

**MINUTES  
CITY COUNCIL WORKSHOP  
CITY OF ARCADIA  
TUESDAY, FEBRUARY 22, 2011  
5:00 PM**

This set of minutes is sequentially out of page number order.

**CALL TO ORDER, INVOCATION, PLEDGE OF ALLEGIANCE & ROLL CALL**

The meeting was called to order at approximately 5:00 PM with the following members and staff present:

**Arcadia City Council**

Mayor Robert Heine

Deputy Mayor Keith Keene

Councilmember Martha Craven

Councilmember Roosevelt Johnson

**Arcadia City Staff**

City Administrator Lawrence Miller

City Attorney Jason Henbest

City Recorder Dana Williams

Deputy Mayor Keene gave the invocation, which was followed by the Pledge of Allegiance and roll call. The Mayor announced the passing of Dr. Goodman's mother and noted funeral arrangements for Sunday, February 27<sup>th</sup> at Elizabeth Baptist Church.

**1. WORKSHOP ON PROPOSED ORDINANCE 964**

The City Attorney reported the proposed ordinance was a re-draft of the nuisance portion of the city code with a few changes laid out, but most significantly that procedurally this portion could now be enforced. He continued that as written, the ordinance would give the Code Enforcement officers the ability to issue citations similar to traffic tickets which in part would lighten the burden for the Special Master hearings. The Attorney talked briefly about the concerns that are not necessarily related to noise, but do create another form of nuisance and that those could be addressed through this ordinance.

Deputy Mayor Keene had provided to the City Attorney proposed language for consideration to be added in the ordinance, and suggested its inclusion as Paragraph (p) in Section 50-101. Distributing a copy of the proposal to each member, the recommended language was "a public nuisance is a thing, act, occupation, condition or use of property which shall continue for such length of time as to substantially annoy, injure or endanger the comfort, health, repose or safety of the public...could include all loud and discordant noises or vibrations of any kind."

Mr. Keene noting that he did not want to adversely affect the economic vitality of the community, similarly wanted all parties involved to be good neighbors. He then talked about the repetitive vibration which can be felt at his residence some two miles from an industrial plant and how he believes this to be detrimental to his well being and even more so to residents who live nearer to the source. The Deputy Mayor also expressed concern about balancing the

subjectivity and objectivity of such an ordinance, stating there is a set standard to measure noise but questioned how the City would apply a standard to this type of nuisance.

The City Attorney responded that private enforcement requires demonstrating a person experienced harm in some way, and that it is sufficient that those in close proximity should be able to enforce this as a public nuisance. Although he added that what is annoying or injurious to one person may not be to another.

Councilmember Johnson asked about the standard dB level for enforcement. The City Attorney answered there is a standard dB level included in the noise ordinance and though he doesn't recall the exact figure, generally noise levels are fairly standardized. He then added the intrusion currently being discussed does not exceed the standard dB level and isn't so much a noise as it is a repetitive vibration at low frequency.

Councilmember Craven questioned whether the City was setting itself up for a lawsuit should it not be able to negotiate some form of compromise with the offending company. The City Attorney responded the ordinance was similar to establishing a speed limit on a roadway and does not typically open itself up for challenge. However, he also cautioned that any lawsuit filed could make its way to the Florida Supreme Court, depending on how far a party to the suit chose to pursue remedy.

The Deputy Mayor again reiterated that it is not his intention to be detrimental to the local economy but that still the Council needs to keep its citizens in mind first; and that representatives or management from the company in question have not attended meetings or stepped forward.

The City Administrator stated he has spoken with Mr. Gallagher, Plant Manager for Tremron, and taken a tour of the facility; and feels they have taken certain steps to mitigate sound, although there are no noise-reducing materials located inside the buildings. Dr. Miller added that Mr. Gallagher talked about adding barriers or buffers along US 17 to reduce noise; but that enactment of this ordinance would be the true catalyst for bringing representatives to the table; and that without it, the city has no enforcement authority.

The City Attorney cautioned that there needs to be a separation of noise from nuisance; and that with the creation of a nuisance, there really is no "number" which can be assigned but rather only to make the ordinance was objective as possible.

The Mayor suggested that the City simply put time restrictions for hours of operation on the plant. The Attorney answered he would be hesitant to include time restrictions for a couple of reasons; namely there will always be train whistles and such "after hours" as they travel through town but also that the City doesn't want to tell a company how to operate their business instead favoring to allow the company to find a solution that both works for their operation and is neighborly.

Deputy Mayor Keene, noting that he had dealt with environmental nuisances for years, researched verbiage and ordinances from other localities to put together the suggestion he did.

He also felt the City needs to set a standard of living for "our" community and while the noise ordinance is a good one, the current nuisance ordinance is quite vague.

Mr. Ken Pepper, 1539 N. Arcadia Avenue, spoke saying he doesn't worry about the vibration or noise during the daylight hours, but feels the company is not making any effort to mitigate what they can. He also pointed out that "we didn't grow up around Tremron, Tremron grew up around [them]."

Mr. Vaughn Aiken, 2072 NE Floridian Circle, also spoke to the issue, saying this past Sunday night the vibrations were bad but that Monday night it was horrific. He talked about being awakened at 2:30 AM and the inability to get back to sleep since then. He thought perhaps the heavy fog somehow trapped the reverberation and heightened its intensity, but added the overall effect is affecting his health.

The City Attorney then talked about research he had done on the low frequency/wavelength travel and how insulating against it is difficult.

Councilmember Craven asked Mr. Aiken if he felt the weather had an effect on the intensity, adding that she had driven to various locations purportedly affected by the noise/vibration about two months ago and didn't seem notice anything extraordinary. Discussion among all parties followed on the various time of operations, weather conditions and intensity.

Mr. Jim Selph, 820 N. Johnson, also discussed the disruption to his well being even as far away as his residence. He stated that while he believes in property rights, running the plant at full throttle at 3 AM on Christmas Eve was excessive. He did not believe that weather was a factor to the intensity, but did believe that residents nearby deserve rest and a peaceful night's sleep. Mr. Selph concluded with the statement the disruption was not just about dB levels but an annoyance.

Mrs. Ann Pepper, 1539 N. Arcadia Avenue, talked briefly about the zoning classification of the plant and the history of her contact with plant managers. Stating she understands about the tax base and economic vitality of the City, she questioned the effect on her property value and how grandfathering would work if this ordinance was enacted.

The City Attorney explained Florida's Bert Harris Act which essentially says once there is an established use, even if the rules change those restrictions cannot be enforced unless the City is willing to purchase the property or otherwise compensate the property owners. With regard to zoning classifications, the Attorney noted zoning is supposed to look forward rather than back. He continued that if the business ceased operations or burned or what-have-you, they would lose their vesting and perhaps not be able to rebuild as before.

Discussion moved to other societal problems such as the homeless taking over Tree of Knowledge Park and frightening or deterring downtown shoppers, loud and weekly "preaching" on the street corner of Oak Street, and in general, disturbance of the peace. There were several conversations occurring simultaneously, with no real conclusion or answer; however the City Attorney did suggest that the City could implement layers of restrictions for

obtaining a permit for legitimate uses vs. illegitimate ones (likened it to the Fireman's Fill-the-Boot campaign) and having those affected by the loss of economic vitality file an affidavit surrounding the events which caused the adversity.

The City Attorney also pointed out he would conduct more research into the language and standards suggested by Deputy Mayor Keene, but that Ordinance 964 related to Nuisances could be heard on first reading at the regular meeting of March 1, 2011.

Having no further business at this time, the meeting was adjourned at 6:15 PM.

APPROVED THIS 1<sup>st</sup> DAY OF MARCH 2011.

By:



Robert W. Heine, Mayor

ATTEST:



Dana L.S. Williams, CMC, City Recorder