Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Final Agenda
City of Fayetteville Arkansas
City Council Meeting
March 22, 2011

A special meeting of the Fayetteville City Council will be held on March 22, 2011 at 4:30 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

A. New Business:

1. **Amend §113.02 & §113.03:** An ordinance to amend §113.02 Regulations To Abate Nuisance, and §113.03 Jurisdiction of This Ordinance of the Fayetteville Code and to declare an emergency.

   PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5393

Announcements

Adjournment: 4:55 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

All interested parties may appear and be heard before the City Council. If you wish to address the City Council on an agenda item please queue behind the podium when the Chair asks for public comment. Once the chair recognizes you, go to the podium and give your name and address. Address your comments to the Chair, who is the presiding officer. The Chair will direct your comments to the appropriate elected official, staff member or others for response. Please keep your comments brief, to the point and relevant to the agenda item being considered so that everyone has a chance to speak.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

As a courtesy please turn off all cell phones and pagers.

A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

City Council Meeting: March 22, 2011 **Adjourn:** 4:55 p.m.

Subject:	Roll				
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Thiel	✓			
	Kinion	✓			
	Petty	✓			
	Tennant	absent			
	Ferrell	✓			
	Mayor Jordan	✓			

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Mayor Jordan				

City Council Meeting: **March 22, 2011**

Subject:	**Amend §113.02 & §113.03**				
Motion To:		2nd Read	3rd Read	Pass	Emergency Clause
Motion By:		Petty	Petty		Petty
Seconded:		Lewis	Lewis		Adams
A. 1 New Business	**Adams**	✓	✓	✓	✓
	Lewis	✓	✓	✓	✓
	Gray	✓	✓	✓	✓
	Thiel	✓	✓	✓	✓
	Kinion	✓	✓	✓	✓
5393	**Petty**	✓	✓	✓	✓
	Tennant	Absent	Absent	Absent	Absent
	Ferrell	✓	✓	✓	✓
	Mayor Jordan				
		7-0	7-0	7-0	

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Adams				
	Lewis				
	Gray				
	Thiel				
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Mayor Jordan				

Fayetteville
ARKANSAS
www.accessfayetteville.org

Departmental Correspondence

LEGAL DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Lioneld Jordan**, Mayor

THRU: **Sondra Smith**, City Clerk

FROM: **Kit Williams**, City Attorney

DATE: **March 23, 2011**

RE: **Ordinance prepared by the City Attorney's Office and passed at the Special City Council meeting of March 22, 2011**

1. Amendment to §113.02 and §113.03 of Fayetteville Code: An ordinance to amend §113.02 Regulations To Abate Nuisance and §113.03 **Jurisdiction Of This Ordinance** of the Fayetteville Code and to declare an emergency.

Mayor Lioneld Jordan

City Attorney Kit Williams

City Clerk Sondra Smith

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
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Final Agenda
City of Fayetteville Arkansas
City Council Meeting
March 22, 2011

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Pledge of Allegiance

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Announcements

Adjournment

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A copy of the City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 West Mountain, Fayetteville, Arkansas.

AGENDA REQUEST

FOR: SPECIAL CITY COUNCIL MEETING OF MARCH 22, 2011

FROM: KIT WILLIAMS, City Attorney

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Amend §113.02 **Regulations To Abate Nuisance**, And §113.03 **Jurisdiction Of This Ordinance** Of The Fayetteville Code And To Declare An Emergency

APPROVED FOR AGENDA:

City Attorney — March 21, 2011
Date

Chief of Staff — 3-22-11
Date

Mayor — 3/22/11
Date

03-21-11A10:14 RCVD

Kim F.

ENTERED 3/21/11

Fayetteville
ARKANSAS

Departmental Correspondence

www.accessfayetteville.org

LEGAL DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **March 18, 2011**

RE: **Amendment of Rock Quarry Operating License Article**

I recommend immediately amending the **Rock Quarry Operating License Article** of the Fayetteville Code to maintain the operation and effectiveness of the **Rock Quarry Operating License Article** to any rock quarry that is now or may in the future operate within the Fayetteville city limits. Although the Arkansas Attorney General and the State Court (which confirmed the legality of the Motor Vehicle Racing Facility Ordinance) determined that the City Council had statutory power to cause a nuisance on the doorstep (within one mile) of the city limits to be abated, the Federal Courts have questioned this statutory power unless the City first sues the business.

By passing these amendments at the Special City Council Meeting called by Mayor Jordan and passing the Emergency Clause, this **Rock Quarry Operating License Article** will immediately be amended to remove the only parts of the **Rock Quarry Operating License Article** which were questioned in this litigation. In fact, since the Rogers Group, Inc. only operates a rock quarry beyond the city limits, it cannot complain about an ordinance which affects only rock quarries inside the city limits. Amending a challenged ordinance is what the City Council did in 2002 when the City Council promptly amended the Fayetteville Sign Ordinance to ensure its continued constitutionality after it had been fully examined during the Federal Court case.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND §113.02 **REGULATIONS TO ABATE NUISANCE**, AND §113.03 **JURISDICTION OF THIS ORDINANCE** OF THE FAYETTEVILLE CODE AND TO DECLARE AN EMERGENCY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby amends §113.02 **Regulations To Abate Nuisance** (B) *Operation of Rock Quarry* by repealing and deleting the following language "or within one mile beyond the city limits of Fayetteville" from both subsections (1) and (2).

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §113.02 **Regulations To Abate Nuisance** (C) *Dust, Mud and Rock Control Measures* by repealing and deleting the following language "or within one mile beyond the city limits of Fayetteville" and by repealing and deleting subsections (2), (4) and (5) and renumbering subsection (3) as (2).

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby amends §113.02(D)(2) by repealing the first sentence of this subsection. Attached as Exhibit A is §113.02 as amended.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby amends §113.03 **Jurisdiction of This Ordinance** by repealing and deleting this section in its entirety and enacting the following replacement §113.03 **Jurisdiction of the Rock Quarry Operating License Article.**

> **"§113.03 Jurisdiction of the Rock Quarry Operating License Article.** The Jurisdiction of The Rock Quarry Operating License Article shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville."

Section 5: That the City Council of the City of Fayetteville, Arkansas hereby determines that to ensure the validity and operation of the Rock Quarry Operating License Article of the Fayetteville Code within the city limits of Fayetteville which is necessary to preserve the public health, peace and safety of Fayetteville citizens, this ordinance needs to take effect immediately. Therefore the City Council of the City of Fayetteville hereby declares that an emergency exists and that this ordinance shall be in full force and effect from the date of its passage and approval.

PASSED and **APPROVED** this 22nd day of March, 2011.

APPROVED: ATTEST:

By: _____ By: _____
LIONELD JORDAN, Mayor **SONDRA E. SMITH**, City Clerk/Treasurer

CHAPTER 113: ROCK QUARRIES AND DIRT MINING FACILITIES

ARTICLE I
ROCK QUARRY OPERATING LICENSE

113.02 Regulations To Abate Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m. on the first and third Wednesday of each month unless such Wednesday is a federal or city holiday. If such Wednesday is a holiday, the permitted blasting day will be moved to the next day (Thursday). If the permitted blasting day would be unsafe or not feasible or practical because of inclement weather or other condition beyond the reasonable control of the quarry operator, the Director of Development Services may designate another weekday during the next five weekdays as a permitted blast day.

(4) Upon timely request by the rock quarry operator, the Director of Development Services or designee is empowered to grant a variance of the time limitations for rock blasting if inclement weather or other condition beyond the reasonable control of the operator has caused a safety issue that requires rock blasting outside the 10:00 a.m. until 3:00 p.m. permitted period. Re-notification is not required unless the blasting is moved to another day.

(5) The rock quarry operator shall notify by telephone the Director of Development Services and any Fayetteville neighbor within a mile of his quarry who has requested such notification at least two hours prior to rock blasting.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville shall only be allowed to operate during the period of 7:00 a.m. until 6:00 p.m. Monday through Friday, and during 7:00 a.m. until noon on Saturday. No major noise producing activities shall occur before 8:30 a.m. or after 4:30 p.m. on a weekday or anytime on Saturday or Sunday. No rock quarry shall be allowed to operate on a federally recognized holiday or Sunday.

(2) All rock quarries within the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

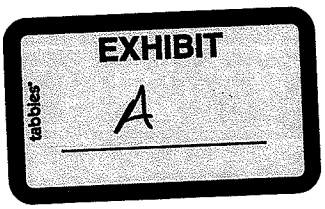
(C) *Dust, Mud and Rock Control Measures.* All rock quarries within the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(D) Control of Dump Truck Tailgate Banging.

(1) It is the express duty of the rock quarry operator to prevent a dump truck delivering anything to the quarry or receiving rock from the quarry to engage in Dump Truck Tailgate Banging as defined in §113.04 (E) at any time upon its property.



(2) No dump truck which has banged its tailgate shall be loaded or otherwise serviced for a full operational day of the quarry after the incident to include all day Monday if the tailgate banging occurs after 4:30 p.m. Friday or anytime on Saturday or Sunday. Loading or servicing such dump truck during this suspension shall constitute a violation of this ordinance and the Rock Quarry Operating License.

113.03 Jurisdiction of the Rock Quarry Operating License Article.

The Jurisdiction of The Rock Quarry Operating License Article shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville.

Fayetteville ARKANSAS
www.accessfayetteville.org

Departmental Correspondence

LEGAL DEPARTMENT

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: **Mayor Jordan**
City Council

CC: **Don Marr**, Chief of Staff
Jeremy Pate, Development Services Director

FROM: **Kit Williams**, City Attorney

DATE: **March 11, 2011**

RE: **Federal Court Rejection of City's Petition for Certification of Question to Arkansas Supreme Court**

On March 10, 2011, the Federal District Court for the Western District of Arkansas issued its Order which denied Fayetteville's request to allow the Arkansas Supreme Court to interpret the state statute upon which the Rock Quarry Ordinance was enacted. The Order stated: "the Court believes that the law of the case doctrine prevents it from reconsidering the issue of whether the City has statutory authority to declare nuisances for activities that are operated outside the city limits." (Page 7 of Order)

The City of Fayetteville certainly agrees with the Court that the "(l)aw of the case doctrine is a doctrine of discretion, not a command to the courts." (Page 7 of Order quoting a 1986 Eighth Circuit Court of Appeals case) In our request to allow the Arkansas Supreme Court to decide the meaning of the contested state statute, the City acknowledged that any referral of this issue rested within the Federal District Court's discretion which it has now exercised to deny our request.

The City of Fayetteville's Answer to the initial Complaint of the Rogers Group, Inc. questioned whether this case should be brought in State rather than Federal Court. Because Rogers Group, Inc. is a foreign corporation, it could sue

the City of Fayetteville in Federal Court. During the hearing for the Corporation's Motion for a Preliminary Injunction, the City asked that the Federal Court abstain from asserting jurisdiction so that Arkansas Courts could determine the meaning of Arkansas law. That request was denied as has our final request for referral to the Arkansas Supreme Court.

I continue to agree with the Arkansas Attorney General's official Opinion that the City Council has proper state statutory authority to protect our citizens by passing an ordinance to abate nuisance activities occurring on our City's doorstep just as the City Council did to abate a nuisance in the ThunderValley situation in 2002. The Circuit Court for the Fourth Judicial District of Arkansas found your ordinance abating a nuisance beyond the city limits legal and constitutional when it was challenged by the owner of ThunderValley in 2003. However, it does not appear that the Arkansas judicial authorities will be allowed to determine if the Rock Quarry Ordinance is legal and constitutional this time.

EXISTING LAW

CHAPTER 113: ROCK QUARRIES AND DIRT MINING FACILITIES

ARTICLE I
ROCK QUARRY OPERATING LICENSE

113.01 Finding Of Nuisance And Need For Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a rock quarry would be a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.02 and, therefore, should be abated by the reasonable regulations required by this ordinance.

(Ord. 5280, 10-20-09)

113.02 Regulations To Abate Nuisance

(A) *Rock Blasting/Use of Explosives.*

(1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.

(2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.

(3) All rock blasting within the permitted quarry shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m. on the first and third Wednesday of each month unless such Wednesday is a federal or city holiday. If such Wednesday is a holiday, the permitted blasting day will be moved to the next day (Thursday). If the permitted blasting day would be unsafe or not feasible or practical because of inclement weather or other condition beyond the reasonable control of the quarry operator, the Director of Development Services may designate another weekday during the next five weekdays as a permitted blast day.

(4) Upon timely request by the rock quarry operator, the Director of Development Services or designee is empowered to grant a variance of the time limitations for rock blasting if inclement weather or other condition beyond the reasonable control of the operator has caused a safety issue that requires rock blasting outside the 10:00 a.m. until 3:00 p.m. permitted period. Re-notification is not required unless the blasting is moved to another day.

(5) The rock quarry operator shall notify by telephone the Director of Development Services and any Fayetteville neighbor within a mile of his quarry who has requested such notification at least two hours prior to rock blasting.

(B) *Operation of Rock Quarry.*

(1) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 7:00 a.m. until 6:00 p.m. Monday through Friday, and during 7:00 a.m. until noon on Saturday. No major noise producing activities shall occur before 8:30 a.m. or after 4:30 p.m. on a weekday or anytime on Saturday or Sunday. No rock quarry shall be allowed to operate on a federally recognized holiday or Sunday.

(2) All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such quarry has obtained a valid, annual Rock Quarry Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.* All rock quarries within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock and gravel, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed rock quarry operator to ensure all of these safeguards, requirements and measures are constantly enforced.

(1) *Dust control measures.* Water or other substances or measures must be fully effective during the operation of the rock quarry to ensure the quarry is in full and continual compliance with the requirements of the Arkansas Water and Air Pollution Control Act as administered by the Arkansas Department of Environmental Quality. A violation of the permit conditions required by

Existing law

the Arkansas Department of Environmental Quality can be grounds for a suspension or revocation of the City's Rock Quarry Operating License. (See §133.05)

(2) *Dirt and mud control measures.* The rock quarry operator is required to ensure that any and all vehicles leaving the rock quarry shall have all mud and dirt removed from the tires and exterior parts of the body of the vehicles prior to exiting the site onto public roads.

(3) *Loose rock and gravel.* The rock quarry operator is responsible to ensure that all dump trucks leaving the rock quarry site that may utilize any city street and are carrying more than half a truck load of gravel, rocks or dirt have their load fully and properly covered.

(4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the rock quarry, the rock quarry operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The rock quarry operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contact information to any Fayetteville employee, official or citizen who requests such information.

(5) *Only dump trucks with proper identifying number may be loaded.* The rock quarry operator shall not load or permit to be loaded or permit to exit the rock quarry any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

(D) Control of Dump Truck Tailgate Banging.

(1) It is the express duty of the rock quarry operator to prevent a dump truck delivering anything to the quarry or receiving rock from the quarry to engage in Dump Truck Tailgate Banging as defined in §113.04 (E) at any time upon its property.

(2) The rock quarry operator shall keep a record of the owner/operator and number of the offending dump truck to include the date and time of the occurrence. No dump truck which has banged its tailgate shall be loaded or otherwise serviced for a full operational day of the quarry after the incident to include all day Monday if the tailgate banging occurs after 4:30 p.m. Friday or anytime on Saturday or Sunday. Loading or servicing such dump truck during this suspension shall constitute a violation of this ordinance and the Rock Quarry Operating License.

(Ord. 5280, 10-20-09; Ord. 5315, 4-20-10)

113.03 Jurisdiction Of This Ordinance

Pursuant to A.C.A. §14-54-103(1), this ordinance to abate a nuisance shall be applicable to any and all rock quarries located within the corporate limits of Fayetteville and for one (1) mile beyond the city limits as prescribed in A.C.A. §14-262-102.

(Ord. 5280, 10-20-09)

113.04 Definitions

(A) *Rock Quarry* means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.

(B) *House* means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.

(C) *Operation of Rock Quarry* means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry.

(D) *Major Noise Producing Activities* means blasting, rock breaking, dump truck tailgate banging, and the use by the quarry operator of non-static backup warning devices on its loader, breaker or other major equipment. Rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity.

(E) *Dump Truck Tailgate Banging* means the avoidable and loud banging of a dump truck tailgate used to vibrate the bed to loosen material in the bed sought to be dumped. The relatively quiet bang that might be unavoidable when a

Existing law

dump truck load is dumped and the truck moves away from the pile without applying the truck's brakes is not regulated by this ordinance.

(Ord. 5280, 10-20-09)

113.05 Issuance, Suspension Or Revocation Of License

(A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Rock Quarry Operating License upon proper application of an owner/operator of a rock quarry within the jurisdiction of this ordinance after ensuring the rock quarry operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for rock quarrying operation.

(B) *Suspension.* The Director of Development Services may suspend a Rock Quarry Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.

(C) *Revocation.* The Director of Development Services may revoke a Rock Quarry Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Rock Quarry Operating License before reissuing another license.

(D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

(Ord. 5280, 10-20-09)

113.06 Penalty

(A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

(B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.

(C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the Terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.

(D) Each violation of the operational hour limitations or the number of rock blasting events allowed by this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to $500.00.

(Ord. 5280, 10-20-09)

113.07 No Reduction In Property Owner's Right To Sue For Nuisance

Nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of rock quarry if a court of competent jurisdiction finds that such facility constitutes a private or public nuisance to that property owner.

(Ord. 5280, 10-20-09)

113.08-113.10 Reserved

ARTICLE II
RED DIRT MINING FACILITY OPERATING LICENSE

113.11 Finding Of Nuisance And Need For Abatement

The City Council of the City of Fayetteville, Arkansas determines and finds that the operation of a red dirt mining facility would be a nuisance to the citizens and City of Fayetteville, Arkansas if operated or used other than as prescribed in §113.12 and, therefore, should be abated by the reasonable regulations required by this ordinance.

(Ord. 5281, 10-20-09)