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
Special 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.

Mayor Jordan called the meeting to order.

PRESENT: Gray, Thiel, Kinion, Petty, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

ABSENT: Alderman Tennant

Pledge of Allegiance

Mayor Jordan thanked the Council for coming.

New Business:

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.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams thanked the Council for coming on their free Tuesday. I wrote a memo to you on March 11, 2011 explaining that the Federal Judge had issued an order, which rejected the City's request to certify the question of the interpretation of state statute upon which the rock quarry ordinance is based to the Arkansas Supreme Court so it could make its determination on how the statute should be interpreted.

This is a discretionary action by the court. It is totally within the Federal District Courts decision whether or not to do that and the Federal Court indicated it would not do that.

There was a conference call last week between the Court, Rogers Group, and the City about the case. At that point in time I asked the judge if he would give us until Thursday of this week, so I could talk to the City Council to see if there is anything the City Council wanted to do before the judge would began to make his decision on the actual merits of the case.

The City of Fayetteville and the Rogers Group have all filed motions for summary judgment on all the causes before the court. There are four separate causes of action that Rogers has filed against us. The first cause is the declaratory judgment action that the ordinance is invalid. The second cause is that it's a violation of due process. The third cause is that it is an illegal taking according to inverse commendation and state law. The fourth cause that it is a federal takings claim. The City has sought to have all those denied and the Rogers Group is supporting at least some if not all of their causes of action in their motion for partial summary judgment.

The judge said we could have up until Thursday to present any further information or evidence to him. I indicated I might file a pleading or send a letter to the court to have it filed in court. I looked at our ordinance and the main part of the issue, not only to the Federal District Court but to the Eighth Circuit, has been involving only our power beyond the city limits of Fayetteville, not within the city limits of Fayetteville.

We could find no precise case directly on point that would decide if a business is operating outside the city limits, what a city must do before it could regulate it. Would it have to sue in regular court and have a determination that it is a nuisance? That appears to be the Federal Courts interpretation. We had an interpretation by our State judge on another ordinance that went out beyond a mile of our city limits, and the State judge found it was constitutional. We have a couple different issues here and different interpretations.

The main issue in this federal case was the extraterritorial jurisdiction of the ordinance. Our code is made severable which means that sometimes if a part of statute or a part of a code section is found unconstitutional only that part would be stricken. That would be extremely difficult for the Federal Court. I have gone back into the rock quarry ordinance and looked at the portions of the ordinance that expressed the City Council's intent to have the jurisdiction go one mile beyond the city limits. The ordinance I just read would remove all of those. The rock quarry ordinance would be operative only within the city limits of Fayetteville.

The first and most important reason I did this was to ensure that if this is passed then the portion that is within the city would remain valid. In the future there might be a rock quarry that would open in the city or there could be annexations where a rock quarry would be within the city. We would still have a valid ordinance that has not been enjoined as long as it is within the city. The second reason is to save litigation cost and expenses. This has been going on a long time. We would like to limit the amount of litigation cost and expenses if we can. This is one way we can do that.

The Rogers Group quarry is outside the city limits. If the rock quarry ordinance no longer applied to them there would be a question of whether they would have any further interest in this case.

This would be very similar to what was done 2002 to 2003 when we were in court regarding the sign ordinance.

Alderman Ferrell: What is the intent if we pass this and anything outside the city limits is not bearing? Is it still going to go to litigation or are you expecting the suit to be dropped?

City Attorney Kit Williams: This could have a salutary effect on the suit. Whether or not it will be dropped I couldn't say. The Federal Judge will take this into account when he looks at whether or not he needs to issue a permanent injunction if we have removed the part that he was most concerned about. There might not be a permanent injunction. The Judge will do what he believes is best. I think this presents it in a clearer manner to the Judge for him to make his final decision.

Alderman Ferrell: I received a call from a citizen that questioned if the City Attorney has ever received compensation for extra work in going to court?

City Attorney Kit Williams: Yes, back when we had a board of directors and Jim McCord was the City Attorney. He was paid by the bond people.

Alderman Ferrell: As far as ongoing continued litigation there hasn't been any compensation since that time?

City Attorney Kit Williams: No, that was ended at least by 1992.

Alderman Petty moved to suspend the rules and go to the second reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Tennant was absent.

City Attorney Kit Williams read the ordinance.

Alderman Petty moved to suspend the rules and go to the third reading. Alderman Lewis seconded the motion. Upon roll call the motion passed 7-0. Alderman Tennant was absent.

City Attorney Kit Williams read the ordinance.

Mayor Jordan: Kit, are we passing this ordinance and the emergency clause at the same time?

City Attorney Kit Williams: No, it will require two separate votes. You cannot vote on the emergency clause, Mayor.

Alderman Ferrell: The over whelming reason that we would do this is to avoid protracted litigation?

City Attorney Kit Williams: Yes, that is number one. The second is to preserve the rock quarry ordinance validity within the city limits.

Alderman Ferrell: Do we have any quarries operating within the city limits?

City Attorney Kit Williams: We do not presently have any quarries. It is possible one could open up or we could annex an area that would have one.

Alderman Thiel: It would be grandfathered in, wouldn't it?

City Attorney Kit Williams: This is not a zoning situation. It could still be regulated.

Alderman Gray: What about all those residents who were so verbal? Have they been given any warning about this?

City Attorney Kit Williams: I will let their Aldermen speak on that. There might have been some contact with them.

Alderman Lewis: I would like to focus on this with the idea that yes they definitely care about this. This is an effort to preserve as much integrity of this as we can right now. The plan is to present this topic at the next ward meeting. I've been in constant communication with them throughout the process. As far as this particular action I have not had a chance to talk with them. As their representative it's important to do the best we can in regard to the integrity of this ordinance as it stands for the City of Fayetteville and to take into consideration the litigation costs.

Alderman Adams: I contacted one today that I've been in constant contact with. I explained the two reasons that I read from this and he has the material that's available on the city page.

City Attorney Kit Williams: I will go with the Aldermen to the next Ward 4 meeting and be there to answer any questions.

Alderman Ferrell: I would hope that we could learn something from this in our efforts for regulation. How long has this been in court, Kit?

City Attorney Kit Williams: It's been about 15 months.

Alderman Ferrell: I hope we remember this in the regulations we pass.

Alderman Lewis: In the ongoing communications I have had and in attending the mediation and communicating the process, I think without a doubt they want this to reach outside the city limits. It's a difficult situation because we have to take in other factors.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Tennant was absent.

Ordinance 5393 as Recorded in the office of the City Clerk

City Attorney Kit Williams: We need a separate vote on the emergency clause.

Alderman Petty moved to approve an Emergency Clause. Alderman Adams seconded the motion. Upon roll call the motion passed 7-0. Alderman Tennant was absent.

Emergency Clause passed

Meeting adjourned at 4:55 p.m.

Lioneld Jordan, Mayor **Sondra E. Smith, City Clerk/Treasurer**