Minutes of the Regular Meeting of the City Council of the City of Lava Hot Springs, Idaho held on Thursday, November 12, 2015 at 5:30 p.m., Lava City Hall, 115 West Elm Street, Lava Hot Springs, Idaho.

Present: Marshall Burgin, Mayor
George Linford, Councilperson
Newt Lowe, Councilperson
Tamara Davids, Councilperson
Carl Brown, Councilperson
Canda Dimick, City Clerk

Excused:

Guests:

Amend Agenda:
None

Approval of Minutes:
Councilperson Brown made a motion to table the minutes. Councilperson Davids seconded the motion. All voted aye, unanimous.

Review and Approve Bills:
Gem Valley Survey, Mayor Burgin will talk with Kody Tilloston about the invoice. P & Z members current. Councilperson Brown made a motion to approve the bills except Gem Valley Survey. Councilperson Davids seconded the motion. All voted aye, unanimous.

Open floor to a Public Hearing:
Mayor Burgin rate rise to avoid a sticker shock down the road.

Councilperson Brown made a motion to open public hearing. Councilperson Linford seconded the motion. All voted aye, unanimous.

Clinton & Greg passed on talking about the water rates
Lisa Toly neutral
George Katsilometes question the wording on the first sentence about the 5%, 7.6 million is a lot of debit. Canda comment on it, standard wording for public advertisements per the Idaho Code, basically it means we are increasing it more than 5%. Every service line will see a flat rate increase of $10.00. If the City needs to increase it more than $10.00 it will need to go before another public hearing. George asked about replacing the meters. The council will review the need to replace meters when a meter goes bad. They will only replace if the meter is no longer working correctly. George question the amount of money collected in Taxes. Canda explained that option tax is allocated out against different projects. Councilperson Brown explained to George that we need to do it. Canda explained that the engineer has to address rates, is addressed in the study. They address this in the rate structure, your enterprise funds cannot be for profit funds. The Funds have to fund the expense. For example the water fund the water, the sewer funds the sewer and so on. There is a $100,000.00 in the option tax budgeted towards the water project. Councilperson Brown made a motion to close the public hearing. Councilperson Linford seconded the motion. All voted aye, unanimous.

Law Enforcement/Code Enforcement Monthly Reports:
Law Enforcement: None

Review & Consider Code Enforcement Report on trees impeding intersecting traffic vision at the intersection of South 4th West and West Fife Street:
Dennis Callahan reported on trees impeding intersecting vision. Arborists said they could cut down the trees to 3 feet and it won’t hurt the trees, makes them look like a bush. Dennis has talked with the owner and the owner wants to skirt the trees. The owner would like to leave the tree until they grow to the full height and then skirt the trees. However, the trees are not going to grow large enough to skirt. There is still a liability as it is now you have to go into the street in order to see the traffic. Dennis feels the only option is to remove the trees or cut them down to 3 feet and make them into bushes. Councilperson Brown made a motion to give the owner either of the two options with a 60 day deadline. Councilperson Davids seconded the motion. All voted aye, unanimous.

Recommendation to allow temporary storage of fill on vacant lot at 63 North 3rd East: Evelee has placed fill dirt on the vacant lot behind the Home Hotel in
the flood plain. Mayor Burgin recommended giving her the temporary permit until her basement is poured and then she can get the dirt back around the foundation. The dirt must be moved once the foundation is poured due to the flood plain. Councilperson Brown made a motion to approve temporary permit. Councilperson Lowe seconded the motion. All voted aye, unanimous.

**Discuss amending Floodplain ordinance to clarify enforcement authority:**
Add code Enforcers Officer should be added to the list. Councilperson Brown made a motion authorizing Canda to draft an ordinance to add the changes. Councilperson Davids seconded the motion. All voted aye, unanimous.

**East Portneuf Street Vacate Request – George Katsilometes:** The City received a letter from George and the Mayor doesn’t feel the City should do any action until the water main in the area is addressed. Marty Anderson would like the city to sign the deed and George would give the City an easement. September 11, 2013 Marty sent a letter to Clyde requesting his help to resolve the survey discrepancy. Marty informed the Mayor and Council that the clock is ticking, 3 year statute of limitation. Mayor asked Marty to give the City 60 days the City needs to talk to Clyde. Councilperson Brown made a motion to get back to them in 2 months on information. Councilperson Linford seconded the motion. All voted aye, unanimous.

**Blue Moon Bar Garden Expansion – Clinton Pagnotto:** The expansion request is for extending the garden into the property they purchased next to the Blue moon. They plan on using the area for horse shoe pits. Mayor Burgin questioned Clinton about additional parking for the Blue Moon. They could not develop the parking places until the roof was completed. They still plan on putting the parking spaces in that the council asked them to put in earlier in the year. Clinton will have the Asphalt down and lines painted this spring for the diagonal parking in front of the garden. They will extend the garden fencing into the other property. The Fence will set back off the alley approximately 20 feet. Councilperson Brown made a motion to approve. Councilperson Linford seconded the motion. All voted aye, unanimous. Councilperson Davids would like to see some plans of the expansion. Evelee is aware of the expansion and has no problems.
78 Main Street Request to serve customers food and drinks on city property – Kerby Pagnotto: Request is against the City’s ordinance. Clinton has reviewed other City where they have worked out special arrangement with owners. He believes it would be nice for his customer and would enhance the community culture. The tables and chairs are a nice sitting area. Mayor Burgin reminds him that it’s against City ordinance and the open container law. Lisa asked what if the owner can lease the property from the City. If a business could lease the property the liability belongs to the owner not the City. The State law only permits them to serve within their permitted area. Business will need to modify their business plans. Ordinances would have to be changed. The City will need to consult with legal. Council tabled for now.

Ordinances (Introduction, Reading & Adoption):
Adopt Ordinance 2015-8 “Sidewalk Ordinance” amending subsections a and b and c of section 8-1-2 of the city code to clarify the person or persons who may notify a property owner to repair, replace or construct sidewalk; clarifying the responsibility of the owner of adjoining property to construct and pay for the same; and authorizing the city to cause the same to be constructed at the owner’s cost and assessed against the adjoining property in accordance with section 50-1008, Idaho code; and amending the time limitations for the property owner to replace, repair or construct sidewalks; repealing all ordinances in conflict herewith; waiving the rule requiring that this ordinance be read on three separate occasions; and establishing an effective date.

Councilperson Davids made a motion to dispense with 3 readings. Councilperson Brown seconded the motion. All voted aye, unanimous. Mayor Burgin read the ordinance. Councilperson Davids made a motion to adopt ordinance. Councilperson Brown seconded the motion. Roll Call. All voted aye, unanimous.

ORDINANCE 2015-8

AN ORDINANCE OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AMENDING SUBSECTIONS A AND B AND C OF SECTION 8-1-2 OF THE CITY CODE TO CLARIFY THE PERSON OR PERSONS WHO MAY NOTIFY A PROPERTY OWNER TO REPAIR, REPLACE OR CONSTRUCT SIDEWALK; CLARIFYING THE RESPONSIBILITY OF THE OWNER OF ADJOINING PROPERTY TO CONSTRUCT AND PAY FOR THE SAME; AND AUTHORIZING THE CITY TO CAUSE THE SAME TO BE CONSTRUCTED AT THE OWNER’S COST AND ASSESSED AGAINST THE ADJOINING PROPERTY IN ACCORDANCE WITH SECTION 50-1008, IDAHO CODE; AND AMENDING THE TIME LIMITATIONS FOR THE PROPERTY OWNER TO REPLACE, REPAIR OR CONSTRUCT SIDEWALKS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; WAIVING THE RULE REQUIRING THAT THIS ORDINANCE BE READ ON THREE SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.
BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AS FOLLOWS:

SECTION 1. Section 8-1-2 A, B, and C, Lava Hot Springs Municipal Code, is hereby amended to read as follows:

8-1-2 CONSTRUCTION, REPAIR OR REPLACEMENT

A. Notice: At any time the city council finds there is a safety hazard to normal pedestrian traffic upon any sidewalk or where there is not a sidewalk for pedestrian traffic on streets designated for sidewalks by resolution of the city council, it shall be the duty of the city, or its authorized representative, to notify the owners of premises within the city abutting or adjoining any public street or sidewalk to construct a new sidewalk, or to replace or repair such sidewalk, as necessary.

B. Cost: The cost of construction, replacing or repairing of any sidewalk shall be the burden of the property owner. The owner of the abutting or adjoining property to said sidewalk shall have the duty to construct, repair, or replace said sidewalk, at his own cost and expense, upon receiving notification from the city. If the property owner fails to construct, repair, or replace said sidewalk, within the time period allotted to said owner, the city may cause the same to be constructed, repaired or replaced and assess the cost thereof to the property owner in accordance with Section 50-1008, Idaho Code.

C. Time Limitations: The owner shall, after notice has been given: 1) repair sidewalk, within forty-eight (48) hours within thirty (30) days; 2) replace such sidewalk, within five (5) sixty (60) days, or 3) to construct a new sidewalk, within thirty (30) sixty (60) days to in accordance with specifications set forth by the city council in such notice, or as may be set forth in the current edition, as amended, of the Idaho Standards for Public Works Construction, if adopted by the city council. Prior to said construction, the owner shall advise the city of the date and time of said construction, and shall further coordinate with the city for the construction of adjoining curb and/or gutter. The city shall be responsible for the cost of the construction of the curb and gutter. However, the city council shall have the discretion to construct curb and gutter, and/or to determine if curb and gutter are needed, and if determined to not be needed, the city shall have no responsibility to construct the same.

SECTION 2. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 3. The rule requiring this ordinance to be read on three separate occasions is hereby waived.

SECTION 4. This ordinance shall be in full force and effect from and after its passage, approval and publication according to law.

Adopt Ordinance 2015-9 “Parking Ordinance”

Adopt Ordinance 2015-9 “Parking Ordinance” amending sections 6-4-1 and 6-4-2 of the Lava Hot Springs municipal code to define the term “vehicle” and to limit the parking of vehicles on public thoroughfares; repealing ordinances in conflict herewith; waiving the rule requiring the reading of this ordinance on three separate occasions; and establishing an effective date. Councilperson Brown made a motion to dispense with 3 readings. Councilperson Linford seconded the motion. All voted aye, unanimous. Councilperson Linford read the ordinance. Councilperson Davids made a motion to adopt ordinance. Councilperson Linford seconded the motion. Roll Call. All voted aye, unanimous.

ORDINANCE 2015-9

AN ORDINANCE OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AMENDING SECTIONS 6-4-1 AND 6-4-2 OF THE LAVA HOT SPRINGS MUNICIPAL CODE TO DEFINE THE TERM “VEHICLE” AND TO LIMIT THE PARKING OF VEHICLES ON PUBLIC THOROUGHFARES; REPEALING ORDINANCES IN CONFLICT HEREWITH; WAIVING THE RULE REQUIRING THE READING OF THIS ORDINANCE ON THREE SEPARATE OCCASIONS; AND ESTABLISHING AN EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF LAVA HOT SPRINGS, IDAHO, AS FOLLOWS:

SECTION 1. Section 6-4-1, Lava Hot Springs Municipal Code, is amended to read as follows:

6-4-1: RESTRICTIONS IMPOSED:

It shall be unlawful and punishable as a misdemeanor for any owner or operator of a vehicle to cause or allow a violation of this chapter. For purposes of this chapter, the term “Vehicle” is defined as any vehicle which is self-propelled and/or designed to travel along the ground, on water or through the air, including, but not limited to, aircraft, watercraft, automobiles, buses, motor bikes, motorcycles, motor scooters, trucks, motor homes, tractors, go-carts, all-terrain vehicles, and golf carts, as well as parts or appurtenances thereto; and it shall also include campers and trailers which are neither inhabited nor affixed to a foundation.

SECTION 2. Section 6-4-2, Lava Hot Springs Municipal Code, is amended to read as follows:

6-4-2: OBSTRUCTION AND PARKING PROHIBITED:

No vehicle shall at any time be parked upon any public thoroughfare, including any street, alley, highway, vehicular way, pedestrian way, or other thoroughfare, in such a manner as to prevent the free and uninterrupted use of the thoroughfare by other vehicles and pedestrians, or of any driveway belonging to or rightfully used by any person other than the person to whom the vehicle belongs. Further, no vehicle shall
be parked on any public thoroughfare, as defined herein, within the city for a period of time exceeding twenty-four (24) hours.

SECTION 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 4. The rule requiring that this ordinance be read on three (3) separate occasions is hereby waived.

SECTION 5. This ordinance shall be in full force and effect from and after its passage, approval, and publication according to law.


Adopt Ordinance 2015-10 “Tree Ordinance”. Canda is still working on the draft with legal, some issues to resolve. Introduce for adoption next month.

Adopt Ordinance 2015-11 “Non-Property Tax Ordinance” extending the non-property tax for a period of eight (8) years to be effective November 20, 2015, after passage by the city Council and Mayor and approval of the city attorney’s summary of Ordinance 2015-11 for publication according to law. Councilperson Brown made a motion to dispense with 3 readings. Councilperson Linford seconded the motion. All voted aye, unanimous. Councilperson Brown, Councilperson Davids, Canda Dimick, Councilperson Linford and Mayor Burgin read the ordinance. Councilperson Linford made a motion to adopt ordinance. Councilperson Brown seconded the motion. Roll Call. All voted aye, unanimous.

ORDINANCE NO. 2015-11

AN ORDINANCE OF THE CITY OF LAVA HOT SPRINGS, BANNOCK COUNTY, IDAHO, FINDING THAT SAID CITY HAS SIGNIFICANT ECONOMIC DEPENDENCE ON VISITORS AND TRAVELERS; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE IMPOSITION OF CERTAIN NONPROPERTY TAXES TO WIT: A THREE PERCENT (3%) HOTEL-MOTEL CAMPGROUND OCCUPANCY TAX AND A TWO PERCENT (2%) LIQUOR BY-THE-DRINK TAX, AND A TWO PERCENT (2%) RETAIL SALES TAX EXCEPT THOSE ITEMS EXEMPT UNDER CHAPTER 36, TITLE 63, IDAHO CODE AND GROCERIES, BUILDING MATERIALS AS DEFINED HEREIN, AND LEASE PURCHASE AGREEMENTS OR LEASES WITH THE OPTION TO PURCHASE OF MOTOR VEHICLES; PROVIDING FOR A EIGHT (8) YEAR DURATION OF SAID NONPROPERTY TAXES; ESTABLISHING THE PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NONPROPERTY TAXES SHALL BE USED; CREATING A PROPERTY TAX RELIEF FUND; AUTHORIZING THE CITY CLERK OR TAX COMMISSION OF THE STATE OF IDAHO TO ADMINISTER,
BE IT ORDAINED by the Mayor and City Council of Lava Hot Springs, Idaho:

Section 1: FINDINGS:

The City Council of the City of Lava Hot Springs, hereby finds that said City has a population less than 10,000; derives the major portion of its economic well being from people catering to recreational needs and meeting needs of people traveling to that distinct city for an extended period of time; that said City has a significant economic dependence upon visitors and travelers passing through or staying in the community and said City; and that said visitors and travelers require services of said City which place an undue burden upon the taxpayers of said City.

Section 2: DEFINITIONS:

(a) Hotel - Motel - Any business including hotels, motels, condominiums, tourist homes, campgrounds, and any other business which in the regular course of business rents or leases for occupancy temporary lodging to individuals with or without meals, except where residence is maintained continuously under terms of a lease or similar agreement for a period in excess of thirty (30) days.

(b) Liquor by-the-drink - The term as used in this ordinance, includes:

(i) "Alcohol", meaning the product of distillation of any fermented liquor, rectified either once or oftener, whatever may be the origin thereof, or synthetic ethyl alcohol.

(ii) "Spirits", meaning any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, among other things, brandy, rum, whiskey, and gin.

(iii) "Wine", meaning any alcohol obtained by the fermentation of the natural sugar content of fruits (grapes, apples, etc.) or other agricultural products containing sugar (honey, milk, etc.)
(iv) “Beer”, meaning any alcohol beverage obtained from the fermentation of sugar, barley, hops, malt, yeast and similar ingredients.

(v) Any liquid or solid, patented or not, containing alcohol, spirits, or wine and susceptible of being consumed by human beings, for beverage purposes.

(c) Sale of Liquor by-the-drink - The terms sale, retail sale, and sale at retail mean the sale of liquor by-the-drink for consumption on the premises, and includes any transfer of money, title, exchange, barter or credit, conditional or otherwise, in any manner or by any means whatsoever as consideration.

(d) Room or space occupancy charge - The total amount charged for the rental use or temporary occupancy of a room, camping space or unit, valued in money, whether paid in money or otherwise, without any deduction.

(e) Seller of liquor by-the-drink - Any individual, partnership, corporation, organization or association that engages in sale or liquor by-the-drink for consumption on the premises, whether by agent, employee or principle.

(f) Taxpayer - Any person subject to or liable for any tax or payment of any tax imposed under this ordinance.

(g) "In the City of Lava Hot Springs: - means within the exterior boundaries of the City of Lava Hot Springs, Bannock County, Idaho.

(h) "Person" - shall include any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or any other group or combination acting as a unit.

(i) Sales Price - the total amount for which liquor by-the-drink is sold, and the total amount of any room or space occupancy charge, and the total amount for which tangible personal property, including services agreed to be rendered as part of the sale, is sold, valued in money, whether paid in money or otherwise, without any deduction.

(j) Groceries - Any edible food or foodstuffs intended for human consumption except (1) alcoholic beverages, (2) tobacco, and (3) any food product which is prepared and sold for consumption at any "eating place" as defined in Idaho Code Section 39-1702, or (4) any sandwiches and foods prepared and sold by retailer for immediate human consumption, or (5) any food product sold through a vending machine if the sales price is more than fifteen cents ($0.15).

(k) Building Materials: "Building Materials" are defined to include all tangible personal property which is used in constructing, altering, repairing or improving real property.
Section 3: IMPOSITION OF CERTAIN NON PROPERTY TAXES:

The City of Lava Hot Springs, hereby imposes and shall collect, as set forth herein, certain non-property taxes as follows:

(a) HOTEL-MOTEL/SPACE OCCUPANCY - a tax is hereby imposed at the rate of three percent (3%) on the occupancy charge for each hotel-motel room or camping space rented or leased within the City of Lava Hot Springs, Bannock County, Idaho. Said occupancy tax shall apply, be computed on and collected on all occupancy charges including all credit, installment, conditional or similar rental or lease fees at the time the fee for rental is charged. Said occupancy tax shall be collected by the owner of said property or his authorized agent from the renter or lessee. One percent (1%) of the three percent (3%) hotel-motel / space occupancy shall be used for that purpose set forth in Section 5F of this ordinance.

(b) LIQUOR BY-THE-DRINK TAX - A tax is hereby imposed at the rate of two percent (2%) of the sales price upon each sale at retail of liquor by-the-drink. The tax shall apply, be computed on, and collected for all sales including credit, or similar sales at the time of the sale, and shall be collected by the retailer from the consumer.

(c) SALES - A tax is hereby imposed at the rate of two percent (2%) on the sales price upon each sale made at retail, exempting only those sales already exempt by State law under Chapter 36, Title 63, Idaho Code, and exempting Groceries and Building Materials as defined in Section 2 of this ordinance and exemtping from said tax sales, lease-purchase agreements or leases with the option to purchase of motor vehicles. The tax shall apply to, be computed on and collected for all sales including credit, or similar sales at the time of the sale, and shall be collected by the retailer from the consumer.

(d) All monies collected and/or retained under the provisions of this ordinance shall be held in trust for the City of Lava and for payment thereof the City Clerk or the City Clerk’s designee, in the manner and at the times in this ordinance provided.

(e) When the sales price involves a fraction of a dollar, said non-property taxes shall be collected on the fractional portion of the price by adding thereto the tax based upon the following bracket system:

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The retailer shall calculate the tax upon the entire amount of the purchases of the consumer made at a particular time subject to this ordinance, and not separately upon each item purchased. The retailer may retain any amount collected under said bracket system which is in excess of the amount of tax for which he is liable to the City during the period as compensation for the work of collection said tax.

Section 4: DURATION OF TAXES:

The non-property taxes authorized and collected under this ordinance are hereby imposed for duration of Eight (8) years from the effective date of this ordinance.

Section 5: PURPOSES FOR WHICH THE REVENUES DERIVED FROM SAID NONPROPERTY TAXES SHALL BE USED:

The non-property tax revenue derived from and collected under this ordinance shall be used for the following purposes:
A. Capital Improvements: Roads, Water, Sewer, Parking
B. Emergency Services: Police, Fire, Ambulance
C. Open Space Acquisition and Recreation
D. Administrative and Legal
E. Direct Costs to Collect and Enforce Tax
F. Tourism Development and Promotion

Section 6: CREATION OF PROPERTY TAX RELIEF FUND:

(a) There is hereby created in the office of the City Clerk a fund to be designated as the "Municipal Property Tax Relief Fund". All monies collected under this ordinance, and not otherwise budgeted by the City Council, shall be placed by the City Clerk into the municipal property tax relief fund. All monies collected and placed into said fund shall be used to replace City property taxes in the ensuing fiscal year.

Section 7: AUTHORIZATION FOR CITY CLERK OR THE CITY CLERK'S DESIGNEE, TO ADMINISTER, REGULATE AND COLLECT SAID NONPROPERTY TAXES:

(a) The City Clerk of the City of Lava Hot Springs is hereby authorized and empowered to administer, regulate and collect payment of all non-property taxes adopted and imposed by this ordinance. Said Clerk shall have all of the powers set forth in this ordinance together with those additional powers necessary and proper to carry out the provisions of this ordinance. The City Clerk of the City of Lava may also designate and collect said non-property taxes. In the event the City Clerk designates to the Idaho State Tax Commission the role of administration regulation and collection under this provision, all references to the City Clerk shall be deemed to refer to the Idaho State Tax Commission. The costs incurred by the State Tax Commission shall be reimbursed from the proceeds collected.

Section 8: PERMITS - ISSUANCE:

(a) Every person desiring to engage in or conduct business of renting a hotel-motel room, or camping space, selling liquor by-the-drink, or engaging in non-excluded retail sales within this City shall file with the City Clerk an application for municipal non-property tax permit for each place of business. A separate permit is required for each place of business within the City. Every application for said permit shall be made upon a form prescribed by the City Clerk and shall set forth the name under which the applicant transacts or intends to transact business, the location of the business or places of business, and such other information as the City Clerk may require. The application shall be signed by the owner, if he is a natural person; or in the case of an association or partnership, by a member or partner, in the case of a corporation, by an executive officer or other person authorized by the corporation to sign the application. Initial permits shall be issued upon completion of the application and payment of a Five Dollar ($5.00) application fee for each permit sought.
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(b) Upon filing an application meeting the requirements set out above, the City Clerk shall issue to each applicant a permit for each place of business. A permit shall not be assignable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. It shall at all times be conspicuously displayed at the location for which it was issued. Issuance of a permit may be subject to additional requirements as set forth in this ordinance.

(c) On the face of the permit shall be fixed a municipal non-property tax number which shall be used by the applicant as an identifying number on all filing, payment and correspondence with regard to the non-property tax imposed under this ordinance.

Section 9: METHOD OF PAYMENT OF TAXES:

(a) The taxes imposed by this ordinance shall be computed and paid for each calendar month. Said taxes are due and payable to the City Clerk on or before the 25th day of the succeeding month. The amount of tax paid shall be computed on the total dollar value of liquor by-the-drink sold and/or hotel-motel / campground occupancy charges and/or retail sales. Each person required to hold a municipal non-property tax permit and number shall file a municipal non-property tax return and a copy of their Idaho State Sales Tax return for the month at the same time said taxes are paid to the City Clerk, unless said person has been permitted in writing by the Idaho State Tax Commission to file quarterly sales and use tax returns. Persons who have been permitted to file other than quarterly returns shall notify the City Clerk in writing and the City Clerk thereupon may require reporting of Sate Tax Returns over some other period.

(b) The first payment of taxes under this ordinance shall be due and payable together on the 25th day of December, 2015 for the period beginning November 20th, 2015, and ending November 30th, 2015. Thereafter all payments shall be made monthly.

(c) A municipal non property tax return shall be filed each and every month by every person engaging in the sale of liquor by-the-drink and/or hotel-motel / campground rental or lease or retail sales regardless of whether or not any tax is due. Returns shall be signed by the person required to file the return or by a duly authorized agent.

Section 10: AUDITS - DEFICIENCY DETERMINATIONS:

(a) The City Clerk may order an audit of any taxpayer under this ordinance for the purpose of ascertaining the correctness or completeness of any return or payment.

(b) If any error or omission is discovered in such audits or in any other way, the City Clerk may compute and determine the amount of tax due upon the basis of facts obtained from such information within its possession and assert a deficiency. One or more deficiency determinations may offset over payment against amount due. Furthermore, said determinations shall be made for the period or periods in respect to which the person fails to make a return and shall be based upon any information which is in the City Clerk’s possession.
(c) The City Clerk shall give written notice of its determination and the amount of its deficiency, including interest, at the rate of eighteen per cent (18%) per annum from the date due, to the person from which such deficiency amount is due. Such notice may be personally delivered or mailed postage pre-paid to the person at the address furnished to the City Clerk in the non-property tax permit application.

Section 11: Redetermination of Deficiency:

(a) Any person against whom a deficiency determination is made under this ordinance, or any person directly interested, may petition in writing for a redetermination within thirty (30) days after service upon the person of notice thereof. If the petition for redetermination is not filed within the thirty (30) day period, the determination becomes final at the expiration of the period.

(b) If a petition for redetermination is filed within the thirty (30) day period, the City Clerk shall reconsider the determination and, if the person so requests in the petition, grant the person oral hearing and give said person ten (10) days notice of the time and place of the hearing personally or by mail, postage pre-paid, addressed to the person at the address furnished to the City Clerk in said person's application for a non-property tax permit.

Section 12: Appeals, Interest on Deficiency:

(a) When a redetermination is made, the City Clerk shall give notice to the taxpayer against whom the redetermination is made. Within thirty (30) days of the date upon which such notice of redetermination is mailed or served, the taxpayer may file an appeal with the City Council or may file a complaint with the District Court for review of the City Clerk's redetermination. There shall be no right of review to the City Council nor to the District Court on the determination of taxes due made by the City Clerk unless a petition for redetermination has been timely filed. No assessment of a deficiency in respect to the tax imposed by this ordinance or proceeding to collect for its collection shall be made, begun or prosecuted until such notice has been mailed to the taxpayer and expiration of such thirty (30) day period after notice of redetermination, or if a protest is filed until a decision on the protest becomes final. If the taxpayer does not protest to the City Council or file an action in District Court within the time prescribed in this section, the deficiency shall be assessed and shall become due and payable upon notice and demand from the City Clerk.

(b) Interest upon any deficiency shall be assessed at the same time as the deficiency and shall become due and payable upon notice and demand from the City Clerk and shall be collected as part of the tax at the rate of eighteen percent (18%) per annum from the date prescribed for payment of the tax.

Section 13: Collection and Enforcement:
(a) As soon as practical after monthly municipal non-property tax return and payment is filed, the City Clerk shall examine same and determine the correct amount of the tax. For the purpose of ascertaining the correctness of any payment determining the amount of tax due where none has been made, determining liability of any person for any tax payable under this ordinance, or the liability at the law or in equity of any person in respect to any tax provided by this ordinance or collecting any such liability, the City Clerk, or duly authorized deputy, is authorized (1) to examine the books, papers, records or other data which may be relevant or material to the inquiry; (2) to summon the person liable for the tax or any officer, agent or employee of such person, or any person having possession, custody or care of books or accounting containing entries relating to the business of the person liable for the tax, to appear before the City Clerk, or deputy, at a time and place named in its summons to produce such books, papers, records or other data and/or give such testimony under oath as may be relevant or material to such inquiry.

Section 14: REFUNDS, LIMITATIONS AND INTEREST:

(a) If the City Clerk determines that any amount due under this ordinance has been paid more than once or has been erroneously or illegally collected or computed, the City Clerk shall set forth that fact in its records and the excess amount paid or collected may be credited on any amount due or payable to the City Clerk for non-property taxes from that person, and any balance refunded to the person by whom it was paid or to his successors, administrators or executors.

(b) No such credit or refund shall be allowed or made after one (1) year from the time the payment was made unless before the expiration of such period a claim therefore is filed by the taxpayer.

(c) Interest shall be allowed on the amount of such credits or refunds at the rate of eight percent (8%) per annum from the date which such tax was paid.

(d) Appeal from the City Clerk’s decision denying in part or in whole a claim for refund shall be made in accordance with the laws of the State of Idaho with regard to claims against municipalities.

Section 15: RESPONSIBILITY FOR PAYMENT OF TAXES:

(a) Every person with a duty to account for or pay over any tax imposed by this ordinance on behalf of a corporation as an office employee of the corporation, or on behalf of a partnership, as a member employee of the partnership shall be personally liable for payment of such tax, plus penalties and interest.

Section 16: PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION:

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(a) The amount of taxes imposed under this ordinance shall be assessed within three (3) years of the time the return upon which the tax assessed to be due was or should have been filed, whichever is later; provided, however, if a deficiency determination or assessment has been made within the prescribed time, such tax may be collected within a period of six (6) years after assessment. The running of limitations provided by this section shall be suspended for the period during which the City Clerk is prohibited from making the assessment or from collection or proceeding in court due to a petition for redetermination or an appeal therefrom, and for thirty (30) days thereafter.

(b) In the case of taxes due during the lifetime of a decedent the tax shall be assessed and proceedings for collection begun within six (6) months after written request therefore (filed after the return is made) by the executor, administrator, or other fiduciary representing the estate of such decedent unless the assessment is stayed by a petition for redetermination or any appeal therefrom.

(c) In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within three (3) years after the date of the discovery of the facts constituting the fraud, or discovery of the failure to file.

Section 17: SUCCESSOR’S LIABILITY:

(a) If a vendor liable for any amount of tax under this ordinance sells out his business or stocks and goods, the vendee shall make an inquiry to the City Clerk and withhold from the purchase price any amount of tax that may be due under this ordinance until such time as the vendor produces a receipt stating that no amount is due.

(b) If the purchaser of business or stock of goods fails to withhold from the purchase price as above required, he is personally liable for the payment of the amount required to be withheld by him which amount shall be immediately due and payable with interest as herein provided and suit may be filed within the time limits set forth in Section 16 of this ordinance to collect the same.

Section 18: GENERAL ADMINISTRATION BY CITY CLERK:

(a) The City Clerk shall enforce the provisions of this ordinance and may prescribe, adopt and enforce rules and regulations relating to its administration and enforcement. The City Clerk may employ qualified auditors for examination of taxpayers' books and records, and shall also employ such accountants, investigators, assistants, clerks, and other personnel as are necessary for the efficient administration of this ordinance, and may delegate authority to its representatives to conduct hearings, or perform other duties imposed by this ordinance.

(b) Every hotel-motel and campground owner and seller of liquor by-the-drink or seller at retail in this city shall keep such records, receipts, invoices, and other pertinent papers as the City Clerk may require. Every such hotel-motel and
campground owner and seller of liquor by-the-drink or seller at retail who files tax payments required under this ordinance shall keep all such records for not less than four (4) years after making such payments unless the City Clerk in writing authorizes their destruction.

(c) The City Clerk, or any person authorized in writing by the Clerk, may examine the books, papers, records and equipment of any person selling liquor by-the-drink and any hotel-motel and campground owner or seller at retail or any person liable for any tax, and may investigate the character of the business of the person in order to verify the accuracy of any return made, or if no return is made by the person to ascertain and determine the amount required to be paid. Any hotel-motel or campground owners or persons who sell liquor by-the-drink or seller at retail whose pertinent records are kept outside of the City must bring the records to the City for examination by the City Clerk upon request of the latter, or by agreement with the City Clerk permit an auditor designated by the City Clerk to visit the place where the records are kept and their audit of such records.

Section 19: PENALTIES:

(a) Any person who violates any provision of this ordinance shall be guilty of misdemeanor, punishable by up to one (1) year in the county jail, and/or Three Hundred Dollars ($300.00) fine or both. Furthermore, each month in which a person fails to report or intentionally fails to accurately compute, or intentionally fails to accurately disclose the total amount of sales or rentals or the amount of tax to be paid, as imposed under this ordinance, shall be considered a separate offense.

(b) Any person who violates any provision of this ordinance shall have his municipal non-property tax permit and tax number revoked. The City Clerk shall send written notice of revocation of said permit and tax number to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council, challenging said revocation. If no appeal is timely made said revocation becomes final. Whenever a person subject to this ordinance has had said permit and tax number revoked, the City Clerk shall not reissue said permit nor issue a new permit to said person until said person places with the City Clerk a bond or other sufficient security in the amount equal to three (3) times the actual, determined or estimated average monthly amount of tax payable by such person pursuant to this ordinance.

(c) The City Clerk, whenever it is deemed necessary to insure compliance with the ordinance, may require any person subject to this ordinance to place with it such security as it may determine. The amount of said security shall not be greater than three (3) times the estimated average monthly amount payable by such persons pursuant to this ordinance. The amount of the security may be increased or decreased by the City Clerk at any time, subject to the limitations set forth above.

(d) Any person who violates any provision of this ordinance shall have all municipal beer license(s), wine license(s), retail liquor by-the-drink license(s) and business license(s) revoked.

(e) Any amount of tax due under this ordinance for which a person fails to report or accurately compute, shall become a lien upon the property of said taxpayer on the date that the same becomes due, and the City may seek to enforce said lien and collect all taxes and interest due together with the reasonable costs of collection, including attorney's fees in a court of competent jurisdiction.

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(f) For the purposes of proper administration of this ordinance, and to prevent evasion of said non-property taxes, the burden of proving that a sale of liquor by-the-drink or rental of a hotel-motel room or campground space or retail sale is not a sale under this ordinance is upon the person who makes the sale or rental in question.

(g) No City Clerk of the City of Lava Hot Springs, Bannock County, Idaho, nor any duly authorized Deputy City Clerk, agent or employee shall divulge or make known to any persons, in any manner, any information whatsoever submitted or obtained directly or indirectly, pursuant to this ordinance, or to permit any non-property tax return or information supplied with regard thereto, or any copy thereof, or any paper or book so obtained to be seen or examined by any person except as provided by law; provided that in any action or proceeding brought for the collection, remission, cancellation, or refund or the whole or any part of a tax imposed under this ordinance, or for enforcing the penalties prescribed for making false or fraudulent returns, any and all information contained in or provided with said returns, may be made accessible to the elected or appointed officials, officers and representatives of said City charged with enforcing or defending same, all such returns, information, statements and correspondence relating thereto may be produced into evidence in any action, civil or criminal, directly pertaining to such returns or the tax imposed on the basis of such returns, provided; the Lava Hot Springs City Council, under such rule and provisions as it may prescribe, may permit, notwithstanding the provisions of this ordinance as to secrecy, the Commission of Internal Revenue of the United States or his delegate or the proper officer of any state imposing a tax to inspect the non-property tax returns or information provided or obtained in connection therewith, or may furnish to such officer or his authorized agent, copies of an abstract thereof, provided; nothing in the ordinance shall prohibit a taxpayer, or authorized representative, upon proper identification, from inspecting and copying his own non-property tax returns and information supplied therewith.

Section 20: PENALTY CHARGE:

(a) Any person who is required to collect, truthfully account for, and pay over any tax imposed by this ordinance and who willfully fails to collect such a tax or truthfully account for or pay over such a tax or willfully attempts in any manner to evade or defeat such a tax or payment thereof, shall, in addition to other penalties provided by law, be liable to pay a penalty equal to the amount of the tax evaded, or not collected, or not accounted for and paid over. The City Clerk shall determine and assess such penalties, and the same shall become due and payable upon notice and demand from the City Clerk. The City Clerk shall send written notice of such penalty charge to the permit holder by mailing the same by certified mail to the address given on the permit application. The permit holder shall have ten (10) days from the date said notice is mailed to file a written request of appeal with the City Council challenging said penalty charge determination. If no appeal is timely made, said penalty charge determination becomes final.

Section 21: REPEAL OF CONFLICTING ORDINANCES:

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Section 22: SEVERABILITY:

It is hereby declared to be the legislative intent that the provisions, and parts thereof, of this ordinance shall be
severable. Should any section, subsection, paragraph, clause or phrase of this ordinance, or any particular application thereof, be declared invalid or unconstitutional for any reason by a court of competent jurisdiction, such decision shall not affect the remaining portions of said section, subsection, paragraph, clause or phrase of this ordinance.

Section 23: WAIVER OF READINGS:

The rule requiring the reading of this ordinance on three separate occasions is hereby waived.

Section 24: EFFECTIVE DATE:

This ordinance, having been approved by the voters on November 3, 2015, shall be in full force and effect on November 20, 2015, after passage by the City Council and Mayor, and publication according to law.

PASSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR this 12th day of November, 2015.

Multi-Jurisdictional All-Hazard Mitigation Plan 2015 and approve resolution authorizing the adoption of the plan if acceptable: Mayor Burgin read resolution 2015-5. Councilperson Linford made a motion to approve resolution 2015-5. Councilperson Brown seconded the motion. All voted aye, unanimous.
AUTHORIZING THE ADOPTION OF THE BANNOCK COUNTY
MULTI-JURISDICTIONAL ALL-HAZARD MITIGATION PLAN 2015

WHEREAS, all of Bannock County, Idaho has exposure to natural hazards that increase the risk to life, property, environment and the County’s economy; and

WHEREAS, pro-active mitigation of known hazards before a disaster event can reduce or eliminate long-term risk to life and property; and

WHEREAS, the Disaster Mitigation Act of 2000 (Public Law 106-390) established requirements for pre and post disaster hazard mitigation programs; and

WHEREAS, the Local Emergency Planning Committee of Bannock County, with participation from local municipalities with like planning objectives has been formed to pool resources and create consistent mitigation strategies within Bannock County; and

WHEREAS, the Committee has completed a planning process that engages the public, assesses the risk and vulnerability to the impacts of natural hazards, develops a mitigation strategy consistent with a set of uniform goals and objectives, and creates a plan for implementing, evaluating and revising this strategy:

NOW, THEREFORE, BE IT RESOLVED that the City of Lava Hot Springs,

SECTION 1: Adopts in its entirety, the Bannock County Multi-Jurisdictional All-Hazard Mitigation Plan (the “Plan”) as the jurisdiction’s Natural Hazard Mitigation Plan, and resolves to execute the actions identified in the Plan that pertain to this jurisdiction.

SECTION 2: Will use the adopted and approved portions of the Plan to guide pre- and post-disaster mitigation of the hazards identified.

SECTION 3: Will coordinate the strategies identified in the Plan with other planning programs and mechanisms under its jurisdictional authority.

SECTION 4: Will continue its support of the Local Emergency Planning Committee as described within the Plan.

SECTION 5: Will help to promote and support the mitigation successes of all participants in this Plan.

SECTION 6: Will incorporate mitigation planning as an integral component of government and partner operations.

SECTION 7: Will provide an update of the Plan in conjunction with the County no less than every five years.

PASSED AND ADOPTED ON THIS 12th day of November, 2015

Business License(s), Alcohol License(s), Coin-op License(s), Building Permit(s) & Non-Property Tax Permit(s):

A) DeLage Landen Financial Services, Inc. (Tax Permit)
B) Janus International Group, LLC (Tax Permit)
C) Authorize Code Enforcement Officer to issue 2016 renewals upon receipt of fee. Renewal subject to Local taxes are current and up to date.

Councilperson Brown made a motion to accept A & B. Councilperson Linford seconded the motion. All voted aye, unanimous.
Councilperson Brown made a motion to authorize Dennis, code enforcement officer, to issue business license upon receipt of payment. Councilperson Davids seconded the motion subject to Local taxes are current. All voted aye, unanimous.

**Building Permit(s):**

A) **10 Cabins** – 68 West Main Street – George Katsilometes, Owner/Applicant

*(Consider Site Plan and Discuss Joint Sewer Service Connection).*  Plan submitted. The plan did not have an A&E engineering stamp which is required. Dennis has notified George that the site plan has to have engineer approval stamp. The engineer is supposed to bring in the agreement tomorrow. Also the Building the inspector is requiring engineering plan on the structure. Canda has received from the county the plan to combine the parcels. Combing the parcels will take care of the joint water and sewer connections. Plan will need to go to Planning & Zoning before it is presented again at the council meeting.

B) **Interior Rebuild due to fire damage** – 154 West Elm – Jim Butterfield, Owner/Applicant:  Councilperson Linford made a motion to accept application. Councilperson Brown seconded the motion subject to Local taxes are current. All voted aye, unanimous.

C) **Pitch Roof** – 83 East Elm – Annastasia Swanson, Owner/Applicant:  They are putting up a pitch roof, north to south. The house is set at 15.5 feet, front yard. Ordinance says that it must be 20 feet setback front yard requirement. Grandfather right is not for pitching a roof only if he repaired the current flat roof. Councilperson Davids made a motion to require a variance. Councilperson Brown seconded the motion. All voted aye, unanimous.

D) **Review Building Permit Ordinance and Consider Amendment:**  Concerns about people excavating and not having a building permit in order. Our City ordinance building permit and the international building code doesn’t cover it. The only way is to spell it out in our City ordinance. City Clerk will draft up an ordinance.  Table
Planning & Zoning Commission Nominations & Appointments: George reported Vicky Lyon has expressed an interest in joining the P&Z committee. George talked with the P&Z team and they are all in favor of it. Councilperson Linford made a motion to appoint Vicky Lyon. Councilperson Brown seconded the motion. All voted aye, unanimous.

Councilperson Linford made a motion to reappoint Curtis Waisath and Fred Hinz to be members of the planning and zoning committee effective Nov. 2nd, 2015. Councilperson Brown seconded the motion. All voted aye, unanimous.

Meetings & Announcements:
A) 100th Birthday Celebration – Wrap Up Plans: Message board using some of the money from the 1% Centennial budget. Application for the 1% needs submitted.

B) Chamber Events – Amantha Sierra, Event Coordinator: Scarecrow festival. Judging needed to completed.
2) Gingerbread Man & House Contest: No contest. Business could do something themselves but, the Chamber is not going to sponsor it.
3) Fire & Ice Festival: Would like to do a different type of decoration for Veterans Park. Amantha would like an Igloo & penguin light decorations for City Park. See if the Chamber wants to do it and if so have the Chamber submit the 1% application.

C) For Cause Personnel Policy – Resolution to Adopt Policy: City Clerk is working on personnel policy.

D) Record Retention Schedule Draft: City Clerk is working on resolution.

E) Solar System net Metering Agreement: Canda read the engineering report on solar system. The system in operational with the 25 kw currently on line. Rocky Mountain Power application for the net reader increase has been submitted to the IPUC for review and approval. Rocky Mountain Power is not expecting to hear until early next year.

F) L Lights: Bulbs ordered, received and installed.
G) **Special Assessment Filings:** City Clerk filed delinquent city services on special tax assessment filled last month.

H) **Veteran’s Park Public Restrooms – Heating System Leak:** Small leak. Still trying to find what caused the leak and how to repair it. It currently is not leaking.

I) **Community Thanksgiving Dinner:** No comments or question.

J) **III-A refund letter regarding initial start up:** No increase in premium and we received a small refund, 290.00.

K) **2015 AIC Fall Academies:** Meeting scheduled for next Thursday. Canda will find out the cost and if the new council would like to attend the City will pay for it.

L) **Miscellaneous:** No date set for the fireman dinner.

**Projects:**

**Wastewater System:**
Generator Electronic System – Mayor Burgin talked with Tony about it. The person he contacted to do the repairs it unable to make it before Tony gets off work. Mayor Burgin authorized Tony to wait for him and the City will pay him the comp time to get it settled.

**Buddy Campbell Memorial Park Expansion Project:**
Status of Fagnant property purchase: Closing on the Wilmore property, owe $417.00. Closing scheduled for Monday. Councilperson Brown made a motion to pay bill. Councilperson Linford seconded the motion. All voted aye, unanimous.

**Pedestrian Bridge Project:**
1) Environmental Document – Canda read email from Aaron discussing the bid alternatives. The alternatives are the Tree, light, fence and sign removal and they are not included in the scope of the project. If the bid comes in that we don’t have enough money to cover the alternatives then the city will need to cover the cost. There is money budgeted for it.

**Buddy Campbell Park:**
Tree trimming – Dennis has appointment tomorrow with Top Notch and Lawn Tech is scheduled for Monday. Dennis is still waiting for the 3rd bid to come in. Dennis has a program that shows every Tree the City has.

**Fire Station Sewer Line Extension:**
Discuss bidding installation. Canda will get with Tony and get the bids out.

**Water Improvement Project Funding Options/Status Report:**
Judicial Confirmation Petition was awarded. Administration contract is in place. Engineering contract in process, Keller has the scope done and working on the funds now. Archeology study, Sundance sent an agreement. Idaho State Historical society is requiring an Archeological study. Keller is not qualified to do the study they went to Sundance to see what it would cost. The study has to be done. Councilperson Brown made a motion to accept Sundance. Councilperson Davids seconded the motion. All voted aye, unanimous.

**Easement Report:** Canda talked with Brian and they will start working with the Title Company to make sure we got the easement in place for the water line and state the process for with easement for the county right away.

**Spring Fencing Project:**
Mayor Bergin reported the project is done as far as they can go unless we get more money. They completed the Big Spring area and almost half of the Small Spring area. More money is needed to finish the Small Spring area. The Big Spring is complete with the exception of the gates. They are ordered and will be installed middle of next month.

**Black Mountain Software Status Report:** Canda reported that the Utility billing is being entered into the program. Hoping the first trail will be the first of December. The program will give us the option to email statement and our customers can sign up for it. No auto pay available on the system. Can a receipt be emailed back to customer? Access will be available to the Council once we are setup.

**I) Removal of dead tree in alley at South 4th West and alley intercepting between West Booth and West Fife Street:** Mayor Burgin would like to see if Patrick would cut down the tree, he can keep the wood if he wants and see if Billy & Tony will remove the stump. Councilperson Brown made a motion to remove tree. Councilperson Davids seconded the motion. All voted aye, unanimous.
**Miscellaneous:** None

**Discussion:** None

Meeting will adjourn into executive session following the discussion period to discuss personnel evaluations for wage rate increase and delinquent local option taxes as permitted by Idaho Code 67-2345 (b) and (d) following the discussion period: Councilperson Linford made a motion to go into executive session. Councilperson Davids seconded the motion. Roll Call. All voted aye, unanimous.

Councilperson Brown made a motion to reconvene. Councilperson Davids seconded the motion. All voted aye, unanimous.

Councilperson Davids made a motion to table wage increases. Councilperson Linford seconded the motion. All voted aye, unanimous.

Councilperson Brown made a motion to send notices for option tax delinquencies demanding reports by Nov. 30th and meet after that time to review. Councilperson Davids seconded the motion. All voted aye, unanimous.

**Adjournment:** Councilperson Lowe made a motion to adjourn. Councilperson Linford seconded the motion. All voted aye, unanimous.

Meeting adjourned at 6:43 pm.

__________________________  __________________________
Amantha Sierra, Transcriber    Marshall N. Burgin, Mayor