

Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Thiel
Ward 2 Position 1 – Kyle B. Cook
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Robert K. Rhoads
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Shirley Lucas
Ward 4 Position 2 – Sarah E. Lewis

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



**City of Fayetteville Arkansas
City Council Meeting Minutes
October 20, 2009**

A meeting of the Fayetteville City Council was held on October 20, 2009 at 6:00 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: Alderman Thiel, Cook, Petty, Rhoads, Ferrell, Lucas, Lewis, Gray, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

American in Bloom Award:

Mayor Jordan thanked Cynthia Cope, Chair of the Fayetteville in Bloom Committee, for her dedication to Fayetteville America in Bloom, the beautification of our wonderful city and all that she does for the community.

Cynthia Cope gave a brief description of America in Bloom, the projects that have been completed in Fayetteville, the volunteers that have helped with projects and the donations that have been received. She presented the Mayor with plaques for Fayetteville for winning four Blooms in the competition and for the Environmental Awareness Award.

Mayor Jordan: On behalf of the City Council, the citizens and volunteers I want to thank you for your hard work. I want to honor all the businesses as well that participated in this.

2009 Volunteer Community of the Year Award:

Mayor Jordan stated Fayetteville will be awarded the 2009 Volunteer Community of the Year award. He thanked the many volunteers in Fayetteville who do so much to make our community

great, to improve the quality of life for so many, and provide service above self. It makes our community and government work in ways that would never be possible without you.

Presentations, Reports and Discussion Items: None

Consent:

Approval of the October 6, 2009 City Council meeting minutes.

Approved

Safe Routes To School Program: A resolution to approve and support a grant application of \$300,800.00 to the Arkansas Highway and Transportation Department for 100% funding for Clabber Creek Trail through the Safe Routes to Schools Program.

Resolution 214-09 as recorded in the office of the City Clerk.

2009 COPS Technology Grant: A resolution to accept the 2009 COPS Technology Grant in the amount of \$500,000.00 and to approve the attached budget adjustment to recognize this revenue.

Resolution 215-09 as recorded in the office of the City Clerk.

Baird, Kurtz & Dobson (BKD), LLP: A resolution to approve an annual contract with BKD, LLP for external auditing services for the 2009 audit in the amount of \$81,000.00.

Resolution 216-09 as recorded in the office of the City Clerk.

Energy Efficiency Rehabilitation Project: A resolution to approve Bid in the amount of \$64,210.00 from Joe Perme Construction for rehabilitation and increased Energy Efficiency of a city owned building at 1932 S. Garland Avenue.

Resolution 217-09 as recorded in the office of the City Clerk.

Alderman Petty moved to approve the Consent Agenda as read. Alderman Lucas seconded the motion. Upon roll call the motion passed unanimously.

Agenda Additions: None

Unfinished Business:

Amend Police Department's Policies, Procedures & Rules Manual: A resolution approving and adopting amendments to the Fayetteville Police Department's Policies, Procedures & Rules

Manual. This resolution was tabled at the October 6, 2009 City Council meeting to the October 20, 2009 City Council meeting.

Chief Greg Tabor asked that this item be tabled to the next meeting due to making a few minor changes.

Alderman Ferrell moved to table the resolution to the November 3, 2009 City Council meeting. **Alderman Lewis** seconded the motion. Upon roll call the motion to table passed unanimously.

This resolution was tabled to the November 3, 2009 City Council meeting.

2009 Millage Levy: An ordinance levying a tax on the real and personal property within the City of Fayetteville, Arkansas, for the year 2009 fixing the rate thereof at 1.3 mills for General Fund Operations, 0.4 mills for the Firemen's Pension and Relief Fund, 0.4 mills for the Policemen's Pension and Relief Fund and 1.0 mill for the Fayetteville Public Library; and certifying the same to the County Clerk of Washington County, Arkansas. *This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the third and final reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Petty stated it seems like Fayetteville does the budget backwards. We make revenue decisions before we've surveyed all our needs. He stated that he is not going to purpose an amendment to raise the levy.

Alderman Lewis stated it is worth thinking about how we're going to address the budget and should we do a levy. This is a good rate at this point.

Alderman Thiel stated that we have a deadline on the millage levy and it takes a great deal of time for all the departments to purpose their budgets and for staff to work on them. There's just no way to have time to get this to us in time for us to adopt this. She stated the Mayor presented a basic proposal of a budget outline and that's really the best they can do this early in the process. She stated it is difficult to vote on this early in the process because of the deadline for the County.

Mayor Jordan stated that is why I give monthly updates on sales tax dollars and where we are on the budget.

Alderman Gray stated she would like to challenge the staff if there is anyway possible that we could start in the middle of summer.

Don Marr, Chief of Staff stated the earlier you start the budget process the greater prediction skills you need. As you go through this process you are predicting what revenue and what expenses are going to be in a future time period. If we start pulling together information from the staff, setting priorities, reviewing, and going through levels of screening that we are doing which is Budget, Accounting, Chief of Staff, and the Mayor. To get it completed you would have to start it in April, we would be starting in the first or second quarter of actually getting results and then we would be predicting not only what we anticipate 2010 to be but where we expect 2009 to finish.

Mayor Jordan stated what he has tried to do is let you know every three months what the state of this City is. We are now making decisions on 2010.

Paul Becker stated you would have to start the budget process in order to meet June in about February. We would be just into the new year, to try to forecast that far ahead would be almost impossible. We would be constantly adjusting the budget for conditions. The statutes are constructed so that we do have to deal with the millage by the end of October and statutorily the budget doesn't have to be presented by the Mayor until December.

Don Marr stated we did cut about a month of review time. He stated he was fairly aggressive with the staff asking them to shorten their review periods and to reduce what they had historically had in there. I didn't do it to get the budget to you earlier I did it to get the last possible time so that we could look at numbers to get you the most accurate number.

Alderman Ferrell stated in previous years we've taken a great deal of time to figure the budget when we were having four, six, to eight percent growth in revenue, when we had positive good growth. He stated he has been here since 2004 and this year is the most proactive year I have seen. We spent a great deal of time when we had positive, good growth.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5279 as Recorded in the office of the City Clerk.

Old Wire Annexation Appeal: An ordinance annexing that property described in annexation petition ANX 09-3409 (CC2009-4), for property located at 3231 North Old Wire Road, the northwest corner of Old Wire Road and Rom Orchard Road, containing approximately 39 acres. *This ordinance was left on the First Reading at the October 6, 2009 City Council meeting.*

Alderman Ferrell moved to suspend the rules and go to the second reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Jeremy Pate, Development Services Director gave a brief description of the ordinance. He stated this was heard at the regular Planning Commission meeting and voted on 5-4 in favor of a motion to deny this request. Staff did not support this application for annexation.

Alderman Petty: When this came forward before it was coupled with a rezoning request right?

Jeremy Pate: That's correct.

Alderman Petty: Now that's not here?

Jeremy Pate: That's correct.

Alderman Petty: It's identified as a rural area but also as an intended growth sector. Does that seem dichotomist to you?

Jeremy Pate: We have had a lot of discussions about what that growth sector map means. The growth sector was created as part of the charrette process, looking at areas where residents potentially wanted to look at locating people within the City in the context of where the City might grow within the next twenty years. The map was refined into what we now have as a Future Land Use Plan. Ultimately what the City adopted was the City plan 2025 Future Land Use Map.

Alderman Petty: The land remaining reserved for agricultural use, how does that affect your opinion on the annexation now that the rezoning request has been removed?

Jeremy Pate: We were asked that question by the applicants, if you look at what our Future Land Use Plan discusses which is leap frog growth where areas of the city are left undeveloped and other areas are developed further away from city services, that would still remain a concern and you have seen that in our staff report all three times.

Alderman Lewis stated she had a question about the fire response. It says the response time of four minutes and then on a letter it talks about there's not a water main near the property of sufficient size for fire fighting.

Jeremy Pate stated there is an old house on the property that hasn't been occupied for a number of years. This is within our water service area. There's not adequate flow to fight a fire. The lines are not large enough to support a development of any size.

Alderman Lewis asked if the police chief could talk about the response time changing because of annexation.

Greg Tabor, Chief of Police: On priority one calls which are life threatening calls we have a goal of five minutes. Anything that makes the city bigger we still have the same amount of officers so it's more area that each officer has to cover and it could affect response time.

Alderman Lucas stated she is always concerned about fire protection. If this is developed it will have to have fire protection before you will approve any sort of development on this land.

Jeremy Pate: That's correct.

Alderman Thiel: Does the sewer run out there?

Jeremy Pate: It does not. The closest sewer is around Crossover and Old Wire Road.

A discussion followed regarding the city limits.

Alderman Ferrell: Is this similar to other annexations and the fact that when it was annexed the developer ran infrastructure to the property?

Jeremy Pate: If it were to be developed it would be their entire responsibility.

Alderman Ferrell: Anytime you annex something new into the city limits for awhile perhaps it's going to have a little impact on the Police and Fire.

Jeremy Pate: There certainly is always an impact.

Alderman Thiel: If sewer is not within 100 feet or whatever the rule is and it is in the city limits then they could build these on a step system?

Jeremy Pate: I believe they would have to extend sewer to this property. We do have an ordinance regarding septic systems and decentralized systems within the city limits but I believe those are not allowed unless they were already permitted when they were annexed.

Alderman Thiel: If it was a development they would be required to. If someone lived out there they wouldn't be.

Jeremy Pate: Right.

Todd Jacobs with Appian Centre for Design gave a brief presentation about this item.

Alderman Lewis stated you are requesting the annexation and your plan is to?

Todd Jacobs: If the property is annexed in that will give us the freedom of continuance of doing our environmental diligence and begin to see what kind of housing connection can happen out there. It allows us to start neighborhood meetings and see what the neighbors want or don't want. It allows us to start preliminary talks with the staff to see what they feel comfortable with bringing; water, sewer, traffic and all the issues that we typically go through with the development; and then evidentially if it was a PZD it would come back before this council for you all to decide on what is appropriate and not appropriate.

Colene Gaston resident of 3270 Rom Orchard Road asked that this item be left on the First Reading. She stated a number of her neighbors were unable to be here tonight and they would like to have an opportunity to give their comments either in person or by letter.

This ordinance was left on the Second Reading

Rock Quarries Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating rock quarrying facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

Alderman Lewis moved to suspend the rules and go to the third and final reading. **Alderman Lucas** seconded the motion. Upon roll call the motion passed unanimously.

***City Attorney Kit Williams** read the ordinance.*

Alderman Thiel stated the Ordinance Review Committee made several recommendations to clarify and fine tune the where as clauses and to include rock breaking and dump truck tailgate banging as noise problems.

Mayor Jordan asked Brenda if she wanted to start with the first one and make that amendment or wait.

Alderman Thiel stated lets try to combine them.

Alderman Lucas: Why don't you just read them all?

Alderman Thiel: I will read them all and then we can decide if there are some we have consensus on and kind of combine them. The second issue we discussed was the number of explosions. We limited that to 24 times per year that they can blast rather than 12 per year once per month. We also considered a variance to allow blasting after the normal period of 10:00 a.m. to 3:00 p.m. to be granted by the City for safety reasons. If we make these other amendments this should be made so that if they have a blast ready to go off and weather or something occurs they can go ahead and get a variance to go ahead and set it off.

Notification, the rock quarry operator must notify by telephone the City and any neighbor within a mile who has requested notification prior to any blast. The operational hours have been expanded from 7:00 a.m. until 6:00 p.m. on weekdays and 7:00 a.m. until 12:00 p.m. on Saturday. The time limitation for the major noise producing activities is limited to weekdays between 8:30 a.m. until 4:30 p.m. Tailgate dump truck banging was proposed to be prohibited at all times at a rock quarry or red dirt mining facility. Definitions of major noise generating activity and dump truck tailgate banging have been added. There were minor changes in Section

113.06 (D) and 113.07 as requested by the quarry operator and those were based on the ability to file lawsuits.

These recommended changes from Ordinance Review Committee can be considered at one time or a whole and the City Attorney has gone through the ordinance and made those changes.

Alderman Lewis stated these recommendations seem like it's a combination of both ordinances because Red Dirt Mining was mentioned.

Kit Williams stated right now we are just talking about the Rock Quarry ordinance but when I was drafting the Red Dirt Mining Facility ordinance I also tried to incorporate what the Ordinance Review Committee had recommended into that ordinance. Not everything was directly applicable because there is a slightly different operation.

Alderman Lewis: Are we going to discuss all of these recommendations together and then hear from the public or are we going to go one at a time?

Mayor Jordan stated we will have to go one at time.

Kit Williams stated several will not be controversial for example the where as clause, variance, notification, definitions, and the minor changes could be decided as a group. If there are disagreements with the number of explosions, operational hours, time limitations for major noise producing activities those might be controversial and those should be handled one at a time.

Alderman Lucas: Don't you make a report that this is your recommendations and then you present it as your recommendations and then it's discussed?

Alderman Thiel: I agree with Kit on some of the simple ones. I was going to make a motion to amend the where as clauses, variance, notification, definitions, and the minor changes which are not controversial. We could then discuss them and then each one of the additional ones we can discuss.

Alderman Thiel moved to amend the ordinance to approve changes 1, 3, 4, 8, and 9 as proposed by the Ordinance Review Committee. Alderman Petty seconded the motion.

Alderman Gray stated it seems like you all have done an excellent job of addressing most of the things that we talked about.

Don Marr suggested that the changes be read for the public who do not have a copy of the memo.

Kit Williams: The suggestion from the Ordinance Review Committee added rock breaking, rock crushing, and dump truck banging as part of the noise problems that would be a nuisance to inhabitation. Those were the major things that we did on that. We did not change the where as clauses dramatically we just added those other factors for major noise producing problems that would be the basis for making a decision that it would be a nuisance if you didn't regulate those.

Alderman Thiel: The variance was to add *the Director of Development Services or designee is empowered to grant a variance of time limitations for rock blasting if inclement weather or other conditions beyond the reasonable control of the operator has caused a safety issue that requires the rock blasting outside the 10:00 a.m. until 3:00 p.m. permitted period.* That's what the variance would do.

The notification is that the rock quarry operator must notify by telephone the City and any neighbor within a mile who has requested notification prior to any blast.

Alderman Lucas: Are you just reading the ones that we're going to consider right now?

Alderman Thiel: Yes. Under definitions we added major noise generating activity. Major noise producing activities means blasting, rock breaking, rock crushing, dump truck tailgate banging and the use by the quarry operator of non static back up warning devices on its loader, breaker, or other equipment. Definition 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 quick bang that might be unavoidable when a dump truck load is dumped and truck moves away from the pile without applying the trucks brakes is not regulated by this ordinance.

The minor changes under 113.06 Penalty (D) each violation of the operational hour limitations or the number of rock blasting events allowed by this ordinance. That was just a clarification.

Alderman Thiel: Under 113.07 we added nothing in this ordinance removes or reduces a property owner's right to sue or seek an injunction against any owner or operator of a rock quarry if a court of competent jurisdiction finds that such facility constitutes a private or public nuisance to that property owner. Those are the things I am covering this motion to amend.

Roma Gray stated regarding the notification for the blasting she wondered if there could be a stipulation on the time frame. She stated she rides horses and she can not make appropriate arrangements for safety so that she will not be on her horse when they blast. She stated other people may have similar issues and wondered if we could stay within a one or two hour time frame of when the blasting would occur not just that it will happen that day.

Alderman Thiel stated it reads right now that such notification at least two hours prior to the rock blasting. You say you need more time than that?

Roma Gray: I would like for them to let us know within a time frame when the blast is going to occur so that we can plan on that for safety purposes with animals and live stock.

Kit Williams: It can't occur under this ordinance unless its 10:00 a.m. to 3:00 p.m. that's already the limited window that they have unless there would be a safety variance granted by the Director of Development Services. There is only a five hour window at this point.

Roma Gray: Do you all feel that's appropriate for them to have the whole five hours for the blast to occur?

Mayor Jordan: That's why we are having this discussion.

Alderman Lucas: Right now it is 10:00 a.m. to 3:00 p.m. so what are you saying? You would like to be notified at least two to three hours before the blast occurs. What would be safety for your animals?

Roma Gray: For me in particular having notification the day before would be ideal so that I can make those kinds of plans for my animals. However when they say they're going to blast that it occurs within that particular timeframe. In the past we have been told that they are going to blast at 10:00 a.m. and a blast didn't occur until 2:30 p.m. I had plans to secure the animals and not be riding at the time and that time had already elapsed and then they blasted later in the afternoon.

Alderman Thiel: That was the only one that apparently anyone had any concern about.

Kit Williams: I noticed that we have rock quarry operators in the room and I would like to get their impressions on what the citizen said about notification. If they have any opposition to this current proposed notification required or any change we might make.

Gary Webb, Rogers Group: We are currently calling everybody that is on the list the day before we shoot and an hour before we shoot.

Alderman Lucas: You say a day before and an hour before. Could it be two hours before?

Gary Webb: Sure, it's a guess anyway. It's not going to be exactly two hours for one thing it takes a half hour to make those phone calls. We get as close as we can. Generally we try to shoot around noon and we start calling people about 11:00 a.m. We can call them at 10:00 a.m.

Alderman Thiel: I was going to suggest since there might be some discussion on that item I could pull that from my motion.

Alderman Lucas: We have already had that discussion.

Alderman Thiel: You don't want to change that?

Alderman Lucas: I would like to add that you notify the day before and two hours prior. I am making an amendment to the amendment.

Kit Williams: The Big Red Dirt Farm individuals are here and I would like to know whether or not that's going to be some sort of operational problem. I would like to get your comments on that and let us know before we pass an ordinance.

Chuck Nestrud, outside counsel for Big Red Dirt Farm: In the blasting situation the professionals who load the shots have a lot of things that they have to consider before they determine exactly what time they're going to set the blast off. Weather conditions may delay a shot in making sure they get everything set right. They do the best job they can in providing

notice but if you start restricting that they have to provide notice a certain time period you're impacting their ability to make safety decisions and I don't think that is a good idea. They're going to do the best job they can. You have heard about the policies of trying to give notice an hour before and the day before and they do that the best they can but if for safety reasons a blast needs to be delayed then the blast needs to be delayed. An arbitrary deadline should not change that.

Kit Williams: Have you seen a copy of the proposed amendments that the Ordinance Review Committee has presented?

Chuck Nestrud: What we would like to do is reserve our comments until we see what the ordinance looks like at the end of all your deliberations. Our comments are more of a generic fashion and not piece by piece and it's hard for us to piece mill our comments to the ordinance. It's the whole picture that we have to look at before we can tell you what we think about it.

Kit Williams: I appreciate that, I wondered if you had seen the proposed changes that the Ordinance Review has presented.

Chuck Nestrud: I have not.

Alderman Lewis: Did you say your operations notify the day before?

Chuck Nestrud: Yes, Big Red Dirt Farm has a conditional use permit and it has notification requirements but that's the policy of all blasters anyway is to notify.

Alderman Petty: What we've got is mostly okay I would support requiring notification a day before even though that's already policy that's good to have that written out. For the blasting already being restricted to a five hour window that takes care of requiring them to notify what the window of blasting will be because we've said that already in the requirements.

Alderman Thiel: Can I make that change to my motion?

Kit Williams: Let me make sure I understand it, are we just moving it up to the day before or are you requiring two notifications?

Alderman Lucas: They are doing two now.

Alderman Thiel: They say they're doing two so why not one day prior and then two hours prior.

Kit Williams: That's fine.

Alderman Gray: It seems like the big difference is Matthew is saying a five hour window where I heard the lady saying that she would like to have a two hour window, right?

Alderman Thiel: No.

Stephen Giles, outside Counsel for Rogers Group: The Rogers Group policy is to notify. The problem with putting that in the ordinance is if we have a situation where a blast has to be delayed and someone does not get the phone call then the license can be revoked because it is one of the causes for penalty under the ordinance. When you set something like that in stone that is going to be a fundamental problem with adherence to that if this is passed and this license is issued. We do not want to be blamed for something that is outside our control.

That is the reason Mr. Williams and I talked about the variance and we agreed to have a variance provision for blasting in the event something happened that is beyond our control but to have that hard and fast and set in the ordinance is really going to cause problems.

City Attorney Kit Williams: I think the way I would interpret this ordinance is that variance would cover this problem. If you had given your notices out and then something happened beyond your operators control, with inclement weather or something, and the blast had to be delayed and a variance was granted then that would not be any violation of this ordinance or your rock quarry license.

Alderman Ferrell: Kit, if there was a delay and they got a variance would that kick in a renotification requirement?

City Attorney Kit Williams: It would not. The variance would be varying that particular time that had been previously allowed for it. If we have problems in the future we can come back and add another requirement if we see that is a problem.

Upon roll call the motion to amend the ordinance items 1, 3, 4, 8, and 9 as proposed by the Ordinance Review Committee but also include a change to the notification section to read *who has requested such notification at least 24 hours and two hours prior to rock blasting.* Upon roll call the motion passed unanimously.

Alderman Thiel moved to amend the ordinance to limit the number of days that blasting can occur to 24 days. Alderman Lucas seconded the motion. There was no vote on this amendment. The motion was withdrawn by Alderman Thiel.

City Attorney Kit Williams read the ordinance as suggestion by the amendment.

This motion was withdrawn by Alderman Thiel.

Alderman Petty: I would like to suggest instead of saying 24 per year we designate which days this could happen. A citizen suggested the first and third Wednesday of each month. That is something I would support as long as we had a variance procedure in there for inclement weather.

Alderman Petty moved to amend the ordinance to allow blasting on the 1st and 3rd Wednesday of the month. Alderman Gray seconded the motion.

Donald Johnson, a citizen: As a citizen I have made some adjustments and am trying to be neighborly with these quarries. I think this would be a great idea. This would give us some understanding of when these blasts would occur. We could plan our family activities around these dates.

Stephen Giles: Rogers Group can not agree to that. We have explained over and over again that this company is in the business of crushing stone and to do that in the most efficient way and the quietest way is to do our blast at half the State limit and conduct blasts when Rogers Group needs to do it to get the stone on the ground so that it can be crushed in and an adequate supply kept on site for the trucks to come and get it. They do not know when they are going to have to blast until sometimes the day before. Rogers Group which is in the business solely to crush and blast can not plan or be affected by an ordinance that says you can only blast on certain days of the month. They just can't do that. What if no one is home but we can't do a blast because it is not one of the days. No one is affected.

Alderman Petty: You do know that the original ordinance limits the quarries to 12 days per year? Are you in support of the amendment which grants your business more freedom?

Stephen Giles: We are not in support of 24 days a year.

Chuck Nestrud, on behalf of Big Red Dirt Farm: We already have a condition that limits our blasts to 24 times per year. We think that is an adequate restriction. Farther limiting that to specific days of the week I do not understand. Your authority is to abate a nuisance. A nuisance does not occur on a specific day of the week. For the life of me I don't understand how this has gotten to something that requires us to be a nuisance, to something that we want regulations that does this because it would make our life easier. That is not what this is all about. You have a very narrow window of authority to regulate and that is an existing nuisance. You can only deal with what is necessary to abate that nuisance. Your authority is not to regulate whatever you feel like regulating.

Roma Gray: Part of the nuisance with the quarries is the wondering when the blasts are going to occur. Yes, you have said we will get the 24 hour notice but having some built in predictability as to the scheduling would make a world of difference, for me in particular to deal with horses and livestock and scheduling riding lessons. In most types of businesses you do planning on how much supply and demand there is going to be.

Darin Matson, Rogers Group: The neighbors can call us any time and ask if we are going to shoot and we would be glad to tell them. That may be a solution.

Alderman Lucas: How far ahead do you schedule?

Darin Matson: Usually the afternoon before.

Alderman Lucas: You don't do it a week before or three days before?

Darin Matson: We try to plan it but we usually call the blasting company the afternoon before.

Alderman Lucas: They can accommodate you that quickly? They don't have any other areas that they have to blast?

Darin Matson: They generally have enough crews working in the area that they will accommodate us. Mr. Maston handed out a list of all the blasts they have done since April of this year. There have been some comments in the media that we doctored our blast for your visits and you will clearly see that one of the visits was the largest blast we ever put off, the other two were similar size blasts. I just wanted to share that with you just to put that to bed. We don't doctor our blasts at any time. We design them all the same.

Alderman Ferrell: Thank you for that. I took strong exception when someone said they felt like we had been doctoring them when we were out there.

Darin Matson: We don't play that game.

Alderman Lewis: You have said that you blast at one half inch per second. You have some wiggle room you can go all the way to one inch per second?

Darin Matson: That's correct. On this list there is a couple that is over point five. That's to the closest structure. We blast to these vibration measurements, we measure closer than that, we measure between 700 and 900 feet from our blast. There are only a couple that hit point six but we have the ability to go to one. Limiting us to 24 blasts per year all bets are off that I can hit the point five and I can hit the 123 decibels. I am going to have to put up larger shots. I have so many sales and less days of shooting. I can not hold my people accountable and the blasting companies accountable to our internal standards if I have to double the size of the shots.

Mayor Jordan: You are saying if you go to 24 blasts they will be larger blasts and have more implication.

Darin Matson: Absolutely. No doubt about it. I just can't physically put that much down in 24 blasts and this has been a slow year. By being honest with you in the amount we are going to shoot by restricting us I can not shoot smaller blasts. I am not going to have the days to do it. With combining it with the red dirt operators, if they shoot a boulder on their pit that counts against one of my days. One boulder of two or three hundred pounds is going to take away my 20,000 tons of rock that I can shoot.

City Attorney Kit Williams: Not if you are shooting on the same day.

Darin Matson: Regardless if it is on the day or not it is one of my blast days that is gone.

City Attorney Kit Williams: I think you misunderstand this. If in fact you both shoot on the same day that is one day.

Darin Matson: But, we are not going to shoot on the same day. I don't know what they do, I do not run their operation, we are two different companies, totally different businesses.

Alderman Cook: What would this chart have looked like nine years ago when you guys were in full run? When the boom was going on and people needed rock all the time.

Darin Matson: We have been in business here since 2008.

Alderman Cook: For instance, this is based on a slow time period.

Darin Matson: The size of the shots is the same. It would be the frequency that may increase. We just got started last year so you are not going to see much difference from last year to this year.

Alderman Cook: Correct. We are talking about limiting this to 24 shots and you said that would restrict you on the amount of supply that you could have. When construction is rocking and rolling people need rock so how many shots would you have to have per year to keep your supply. I know you would be guessing.

Darin Matson: I would say we would probably have to shoot upwards to three times per week. If this quarry was growing the way we would love to see it grow and some of our other business we would like to have that flexibility to be able to shoot three times per week. Typically it would probably be more like two times per week.

Alderman Cook: If you were shooting at that frequency as far as the vibration numbers are they going to be similar to what we are seeing on this chart?

Darin Matson: If we have the flexibility I can guarantee you that we will stick to our internal limits. That is why we designed them that way.

Alderman Thiel: Legally they can't blast a whole lot more as far as the volume of the blast.

City Attorney Kit Williams: They can increase it to some extent.

Alderman Thiel: He is saying the blast would have to be a lot larger if they had to do it less frequent.

City Attorney Kit Williams: They are shooting at about half the strength that they are allowed to shoot under State and Federal law.

Dana Gallagher reminded the Council that the purpose of the ordinance was the abatement of a perceived nuisance, something that is disturbing. She stated one of the ways we can control something that is disturbing is by planning. She stated the neighbors never raised an issue until this became overbearing, they tried to be good neighbors. She voiced her concern about not being able to plan her life. She stated the neighbors came here to cooperate.

Debbie Johnson: I agree on the first and third Wednesdays.

City Attorney Kit Williams: A couple of things that need to be a part of the amendment if you are going to do it. We need to say if the first and third Wednesday happens on a holiday that automatically the next day or Thursday or whatever you want to say. Plus there probably needs to be a variance in here in case it is a day that would not be appropriate for blasting because of inclement weather or something like that. We would then need to give the Director of Developmental Services the right to postpone the blasting. I think we need those two provisions within it if we are going to try to limit it to specifically the first and third Wednesday.

Alderman Petty: I am on board with that.

Alderman Gray: Yes. I agree.

Upon roll call the motion to amend the ordinance to allow blasting on the 1st and 3rd Wednesday of the month passed 5-3. Alderman Petty, Lucas, Lewis, Gray, and Thiel voting yes. Alderman Cook, Rhoads, and Ferrell voting no.

Mayor Jordan: Operational hours and days the operational hours have been expanded to 7:00 a.m. until 6:00 p.m. on weekdays and 7:00 a.m. until noon on Saturday.

Alderman Lewis: Part of the discussion is the safety for kids and the dump trucks in the mornings. It states *the major noise producing activities are later in the weekdays between 8:30 a.m. and 4:30 p.m.* That is inside the operational hours which are 6:00 a.m. to 7:00 a.m. I am proposing the operational hours be 8:30 a.m. to 6:00p.m. They are not starting until later.

Mayor Jordan: So you want to change the times on what we have. What do you want the times to be?

Alderman Lewis: Mostly operational hours are the only thing we are talking about so I would like them to not be operational until later.

Mayor Jordan: What time?

Alderman Lewis: 8:30 a.m. until 6:00 p.m.

Mayor Jordan: That's on weekday's right?

Alderman Lewis: Correct.

Mayor Jordan: Are you changing Saturdays?

Alderman Lewis: No.

Alderman Ferrell: Sarah, are you talking about the whole year or during the school year?

Alderman Lewis: It's because of the kids so I guess only during the school year.

Alderman Lewis moved to amend the hours of operation to 8:30 to 6:00 during the school season and from 7:00 to 6:00 during the summer. Alderman Lucas seconded the motion.

Alderman Gray: I understand that would create a problem for some people that their workers go to work at 7:00 a.m. if they can't go pick up a load of rock until 8:30 a.m. That is kind of a problem.

Alderman Ferrell: Some of the principals here at one time had offered to construct some bus shelters along the side of the road in an attempt of good faith to try to help shelter and protect any of the school children along side the road.

Alderman Thiel: At one point some of the operators suggested they would build shelter but we can not require that in the ordinance.

Alderman Petty: I appreciate what you are suggesting it is something I struggle with too but I support what we came up with at the Ordinance Review. I do not think I can support anything that is more restrictive than what we have already came up with.

Dave Bolin, Hamestring Road: I think what we need to remember with the difference in hours, 8:30 a.m. gets everybody pass the school kids on the road, buses on the road and traffic on the road and quiet at least in the springtime and maybe in the fall. It makes it easier if you say 8:30 a.m. to 6:00 p.m. because then you have far less to deal with about the noise issue. What we are doing is abating the nuisance for the pits that are within a mile of the city limits. We think that 8:30 a.m. to 6:00 p.m. would be more appropriate. We are trying to keep the dump trucks and everybody else from mingling in the dark, in the morning, with the noise in a high density residential, agricultural area. We think this is a good compromise.

Hugh Jarrett, attorney for Stephens Red Dirt Pit: We did offer to help with those bus shelters for the school kids and we still are more than happy to do that.

Mack McCandless, West Wedington Drive: My house is 900 feet from the edge of the pit. My concern is not just with the traffic on Hamestring Road or the bus shelters that are going to be put there. My concern is with the entire length of Wedington Drive. He voiced his concerns about the conflict with traffic. I hope you can see the point on shortening these hours.

Darin Matson, Rogers Group: We can't support more restrictive hours. We can't run a successful business where the first load shows up to paving or construction crew at 9:30 a.m. or 10:00 a.m. in the morning. Extending the hours is not an equal compromise from the morning to the afternoon.

Alderman Lewis: I guess what I am struggling with are the kids along the road in the morning. That really is what the point of this recommendation is. What is your recommendation on addressing that?

Darin Matson: Other than creating the shelters we defiantly would participate in that. We will accommodate them any way we can. The trucks have been traveling these roads for a number of

years and I don't know of any instances with school buses. It would help to know what we need to address. It is almost like placing an ordinance in place where there is not a problem. There hasn't been a problem. Truck drivers have kids and families. They are not out there to run people over.

Chuck Nestrud: We would have to agree with what the Rogers people said. It is almost impossible to run a business if you can't run your business at the time and period that the people are use to working. If you are supposed to give two hours notice before a blast that starts at 10:00 a.m. and you can't open your facility until 8:30 a.m. when does this two hour window to give notice start? We are not going to have people there when they can't do any work to start making phone calls. You are just placing restriction on top of restriction that is almost impossible to deal with.

City Attorney Kit Williams: Operating a facility does not mean that you can't be there. It means that you can't have major pieces of equipment working rather than not being able to be there yourself.

Chuck Nestrud: You can't do any work so why would you do that.

Mary Crumley, Hamestring Road, voiced her concern about the trucks on Hamestring Road. It is the safety aspect of the people hauling their children in and out. That road is dangerous.

Alderman Thiel: What time do your grandchildren come down to your house?

Mary Crumley: About 7:00 a.m. and 7:15 a.m. Their parents bring them.

Alderman Thiel: So they are not out there walking on Hamestring?

Mary Crumley: No.

Alderman Thiel: Does any one have a quantity of school children? Do we even know how many school age children catch a bus between Wedington and the quarries?

Debbie Johnson: I do not know the answer to that question. There are three buses that travel that road. The hours of operation on Saturday is that limited to sales only? Will the dump trucks be loading and unloading on Saturdays?

Mayor Jordan: It is just like a regular work day.

City Attorney Kit Williams: And there is no major noise producing activities allowed.

Debbie Johnson: I would like to see no noise at all coming out on Saturday. What time can they start on Saturday?

Alderman Lucas: 7:00 a.m.

Alderman Lewis: Right now it states from 7:00 a.m. to noon on Saturday with limitations on the noise making activity.

Debbie Johnson: No tailgate banging and no backup beeping?

Alderman Lewis: Right.

Debbie Johnson: How are we going to enforce that?

Alderman Lucas: They will just abide by it.

Debbie Johnson: What if they don't?

Mayor Jordan: They would be in violation of the ordinance and we would send someone out to enforce the ordinance.

Debbie Johnson: I would like my Saturdays free of quarry noise. I would like complete silence on Saturday mornings if at all possible.

Billy Sweetser: If you are going to limit dump trucks you are going to need to limit somebody hauling hay, feed, chickens or whatever it is you haul on the highway. They are all trucks. What's the difference? What is the difference in a gravel truck and a truck hauling equipment? How do you regulate that? No trucks?

Don Johnson: We have had our fourth windshield broken from gravel. We have to pay for these ourselves. I don't think I have had any windshields broken from hay hauling. I appreciate the ordinance that you are working on. With these time limits I know it is going to be difficult to run a rock quarry but the citizens are trying to adjust or whatever it takes so that we can work with them neighbors. I appreciate the fact that they are willing to make bus shelters for these children. How thick is the concrete going to be on these bus shelters? Is it going to be dump truck proof? We are zoned agricultural and residential not commercial.

Alderman Thiel: I am going to continue to support the recommendation that came from the Ordinance Review Committee. I will not be supporting Sarah's amendment.

Alderman Lewis: It is a hard decision. I understand they need operating hours but also it is a safety issue. I don't know that I have the perfect answer but it seems like pushing it back a little bit is one way to address it because I am not sure everyone can come together and build bus stops in all the right places and so on.

City Attorney Kit Williams: Remember that your power as the City Council is to abate a nuisance. It is not really a safety issue. You have to determine, using your legislative discretion and understanding, is this a nuisance. If the rock quarry would be a nuisance the way it is operating right now, what kind of reasonable regulations could you place on that rock quarry so that it stops being a nuisance. There can be some consideration of the traffic that it generates and it generates a lot of dump truck traffic. I think that the safety issue here should not be overstated

because I think that is a much weaker read to support this ordinance than the other kinds of reasons that you have heard from the citizens about noise and the other disruptions to their lives. I think that is what you should primarily consider when you are thinking about trying to abate a nuisance.

Alderman Rhoads: Kit, I am glad you said that. It seems to be as we think through this, not just this issue about hours, but the other issues that will come before us that are on the memo that we have already talked about. I think our natural inclination is to reach out to these people because we don't particularly care to be disrupted Saturday morning. However, if we go too far as a Council I think we will end up seeing some operators that will determine that if they can't stay in business with the conditions we put on them, then all of that will be for naught because we will find ourselves in litigation which we may not be able to prevail. In that case the good folks may end up with something that is worse because of our efforts to over help. I just would caution you all about that. I don't think it is a bright line. I think it is a pretty hazy line.

The reason we pushed it back to the Ordinance Review Committee is so we could have a full fledged discussion with both sides and my sense is that there was some give and take in that room. I don't know if the operators are in total agreement but my sense is that the recommendations of the Ordinance Review Committee got pretty fair acceptance by the operators.

Alderman Ferrell: I think Kit hit on the key word which is reasonable. I think that the citizens came and asked for help and I think that what happened is we have had an over reaction. I think the industry has tried to be flexible to a certain extent. I won't support the ordinance, I view it as unreasonable. This Administration and this Council have all agreed that economic development is very important and the primary aspect of economic development is retention of existing industry. I think that is something we need to keep in mind. We need to come to common ground and agreement where we can but I think there are some things involved in these ordinances that are unreasonable to expect from the developers.

Alderman Lewis: The City has the right to protect the safety and general welfare of its people. That includes their property values and their quality of life. That is part of this in looking at and trying to abate the nuisances that may come from an operation like this it's an effort to do that. I agree at the Ordinance Review Committee meeting I felt very good about those and I thought there was a lot of workability's in those meetings. I think it has been a good effort.

Mayor Jordan: At the Ordinance Review Committee do you all vote on every one of these?

Alderman Thiel: Yes.

Alderman Petty: That was the first meeting and I believe we were all in support.

Mayor Jordan: We are voting on the amendment to the Ordinance Review Committee recommendation from 8:30 a.m. to 6:00 p.m. on weekdays during the school year and 7:00 a.m. to 12:00 p.m. on Saturdays.

Upon roll call the motion to amend the ordinance hours of operation to 8:30 a.m. to 6:00 p.m. on weekdays during the school year and 7:00 a.m. to 12:00 p.m. on Saturdays failed 2-6. Alderman Lucas and Lewis voting yes.

Alderman Thiel read the recommendation by the Ordinance Review Committee.

Alderman Thiel moved to amend the hours of operation from 7:00 to 6:00 Monday thru Friday and 7:00 to 12:00 on Saturday as recommended by the Ordinance Review Committee. **Alderman Petty** seconded the motion.

Stephen Giles: We had agreed in the Ordinance Review Committee to all of that with the exception of having to turn rock crushing and major noise producing activity. The company has to be able to crush stone early in the morning to have it ready for the trucks. I might also remind the Council that our quarry is a half mile from the residents of the City of Fayetteville for whom this ordinance is designed to protect. They can not hear our crusher so it does not make any difference if it is crushing at 7:00 a.m. We appreciate your consideration.

Alderman Thiel: That was the recommendation from the committee. We kind of discussed what was just brought out but we didn't really come up with an amendment. I am still open to that.

Alderman Lucas: I want to remind everyone that this is not just with these operations. This is for the City of Fayetteville, whether this operation is three quarter of a mile or a mile from the City. This is within a mile from the City. It is not aimed at this one quarry.

Upon roll call the motion to amend the hours of operation from 7:00 to 6:00 Monday thru Friday and 7:00 to 12:00 on Saturday as recommended by the Ordinance Review Committee passed unanimously.

Alderman Rhoads: Kit came up with some language that I would like to propose as an amendment. Under D: Major Noise Producing Activities this is the additional language *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*. If it is beyond a half mile then it is not considered a major noise producing activity.

Alderman Thiel: The rock crushing has been removed from major noise producing activities and then it is added back in that regard.

Alderman Rhoads moved to amend the ordinance as follows: *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*. **Alderman Ferrell** seconded the motion.

Chuck Nestrud: I appreciate your interest in trying to deal with the rock crushing issue. I would like to mention that all rock crushers are not the same. The real issue what is the noise level at the city limits. Our rock crusher on a relative scale is very small and doesn't produce any noise of any concern. In fact it meets your noise ordinance levels at the city limits. It is not the

distance because all rock crushers are not the same. It is the noise level that those rock crushers generate. We believe that if we operate our rock crusher at a level that meets your noise ordinance it should not be an issue because you have already determined that is an acceptable level for your city residents.

Alderman Rhoads: I appreciate your comments. We discussed it at the Ordinance Review Committee that using noise meters and things of that nature would be incredibly difficult to do. This is an effort to make this as simple as possible.

Chuck Nestrud: Sometimes simple is not the best solution.

City Attorney Kit Williams: We also heard from the neighbors concerning the rock crushing machine that they heard. So even though it might be at a certain level it does not mean it would not be a nuisance if it is operating for extended periods of time. I think that was the decision of the Ordinance Review Committee to make it a major noise producing activity because it could in fact disturb neighbors that are close by it.

Alderman Thiel: It is my understanding that one of the rock crushers was very quiet. The one that was so quiet that was within a half a mile?

City Attorney Kit Williams: The Rogers Group and the Stephens Red Dirt Farm are farther away than the Big Red Dirt Farm which is the closest quarry and red dirt farm.

Alderman Thiel: So the one you are representing is closer than a half a mile to a residence?

Chuck Nestrud: Yes.

Alderman Lucas: I question the half mile to a house, building, or structure. Would it not be easier to say from the city limits?

City Attorney Kit Williams: Since we are trying to protect our citizens, especially in their homes, that is an appropriate distance rather than to a yard if you are protecting a citizen from this constant noise that is generated. A home is often looked at in the law as something that deserves special protection.

Mack McCandless: I don't know how far the rock crushers are from my house but I hear them. They are loud enough to be a nuisance.

Dana Gallagher stated noise can be a nuisance in two forms. The loud blasts are definitely a concern for all of us. She discussed other noises that are a nuisance. I would appreciate that nuisance being abated.

Mayor Jordan: We have an amendment; *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity*

Upon roll call the motion to amend the ordinance to state: *rock crushing within a half mile of a house within the city limits of Fayetteville is also a major noise producing activity* passed unanimously.

City Attorney Kit Williams read amendment # 7 regarding tailgate banging.

Alderman Rhoads moved to amend the ordinance to not allow dump truck tailgate banging. Alderman Lucas seconded the motion.

City Attorney Kit Williams: At our Ordinance Review Committee meeting they indicated that this was something they felt like they could do. It was not a real need for the dump truck operators to do that and they would assist the dump truck drivers from emptying their loads if need be. I just wanted to make sure that was still the case with both the Rogers Group and the Big Red Dirt Farm. If they could help in making sure the dump trucks would not bang their tailgates.

Chuck Nestrud: I think that what we said was we would give it our best efforts to advise our truck drivers that is not an acceptable practice. There are a number of trucks in the facility and there is not a clear line between what is dump truck tail bashing and some other activity. When a noise occurs, to pinpoint whether or not this is on one side of the line or the other, is a difficult call. To have a license that the City purports to issue to this facility in jeopardy is not an acceptable practice. Most of our objections to this ordinance go to this licensing provision. It is really the enforcement mechanism that you have set up that puts our ability to stay in operation in jeopardy that we object to. We are going to give it our best efforts to comply with this provision but we object to the enforcement mechanism that you have put in place.

Steve Giles, outside counsel Rogers Group: We have looked at this and discussed it at the Ordinance Review Committee. Rogers Group doesn't own any trucks that haul in and out of their quarry. That severely limits their ability to tell these drivers what to do. We did agree that we could prohibit them from doing the tailgate banging.

City Attorney Kit Williams: It just means that if a dump truck violated your directions not to bang their tailgate your operator would not fill that dump truck for a day.

Steve Giles: We agree that we could go along with that.

Upon roll call the motion to amend the ordinance to not allow dump truck tailgate banging passed 7-1. Alderman Ferrell voting no.

City Attorney Kit Williams: I drafted some language for something you have already pretty much passed but since ordinances must be read let me read that. This is for the number of explosions allowed which would be on page two. *All rock blasting within the permitted quarry shall only be allowed 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 practicable because of inclement weather or other conditions beyond the reasonable control of*

the quarry operator the Director of Developmental Services may designate another weekday during the next five weekdays as a permitted blast day.

Alderman Cook: That basically still spells out 24 blasts a year.

Alderman Thiel moved to amend the ordinance as follows: *All rock blasting within the permitted quarry shall only be allowed 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 practicable because of inclement weather or other condition beyond the reasonable control of the quarry operator the Director of Developmental Services may designate another weekday during the next five weekdays as a permitted blast day.* **Alderman Lucas** seconded the motion. Upon roll call the motion passed 6-2. **Alderman Cook** and **Ferrell** voting no.

Alderman Cook: I think we made some good changes in this but I am still worried about the number of explosions. I think we are going to create more of a problem. While we are trying to do some good there I think ultimately we are going to create a bigger problem by limiting that because they are just going to raise the limit. They are going to use stronger blasts that are going to create more of a nuisance is what I am afraid of. To me that is the sticking point the number of blasts but some of the other changes we made I thought were good changes that it seems like the operators are willing to live with. I struggle with that one.

Alderman Petty: I would like to hear from citizens on whether you would rather have limits on blasting or limits on the number of days. It sounds like this is going to have a significant affect either way we go.

City Attorney Kit Williams: Please keep in mind that we are not allowed to regulate the power of explosions. That is regulated by the State and Federal government. We can probably regulate the number but I don't think we can regulate the power of these explosions.

Alderman Lewis: I am concerned about that too. As I understand the Rogers Group chooses to keep the power of their explosives lower because that benefits all parties involved because it reduces the damage to surrounding buildings.

City Attorney Kit Williams: Even though we can't regulate the power of explosions, I guess it would be within the City Councils power, if they so choose, to say that if an operator is willing to kept his explosions at a certain level that he would be allowed bonus days of explosions. The problem there is that would be extremely difficult to monitor and I would be more nervous doing that then simply limiting the number of days because that does seem to be getting into the State and Federal power.

Alderman Ferrell: I would like to hear from the people in the business what their take is on the idea of bonus days.

Dave Bolin: The days versus the strength of the blast personally we would like to stick with the days. We would prefer that the blast not be large. If you know when the blast is coming it does not feel or sound as big as if you didn't know when it is coming.

Jim Gallagher: We really appreciate your hard work. We too would like to keep the control on the number of days as opposed to the size of the blast. The nuisance aspect is this is not limited to loud noises. It is interfering with our ability for our entire family to enjoy our home.

Chuck Nestrud with Big Red Dirt Farm: Our operation is located in the County. It is not in the city limits. We are highly regulated by the County through a conditional use permit. We agreed to go through the conditional use permit process when we did not believe that we were required to go through that process just because the County wanted to impose some restrictions similar to the types of restriction you are imposing, hours of operation, number of blasts, and things that we negotiated in good faith with the County to impose upon ourselves to be good neighbors.

During that conditional use process the County went to the effort of contacting the City and asking the City what input it wanted to have on the conditional use permit process and you responded. Your only response was if they do any damage to our roads we want them fixed. The County put that condition in our permit. The County looked at the safety issues and the noise issues. The County looked at all those issues and they looked at what your regulatory people said they wanted in that permit and they accommodated you. We believe we are regulated by the appropriate body that did the right thing. At the end of the day it's their land and their jurisdictional area. The authority of the City to deal with this issue is limited to the abatement of a nuisance. What is a nuisance is up to the courts to decide. Whether what we are doing today is a reasonable interference with the use of an adjoining property and if it is you can take such actions that are appropriate to abate that nuisance. Nobody has said that our operation today constitutes a nuisance. The concerns that have been raised are about noise, we have negotiated in good faith to deal with that issue. There were concerns about the number of blasts and we have negotiated in good faith to deal with the number of blasts. This concept of licensing is unheard of in Arkansas for a City, any municipality, to start issuing licenses to facilities that are located outside their jurisdiction. I don't think you will find any other city that has done that because you can't regulate facilities that are outside your borders, by starting a regulatory program, issuing licenses, taking away licenses, taking away that facilities ability to be in business and conduct operations. That regulatory program is a taking and we can't live with that. We did not choose to be in the City, we chose to be in the County. You have not annexed this area. You annexed the areas that you want to regulate now. We were in business at the time that you annexed these houses, these neighbors, who are now talking about the problem that they have. You chose to bring the city limits up to our boundaries we did not choose to have the city limits at those areas. You made that decision after we were in operation. Your decision to impose regulations on a facility that is currently legally operating outside your jurisdictional boundaries is unprecedented in Arkansas and we can't live with that.

Steve Giles, Rogers Group: I echo some of the comments that Chuck just made to you. We have always objected to the jurisdiction of the City to go outside particularly for our quarry that is one half mile outside your city limits and say it could be a nuisance. We are trying to keep it

from not being a nuisance. The law does not permit you to do that. We are still open to negotiation as long as this ordinance is not passed. We can not accept a licensing requirement for the same reason there is no jurisdiction to do that in the City. The restriction on the company's operations and mandatory restrictions with criminal penalties we can not agree to that. We have given a lot of negotiation to the City and voluntarily agreed to go along with some of these provisions but the bottom line is if this goes forward in its current form we are going to have to file a lawsuit to challenge it. I hope for everybody's sake particularly yours and the companies that it is resolved very quickly in a motion to dismiss on a jurisdictional question. If it is not we are all in for a very long and bitter lawsuit. I appreciate your consideration in not passing this ordinance.

Chief Greg Tabor asked about the penalty phase of the ordinance.

Dana Gallagher stated there has been compromise on both sides and I think we both would like something more. She voiced her concern about the quarry being a nuisance.

Alderman Rhoads: Kit, could you respond to Mr. Hester's comments specifically about licensing outside our city limits?

City Attorney Kit Williams: As some of you will remember when we did the motor vehicle racing facility which was also partly and mainly outside the city limits I exhaustively researched and tried to find cases that would have interpreted the City's power to abate a nuisance beyond the city limits which is in the statute, but that particular statute has been very infrequently litigated and taken to the Supreme Court. I could only find one case and that was the case of the braying mule. They did uphold a conviction of a person that had kept a braying mule within a mile of the city limits as a nuisance and said that the little town's City Council had the right to prohibit someone keeping a braying mule within a mile of the city limits. That case was in about 1911. There is a dearth of case history and any kind of support for exactly how this State Statute should be interpreted. It is true when their attorneys said this hasn't happened before. I have not seen a case in which it has happened. That doesn't mean it is improper that in order to abate a nuisance that you provide regulations and you enforce them with a licensing procedure. Maybe the courts will think that the licensing procedure is something we should not have but we do have a severability clause within our code that says if that part doesn't work it will be severed out and the rest of the ordinance will still be effective. I will disagree with my friend Steven Giles when he said there would be a long and bitter lawsuit. It could very well be long, I hope not but they always seem like they are long. It won't be bitter at least not on the City's point of view. We will be happy to work with them and present the facts to the court and let the court decide whether or not the City Council had reasonable grounds and had the authority of the law to pass this ordinance. Certainly I think there will be litigation on this and I don't look forward to that. We have a limited staff. We don't really have a whole bunch of outside counsels that can come in and handle the litigation, I have to do it. I work for you all and the citizens. If it is your decision to pass this ordinance then that is what you should do and we will let the courts decide what they will do.

Alderman Ferrell: Is it your opinion Kit that this ordinance would be better passed with the licensing? What is your opinion? Do you think that what is being attempted will succeed or can

be done without the licensing procedure, or do you think the licensing procedure is part in parcel of the whole thing?

City Attorney Kit Williams: I think the licensing procedure will actually make it more enforceable and it will be better administered that way. I have always hoped and I know this has been the goal of the Ordinance Review Committee and the two aldermen from Ward 4 that compromise could be worked out so that these businesses could continue to operate and prosper and yet their nuisance activities be reduced on their neighbors. I think that a licensing procedure that works with them is probably the best way to do that.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Alderman Cook and Ferrell voting no.

Ordinance 5280 as Recorded in the office of the City Clerk.

Red Dirt Mining Facilities: An ordinance to prevent injury or annoyance within the corporate limits of Fayetteville by regulating red dirt mining facilities so that these facilities will not be nuisances. *This ordinance was left on the First Reading at the September 1, 2009 City Council meeting. This ordinance was left on the Second Reading at the September 15, 2009 City Council meeting. This ordinance was left on the Second Reading at the October 6, 2009 City Council meeting and Tabled to the October 20, 2009 City Council meeting.*

Alderman Petty moved to suspend the rules and go to the third and final reading. Alderman Lewis seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Thiel: We just dealt with the rock quarry licensing.

City Attorney Kit Williams: Most of the changes that the Ordinance Review Committee adopted for the rock quarry ordinance could be applied for the red dirt mining facility ordinance; the tailgate banging, the changes to the whereas clauses, the changes to the final two sections about it still can be a private nuisance, the definitions of major noise producing activities, and the hours of operation. I have placed all of those into the red dirt mining facility just as you had suggested for the rock quarry ordinance. Certainly you have made changes on those since I have done that and there might be some more changes.

Alderman Rhoads: Was there anything different in the red dirt? You pointed out all the things that were the same, is there anything different that we need to hone in on? Was it rock crushing?

City Attorney Kit Williams: Well, obviously the rock crushing probably wouldn't apply to it but I left those definitions within it. I don't think they are crushing rock at a red dirt facility.

Alderman Thiel: I would recommend that we just make a motion to make all the amendments that we just made to the rock quarry. Can we do it like that?

City Attorney Kit Williams: Including all the ones from Ordinance Review Committee as well as the ones you passed tonight.

Alderman Thiel moved to amend the ordinance with the same amendments that were placed on the Rock Quarries Facilities. Alderman Lucas seconded the motion.

Mayor Jordan: We are basically voting on all the amendments in one batch.

Dave Bowen, a resident of Hamestring Road reminded the Council that the red dirt pits are allowed by the ADEQ and everybody else to blast and crush rock. The blasting has to be exactly the same.

City Attorney Kit Williams: The rock crushing, the blasting, everything is in there.

Dave Bowen: Good, then I am happy.

Hugh Jarrett, Attorney for Stephens Dirt Farm: This is just a procedural question really; the hours of operation are basically the only thing I am going to talk about. Do we need to talk about that now or would you all rather wait until the ordinance as a whole comes through?

Mayor Jordan: I understand Hugh that you can talk about it now if you want to because all the amendments we passed before we are passing right now as a whole.

Hugh Jarrett: But we will have a chance to address the ordinance as a whole in a few minutes.

Alderman Thiel: You are addressing it now.

Hugh Jarrett: The ordinance as a whole?

Mayor Jordan: Yes, well I am wrong about that we are addressing the amendments.

City Attorney Kit Williams: It includes the hours of operations, the amendments do.

Hugh Jarrett: I will come back when we are on the whole.

Mayor Jordan: Alright.

Upon roll call the motion to amend the ordinance with the same amendments that were placed on the Rock Quarries Facilities passed 6-2. Alderman Cook and Ferrell voting no.

Mayor Jordan: Now we are going to be talking about the ordinance as a whole.

Hugh Jarrett: Thank you, we have talked about a lot of different aspects of red dirt mining and quarrying. It's hard to keep track of all of it but I am just going to go through a list of facts that pertain to the situation. There has not been a real estate transaction in the area of the dirt pits

since they opened that has been for a loss that is a fact. There have been no accidents involving a dump truck that was caused by a dump truck since those pits have been in operation. That is a fact. There have been 53 days so far this year that we have lost to rain. That is a fact. That information is included in the letter that I sent to you. The noise generated by the pits when they are operating is in compliance with the noise ordinance. I know we can't extend the noise ordinance outside the city limits but the reason I bring that up is the language of the noise ordinance indicates that a continued noise level is unreasonable if it exceeds a certain level.

This morning I knew there would be questions about my honesty. I had a Fayetteville Police officer come out to the city limits on Hamestring and we did a noise measurement, it wasn't me it was a Fayetteville Police officer when the operations were running. Stephens Dirt Farm was operating, Rogers Group was operating, as was Big Red so that is as much activity as you are going to get out there. When a truck goes by it is going to spike but that is handled in the ordinance. When the operations are going at a normal level you are operating at a level of about 63 to 64 decibels. 60 decibels is the limit set for residential activity in the city limits of Fayetteville. 70 decibels is for commercial activity and I think 80 decibels is for industrial activity. So we don't even come close to the levels set for commercial and industrial activity. When you talk about decibels I didn't understand exactly what we were talking about. I live in Ward 2 up above Root Elementary School and when you have just a general drone of traffic that you can hear in the background on Mission and you can hear a little bit from Crossover. That is approximately the same level of noise at the city limit sign as 63 or 64 decibels. I have a map. These are the operations in question. Down here in the corner you have Big Red, then Rogers Group is the gray, that is the quarry and they are really at half a mile from the City and then Stephens you can see in the very top, that is our red dirt operation. We are a long ways from the city limits. The way a dump truck is loaded is a trackhoe scoops up dirt and dumps it into a dump truck. It is not a loud bang, there is no rock involved, it is dirt, and it's a low rumble. You cannot hear a dump truck being loaded by a trackhoe at the city limit line or anywhere close to there. Where I went is Fayetteville's city limits and where the city limits crosses Hamestring. There is a sign on the side of the road that says city limits and that is where the officer took the test. The noise level coming off of Wedington Drive is much louder than the noise level coming from those dirt pits. You cannot hear from anywhere in there, you cannot hear a dump truck being loaded. The noise level at 63 or 64 decibels you cannot hear.

So when you talk about the hours of operation, probably the closest scenario that we have in Fayetteville would be and this is several years ago but when people were complaining about the noise level coming off of Dickson Street. On Dickson Street you have a bunch of different businesses that were creating a problem for some of the neighbors. They were complaining about the music at night. So the way the noise ordinance is written is from 7 a.m. to 11 p.m. there is a certain amount of noise that can be made. After 11 p.m. there is a different amount of noise that can be made. The City did not come in and say every bar on Dickson Street has to shut down at 11:00 p.m. because you might have a band outside playing. That wasn't the course of action that was taken. They said there was a problem, let's address the problem, and take care of that issue. That is what was done. In this case basically what you have heard from the public is the rock crushers and the blasting are what is causing the issues. There hasn't been anybody say that a trackhoe putting dirt in the dump truck is keeping me up at night. That has not been said. They might come up here and say it now to rebut me but that has not been said yet. So to

limit us from putting dirt into a dump truck more than a half mile from the city limits is not reasonable. We will do anything we can to try to be reasonable with the City. We will put numbers on our dump trucks. We will help build those shelters. We will prevent them from banging their tailgates. We can ask them not to bang their tailgates and if it happens accidentally the ordinance takes care of that. We will try to do our best on that. We will do everything we can. But the simple fact of the matter is that imposing a ban on any of our operations after a certain time limit is overbroad and really does not deal with the perceived problem. All it does is stop us from working when the activities of loading a truck are not being complained about. What I would ask is that you take into consideration that all these people are differently situated but we need to address what the issues are. If we can operate in a manner that is not causing an affect on the neighbors then I don't think you need to curtail our hours of operation. That is really the crux of my argument there. A couple of more issues that I have, Mr. Bowen who lives probably the closest to the pits, he bought his house after we were already in operation, that is a fact. The Gallagher's here who probably made the most sensational arguments against our pits, they do not live in the city limits of Fayetteville. They live on Martin Drive which is outside the city limits of Fayetteville according to the ordinance anything that they say really can't be taken into consideration by the Council. I know that is hard to do but that is how the law reads.

When the race track issue came up, they had one business, to race cars. So every time they raced a car it was loud. That is why curtailing their hours of operation was necessary, they had one business. The dirt pits, the quarries, everybody there have various different activities that take place at these institutions and the parts of the business that do not affect the neighbors should be allowed to operate. The parts of the business that do affect the neighbors I think we could curtail those hours. If Thunder Valley had a concession stand I don't really think you would have had a problem with the concession stand staying open longer than the race tracks going on because the concession stand didn't bother anybody, just the racing. What is really an issue here or if these businesses here that are subject to this ordinance were a monopoly and you could not get dirt or rock anywhere else I don't think you would see the pushback from the businesses because they would have to get the dirt from us, they would have to get the stone from us and it is a done deal. That is not the case here. There are two pits in Johnson that are closer than us to the City of Fayetteville. There is a pit in Lowell, Sonora, and Goshen that are not subject to these ordinances. So we are simply asking to be able to stay as competitive as we can subject to this ordinance. If we can operate and not disturb the neighbors then we would appreciate being able to operate under those activities that don't bother the neighbors. I defy anyone to go stand at those city limits and identify when we are loading a truck. You cannot hear it. I would just appreciate your consideration from removing the hours of operation restrictions. Right now we have agreed with the County from going from 6:00 a.m. to 9:00 p.m. The number of times we have operated until 9:00 p.m. at night are few and far between. We are not going to be out there at 9:00 p.m. very often. All we are asking is these days when things are slow, when we do have the chance to get some work done, we would just like to get our work done in a manner that is compatible with the neighbors. Loading those trucks with dirt is compatible with the neighbors, you can't hear it. The tailgate banging I understand that is basically a part of our haul off business. The tailgate banging is the loudest thing we do and I can totally understand restricting that. We can live with that but being able to load those trucks is the life blood of the business and it does not affect the neighbors. We would appreciate your consideration in allowing that to go on.

Alderman Thiel: So you are talking about loading the trucks after 6:00 p.m., that is what you want to do or prior to 7:00 a.m.

Hugh Jarrett: Yes ma'am.

Alderman Thiel: And of course that means the dump trucks are then on the road.

Hugh Jarrett: Yes ma'am.

Alderman Thiel: Alright. You are representing Stephens Red Dirt Farm so your competition is just the red dirt business that you referred to. That is not the rock quarry.

Hugh Jarrett: Actually Rogers Group, they lease from us but we don't compete with them. We don't blast.

Alderman Thiel: There are not a lot of rock quarries in the area but there are a lot of red dirt farms is that what you are saying?

Hugh Jarrett: Honestly, I don't know. I was referring to red dirt pits, yes ma'am. I am not sure about the quarries.

Alderman Thiel: You do understand that the noise producing activities, you were talking about loading the trucks, of course that is allowed between 7:00 a.m. to 6:00 p.m. because that's not a noise producing activity but you want it beyond that 7:00 a.m. to 6:00 p.m.

Hugh Jarrett: If we can load those trucks in a manner that is not intrusive on the neighbors then let us load the trucks. That is all we are asking.

Alderman Thiel: Past 6:00 p.m.

Hugh Jarrett: Right now our agreement with the County is from 6:00 a.m. to 9:00 p.m. The number of times we will operate up to 9:00 p.m. are few and far between. We would just like the option, if a big job was there and we need to get it done, to be able to get it done.

Alderman Petty: When you might operate until 9:00 pm at night is that usually the case that the job is big enough that you are running them as much bumper to bumper as you can?

Hugh Jarrett: It is my understanding that the few times that you go until 9:00 p.m. is you have a job and either weather is coming or your client is saying we have a deadline and we need to get this filled as fast as possible, can you do that. Those are the few times that that happens.

Alderman Lewis: You were saying you don't do that very often. Is that something that basically depends on the market?

Hugh Jarrett: It would.

Debbie Johnson, a resident within the city limits stated this is about nuisance. The noise is a nuisance. Any noise that comes from a quarry is a nuisance. She stated it is a constant noise.

City Attorney Kit Williams: Do you believe that you can hear the Stephens Red Dirt Farm when they are operating, not counting the banging of the tailgate, but if they are operating by loading their dump trucks with red dirt do you feel like you can hear that?

Debbie Johnson: Yes.

City Attorney Kit Williams: How can you distinguish that between the closer red dirt farm?

Debbie Johnson: I live next to the red dirt farm. The noise that we hear is 7:00 a.m. with constant rock crushing.

City Attorney Kit Williams: Let's not talk about rock crushing. I am only interested in the red dirt farm.

Debbie Johnson: They do run rock crushers I do believe.

City Attorney Kit Williams: Let's talk only on what Stephens Red Dirt Farm would do and only the filling of the dump trucks with the loader. Do you think you ever hear that and if you do how can you distinguish between that and the close red dirt farm?

Debbie Johnson: I am not sure but I know there is constant noise coming out from the red dirt farm when they are in operations and it is a nuisance.

Dave Bolin, a resident of Hamestring Road stated guys remember it is not only loading trucks, it's the number of dump trucks going up and down Hamestring and every place else.

J.T. Baker with Stephens Red Dirt Farm gave a brief history of the farm.

One of the things that seems to be a big issue is the safety on Wedington and the safety on Hamestring Road. In 15 years there has not been a dump truck accident. From 2003 to the beginning of 2009 Stephens Red Dirt had six complaints with the ADEQ. Four of those complaints there was no problem. The other two were small erosion control issues that were outside the ADEQ which was actually just an oversight by the ADEQ and the storm water permits that were fixed easily. Since this process started we have had tons of complaints. What I have a hard time with in that is that we are operating right now about 20% of our capacity from the height of our business which was 2004-2005 and we are getting five or six times as many complaints. I feel like they want to put us out of business and they are going to stop at nothing to do that. I don't think that is fair. If we can't run out of our own pit with our own trucks we are going to go out of business. Safety out there has done nothing but improve. I think that limiting hours of operation is really not going to do a lot of good as far as safety for school children. If we start loading trucks at 6:00 the safety aspect for the kids is going to be a moot point. I do understand the dump truck noise but one thing you have to keep in mind is if they don't come

out of our dirt pit they are going to come out of somewhere. They are still going to be traveling the streets of Fayetteville.

One of the comments that was made was if we are not open early they can get materials from another quarry and then come by and get it from us later. That is not practical because the material has to be uniform or it will not meet the compaction test. If they do that they are going to buy all their material from another quarry in essence again putting us out of business. The noise of the tailgates I have no problem doing whatever I need to do to limit that to the best of my ability. I would like to point out though that 300 yards to the west of our dirt pit there was a dump site from material coming from a City of Fayetteville job that for the last two years has been being dumped there from 6:00 a.m. in the morning until 6:00 p.m. at night. I spoke with Mr. Rich who lives at the end of that road this morning and he confirmed that. I think it is tough to get penalized from tailgate banging that is not ours.

He stated working past 6:00 p.m. does not occur very often. He gave examples of when this could occur. He stated the City of Fayetteville dump trucks operated mostly from 6:00 a.m. to 2:00 p.m. and they are going to have to change that also. When we have an opportunity to work we have to work. It is seasonal and if we can't do it then the people that work for us are not going to be able to make a living. When you look at the Lindsey Company, Rogers Group, and Sweetser it's easy to say they have a lot of different things going on and if we close this down or if it goes out of business they still have a lot of things going on. In closing I want you to think about that if you do hinder this to the point that we go out of business it is really not going to be as much of an attack on them as it is on the blue collar workers. We have just in our company 70 of them that are not going to have a job. Thank you for your time.

Dana Gallagher, resident of 12279 Martin Road stated I know the Bolin's bought their house in 1999. I also know for a fact that there have been accidents involving dump trucks. I only say this because I was in the accident. She went on to describe the accident. She stated I want you to support this ordinance.

Alderman Ferrell: Did the accident happen on Hamestring Road?

Dana Gallagher: No, it happened on Wedington and 54th Street?

City Attorney Kit Williams: Ma'am, you are a Fayetteville citizen, a resident of Fayetteville?

Dana Gallagher: My property is on the Fayetteville city line. I am just on the edge of Fayetteville. I am not inside the Fayetteville city limits. I don't think that should be a determining factor.

City Attorney Kit Williams: I will say you all can take measures to abate a nuisance to Fayetteville residents. I don't think you can take measure to abate nuisances to non Fayetteville county residents.

Mack McCandless, a citizen stated I would have to agree with the young man who stated some things are not fair. They are going to have a problem because they are going to be caught in this

ordinance also. You have to break eggs to make an omelet and somebody has to get hurt. We have given quite a lot into this. You all have worked real hard to make it fair and honest and we thank you for that. I hope this thing can get ironed out.

Lanny Samples, resident of Wedington Drive just south of the red dirt farm stated if you considered days per week J.T. has lost a lot of time this year and yet he has not had to work past 6:00 p.m. anytime this year. So there is a lot of leeway in that time frame. I would think the one hour between 6:00 p.m. and 7:00 p.m. that he has asked for would not be a big burden. I don't think anyone is going to go out of business. I think to be fair as in the mining operation what is fair for one is fair for all. If they are within the one mile limit of the City of Fayetteville I think they all should abide by the same rule. I appreciate everyone for the consideration of this ordinance and Sarah and Shirley for representing us in Ward 4. We appreciate you all very much.

Don Johnson, a Fayetteville resident stated basically I appreciate all the work you have done for this ordinance and we hope it passes with all the provisions that have been made with it. I did have a comment about dump truck wrecks of course there were dump truck wrecks. What I was curious about is the red dirt farm was asking about the number of days they are working or the hours. What they might consider is the number of days that we have that they are compromising their work days. If there is 365 days in a year how many days do the residents have just to have their lives, maybe 60 to 65?

Alderman Petty: I support the restricted hours of operation that we have already come up with. With all do respect to Mr. Jarrett, dump trucks lining up and using the road has been a concern that has been brought up several times. What it comes down to for me is two things. I think these people have the right to peaceful evenings and I don't think that restricted hours are as deep of a burden as they are being made out to be, given how little you have taken advantage of what would be expanded hours in the past year. I think that when the economy picks up you are going to have plenty of jobs to fill the hours. While they have rights to a peaceful evening I don't think you have a right to take every job that is offered. I think you will be able to fill the hours once the economy picks back up.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 6-2. Aldermen Petty, Rhoads, Lucas, Lewis, Gray and Thiel voting yes. Aldermen Cook and Ferrell voting no.

Alderman Ferrell: I appreciate the fact that Brenda and the Ordinance Review Committee took this twice and met on it on a pretty quick notice. I thank you for that.

Ordinance 5281 as Recorded in the office of the City Clerk.

New Business:

Justice Assistance Grant (JAG): An ordinance to waive competitive bidding and to purchase 45 X-26 Tasers and Taser-Cams for \$69,967.25 from TEECO Safety, Inc.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the second reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Thiel** was absent during the vote.

Mayor Jordan: I had a few contacts on why we are doing competitive bidding. If you would just explain that I think that would go a long way.

Police Chief Greg Tabor: Taser International is the only company that makes tasers and Taser has protected areas. For this area TEECO Safety, Inc. is the only distributor that can sell tasers in the State of Arkansas. There was only one company to get them from so that is why we did not do competitive bidding.

City Attorney Kit Williams read the ordinance.

Alderman Cook moved to suspend the rules and go to the third and final reading. **Alderman Ferrell** seconded the motion. Upon roll call the motion passed 7-0. **Alderman Thiel** was absent during the vote.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. **Alderman Thiel** was absent during the vote.

Ordinance 5282 as Recorded in the office of the City Clerk.

Amend Chapter 35: Taxation: An ordinance to amend Chapter 35: Taxation of the Fayetteville Code to incorporate amendments of State Law affecting the Hotel, Motel and Restaurant Tax.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams: Mr. Mayor you asked me when the issue came up before the Advertising and Promotion Commission about whether or not they could advance or loan some money to the Botanical Garden Society. My opinion is they can do that because the broad terms used in the State Law that says that these funds may be used for this sort of purpose. That is why I looked at this issue and felt like it probably would be appropriate for us to bring our code up to date with State Law. That is why I drafted this proposed change.

Alderman Ferrell: On the amendment to the State law that dealt with this, was it just enabling or what exactly did the State law amendment do?

City Attorney Kit Williams: The State law has changed through the years and added more and more allowable purposes that the A & P Commission could use their funds for. So I just want that brought up to date so that we are in tune with State law.

Alderman Ferrell: Before the State law changed if there had been any changes would it have had to go back before the voters?

City Attorney Kit Williams: No, I don't think that would be required.

Alderman moved to suspend the rules and go to the second reading. Alderman seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman moved to suspend the rules and go to the third and final reading. Alderman seconded the motion. Upon roll call the motion passed 7-0. Alderman Thiel was absent during the vote.

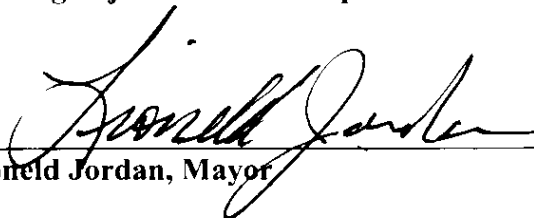
City Attorney Kit Williams read the ordinance.

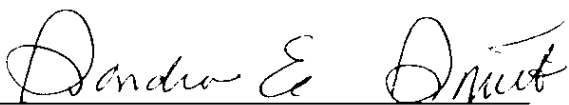
Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-0. Alderman Thiel was absent during the vote.

Ordinance 5283 as Recorded in the office of the City Clerk.

Announcements:

Meeting adjourned at 10:10 p.m.


Lionel Jordan, Mayor


Sondra E. Smith, City Clerk/Treasurer