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## CHAPTER 113: ROCK QUARRIES AND DIRT MINING FACILITIES

### ARTICLE I ROCK QUARRY OPERATING LICENSE

#### 113.01 Finding Of Nuisance And Need For Abatement

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

(Ord. 5280, 10-20-09)

#### 113.02 Regulations To Abate Nuisance

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

- (1) No rock blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.
- (2) No rock blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.
- (3) All rock blasting within the permitted quarry shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m. on the first and third Wednesday of each month unless such Wednesday is a federal or city holiday. If such Wednesday is a holiday, the permitted blasting day will be moved to the next day (Thursday). If the permitted blasting day would be unsafe or not feasible or practical because of inclement weather or other condition beyond the reasonable control of the quarry operator, the Director of Development Services may designate another weekday during the next five weekdays as a permitted blast day.
- (4) Upon timely request by the rock quarry operator, the Director of Development Services or designee is empowered to grant a variance of the time limitations for rock blasting if inclement weather or other condition beyond the reasonable control of the operator has caused a safety issue that requires rock blasting outside the 10:00 a.m. until 3:00 p.m. permitted period. Re-notification is not required unless the blasting is moved to another day.

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

(B) *Operation of Rock Quarry.*

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

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

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

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

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

(D) *Control of Dump Truck Tailgate Banging.*

- (1) It is the express duty of the rock quarry operator to prevent a dump truck delivering anything to the quarry or receiving rock from the quarry to engage in Dump Truck Tailgate Banging as defined in §113.04 (E) at any time upon its property.
- (2) No dump truck which has banged its tailgate shall be loaded or otherwise serviced for a full operational day of the quarry after the incident to include all day Monday if the tailgate banging occurs after 4:30 p.m. Friday or anytime on Saturday or Sunday. Loading or servicing such dump truck during this suspension shall constitute a violation of this ordinance and the Rock Quarry Operating License.

(Ord. 5280, 10-20-09; Ord. 5315, 4-20-10; Ord. 5393, 3-22-11)

**113.03 Jurisdiction Of The Rock Quarry Operating License Article**

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

(Ord. 5280, 10-20-09; Ord. 5393, 3-22-11)

**113.04 Definitions**

- (A) *Rock Quarry* means any open excavation used for obtaining building stone, slate, limestone or other type of rock used for paving or building purposes.
- (B) *House* means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.
- (C) *Operation of Rock Quarry* means any blasting, operation of any mechanical equipment on the premises of the rock quarry or any operation of dump trucks or other large vehicles on the premises of the rock quarry site. Starting,

running the engine or moving any equipment or dump truck on the premises shall constitute operation of the rock quarry.

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

- (E) *Dump Truck Tailgate Banging* means the avoidable and loud banging of a dump truck tailgate used to vibrate the bed to loosen material in the bed sought to be dumped. The relatively quiet bang that might be unavoidable when a dump truck load is dumped and the truck moves away from the pile without applying the truck's brakes is not regulated by this ordinance.

(Ord. 5280, 10-20-09)

**113.05 Issuance, Suspension Or Revocation Of License**

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

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

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

- (D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office

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with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the rock quarry operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

(Ord. 5280, 10-20-09)

### **113.06 Penalty**

- (A) Any owner, lessor or lessee of real property upon which is located a rock quarry and any operator, manager, or employee of such rock quarry shall ensure such quarry is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.
- (B) The Rock Quarry Operating License may be suspended or revoked by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the rock quarry not in conformity with its Rock Quarry Operating License.
- (C) Any owner, operator, manager, lessee or employee of a rock quarry shall be guilty of a criminal violation if such person operates the rock quarry in violation of any of the Terms of this ordinance, without a current and valid Rock Quarry Operating License, or in violation of any of the terms of his Rock Quarry Operating License.
- (D) Each violation of the operational hour limitations or the number of rock blasting events allowed by this Ordinance or the applicable Rock Quarry Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

(Ord. 5280, 10-20-09)

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

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

(Ord. 5280, 10-20-09)

### **113.08-113.10 Reserved**

## **ARTICLE II RED DIRT MINING FACILITY OPERATING LICENSE**

### **113.11 Finding Of Nuisance And Need For Abatement**

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

(Ord. 5281, 10-20-09)

### **113.12 Regulations To Abate Nuisance**

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

- (1) No blasting shall be allowed within 60 yards of any house within the city limits of Fayetteville.
- (2) No blasting explosive charge or location shall exceed the most restrictive limitations within federal, state and Washington County regulations or laws.
- (3) All blasting within the permitted red dirt mining facility shall only be allowed between the hours of 10:00 a.m. and 3:00 p.m. on the first and third Wednesday of each month unless such Wednesday is a federal or city holiday. If such Wednesday is a holiday, the permitted blasting day will be moved to the next day (Thursday). If the permitted blasting day would be unsafe or not feasible or practical because of inclement weather or other condition beyond the reasonable control of the quarry operator, the Director of Development Services may designate another weekday during the next five weekdays as a permitted blast day.
- (4) Upon timely request by the red dirt mining facility operator, the Director of Development Services or designee is empowered to grant a variance of the time limitations for rock blasting if inclement weather or other condition beyond the reasonable control of the operator has caused a safety issue that requires blasting outside the 10:00 a.m. until 3:00 p.m. permitted period. Re-notification is not required unless blasting is moved to

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another day.

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

(B) *Operation of Red Dirt Mining Facility.*

- (1) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate during the period of 7:00 a.m. until 6:00 p.m. Monday through Friday, and during 7:00 a.m. until noon on Saturday. No major noise producing activities shall occur before 8:30 a.m. or after 4:30 p.m. on a weekday or anytime on Saturday or Sunday. No red dirt mining facility shall be allowed to operate on a federally recognized holiday or Sunday.
- (2) All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall be prohibited from any operations until the owner/operator of such facility has obtained a valid, annual Red Dirt Mining Operating License. This license to operate shall be issued by the Fayetteville Planning Department on a fiscal year (July 1 through June 30) schedule with no fee assessed.

(C) *Dust, Mud and Rock Control Measures.*

All red dirt mining facilities within the city limits of Fayetteville or within one mile beyond the city limits of Fayetteville shall only be allowed to operate with the following safeguards and measures to ensure that dust, dirt, mud, loose rock, and all other possible irritants or nuisance substances do not adversely affect Fayetteville residents. It is the express continuing duty of the licensed red dirt mining facility operator to ensure all of these safeguards, requirements and measures are constantly enforced.

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

Environmental Quality can be grounds for a suspension or revocation of the City's Red Dirt Mining Facility Operating License. (See §133.15)

- (2) *Dirt and mud control measures.* The red dirt mining operator is required to ensure that any and all vehicles leaving the red dirt mining facility shall have all mud and dirt removed from the tires and exterior parts of the body of all vehicles prior to exiting the site onto public roads.
- (3) *Red dirt.* The red dirt mining operator is responsible to ensure that all dump trucks leaving the red dirt mining site that may utilize any city street and are carrying more than half a truck load of red dirt have their load fully and properly covered.
- (4) *Dump truck identifying number.* In order for citizens to easily and correctly identify dump trucks and their owner/operators who are servicing the red dirt mining facility, the red dirt mining operator shall require any dump truck accessing or servicing his facility to have an easy to read four digit number at least six inches high and twelve inches wide on the tail gate of the dump truck. The red dirt mining operator shall maintain an up-to-date and accurate log of the owner and operator of each numbered dump truck and shall immediately supply the owner and operator's name, address and contact information to any Fayetteville employee, official or citizen who requests such information.
- (5) *Only dump trucks with proper identifying number may be loaded.* The red dirt mining operator shall not load or permit to be loaded or permit to exit the red dirt mining facility any dump truck unless the identifying number specified in subsection (4) is clearly legible, easy to read and not obscured by dirt, mud or otherwise.

(D) *Control of Dump Truck Tailgate Banging*

- (1) It is the express duty of the red dirt mining facility operator to prevent a dump truck delivering anything to the red dirt mining facility or receiving red dirt from the facility to engage in Dump Truck Tailgate Banging as defined in §113.04 (E) at any time upon its property.
- (2) The red dirt mining facility operator shall

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keep a record of the owner/operator and number of the offending dump truck to include the date and time of the occurrence. No dump truck which has banged its tailgate shall be loaded or otherwise serviced for a full operational day of the red dirt mining facility after the incident to include all day Monday if the tailgate banging occurs after 4:30 p.m. Friday or anytime on Saturday or Sunday. Loading or servicing such dump truck during this suspension shall constitute a violation of this ordinance and the Red Dirt Mining Facility Operating License.

(Ord. 5281, 10-20-09; Ord. 5315, 4-20-10)

### 113.13 Jurisdiction Of This Ordinance

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

(Ord. 5281, 10-20-09)

### 113.14 Definitions

- (A) *Red dirt mining* means any open excavation used for obtaining red dirt or other type of soil used for paving or building purposes.
- (B) *House* means any habitable structure including a mobile or manufactured home, a dwelling, a residence, an apartment, a condominium, a dormitory, a hotel or motel.
- (C) *Operation of Red Dirt Mining Facility* means any blasting, operation of any mechanical equipment on the premises of the red dirt mining facility or any operation of dump trucks or other large vehicles on the premises of the red dirt mining site. Starting, running the engine or moving any equipment or dump truck on the premises shall constitute operation of the red dirt mining facility.
- (D) *Major Noise Producing Activities* means blasting, rock breaking, dump truck tailgate banging, and the use by the red dirt mining facility operator of non-static backup warning devices on its loader or other major equipment. Rock crushing within a half-mile of a house within the city limits of Fayetteville is also a major noise producing activity.
- (E) *Dump Truck Tailgate Banging* means the avoidable and loud banging of a dump truck tailgate used to vibrate the bed to loosen material in the bed sought to be dumped. The relatively

quiet bang that might be unavoidable when a dump truck load is dumped and the truck moves away from the pile without applying the truck's brakes is not regulated by this ordinance.

(Ord. 5281, 10-20-09)

### 113.15 Issuance, Suspension Or Revocation Of License

- (A) *Issuance.* The Director of Development Services or designee shall prepare and issue an annual Red Dirt Mining Facility Operating License upon proper application of an owner/operator of a red dirt mining facility within the jurisdiction of this ordinance after ensuring the owner/operator will be in full compliance with all requirements of this ordinance and has all other current and valid federal, state and county permits required for red dirt mining operation.
- (B) *Suspension.* The Director of Development Services may suspend a Red Dirt Mining Facility Operating License for up to thirty (30) days for violations of the terms of the license after a due process hearing.
- (C) *Revocation.* The Director of Development Services may revoke a Red Dirt Mining Facility Operating license for repetitive, continuing, intentional, or substantial violations of the requirements of this ordinance. The Director of Development Services may require adequate assurances that any operator whose license has been revoked will fully comply with the Red Dirt Mining Facility Operating License before reissuing another license.
- (D) *Appeal.* Any person whose license has been suspended or revoked pursuant to this section, may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten business days of the issuance of suspension or revocation. The City Council may then determine whether the red dirt mining facility owner/operator violated the requirements of the ordinance and, if so, whether suspension (up to 30 days) or revocation is appropriate for such violation.

(Ord. 5281, 10-20-09)

### 113.16 Penalty

- (A) Any owner, lessor or lessee of real property upon which is located a red dirt mining facility and any operator, manager, or employee of such red dirt

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mining facility shall ensure such facility is operated within the limits of this ordinance and shall be guilty of a criminal violation for any violation of the requirements of this ordinance.

- (B) The Red Dirt Mining Facility Operating License may be revoked or suspended by the Director of Development Services after a due process hearing for an owner's, manager's, operator's, employee's, or lessee's violation of any terms or limits within this ordinance or for operating the red dirt mining facility not in conformity with its Red Dirt Mining Facility Operating License.
- (C) Any owner, operator, manager, lessee or employee of a Red Dirt Mining Facility shall be guilty of a criminal violation if such person operates the red dirt mining facility in violation of any of the terms of this ordinance, without a current and valid Red Dirt Mining Facility Operating License, or in violation of any of the terms of his Red Dirt Mining Facility Operating License.
- (D) Each violation of the operational hour limitations or the number of blasting events allowed by this Ordinance or the applicable Red Dirt Mining Facility Operating License shall constitute a separate violation of this ordinance and shall be punishable by a fine of up to \$500.00.

(Ord. 5281, 10-20-09)

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

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

(Ord. 5281, 10-20-09)