

RULES AND ORDINANCE COMMITTEE

AGENDA

*Virtual Meeting - visit this webpage for information on how to participate
www.cityofelkinswv.com/login*

*September 10, 2020
12:00 p.m.*

1. **Call to order and roll call**
2. **Public comment - comments submitted via email or phone call to the city clerk will be read aloud during this time. No live comments can be accepted due to physical and technological limitations during the coronavirus pandemic state of emergency. Public comments may be entered to Elkins City Clerk Jessica Sutton by emailing jsutton@cityofelkinswv.com or calling 304-636-1414 ext. 1211. To be read aloud during the public comment period of this meeting, comments must be entered no later than 11:30 a.m. Thursday, September 10, 2020.**
3. **Consent calendar**
 - a. Minutes proposed for the special call meeting of August 13, 2020
4. **Old business**
 - a. Review of Ordinance 210
 - b. ATV/UTV use in city limits
5. **Announcements**
6. **Adjournment**

RULES AND ORDINANCE COMMITTEE REGULAR MEETING MINUTES

*Virtual
August 13, 2020
12:00 p.m.*

Present were Committee Members: L. Vest, Chair; M. Hinchman; and R. Chenoweth

Also present were: Councilors M. Cuonzo, D. Parker, J. Guye, and C. Friddle; Treasurer T. Judy; Operations Manager B. Pingley; City Attorney G. Roberts; City Clerk J. Sutton; Lt. R. Belt; External Affairs S. Stokes; and C. Boggs (acting as recording secretary)

PUBLIC COMMENT

Five public comments were received and read aloud by J. Sutton on behalf of:

K. McClane, Elkins Make It Quiet; R. Morris, Randolph County Development Authority; L. Woods, Elkins-Randolph County Chamber of Commerce; M. Humphrey, Elkins Main Street; and M. Ogden. Comments are attached for review.

MINUTES

Cm. Chenoweth, **MOVED APPROVAL OF THE MINUTES OF THE JULY 30, 2020 SPECIAL CALL MEETING.** The motion carried.

NEW BUSINESS

After receiving multiple complaints from residents regarding excessive noise from the Hamer Pellet Fuel facility, a review of Ordinance 210 by the Rules and Ordinance Committee was requested by Chair L. Vest.

Cm. Chenoweth stated that he has personally reached out to Hamer to request a meeting to discuss the issue, but has not received any response to date. He suggested that while he would prefer to take an informal approach, Hamer's lack of response may prevent this route. Cm. Chenoweth recommended that the R&O Committee reevaluate the existing ordinance, as one of his concerns is the absence of a definition of normal working hours. He also presented the idea of a group working collectively to gather more information and to attempt negotiations with Hamer, as previously discussed with B. Pingley and other interested parties.

Cm. Vest was in favor of approaching Hamer once more to initiate discussions. However, she also acknowledged that the sound does not personally affect her and that she feels this is an unavoidable part of living within city limits.

Cm. Hinchman conceded that he also hears some noise but is unbothered by it.

Operations Manager B. Pingley confirmed that he had initially extended the offer to coordinate efforts to work with Hamer on potential solutions, however, Mr. Pingley now feels that

additional issues raised could be viewed as an attempt to shut down Hamer and he is no longer comfortable being involved. Additionally, he does not foresee a way to meet the demands of the EMIQ group as laid out in their previous presentation to council.

City Attorney G. Roberts provided some insight on the background surrounding the existing Ordinance 210. She stated that ordinances in other municipalities were considered when adopting an Elkins version, but no specific industrial noise complaints were presented at that time, apart from the noise created by dynamic braking systems used in large trucks.

Members agreed to postpone the item until the next regular meeting, when an in-person discussion would be more likely.

The committee next visited whether ATV/UTV use within city limits should be permissible. Cm. Chenoweth explained that his understanding of the amended state code was to permit ATV/UTV access on public highways to assist gas-well tenders and others in ease of access to their work sites. He is uncertain how this could pertain to recreational use.

Cm. Hinchman questioned if the city could regulate use of state-maintained highways within city limits. He also stated that he has no preference if the use would be professional or recreational, but he believes they should require permits.

City Attorney Roberts advised input from our Public Safety officials should be considered.

Lt. R. Belt advised on behalf of Chief Bennett that if the city should decide to allow ATV/UTV use, he would recommend imposing an additional permit to operate the vehicle on the highways, ensure legal mufflers, operating requirements, etc.

Committee agreed to add the topic to the next agenda for further discussion.

ANNOUNCEMENTS

The next meeting of the committee will be September 10, 2020 at noon.

Cm. Chenoweth **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 1:01 p.m.

The foregoing minutes were approved at the meeting of _____, 2020

Name & Title

Signature

Jessica Sutton

From: Katy McClane
Sent: Monday, August 10, 2020 9:01 AM
To: Jessica Sutton; Linda Vest
Subject: Public Comment for Rules & Ord. Comm. on Aug. 13

Hi Jessica,

What time is the meeting on Thurs. for the R&O committee? It isn't posted on the city website. Thanks

Here is a public comment from Elkins Make It Quiet for this meeting.

The term "Grandfathered in" has been used when we asked the city what we can do about the noise from the Hamer plant. We take this to mean that there isn't anything we can do about the noise because Hamer has been "Grandfathered in".

"Grandfathering" only makes any sense as it might apply to the noise levels in existence at that time. It makes no sense at all for it to allow for increased levels, or be a blank check to make as much noise as they want to, forever. If the City of Elkins enacts an industrial noise ordinance, it should, as a minimum, apply to any noise levels above the previously grandfathered level.

Regards,
Katy McClane
EMIQ Secretary



**RANDOLPH
COUNTY**
WEST VIRGINIA

**DEVELOPMENT
AUTHORITY**
PLAN • INVEST • PROSPER

August 13, 2020

Rules & Ordinances Committee
City of Elkins
401 Davis Avenue
Elkins, West Virginia 26241

Dear Rules & Ordinances Committee Members:

On behalf of the Randolph County Development Authority I write to you regarding the conversations taking place with Hamer Pellet Fuel located in the Elkins Industrial Park.

As the agency charged with economic development in Elkins and Randolph County, we take great interest with issues that arise from businesses in our area. While we certainly cannot fix all issues, we try to facilitate solutions when/if we can. Therefore, a few years ago when the issue of noise from the Hamer Pellet plant was first raised, I went to meet with representatives from the company. At that time they advised me of things they had done to minimize noise the best they could (mufflers on pieces of equipment, etc.). They referenced discussions they had with individuals who complained and how they tried to accommodate the best they could, while still achieving the goals of their business. The issued then went away for a period of time. When the issue was raised again last summer, I was contacted by Hamer Pellet Fuel to discuss the situation. I attended that meeting with RCDA board member and Elkins City Councilman Charlie Friddle. We toured the plant, discussed the issues, and what if anything could be done. At that time Hamer discussed additional steps they had taken to evaluate and mitigate noise emitted from the plant. They have visited neighborhoods throughout the City at all hours of the day and night. They have replaced the OSHA required backup beepers on moving equipment with ones that emit white noise rather than a beep. They have also made operational adjustments when possible to minimize noise the best they can while still meeting business goals. During this time they also had inquired with which laws/ordinances/regulations they were violating and determined they were not out of compliance in any way.

Hamer Pellet is a vital employer to our area. While they not only employ approximately 15-20 people during any given time of the year, they also provide a critical outlet of wood waste for our hardwoods industry in and around Randolph County. The hardwood industry is a massive economic driver for our region. Tons and tons of sawdust are produced by each hardwood company annually. That sawdust can be the difference between success and failure for a company. Without Hamer Pellet so close to our other

hardwood manufacturers, that sawdust would be sent to a landfill at an incredible cost to a company. That impacts production output, employee counts, the financial bottom line, and overall success of a company. With Hamer Pellet, sawdust becomes a revenue stream, allowing for higher production outputs, more employees, and complete utilization of trees harvested from our forests. Hamer Pellet has a significant job multiplier effect in our region.

Some have suggested that Hamer significantly curtail their operating hours. They are already doing that as production schedules allow. While they have run 24/7 in the past, they are currently running either 16/5 or 12/5. The last two years there have been pellet shortages due to cold winters. They operate the hours they do to keep up with their peak seasonal demand. When we have extremely cold winters that last a while, operating 24/7 does not allow them to keep up with demand. If they are not permitted to operate as their production schedule demands the viability of the company in Elkins diminishes. Not to mention those are payroll hours that are being taken away from their employees and our economy.

The negative perception this gives in the business world is concerning to me as well. When a business is located and operating within all of the laws, ordinances, rules, and regulations of a municipality, and the city gives the impression it is working to change the rules mid game after millions upon millions of dollars have been invested in a business is not a good impression to give. In this extremely competitive world of economic development, where it is hard to keep what you have, not to mention recruit new, sending a message that a government entity could force operational changes on a manufacturer is not something a new business is willing to risk. Especially when what they have been doing is 100% within the rule of law. I have had other employers in and around the area ask me what was going on and if their name had been mentioned. They asked if the city was looking at anything they were doing and going to be trying to force operational changes on their business. I have assured them that was not the case, but the thought has been placed in the back of their mind and it is now another concern they have to worry about in addition to all of the others they are currently struggling with.

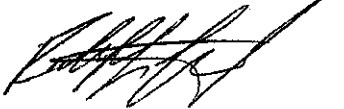
While I fully appreciate the interest of City Council evaluating concerns of citizens, this complaint has been reviewed, determined to not be out of compliance, and put to rest. Until a few months later is brought up again and a few months later is brought up again, and a few months later is brought up again. All while a good and vital employer for the area is run through the mud for doing nothing other than providing jobs, providing revenue streams for other businesses, and following every law it is required to follow. As I am sure you can imagine, it becomes frustrating after a while and the thoughts of "is this worth it" starts to creep into minds. It is important to remember that Elkins is quiet mountain town as some have suggested. However, it is a quiet mountain town in relative terms. Are we a quiet mountain town compared to Pittsburgh, New York, or Chicago? Absolutely we are quiet. Are we a quiet mountain town compared to Helvetia, Pickens, or Glady? No, we



are not. We have a bustling, diversified regional economy in Elkins that we are constantly working to grow. With that comes some noise. There are dozens of businesses in Elkins that emit noise 24/7. From exhaust fans, large air conditioner units, utility plants, tractor trailers, etc. Recently Hamer had a complaint from a citizen saying the plant woke her up at 2:30 in the morning. The plant had shut down the previous night at 10:00 p.m. they were not even running at 2:30 a.m. As I mentioned, there are many businesses that have operations that emit noise and create a "hum" over Elkins 24/7. That "hum" is attributable to people, businesses, activity, life, and growth. I am sure you would agree the City of Elkins should not want it any other way.

I strongly encourage the Rules and Ordinances Committee to not take any action that would place additional burdens on any company who operates or wishes to operate within the City of Elkins. I appreciate your consideration and I am happy to answer any questions or provide any further feedback that I can to this committee or the full council.

Respectfully Submitted,



Robert L. Morris, Jr.
Executive Director





**ELKINS-RANDOLPH COUNTY
CHAMBER**

August 13, 2020

City of Elkins
ATTN: Rules & Ordinances Committee
401 Davis Avenue
Elkins, WV 26241

Dear Rules & Ordinances Committee,

The Elkins – Randolph County Chamber offers this letter of support for the Hamer Pellet Fuel Company for your consideration. Hamer Pellet Fuel is part of our vibrant community, providing jobs to our citizens and performing an important part of the hardwood industry's need as an outlet for sawdust. We acknowledge the challenging times our economy is facing and recognize we must support our local business to the best of our ability.

The Chamber is unaware of any violations of ordinances or rules on the part of Hamer Pellet Fuel. They have, as far as our organization knows, followed all city ordinances set in place. To be the vibrant community we strive to be, we must continue to provide opportunity for businesses to thrive in Elkins.

For all these reasons, the Elkins – Randolph County Chamber of Commerce offers its full support of Hamer Pellet Fuel Company. We ask you place no additional burdens on this business that is so important to our local economy and workforce.

Most Sincerely,

Lisa B. Wood, Executive Director



Dear Rules & Ordinances Committee:

Please accept this letter as full support of Elkins Main Street for the Hamer Pellet Fuel Company. It is our request and recommendation that the City of Elkins not place any additional burdens on businesses that would prevent businesses sustaining or investing in our community.

We want to support our businesses in any way we can in this challenging economy. An important and vital employer in our region, Hamer provides not only jobs and an outlet of sawdust for our hardwood manufacturers. To the best of our knowledge, Hamer has not been violating any ordinance in relation to the complaints made about their company. Therefore they should be supported as a good law abiding business. To work toward a more vibrant community, we need more businesses of all types in Elkins, including manufacturing.

Thank you for your attention to this matter.

All the best;

A handwritten signature in cursive script that reads "Madalyn Humphrey".

Madalyn Humphrey
Executive Director
Elkins Main Street

City of Elkins

Rules and Ordinance Committee

Attention: Jessica Sutton

Dear Jessica,

My name is Matthew Ogden, I have been an active member and lifelong resident of the City of Elkins. I am employed by the Elkins Fire Department, a part time Paramedic for Randolph County EMS, and current business owner of *Ogden Pressure Washing* within the city limits. My proposal to you today is to consider changing one of the city's current ordinances based upon the facts that I present below.

On June 21st, 2001, the City of Elkins passed an ordinance banning the use of ATV's within the city limits. I am positive the safety for both the ATV operator and the residents of Elkins were a primary factor in that decision. However, the advancement in technology has allowed the operation of an ATV/UTV to be much safer. An ATV is defined, in short, as a vehicle with a weight of 800lbs or less, on 3 or more low pressure tires, with a seat that is designed to be STRADDLED by the operator. Whereas, a UTV aka Side-by-side is defined, in short, as a vehicle with a steering wheel, foot pedals for control, and non-straddle bucket or bench seating that are equipped with seatbelts; much like a car or truck. At the time this ordinance passed side-by-sides were not very well known and the technology had not evolved enough to ensure the safety of all those involved.

Since then UTV's have become so popular that on March 7th, 2020, the WV State Senate passed Senate Bill 690, allowing the use of these UTV'S on state-maintained roads and/or highways with a few stipulations. SB 690 specifically allows the use of UTV's (side-by-sides), not ATV's (4-wheelers), or low speed vehicles (such as golf carts) to be registered, much like a motorcycle, as a Street Legal Special Purpose Vehicle to be driven on state maintained roads and highways. Street Legal Special Purpose Vehicles are PROHIBITED from traveling on interstate roads, 4 – lane roads with a posted speed limit greater than 55MPH, or from traveling a distance greater than 20 miles on a highway displaying centerline pavement markings. To be in accordance with the law these vehicles would need to be registered through the DMV and must have proof of ownership, insurance, and be properly equipped with safety systems such as mirrors, turn signals, horn, and license plates. These vehicles must also undergo vehicle inspection by an authorized inspection personnel to ensure the safety systems are in place and in working condition. With that being said, I am asking you, the committee, to consider changing the current ordinance to allow the use of UTV's (not ATV's) within the city limits of Elkins. I believe the city would benefit greatly from the new state law while allowing outdoor enthusiasts, like myself, to enjoy the outdoors.

All counties, cities, and towns surrounding Elkins allow the use of UTV's, however, some municipalities do require special permits. Beverly, Coalton, and Parsons allow the use of these vehicle without a permit. Junior, Belington, and Phillipi allow the use of these vehicles with a special permit issued by each municipality. For example, In Belington you can purchase a permit for \$25.00 per year, which grants you permission to operate a UTV within their city limits. I spoke with a police officer in

Belington who stated they currently have about 50 permit holders and have not had any on – road accidents involving UTV’s. Much like Junior, Belington, and Philippi, the city of Elkins could benefit from this by issuing and requiring the operators of a UTV within the city limits to purchase a permit for said amount. Per SB 690, an operator could legally drive a UTV, if registered, from Crystal Springs to Beverly. However, because of the current city ordinance that is impossible. The city of Elkins is in the center of all other cities and towns that allow the use of these UTV’s, therefore not allowing access from point A to point B without having to haul the UTV by trailer midway through.

In closing, I would like to expand in my proposal to the committee that what I am asking for is not a “free for all event,” and that not every owner of a UTV be allowed to flood the streets of Elkins. Only those who take the proper and legal steps and become permit holders would have permission to do so. I truly believe that only the responsible UTV owners, such as myself, will be pleased to purchase a permit for use inside the city limits.

If you have any further questions or concerns, please feel free to contact me via phone at (304) 642-2200.

Thank you for your time and consideration.

Matthew Ogden