)(A). However, the definition of "public meetings" in the FOIA does not provide the same affirmative textual clarity to support a definitive conclusion that emails can constitute a public meeting, as the majority has held here. Ark. Code Ann. §§ 25-19-103(6) and 25-19-106.

The majority concedes that the FOIA does not include email communications in its definition of a public meeting. Further, the General Assembly has had the opportunity to amend the definition of a public meeting to include email communication and it has not done so. While there may very well be legitimate policy reasons to include emails and other electronic communications in the public meeting definition as technology advances, our role as judges is to determine what the law is, not what the law should be. For this reason, I concur in part and dissent in part.

Wood, J., joins.

RE: More

From: Jason Carter jason@carterlaw.us

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 10:33 AM

There is no "secret" meeting. You have scheduled legal training for select city officials that is not open to the public. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although you are offering the training session for the invited officials who wish to attend, attendance is not mandatory.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Monday, May 8, 2023 9:43 AM

To: Jason Carter <jason@carterlaw.us>

Subject: More

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879


Mobile 870-715-7988

Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 1:12 PM

 [harrison_zoning_code_august_2022.pdf](#) 167 KB
[ATT00001.htm](#) <1 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 4:36:20 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: **harrison_zoning_code_august_2022**

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.

Re: Questions — City of Harrison

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Sun, May 7, 2023, 8:39 PM

Will do.

On Sun, May 7, 2023 at 8:18 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Please give me an early heads up if you decide to cancel the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 7, 2023, at 7:53 PM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright
<ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879

Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>
Date: May 7, 2023 at 6:21:43 PM CDT
To: Nancy Cartwright <ncartwright@harrisonar.gov>
Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019).

Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training.

(3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM
To: Jason Carter <jason@carterlaw.us>
Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney

P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



Information request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Cc: Jerry Jackson mayor@harrisonar.gov

Date: Thu, May 11, 2023, 2:04 PM



HRO GD Legal Meeting info request memo.pdf 1,020 KB

After our call, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879


Mobile 870-715-7988

Fwd:

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Tue, May 9, 2023, 4:55 PM

 text_0.txt <1 KB

----- Forwarded message -----

From: **Jerry Jackson** <mayor@harrisonar.gov>

Date: Tue, May 9, 2023 at 3:36 PM

Subject: Fwd:

To: Christeen Waters <hr@harrisonar.gov>

Please send to Nancy

----- Forwarded message -----

From: <8703916841@vzwpix.com>

Date: Tue, May 9, 2023 at 3:22 PM

Subject:

To: <8704161099@vzwpix.com>, <8707544073@vzwpix.com>, <mayor@harrisonar.gov>

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Re: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Sun, May 7, 2023, 6:37 PM

Thank you so much. I have already made the "rules" for the meeting during the invite email and I will reiterate on the display and verbally at the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

> On May 7, 2023, at 6:21 PM, Jason Carter <jason@carterlaw.us> wrote:

>

> Nancy,

>

> You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

>

> A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

>

> Hang in there!

> Jason

>

> -----Original Message-----

> From: Nancy Cartwright <ncartwright@harrisonar.gov>

> Sent: Sunday, May 7, 2023 3:18 PM

> To: Jason Carter <jason@carterlaw.us>

> Subject: Questions — City of Harrison

>

> After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

>

> Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

>

> I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

>

> Again, many thanks.

>

- > Nancy Cartwright
- > City Attorney
- > P.O. Box 1715
- > Harrison, AR 72602-1715
- > Tel 870-517-5879
- > Mobile 870-715-7988
- >

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

Nancy Cartwright

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

Re: Education meeting

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Fri, May 5, 2023, 10:20 AM

I will try and get a good count for Monday's meeting. And try to get a count on who needs a different session.

On Thu, May 4, 2023 at 11:12 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Ok. If any aren't able- we can set a second meeting for them. Thx

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

On May 4, 2023, at 10:57 PM, Christeen Waters <cwaters@harrisonar.gov> wrote:

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715

Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--
Thanks,
Christeen Waters

--
Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
 4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
 5. **Planning Commission Action.**
 - (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
 - (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.
- C. Standards for Approval.** In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.
1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
 2. The proposed land use shall be compatible with other area properties located near it.
 3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
 4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
 5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
 6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
 7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
 8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
 9. Open space located on the proposed use shall be maintained by the owner/developer.
 10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
 11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
 12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.
- D. Amendments.** Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

From: Nancy Cartwright ncartwright@harrisonar.gov

To: jayc@harrisondaily.com

Date: Mon, May 8, 2023, 11:40 AM

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

Re: Education meeting

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 4, 2023, 10:57 PM

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thanks,
Christeen Waters

Fwd: Legal Educational Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:01 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Wade Phillips <wphillips@harrisonar.gov>

Date: May 5, 2023 at 4:37:16 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: FW: Legal Educational Meeting

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>

Sent: Thursday, May 4, 2023 4:47 PM

To: WADE PHILLIPS <wphillips@harrisonar.gov>

Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

RE: Meeting

From: Bethany Marcum bmarcum@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Nancy Cartwright
ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 10:48 AM

I'm not seeing anything on social media that would warrant a statement. I do believe that posting a from our website would just give fuel to a fire that no one is aware of.



Bethany Marcum

Human Resources and
Communications Manager
City of Harrison, Arkansas

Phone: 870-204-5498

Email

bmarcum@harrisonar.gov

PO Box 1715, Harrison, AR
72602

From: Jerry Jackson <mayor@harrisonar.gov>

Sent: Monday, May 8, 2023 10:23 AM

To: Nancy Cartwright <ncartwright@harrisonar.gov>; Bethany Marcum
<bmarcum@harrisonar.gov>

Subject: Meeting

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor
[City of Harrison, Arkansas](#)
O: 870-741-2777
E: **mayor@harrisonar.gov**




Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 5:23 PM

 [harrison_zoning_code_august_2022.pdf](#) 163 KB
[ATT00001.htm](#) <1 KB

As I mentioned there were two emails with the training materials I sent to Christeen to print for the training. All contents are from the zoning code. I sent you the first email earlier during our call and have now located the second. Because I sent it to her from my phone, it defaulted and sent from my outlook email. Copy attached for you.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 10, 2023 at 5:18:50 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: **Fwd: harrison_zoning_code_august_2022**

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

RE: More

From: Jason Carter jason@carterlaw.us

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 10:33 AM

There is no "secret" meeting. You have scheduled legal training for select city officials that is not open to the public. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although you are offering the training session for the invited officials who wish to attend, attendance is not mandatory.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Monday, May 8, 2023 9:43 AM

To: Jason Carter <jason@carterlaw.us>

Subject: More

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879


Mobile 870-715-7988

Fwd: FOI Request - Metting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jeff Pratt cityclerk@harrisonar.gov

Date: Mon, May 15, 2023, 11:30 AM

 25-19-106 Open Meetings.docx 17 KB
ATT00001.htm <1 KB

Heads up. I will get you my stuff late today.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jimmie Cavin <jimmie.cavin@yahoo.com>

Date: May 15, 2023 at 11:13:43 AM CDT

To: mayor@harrisonar.gov, jjackson@harrisonar.gov

Cc: ncartwright@harrisonar.gov

Subject: FOI Request - Metting

Hey Jerry 😊

Under the Arkansas Freedom of Information Act I request in electronic form via email the following pertaining to all meetings of the City Council and Planning Commission held on May 8th 2023 -

1. All notices required under AR Code 25-19-106
2. All audio / video required under AR Code 25-19-106

3. All email communications

I have attached AR Code 25-19-106 for your reference.

Please acknowledge receipt of this request.

Thank You !


Jimmie Cavin
501-412-9520

Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 1:12 PM

 [harrison_zoning_code_august_2022.pdf](#) 167 KB
[ATT00001.htm](#) <1 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 4:36:20 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: **harrison_zoning_code_august_2022**

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.

Re: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Date: Sun, May 7, 2023, 8:17 PM

Please give me an early heads up if you decide to cancel the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 7, 2023, at 7:53 PM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>
Date: May 7, 2023 at 6:21:43 PM CDT
To: Nancy Cartwright <ncartwright@harrisonar.gov>
Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>
Sent: Sunday, May 7, 2023 3:18 PM
To: Jason Carter <jason@carterlaw.us>
Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Information request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Cc: Jerry Jackson mayor@harrisonar.gov

Date: Thu, May 11, 2023, 2:04 PM



HRO GD Legal Meeting info request memo.pdf 1,020 KB

After our call, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879

Mobile 870-715-7988

Re: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Sun, May 7, 2023, 6:37 PM

Thank you so much. I have already made the "rules" for the meeting during the invite email and I will reiterate on the display and verbally at the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

> On May 7, 2023, at 6:21 PM, Jason Carter <jason@carterlaw.us> wrote:

>

> Nancy,

>

> You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

>

> A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

>

> Hang in there!

> Jason

>

> -----Original Message-----

> From: Nancy Cartwright <ncartwright@harrisonar.gov>

> Sent: Sunday, May 7, 2023 3:18 PM

> To: Jason Carter <jason@carterlaw.us>

> Subject: Questions — City of Harrison

>

> After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

>

> Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

>

> I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

>

> Again, many thanks.

>

- > Nancy Cartwright
 - > City Attorney
 - > P.O. Box 1715
 - > Harrison, AR 72602-1715
 - > Tel 870-517-5879
 - > Mobile 870-715-7988
 - >
-

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
 4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
 5. **Planning Commission Action.**
 - (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
 - (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.
- C. Standards for Approval.** In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.
1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
 2. The proposed land use shall be compatible with other area properties located near it.
 3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
 4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
 5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
 6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
 7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
 8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
 9. Open space located on the proposed use shall be maintained by the owner/developer.
 10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
 11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
 12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.
- D. Amendments.** Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

RE: Green Digital CUP Application - Conditions Memo 05-04-2023

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov

Date: Fri, May 5, 2023, 9:03 AM

That works for me. Some of the answers and info provided could possibly modify the conditions so it will be good to review that before sending anything else.

Also, if anyone can think of any other conditions to proposed...let me know.

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Friday, May 5, 2023 8:28 AM

To: Wade Phillips <wphillips@harrisonar.gov>

Cc: Jerry Jackson <mayor@harrisonar.gov>; Luke Feighert <cfo@harrisonar.gov>

Subject: Re: Green Digital CUP Application - Conditions Memo 05-04-2023

Thank you for this! I had a conference with Attorney Stacks late yesterday afternoon. He has a phone call with his clients today and hopes to get me the documents and answers requested today or Monday. After we have reviewed the received

information, I suggest is the right time to send this proposal. Please let me know if this timeline works for you.

The legal education meeting is set for Monday at 5:30PM.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 4, 2023, at 1:09 PM, Wade Phillips <wphillips@harrisonar.gov> wrote:

A draft of requested conditions for a conditional use permit is attached.
<Green Digital CUP Application - Conditions Memo 05-04-2023.pdf>

Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

Re: Meeting

From: Jerry Jackson mayor@harrisonar.gov
To: Bethany Marcum bmarcum@harrisonar.gov
Cc: Nancy Cartwright ncartwright@harrisonar.gov
Date: Mon, May 8, 2023, 11:07 AM

I really think we should also post a statement before the training meeting

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



On Mon, May 8, 2023 at 10:48 AM Bethany Marcum <bmarcum@harrisonar.gov> wrote:

I'm not seeing anything on social media that would warrant a statement. I do believe that posting a from our website would just give fuel to a fire that no one is aware of.



Bethany Marcum

Human Resources and
Communications Manager

City of Harrison, Arkansas

Phone: 870-204-5498

Email

bmarcum@harrisonar.gov

PO Box 1715, Harrison, AR
72602

From: Jerry Jackson <mayor@harrisonar.gov>

Sent: Monday, May 8, 2023 10:23 AM

To: Nancy Cartwright <ncartwright@harrisonar.gov>; Bethany Marcum
<bmarcum@harrisonar.gov>

Subject: Meeting

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Re: Education meeting

From: Christeen Waters cwaters@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 4, 2023, 10:57 PM

Yes, Jerry chose to have it on Monday, May 8 from 5:30-6:30. All have been notified.

On Thu, May 4, 2023 at 10:54 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thanks,
Christeen Waters

Fwd: Legal Education Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:00 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 4, 2023 at 2:57:55 PM CDT

To: Jerry Jackson <mayor@harrisonar.gov>, Wade Phillips
<wphillips@harrisonar.gov>, Luke Feighert <cfo@harrisonar.gov>

Subject: Legal Education Meeting

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

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Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
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RE: Meeting

From: Bethany Marcum bmarcum@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Nancy Cartwright
ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 10:48 AM

I'm not seeing anything on social media that would warrant a statement. I do believe that posting a from our website would just give fuel to a fire that no one is aware of.



Bethany Marcum

Human Resources and
Communications Manager
City of Harrison, Arkansas

Phone: 870-204-5498

Email

bmarcum@harrisonar.gov

PO Box 1715, Harrison, AR
72602

From: Jerry Jackson <mayor@harrisonar.gov>

Sent: Monday, May 8, 2023 10:23 AM

To: Nancy Cartwright <ncartwright@harrisonar.gov>; Bethany Marcum
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Subject: Meeting

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Thank you,

Jerry Jackson, Mayor
[City of Harrison, Arkansas](#)
O: 870-741-2777
E: **mayor@harrisonar.gov**




Fwd: harrison_zoning_code_august_2022

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 5:23 PM

 harrison_zoning_code_august_2022.pdf 163 KB
ATT00001.htm <1 KB

As I mentioned there were two emails with the training materials I sent to Christeen to print for the training. All contents are from the zoning code. I sent you the first email earlier during our call and have now located the second. Because I sent it to her from my phone, it defaulted and sent from my outlook email. Copy attached for you.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 10, 2023 at 5:18:50 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: **Fwd: harrison_zoning_code_august_2022**

Nancy Cartwright
Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 9:43 AM

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.


Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Fwd: FOI Request - Metting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jeff Pratt cityclerk@harrisonar.gov

Date: Mon, May 15, 2023, 11:30 AM

 25-19-106 Open Meetings.docx 17 KB
ATT00001.htm <1 KB

Heads up. I will get you my stuff late today.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jimmie Cavin <jimmie.cavin@yahoo.com>

Date: May 15, 2023 at 11:13:43 AM CDT

To: mayor@harrisonar.gov, jjackson@harrisonar.gov

Cc: ncartwright@harrisonar.gov

Subject: FOI Request - Metting

Hey Jerry 😊

Under the Arkansas Freedom of Information Act I request in electronic form via email the following pertaining to all meetings of the City Council and Planning Commission held on May 8th 2023 -

1. All notices required under AR Code 25-19-106
2. All audio / video required under AR Code 25-19-106

3. All email communications

I have attached AR Code 25-19-106 for your reference.

Please acknowledge receipt of this request.

Thank You !

Jimmie Cavin
501-412-9520

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

Re: Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Date: Sun, May 7, 2023, 8:17 PM

Please give me an early heads up if you decide to cancel the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 7, 2023, at 7:53 PM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>
Date: May 7, 2023 at 6:21:43 PM CDT
To: Nancy Cartwright <ncartwright@harrisonar.gov>
Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>
Sent: Sunday, May 7, 2023 3:18 PM
To: Jason Carter <jason@carterlaw.us>
Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
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 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
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C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
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5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: jason@carterlaw.us

Date: Sun, May 7, 2023, 3:17 PM

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879

Mobile 870-715-7988

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Wade Phillips wphillips@harrisonar.gov

Date: Mon, May 8, 2023, 1:43 PM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the

manner they believe best serves the community.

RE: Green Digital CUP Application - Conditions Memo 05-04-2023

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov

Date: Fri, May 5, 2023, 9:03 AM

That works for me. Some of the answers and info provided could possibly modify the conditions so it will be good to review that before sending anything else.

Also, if anyone can think of any other conditions to proposed...let me know.

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Friday, May 5, 2023 8:28 AM

To: Wade Phillips <wphillips@harrisonar.gov>

Cc: Jerry Jackson <mayor@harrisonar.gov>; Luke Feighert <cfo@harrisonar.gov>

Subject: Re: Green Digital CUP Application - Conditions Memo 05-04-2023

Thank you for this! I had a conference with Attorney Stacks late yesterday afternoon. He has a phone call with his clients today and hopes to get me the documents and answers requested today or Monday. After we have reviewed the received

information, I suggest is the right time to send this proposal. Please let me know if this timeline works for you.

The legal education meeting is set for Monday at 5:30PM.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 4, 2023, at 1:09 PM, Wade Phillips <wphillips@harrisonar.gov> wrote:

A draft of requested conditions for a conditional use permit is attached.
<Green Digital CUP Application - Conditions Memo 05-04-2023.pdf>

Fwd: Meeting Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov, Jerry Jackson
mayor@harrisonar.gov

Date: Thu, May 11, 2023, 9:31 AM

FYI.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 10, 2023 at 8:00:01 AM CDT

To: cappsgoblin@hotmail.com

Subject: Meeting Request

Good morning, Dr. Lewis. I was unavailable yesterday, but understand you have submitted a request for information regarding the event I conducted Monday evening at city hall. I have not yet received a copy of your request and do not offer to assume, but I was told it is a request for any training materials. I offer that your request may not provide sufficient information to address your concerns regarding the legal training event and the City's consideration of the pending application by Green Digital. **I am not suggesting a meeting would substitute for response to a valid FOIA request, but hope that I can provide a less formal avenue for you to receive information.**

I can make myself available to meet with you at city hall today. I will give you a call later this morning to check your availability.

Thank you.

Nancy Cartwright

Re: Meeting

From: Jerry Jackson mayor@harrisonar.gov
To: Bethany Marcum bmarcum@harrisonar.gov
Cc: Nancy Cartwright ncartwright@harrisonar.gov
Date: Mon, May 8, 2023, 11:07 AM

I really think we should also post a statement before the training meeting

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



On Mon, May 8, 2023 at 10:48 AM Bethany Marcum <bmarcum@harrisonar.gov> wrote:

I'm not seeing anything on social media that would warrant a statement. I do believe that posting a from our website would just give fuel to a fire that no one is aware of.



Bethany Marcum

Human Resources and
Communications Manager

City of Harrison, Arkansas

Phone: 870-204-5498

Email

bmarcum@harrisonar.gov

PO Box 1715, Harrison, AR
72602

From: Jerry Jackson <mayor@harrisonar.gov>

Sent: Monday, May 8, 2023 10:23 AM

To: Nancy Cartwright <ncartwright@harrisonar.gov>; Bethany Marcum
<bmarcum@harrisonar.gov>

Subject: Meeting

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Education meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Thu, May 4, 2023, 10:54 PM

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879

Mobile 870-715-7988

Fwd: Legal Education Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:00 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 4, 2023 at 2:57:55 PM CDT

To: Jerry Jackson <mayor@harrisonar.gov>, Wade Phillips
<wphillips@harrisonar.gov>, Luke Feighert <cfo@harrisonar.gov>

Subject: Legal Education Meeting

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues

relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Re: Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Cc: Bethany Marcum bmarcum@harrisonar.gov

Date: Mon, May 8, 2023, 10:45 AM

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. Do you want me to make a statement to HDT? I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
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C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
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7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 9:43 AM

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879

Mobile 870-715-7988


FOI Request - Metting

From: Jimmie Cavin jimmie.cavin@yahoo.com

To: mayor@harrisonar.gov , jjackson@harrisonar.gov

Cc: ncartwright@harrisonar.gov

Date: Mon, May 15, 2023, 11:13 AM

 25-19-106 Open Meetings.docx 17 KB

Hey Jerry 😊

Under the Arkansas Freedom of Information Act I request in electronic form via email the following pertaining to all meetings of the City Council and Planning Commission held on May 8th 2023 -

1. All notices required under AR Code 25-19-106
2. All audio / video required under AR Code 25-19-106
3. All email communications

I have attached AR Code 25-19-106 for your reference.

Please acknowledge receipt of this request.

Thank You !

Jimmie Cavin
501-412-9520

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

Re: Questions — City of Harrison

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Sun, May 7, 2023, 7:53 PM

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>

Date: May 7, 2023 at 6:21:43 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start

engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM

To: Jason Carter <jason@carterlaw.us>

Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and

liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**



Nancy Cartwright

Harrison City Attorney
ncartwright@harrisonar.gov

Kaylee Johnson
Legal Assistant
kjohnson@harrisonar.gov

Phone: 870-517-5879



P.O. Box 1715
Harrison, AR 72602

TRANSMITTAL MEMORANDUM

DATE: May 11, 2023

TO: Mayor Jerry Jackson, Luke Feighert, Jeff Pratt,
Wade Phillips, Bethany Marcum, Christene Waters

☐ Fax ☐ USPS
☒ Email ☐ Hand Delivered

☐ Fax ☐ USPS
☐ Email ☐ Hand Delivered

RE: Legal Educational Training on May 8, 2023 - Information Packet

Attached please find copies of my emails with attachments setting up a meeting held on May 8, 2023. Although the meeting was not a public meeting, all information related to the meeting is public information. I have shared this information with the only two members of the public that have spoken to me directly.

A handwritten signature in black ink that reads "Nancy Cartwright". The signature is written in a cursive style with a long horizontal line extending from the end.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: Legal Education Meeting
Date: May 4, 2023 at 2:57:55 PM
To: Jerry Jackson mayor@harrisonar.gov, Wade
Phillips wphillips@harrisonar.gov, Luke Feighert
cfo@harrisonar.gov

All P & Z commissioners
All Council
Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public

meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

From: Wade Phillips wphillips@harrisonar.gov
Subject: FW: Legal Educational Meeting
Date: May 5, 2023 at 4:37:16 PM
To: Nancy Cartwright ncartwright@harrisonar.gov

Wade W. Phillips, PE, LEED AP
C.O.O./City Engineer



[870.741.3434](tel:870.741.3434) Office
[870.741.0318](tel:870.741.0318) Fax
www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>
Sent: Thursday, May 4, 2023 4:47 PM
To: WADE PHILLIPS <wphillips@harrisonar.gov>
Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: [870-741-2777](tel:870-741-2777)

cwaters@harrisonar.gov

From: Nancy Cartwright ncartwright@harrisonar.gov

Date: May 8, 2023 at 11:40:57 AM

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public.

Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

From: Nancy Cartwright ncartwright@harrisonar.gov
Subject: harrison_zoning_code_august_2022
Date: May 8, 2023 at 4:36:20 PM
To: Christeen Waters cwaters@harrisonar.gov

Can I get 15 copies of this packet please? I'm in the media room, but if you could place them in a stack on the conference room table, that's perfect.



harrison_zo...t_2022.pdf

171 KB

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel [870-517-5879](tel:870-517-5879)
Mobile [870-715-7988](tel:870-715-7988)

to its impact on neighboring property or to the city as a whole. For this reason, it requires a careful review of its location, design, configuration, and spatial impact to determine the desirability of allowing it on a particular site.

The conditional use process must not allow an applicant to secure a use variance or as a means to circumvent the intent of the General Plan or Zoning Ordinance. Building configurations, footprints, and outlines should be compatible with other uses permitted for a district. Whether a proposed use is appropriate in a particular location depends upon a careful evaluation of the impacts to the neighborhood and the city by the Planning Commission and a weighing of conditions and methods proposed by the Commission or by the applicant to mitigate those impacts.

3. **Table of Permitted Uses.** Where the letter “C” appears for certain uses in the Table of Permitted Uses, the use is permitted subject to approval by the Planning Commission of a Conditional Use Permit.

B. Procedure for Conditional Use Request.

1. **Application.** An application shall be filed by the property owner with the Department of Public Works in accordance with current Department policies and procedures. Said application shall be filed no less than twenty-two (22) days prior to the Planning Commission meeting. Such applications shall show the location and intended use of the site and include a general statement as to the intent of the use. Applications may be obtained from the Department of Public Works. A general graphic representation of what is proposed shall be submitted as well and shall include the following:
 - (a) The location, size, and use of buildings, signs, land and improvements;
 - (b) The location, size and arrangement of parking space, loading space, driveways and street access;
 - (c) Proposed screening and landscaping;
 - (d) The use of adjoining property;
 - (e) Scale, north arrow and vicinity map; and
 - (f) Any additional information needed by the staff because of conditions peculiar to the development.
2. **Notification.**
 - (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice for conditional use and shall submit proof of publication to the Department of Public Works. This public notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
 - (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than seven (7) days prior to the public hearing.
 - (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the conditional use sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the owner/occupant of the property.

3. **Staff Review.** The Department of Public Works staff shall review the proposed conditional use and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendation to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) or more public hearings thereon. The Planning Commission shall review conditional use applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed conditional use.
5. **Planning Commission Action.**

- (a) *Action.* The Planning Commission may approve, deny, defer, or modify a conditional use request based on findings of fact with regard to the standards set forth in Section C below.
- (b) *Conditions.* The Planning Commission may impose conditions and restrictions upon the premises benefited by a Conditional Use Permit as may be necessary to reduce or minimize any injurious effects of the conditional use. Such action may be necessary to ensure that the conditional use is compatible with surrounding property to better carry out the intent of this Ordinance. Once any portion of the approved conditional use permit is utilized, all such conditions pertaining to such authorization shall become effective immediately. Such conditions may include time limits for exercise of such authorization and commence within a reasonable time. The violation of any condition so imposed shall constitute grounds for revocation of the conditional use permit.

C. Standards for Approval. In carrying out the purpose of this section, the Commission's consideration shall include, but not be limited to, the following development standards and design specifics. The appropriateness of these standards shall be determined at the discretion of the Planning Commission for each specific conditional use location.

1. The proposed use shall be so designated, located and operated so that the public health, safety and welfare will be protected.
2. The proposed land use shall be compatible with other area properties located near it.
3. The proposed use shall be in compliance with the provision of "Conditional Uses" as set out in this Ordinance.
4. The proposed use shall be in conformance with all applicable provisions stated in this Ordinance for the district in which the use is to be located.
5. The proposed conditional use shall be in conformance with all off-street parking and loading requirements of this Ordinance and ingress and egress and pedestrian ways shall be adequate.
6. Safeguards limiting noxious or offensive emissions, including lighting, noise, glare, dust and odor shall have been addressed in the proposed use application.
7. Landscaping and screening of the proposed use shall be in accordance with these Ordinance regulations and the City of Harrison landscaping regulations.
8. Proposed use signage shall be in accordance with the provisions of this Ordinance.
9. Open space located on the proposed use shall be maintained by the owner/developer.
10. The size and shape of the site, including size, shape and arrangement of proposed structures shall be in keeping with the intent of this Ordinance.
11. The Planning Commission shall in no case authorize less than minimum requirements of the Ordinance relating to height, area, or setbacks.
12. The Planning Commission shall not permit any use in a zone as a conditional use that is not permitted under the Zoning Ordinance.

D. Amendments. Major changes to a conditional use authorization must follow the same process as the original conditional use; however, the Commission may delegate to the staff authority to approve minor modifications to the conditions approved, including modifications to an approved development plan.

E. Building Permit. No building permit shall be issued except in conformance with the provisions of this section.

SEC. 301.7 VIOLATIONS AND PENALTIES

A violation of this ordinance shall be deemed a misdemeanor and shall be punishable as set forth in the Harrison Municipal Code Section 1.32.01.

SEC. 301.8 ORDINANCE AMENDMENTS

A. Authority. The City Council shall have the authority to enact amendments to the text or map of the Zoning Ordinance in accordance with the provisions of this section. Such action may be initiated on the recommendation of the Planning Commission, on its own motion, or on petition from a property owner. Before action is taken in regard to any amendment of the Ordinance, the Planning Commission shall have reviewed the case and given a recommendation. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinance and resolutions by a vote of the majority of the Council.

B. Procedure for Zoning Amendments by Property Owners.

1. **Application.** An application for amendment shall be filed with the Building Official. The applications for a Zoning Map Amendment shall contain the following information:

- (a) Name and address of applicant.
- (b) Statement that the applicant is the owner or the authorized agent of the owner of the property for which the Zoning Map Amendment is proposed.
- (c) Address and legal description of property.
- (d) A map of the subject property, delineating:
 - 1) the dimensions of the property;
 - 2) approximate location of buildings with appropriate dimensions;
 - 3) land uses of adjacent properties.
- (e) The application shall be accompanied by the prescribed fee as determined by the City Council.

2. **Notification.**

- (a) *Notice of Public Hearing.* Notice of public hearing shall be published in a newspaper of general circulation in the city, at least one (1) time fifteen (15) days prior to the hearing. The Applicant will publish the notice of proposed amendment and shall submit proof of publication to the Department of Public Works. This public notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing.
- (b) *Sign.* The Department of Public Works will post one or more public hearing signs on the premise of said property. Such sign(s) shall be clearly visible, unobstructed to the passing general public, and posted on or near the existing front property line not later than fifteen (15) days prior to the public hearing.
- (c) *Notification of Property Owners.* Notice of public hearing shall be given by the applicant, at his/her expense, to each owner or occupant of property located within 200 feet of the property which is the subject matter of the application no later than 15 prior to the hearing. This notice must include the rezoning being sought, the location including legal description and address (if no address is available, a description which is clear to the average lay person will suffice), and the time, date and place of the public hearing. This notice requirement may be satisfied by either of the following method: (1) Notice by certified mail, return receipt requested or (2) hand delivery of the notice and the execution of an acknowledgement of receipt thereof by the

From: Nancy Cartwright

Nancy.cartwright@outlook.com

Subject: Fwd: harrison_zoning_code_august_2022

Date: May 10, 2023 at 5:18:50 PM

To: Nancy Cartwright ncartwright@harrisonar.gov

Nancy Cartwright

Attorney at Law

P.O. Box 1737

Harrison, AR 72602-1737

Begin forwarded message:

From: Nancy Cartwright <Nancy.cartwright@outlook.com>

Date: May 8, 2023 at 4:37:57 PM CDT

To: Christeen Waters <cwaters@harrisonar.gov>

Subject: harrison_zoning_code_august_2022

WAIT!!! I need 15 of these, too

Nancy Cartwright

Attorney at Law
P.O. Box 1737
Harrison, AR 72602-1737



harrison_zo...t_2022.pdf

166 KB

owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

Fwd: Legal Educational Meeting

From: Reed Petty rpetty@harrisonar.gov

To: Christeen Waters hr@harrisonar.gov, Nancy Cartwright
ncartwright@harrisonar.gov, Jerry Jackson mayor@harrisonar.gov

Date: Mon, May 8, 2023, 9:32 PM

Dear Christeen, City Attorney Cartwright, and Mayor Jackson,

I am here offering my apology to you all. My memory is beginning to show its age. I completely forgot about this meeting until just now. My fault. I am very sorry to have failed to fulfil my commitment made below. I hope that I can make some type of recovery and learn of those things which I missed.

The moral for me is to use an automated reminder system in the future, which I will do faithfully going forward. Again, I apologize.

Sincerely,
Reed Petty

----- Forwarded message -----

From: Reed Petty <rpetty@harrisonar.gov>

Date: Thu, May 4, 2023 at 4:57 PM

Subject: Re: Legal Educational Meeting

To: Christeen Waters <cwaters@harrisonar.gov>

I'll plan to attend, thanks.

On Thu, May 4, 2023 at 4:21PM Christeen Waters <cwaters@harrisonar.gov> wrote:

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in

a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Questions — City of Harrison

From: Nancy Cartwright ncartwright@harrisonar.gov

To: jason@carterlaw.us

Date: Sun, May 7, 2023, 3:17 PM

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879

Mobile 870-715-7988

Re: HRO GD Legal Meeting info request memo.pdf

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov, Wade Phillips wphillips@harrisonar.gov, Jeff Pratt cityclerk@harrisonar.gov, Christeen Waters cwaters@harrisonar.gov, Bethany Marcum bmarcum@harrisonar.gov, Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 11, 2023, 1:52 PM



HRO GD Legal Meeting info request memo.pdf 1,020 KB

ATT00001.txt <1 KB

HRO GD Legal Meeting info request memo.pdf 1,020 KB

One more time!

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

> On May 11, 2023, at 10:25 AM, Nancy Cartwright <Nancy.cartwright@outlook.com> wrote:

>

> Sorry, acrobat is my own license so it sends from the wrong account.

>

> Nancy Cartwright

> Attorney at Law

> P.O. Box 1737

> Harrison, AR 72602-1737

>

>

>>> On May 11, 2023, at 10:23 AM, Nancy Cartwright

<Nancy.cartwright@outlook.com> wrote:

>>>

>>

>>

>>

>>

>>

>> Nancy Cartwright

>> Attorney at Law

>> P.O. Box 1737

>> Harrison, AR 72602-1737

>>

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Wade Phillips wphillips@harrisonar.gov

Date: Mon, May 8, 2023, 1:43 PM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the

manner they believe best serves the community.

RE: Green Digital CUP Application - Conditions Memo 05-04-2023

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov

Date: Fri, May 5, 2023, 9:03 AM

That works for me. Some of the answers and info provided could possibly modify the conditions so it will be good to review that before sending anything else.

Also, if anyone can think of any other conditions to proposed...let me know.

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Friday, May 5, 2023 8:28 AM

To: Wade Phillips <wphillips@harrisonar.gov>

Cc: Jerry Jackson <mayor@harrisonar.gov>; Luke Feighert <cfo@harrisonar.gov>

Subject: Re: Green Digital CUP Application - Conditions Memo 05-04-2023

Thank you for this! I had a conference with Attorney Stacks late yesterday afternoon. He has a phone call with his clients today and hopes to get me the documents and answers requested today or Monday. After we have reviewed the received

information, I suggest is the right time to send this proposal. Please let me know if this timeline works for you.

The legal education meeting is set for Monday at 5:30PM.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 4, 2023, at 1:09 PM, Wade Phillips <wphillips@harrisonar.gov> wrote:

A draft of requested conditions for a conditional use permit is attached.
<Green Digital CUP Application - Conditions Memo 05-04-2023.pdf>

Fwd: Meeting Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov, Jerry Jackson
mayor@harrisonar.gov

Date: Thu, May 11, 2023, 9:31 AM

FYI.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 10, 2023 at 8:00:01 AM CDT

To: cappsoblin@hotmail.com

Subject: Meeting Request

Good morning, Dr. Lewis. I was unavailable yesterday, but understand you have submitted a request for information regarding the event I conducted Monday evening at city hall. I have not yet received a copy of your request and do not offer to assume, but I was told it is a request for any training materials. I offer that your request may not provide sufficient information to address your concerns regarding the legal training event and the City's consideration of the pending application by Green Digital. **I am not suggesting a meeting would substitute for response to a valid FOIA request, but hope that I can provide a less formal avenue for you to receive information.**

I can make myself available to meet with you at city hall today. I will give you a call later this morning to check your availability.

Thank you.

Nancy Cartwright

Re: Meeting

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 11:06 AM

Yes

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



On Mon, May 8, 2023 at 11:03 AM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

I need to know. I've put my morning at a halt for this.

Do you want me to make a statement to HDT?

I am prepared to do so now.

Nancy Cartwright

City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:44 AM, Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. **Do you want me to make a statement to HDT?**

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



Education meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Christeen Waters cwaters@harrisonar.gov

Date: Thu, May 4, 2023, 10:54 PM

Was there a date picked for this meeting? I need to calendar it.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879


Mobile 870-715-7988

City of Fort Smith v Wade 2019 Ark 222 578 SW3d 276 Ark 2019.pdf

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 9:41 PM

 City of Fort Smith v Wade 2019 Ark 222 578 SW3d 276 Ark 2019.pdf 116 KB
ATT00001.txt <1 KB

Attached is the pdf copy of the case referenced in our call today.

Re: Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov

Cc: Bethany Marcum bmarcum@harrisonar.gov

Date: Mon, May 8, 2023, 10:45 AM

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. Do you want me to make a statement to HDT?
I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



owner/occupant of the property. The postmarked certified receipts and/or hand delivery acknowledgments shall be submitted to the Department of Public Works not less than ten (10) days prior to the Planning Commission meeting along with a map showing the location of the property in questions as well as the owners within 200 feet of the property and a letter from the petitioner certifying that the map shows a complete list of those property owners.

3. **Staff Review.** The Department of Public Works staff shall review the proposed zoning request and report to the Planning Commission on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance and shall make recommendations to the Planning Commission.
4. **Public Hearing.** The City Planning Commission shall hold one (1) one or more public hearings thereon. The Planning Commission shall review zoning request applications at its regularly scheduled meetings, at which time interested persons may appear and offer information in support of, or against, the proposed zoning request.
5. **Planning Commission Action.**
 - (a) *Approval.* Following the public hearing, the proposed amendment may be approved as presented or as modified, by a majority of the Planning Commission and recommended for adoption by the City Council, with reasons for recommendation stated in writing. No petition shall be reviewed by the City Council without a report from the Planning Commission on the case.
 - (b) *Denial.* If the Planning Commission disapproves a proposed amendment, the applicant may appeal to the City Council in accordance with Section 301.9, Appeals to City Council.
 - (c) *Forward to City Council.* Following approval by the Planning Commission, the petition will be sent to the City Council for action. A petitioner may withdraw the request for an amendment prior to action by the City Council.
 - (d) *Re-consideration.* No application for a zoning amendment will be considered by the Planning commission within one (1) year from date of final disapproval by Planning Commission of a proposed amendment; except upon a showing of a substantial change in conditions found to be valid by the Planning Commission and demonstrated by a majority vote of the full Planning Commission in favor of rehearing. For purposes hereof, a change of ownership of the subject property shall not be deemed to be a change of conditions.
6. **City Council Action.** The City Council by majority vote, may by ordinance, adopt the recommended amendment submitted by the Planning Commission or may return the proposed amendment to the Planning Commission for further study and recommendation. If the City Council does not concur with the recommendation of the Planning Commission, either as first submitted or as submitted after re-study, the City Council may, by majority vote, amend this ordinance by granting the request for amendment in full or in modified form. However, nothing in this section shall be construed to limit the City Council's authority to recall the ordinances and resolutions by a vote of a majority of the Council.

C. Procedures for Zoning Amendments by the City Council.

1. **Refer to Planning Commission.** The City Council may refer a request for amendment to the Planning Commission to be considered in accordance with the procedures outlined in Section D below.
2. **Emergency.** The City Council may act upon a request to amend this Ordinance when an emergency exists which threatens the health, safety, welfare, or morals of the citizens of the City.

An amendment may be made under this section upon approval of two-thirds (2/3) of the entire City Council.

D. Procedures for Zoning Amendments by the Planning Commission.

1. **Initiation.** The Planning Commission, may, from time to time, either upon request by one or more of its members, by direction of the City Council, or in the course of its normal planning activities, consider amendments or additions to the Zoning Ordinance.
2. **Studies.** The Planning Commission shall prepare a work program and make studies, including the preparation of maps, to support its decisions regarding possible amendments.
3. **General Plan.** If the proposed amendments are not consistent with the General Plan, the Planning Commission shall first consider and adopt any necessary changes to the General Plan.
4. **Public Hearing.** The Planning Commission shall hold a public hearing to consider amendments to the Zoning Ordinance.
5. **Notification.** Changes in the Zoning Ordinance initiated by the Planning Commission shall be considered comprehensive changes affecting the entire city and no individual notifications shall be made. A map indicating the proposed changes shall be available in City Hall for interested citizens and property owners.
6. **Planning Commission Action.** Following the public hearing, the proposed plans may be recommended as presented, or in modified form, by a majority of the entire Planning Commission.
7. **City Council Action.** Following its adoption of plans and recommendations of ordinances and regulations, the commission shall certify adopted plans or recommended ordinances and regulations to the City Council for its adoption.

E. Standards for Approval. The City Council may consider several recommendations and planning documents when attempting to make a decision on the granting of an amendment. Such guidelines may be derived from recommendations from the Planning Commission and City staff, use of provisions of any plans developed and adopted by the City (i.e. master street plan, master plans for water and sewer, etc.), as well as any other appropriately approved document created to provide required public facilities necessary to protect the public interest. Any denial by the City Council of an amendment shall be final for one (1) year and the same application may not be reinitiated until the expiration of that deadline.

SEC. 3.01.9 APPEALS TO CITY COUNCIL

A. Notice of Appeal. Any decision by the Planning Commission regarding a rezoning or conditional use permit may be appealed to the City Council. In order to make an appeal, the aggrieved party must file a "Notice of Appeal" with the City Clerk within 30 days of the Planning Commission's final action. The Notice of Appeal shall be filed on forms and in a format prescribed by the City Council. As a minimum however, the applicant shall provide the following information:

1. Summary of any reasons provided by the Planning Commission concerning the decision made in the case.
2. Reasons why the applicant of the appeal contends that the Planning Commission erred in its decision.
3. Reasons why the applicant of the appeal believes that the public health, safety, welfare, and morals would be better served if the Planning Commission's action were reversed.

4. Any new and pertinent information bearing on the case which may have been overlooked by the Planning Commission or which may have come to light following the meeting at which the Planning Commission made its decision.

B. City Council Action. Appeals to the City Council shall be de novo; however, they shall first be considered on the record of the public hearing and Planning Commission meeting at which the original case was heard and the original decision made. Based on this review, the City Council may affirm the Planning Commission's decision, reverse it, or send the case back to the Planning Commission for further study and re-certification. If new information is placed before the Council that, in the opinion of the Council, would affect the Planning Commission's decision, the Council may refer the case back to the Planning Commission for further study, including new information, and re-certification.

SEC. 301.10 VARIANCES

A. General. The Board of Adjustment shall have the authority to approve variances of the Zoning Code.

B. Procedure for Variance Requests.

1. **Application.** All appeals and applications made to the Board shall be made in writing on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of the Ordinance involved and shall exactly set forth:
 - (a) The interpretation that is claimed,
 - (b) The use for which the permit is sought, or
 - (c) The details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.
 - (d) *Submittals.* Each applicant must submit, at least twenty-two (22) days prior to the public hearing, a scale drawing showing the requested variance along with all relevant information, including the exceptional condition of situation of the property which causes the exceptional practical difficulty or undue hardship for which relief is being sought.
2. **Notification.**
 - (a) *Notice of Public Hearing.* The Board shall fix a reasonable time for the public hearing of an appeal, cause public notice to be given of the time and place thereof, as well as due notice to the parties of interest, and decide same within a reasonable time. Public notice shall be published at least fifteen (15) days preceding the date of such hearing in a newspaper of general circulation in Harrison. The public notice shall give the particular location of the property on which the appeal is requested, including a legal description and an address (if no address is available, a description which is clear to the average lay person will suffice), as well as a brief statement of what the appeal consists.
 - (b) *Sign.* The Department of Public Works will post a notice of public hearing sign on said property for which a variance is being requested. Such sign(s) shall be clearly visible, unobstructed to the passing general public and posted on or near the front property line not later than fifteen (15) days prior to the public hearing.
3. **Staff Review.** The Department of Public Works staff shall review the proposed variance request and report to the Board of Adjustment on its relation to and probable effect on the surrounding area as well as its compliance with the requirements of this Ordinance.
4. **Public Hearing.** Public hearings may be adjourned from time to time, and, if the time and place of the adjourned meeting be publicly announced when the adjournment is made, no further notice of such adjourned meeting need be published. At a public hearing any party may appear in person, by agent, or by attorney.

More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 9:43 AM

Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

FOI Request - Metting

From: Jimmie Cavin jimmie.cavin@yahoo.com

To: mayor@harrisonar.gov , jjackson@harrisonar.gov

Cc: ncartwright@harrisonar.gov

Date: Mon, May 15, 2023, 11:13 AM

 25-19-106 Open Meetings.docx 17 KB

Hey Jerry 😊

Under the Arkansas Freedom of Information Act I request in electronic form via email the following pertaining to all meetings of the City Council and Planning Commission held on May 8th 2023 -

1. All notices required under AR Code 25-19-106
2. All audio / video required under AR Code 25-19-106
3. All email communications

I have attached AR Code 25-19-106 for your reference.

Please acknowledge receipt of this request.

Thank You !

Jimmie Cavin
501-412-9520

Meeting Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 8:00 AM

Good morning, Dr. Lewis. I was unavailable yesterday, but understand you have submitted a request for information regarding the event I conducted Monday evening at city hall. I have not yet received a copy of your request and do not offer to assume, but I was told it is a request for any training materials. I offer that your request may not provide sufficient information to address your concerns regarding the legal training event and the City's consideration of the pending application by Green Digital. **I am not suggesting a meeting would substitute for response to a valid FOIA request, but hope that I can provide a less formal avenue for you to receive information.**

I can make myself available to meet with you at city hall today. I will give you a call later this morning to check your availability.

Thank you.

Nancy Cartwright

Re: Questions — City of Harrison

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Sun, May 7, 2023, 7:53 PM

Ok thank you

On Sun, May 7, 2023 at 6:41 PM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

This is my email with the AML's general counsel, Jason Carter. He has been invaluable for me in this process. As you will read below, he recommends going forward with the meeting.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Jason Carter <jason@carterlaw.us>

Date: May 7, 2023 at 6:21:43 PM CDT

To: Nancy Cartwright <ncartwright@harrisonar.gov>

Subject: RE: Questions — City of Harrison

Nancy,

You're on the right track. The key is to avoid creating a public meeting of either the planning commission or the city council, which means that you should neither solicit a response from participants nor ask them to render a decision. *City of Fort Smith v. Wade*, 578 S.W.3d 276 (Ark. 2019). Ideally, information should flow in one direction, from you to the group. If participants start

engaging in sidebar discussions about how this should go during the meeting, then they are running afoul of the FOIA. You should warn them about this. Also, be wary of participants using you as a proxy for their discussions - speaking to one another through you.

A few extra points to consider: (1) Any presentation materials will be subject to FOIA. (2) You can (and should) advise your clients about FOIA but you cannot force them to comply. They're going to do what they're going to do. Given that risk, I still think it's a good idea to do the training. (3) The information you present during the meeting will be repeated to someone else outside the meeting before you make it to your car. Guaranteed. I still think it's a good idea to do the training.

Hang in there!
Jason

-----Original Message-----

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Sunday, May 7, 2023 3:18 PM

To: Jason Carter <jason@carterlaw.us>

Subject: Questions — City of Harrison

After our call last week, I took steps to schedule a legal training/education meeting with commissioners and council members as a group. In the scheduling email, it clearly states that the meeting is for me to address the procedures and legal issues facing the City as part of the applications by Green Digital. It further states there will be no discussion between attendees at the meeting on the issues and no questions to me from the group. I also conveyed attendees will have a chance to meet individually with me to ask their questions. Further, this was not set as a public meeting, but rather a training/education event. I took this to be consistent with the conversations you and I have had and that this is not required to be a public meeting and is not violative of FOIA- in that I've taken steps to avoid the discussion of the subject matter and am using as an opportunity to inform these officials on the procedure, law, legal advice, pre litigation issues, and potential outcomes and

liability.

Unfortunately, over the weekend reports are now being made across social media that the Mayor is holding secret meetings with Green Digital (applicant) at the date/time I've set this legal training. This has been very disruptive (to say the least) today.

I still offer the meeting is necessary and consistent with my duty to keep my clients informed and educated on the procedure and issues. Do you see any error with my analysis? I apologize for reaching out over the weekend, but I am facing pressure to cancel the meeting and stop my efforts.

Again, many thanks.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

--

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: **mayor@harrisonar.gov**




Info Request

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 1:58 PM

 HRO GD Legal Meeting info request memo.pdf 1,020 KB
ATT00001.txt <1 KB

After our call this morning, I went ahead and compiled a memo that includes the emails setting up the legal education meeting held Monday (5/8) at city hall, together with the "handouts" and their emails with my print request, and the press statement I submitted in response to the rumor of a "secret meeting". This should include those emails you have already been provided, but is (I hope) in a more user friendly format. Thank you for your questions.

Fwd: Legal Educational Meeting

From: Reed Petty rpetty@harrisonar.gov

To: Christeen Waters hr@harrisonar.gov, Nancy Cartwright
ncartwright@harrisonar.gov, Jerry Jackson mayor@harrisonar.gov

Date: Mon, May 8, 2023, 9:32 PM

Dear Christeen, City Attorney Cartwright, and Mayor Jackson,

I am here offering my apology to you all. My memory is beginning to show its age. I completely forgot about this meeting until just now. My fault. I am very sorry to have failed to fulfil my commitment made below. I hope that I can make some type of recovery and learn of those things which I missed.

The moral for me is to use an automated reminder system in the future, which I will do faithfully going forward. Again, I apologize.

Sincerely,
Reed Petty

----- Forwarded message -----

From: Reed Petty <rpetty@harrisonar.gov>

Date: Thu, May 4, 2023 at 4:57 PM

Subject: Re: Legal Educational Meeting

To: Christeen Waters <cwaters@harrisonar.gov>

I'll plan to attend, thanks.

On Thu, May 4, 2023 at 4:21PM Christeen Waters <cwaters@harrisonar.gov> wrote:

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in

a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

*Thank you,
Christeen Waters*

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

FW: Legal Educational Meeting

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Fri, May 5, 2023, 4:37 PM

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Christeen Waters <cwaters@harrisonar.gov>

Sent: Thursday, May 4, 2023 4:47 PM

To: WADE PHILLIPS <wphillips@harrisonar.gov>

Subject: Legal Educational Meeting

An educational training meeting will be held for you at City Hall next week on Monday, May 8, from 5:30-6:30. Nancy Cartwright, City Attorney, will be speaking on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting. There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Please do not forward this message to anyone else. And only reply to me, to let me know if you will be attending.

--

Thank you,
Christeen Waters

Mayor's Executive Asst
City of Harrison



Phone: 870-741-2777

cwaters@harrisonar.gov

Re: HRO GD Legal Meeting info request memo.pdf

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov, Wade Phillips wphillips@harrisonar.gov, Jeff Pratt cityclerk@harrisonar.gov, Christeen Waters cwaters@harrisonar.gov, Bethany Marcum bmarcum@harrisonar.gov, Nancy Cartwright ncartwright@harrisonar.gov

Date: Thu, May 11, 2023, 1:52 PM



HRO GD Legal Meeting info request memo.pdf 1,020 KB

ATT00001.txt <1 KB

HRO GD Legal Meeting info request memo.pdf 1,020 KB

One more time!

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

> On May 11, 2023, at 10:25 AM, Nancy Cartwright <Nancy.cartwright@outlook.com> wrote:

>

> Sorry, acrobat is my own license so it sends from the wrong account.

>

> Nancy Cartwright

> Attorney at Law

> P.O. Box 1737

> Harrison, AR 72602-1737

>

>

>>> On May 11, 2023, at 10:23 AM, Nancy Cartwright

<Nancy.cartwright@outlook.com> wrote:

>>>

>>

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>>

>>

>> Nancy Cartwright

>> Attorney at Law

>> P.O. Box 1737

>> Harrison, AR 72602-1737

>>

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Bethany Marcum bmarcum@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov

Date: Mon, May 8, 2023, 1:01 PM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be

better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

RE: Green Digital CUP Application - Conditions Memo 05-04-2023

From: Wade Phillips wphillips@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Cc: Jerry Jackson mayor@harrisonar.gov, Luke Feighert cfo@harrisonar.gov

Date: Fri, May 5, 2023, 9:03 AM

That works for me. Some of the answers and info provided could possibly modify the conditions so it will be good to review that before sending anything else.

Also, if anyone can think of any other conditions to proposed...let me know.

Wade W. Phillips, PE, LEED AP

C.O.O./City Engineer



870.741.3434 Office

870.741.0318 Fax

www.harrisonar.gov

My email address has changed to wphillips@harrisonar.gov. Please update contact information accordingly.

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Sent: Friday, May 5, 2023 8:28 AM

To: Wade Phillips <wphillips@harrisonar.gov>

Cc: Jerry Jackson <mayor@harrisonar.gov>; Luke Feighert <cfo@harrisonar.gov>

Subject: Re: Green Digital CUP Application - Conditions Memo 05-04-2023

Thank you for this! I had a conference with Attorney Stacks late yesterday afternoon. He has a phone call with his clients today and hopes to get me the documents and answers requested today or Monday. After we have reviewed the received

information, I suggest is the right time to send this proposal. Please let me know if this timeline works for you.

The legal education meeting is set for Monday at 5:30PM.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 4, 2023, at 1:09 PM, Wade Phillips <wphillips@harrisonar.gov> wrote:

A draft of requested conditions for a conditional use permit is attached.
<Green Digital CUP Application - Conditions Memo 05-04-2023.pdf>

Fwd:

From: Nancy Cartwright ncartwright@harrisonar.gov

To: hotride7o9@gmail.com

Date: Thu, May 11, 2023, 9:02 AM

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

Begin forwarded message:

From: Nancy Cartwright <ncartwright@harrisonar.gov>

Date: May 8, 2023 at 11:40:57 AM CDT

To: jayc@harrisondaily.com

There is no "secret" meeting. I have scheduled legal training for select city officials that is not open to the public. Attendees cannot discuss their position or concerns on the underlying issues in the group meeting. Attendees will have an opportunity to ask questions, but only separately outside of the group. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although I am offering the training session for the invited officials who wish to attend, attendance is not mandatory. And, only city officials will be in attendance.

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manner they believe best serves the community.

Re: Meeting

From: Jerry Jackson mayor@harrisonar.gov

To: Nancy Cartwright ncartwright@harrisonar.gov

Date: Mon, May 8, 2023, 11:06 AM

Yes

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



On Mon, May 8, 2023 at 11:03 AM Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

I need to know. I've put my morning at a halt for this.

Do you want me to make a statement to HDT?

I am prepared to do so now.

Nancy Cartwright

City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:44 AM, Nancy Cartwright <ncartwright@harrisonar.gov> wrote:

Give me a chance to followup on your request that I give a statement to Jay @HDT. I've cleared a statement with AML just this minute. And, I took it from your request that you wanted me to handle it with HDT first. Is this not correct? If so, say nothing until I've handled it with HDT. **Do you want me to make a statement to HDT?**

I am prepared to do so now.

Nancy Cartwright
City Attorney
P.O. Box 1715
Harrison, AR 72602-1715
Tel 870-517-5879
Mobile 870-715-7988

On May 8, 2023, at 10:22 AM, Jerry Jackson <mayor@harrisonar.gov> wrote:

Could we post something today explaining our 5:30 meeting? I think it would be helpful to dispel rumors.

Thank you,

Jerry Jackson, Mayor

[City of Harrison, Arkansas](#)

O: 870-741-2777

E: mayor@harrisonar.gov



Legal Education Meeting

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jerry Jackson mayor@harrisonar.gov, Wade Phillips wphillips@harrisonar.gov,
Luke Feighert cfo@harrisonar.gov

Date: Thu, May 4, 2023, 2:57 PM

All P & Z commissioners

All Council

Department Heads?

Available dates: 5/8, 5/10, 5/12 and 5/16

Do NOT send to council by the group email. Must be individual email addresses, calls or texts. Suggested language below:

Legal Education Meeting

A educational training meeting will be held for you at City Hall next week on issues relating to the law and procedure planning and zoning issues currently facing the City related to the applications of Green Digital LLC. This will not be a public meeting.

There can be no discussion among attendees on the pending issues. There will be an opportunity for your questions to be answered in a side room without group participation. Again, this will not be a public meeting, so attendees can't discuss the subject matter with each other.

Nancy Cartwright

City Attorney

P.O. Box 1715

Harrison, AR 72602-1715

Tel 870-517-5879


Mobile 870-715-7988

City of Fort Smith v Wade 2019 Ark 222 578 SW3d 276 Ark 2019.pdf

From: Nancy Cartwright ncartwright@harrisonar.gov

To: cappsgoblin@hotmail.com

Date: Wed, May 10, 2023, 9:41 PM

 City of Fort Smith v Wade 2019 Ark 222 578 SW3d 276 Ark 2019.pdf 116 KB
ATT00001.txt <1 KB

Attached is the pdf copy of the case referenced in our call today.

Re: More

From: Nancy Cartwright ncartwright@harrisonar.gov

To: Jason Carter jason@carterlaw.us

Date: Mon, May 8, 2023, 10:39 AM

Thank you.

Nancy Cartwright
Harrison City Attorney
P.O. Box 1715
Harrison, AR 72602
Tel 870-517-5879
ncartwright@harrisonar.gov

> On May 8, 2023, at 10:33 AM, Jason Carter <jason@carterlaw.us> wrote:

>

> There is no "secret" meeting. You have scheduled legal training for select city officials that is not open to the public. By closing the meeting to the public, city officials are more likely to ask questions about the law. It enhances the education process. Although you are offering the training session for the invited officials who wish to attend, attendance is not mandatory.

>

> Of course, the law related to current city issues will be discussed in training. Due to FOIA's open meeting requirements, no city official will be asked or advised to make a decision on a current issue. They will be simply educated on the law related to the issue. Then, later, in an open public meeting, each official will be better prepared to discuss their perception of the facts and law, and vote in the manner they believe best serves the community.

>

>

> -----Original Message-----

> From: Nancy Cartwright <ncartwright@harrisonar.gov>

> Sent: Monday, May 8, 2023 9:43 AM

> To: Jason Carter <jason@carterlaw.us>

> Subject: More

>

> Quick question - Mayor has asked me to take an interview with press ASAP about the alleged "secret" meeting that is at 5:30 today. It has been two months of Mondays. I would appreciate your input.

>

> Nancy Cartwright

> City Attorney

> P.O. Box 1715

> Harrison, AR 72602-1715

> Tel 870-517-5879

> Mobile 870-715-7988

>
