

Minutes of the Special Meeting of the Lava Hot Springs Planning & Zoning Commission held Monday, June 1, 2020 at 6:30 p.m. by Zoom teleconference.

Present:

Neil Anderson, Commission Chair  
Fred Hinz, Commission Member  
Curtis Waisath, Commission Member

Vicky Lyon, Commission Member  
James Page, Commission Member  
Canda L. Dimick, City Clerk

Guests: None

Neil Anderson, Commission Chair explained that the meeting is being held by teleconference due to COVID-19. Meeting was called to order at 6:30 p.m.

### **Approval of Minutes – ACTION ITEM**

Canda Dimick, City Clerk, reported that she had no minutes to present for approval. The City Clerk's computer had to be upgraded to Windows 10 and the tech is in the process of switching everything over to the new tower. Motion was made by Vicky Lyon, Commission Member and seconded by Curtis Waisath, Commission Member to table the approval of the minutes until the next meeting. All voted aye, unanimous.

### **Noise Ordinance – ACTION ITEM**

Neil Anderson, Commission Chair asked members if they all had an opportunity to look over the ordinance and study it. Curtis Waisath and Vicky Lyon, Commission Members acknowledged that they did on the recording.

Neil Anderson, Commission Chair asked Canda Dimick, City Clerk if it was necessary to read the whole ordinance into the minutes. Canda Dimick, City Clerk reported that it was not necessary to read it but the commission does need to go through the ordinance and work on the provisions where there are questions noted.

Canda Dimick, City Clerk explained that she is working with the City Attorney on the title of the ordinance to legally spell out all of the provisions. She questioned if commission members had any concerns with the purpose and definitions as written. Vicky Lyon, Commission Member reported that in the first paragraph under purpose the public health, safety, peace, there should be and. Correction was noted "This ordinance is enacted to protect, preserve and promote the health, safety and welfare, peace and quiet for the citizens of the city through the reduction, control, and prevention of noise".

Canda Dimick, City Clerk asked commission members if they were comfortable with the day time hours; 10 am to 8 pm. Several commission members acknowledged that the day time hours were acceptable.

Canda Dimick, City Clerk asked commission members if they had any concerns and or comments regarding the extended daily permit provision. Neil Anderson, Commission Chair, questioned if there would be any kind of limitations on how long they could go. Commission Members were asked if they were OK with the extended daily permit definition (*Extended daily permit* means a current and valid permit authorizing the use of sound amplification equipment at a specific location or upon a

specific route at designated times for a period not to exceed five consecutive days.) Neil Anderson, Commission Chair commented that he thought the definition for extended daily permit was OK as written. Vicky Lyon, Commission Member commented that she felt that the daily permit was fine but there should be no extension of the hours granted; things need to start quieting down by 10 p.m. Neil Anderson, Commission Chair commented that maybe on the extended daily permit it should include the hours because an extended daily permit means that they are only going to be there for more than one day but they still have to abide by the hours. Vicky Lyon, Commission Member commended that she has always told people that the City has a noise ordinance and that at 10 pm party time is over. Commission Members Fred Hinz and Curtis Waisath voiced comments supporting 10 p.m. quiet time.

Curtis Waisath, Commission Member commented that the sound nuisance definition explains it all (*Sound nuisance* means any sound which either exceeds the maximum permitted sound levels specified in Section 6 of this ordinance, or for purposes of Sections 4, 5 and 7 of this ordinance, otherwise unreasonable disturbs, injures or endangers the comfort, repose, health, peace or safety of others.)

James Page, Commission Member joined the meeting by teleconference at this time. James Page, Commission Member was informed that the proposed noise ordinance was being reviewed page by page and that the commission was on page three. James acknowledged that he had no concerns with the provisions as written up to page three.

The provision regarding noisy animals and birds was reviewed. Neil Anderson, Commission Chair questioned if there is really a problem with noisy animals. Curtis Waisath, Commission Member commented that the problem would be mostly with barking dogs. Canda Dimick, City Clerk informed commission members that the city has an animal control ordinance which addresses barking dogs and advised commission members that they may want to review the provisions in the animal control ordinance to make sure they do not conflict. Neil Anderson, Commission Chair suggested referencing the animal control ordinance in the noise ordinance provision and recommended asking legal counsel to review it. Vicky Lyon, Commission Member stated that she thinks it is already addressed because the noise ordinance provides for any animal that causes frequent or long and continued sound which unreasonably disturbs. She feels that if there is a dog howling all the time it may not be over the noise level but the fact that the noise continues would apply. James Page, Commission Member agreed that it would be more of an annoyance than a noise exceeding the sound level problem. The provision says that the noise doesn't have to be loud that it can be within the permissible levels but annoying. Neil Anderson, Commission Chair explained that what is being discussed is to include the other animal control provisions being referenced into the noise ordinance so that there will be no conflict between the two ordinances. Canda Dimick, City Clerk was asked to check with the City Attorney on referencing the animal control ordinance provisions.

Commission members acknowledged that the language in the noisy animal provision was acceptable and moved onto discussing provision regarding noisy vehicles. There were brief personal comments regarding vehicle noise voiced, no changes to the provision made.

Provision regarding maximum permissible sound levels was discussed. It was questioned if the city is going to purchase a decibel meter for the code enforcement officer. Canda Dimick, City Clerk reported that the ordinance as written will require purchasing a sound level meter. The City hasn't looked at purchasing a meter yet. Canda Dimick, City Clerk expressed that maybe the commission should recommend the City purchasing a meter to complete some experimental testing before the ordinance is adopted. The commission can then determine if the level as established in the ordinance needs to be changed rather than mirroring another city's ordinance. Commission members supported completing some experimental testing. James Page, Commission Member stated that the city needs to have the decibel meter for the code enforcement officer to use and prove that the level exceeds the permissible limit.

Curtis Waisath, Commission Member questioned if the City is going to have a trained hearing officer for permit suspensions/revocations as provided for in section twelve of the ordinance. Canda Dimick, City Clerk reported that section twelve also needs to be reviewed by the commission and discussed.

Commission members agreed that the sound levels provided for in the ordinance for *Residential property*: a) Sixty-five (65) dB(A) during daytime hours and b) Fifty-eight (58) dB(A) during nighttime hours may need to be different. Neil Anderson, Commission Chair commented that he doesn't feel that sixty-five decibels is excessive; smoke alarms are around one hundred thirty-five which are covered in the ordinance under the exceptions or defenses. Neil reported that sixty-five decibels is about the type of sound produced from a running table saw. Fred Hinz, Commission Member commented that the commission can continue to talk different levels but nothing is going to be gained until a decibel meter test is completed and he feels the levels in the ordinance should be left blank until the test is done. James Page, Commission Member suggested leaving the levels as established and change them at a later date if there is a problem. Fred Hinz, Commission Member stated that is true too. Vicky Lyon, Commission Member stated that changes take an act of Congress. She suggested and made it a motion to recommend purchasing a decibel meter so that some readings can be taken so that they are familiar with what they feel the readings should be. Motion was seconded by James Page, Commission Member. Neil Anderson, Commission Chair reiterated that it's been moved and seconded that the City purchase a decibel meter so that the commission can experiment with it before establishing rates. All voted aye, unanimous.

It was noted that the method of sound measurement provisions was covered with the sound measurement provision discussion.

Commission moved onto discussing amplified sound from motor vehicles. Neil Anderson, Commission Chair voiced comments and irritations with the amplified vehicle noise. Commission members agreed that the provision was well written and that amplified noise from motor vehicles does need to be limited.

Discussion moved onto provision regarding permit for sound amplification equipment. Curtis Waisath, Commission Member pointed out spelling error where a letter “t” is needed (It is unlawful for a person to use or cause to be used any loudspeaker, loudspeaker system, sound amplifier, or any other machine or device that produces, reproduces, or amplifies sound outside of a building or enclosed structure or causes sounds produced, reproduced, or amplified within a building or enclosed structure to exceed the levels). Spelling correction was made and noted.

Section 10: Permit Issuance; Classification and Terms was discussed. James Page, Commission Member asked how long the permits were good for. It was explained that there is a daily permit or an extended daily permit that is limited to five days maximum. Fred Hinz, Commission Member questioned the provision in Section 10 permitting noise until 11 pm on weekends (*Annual permits*: Valid for the 14-hour period between the hours of 8 a.m. and 10 p.m. Sunday through Thursday; and the 15 hour period between the hours of 8 a.m. and 11 p.m. Friday and Saturday). He feels that the noise should stop at 10 p.m. every night. Vicky Lyon, Commission Member agreed. Neil Anderson, Commission Chair commented that some of the businesses abut right up next to residential uses (he used the Roof Top Bar as an example). He feels that the time needs to be kept to 10 p.m. Vicky Lyon, Commission Member expressed that she feels that the city needs to be respectful to the residents. People can still party, they just need to be quite and keep the noise down. People need to realize that they are in a neighborhood and they need to be responsible and respectful. Canda Dimick, City Clerk was asked to change the 11 p.m. time on Friday and Saturday’s to 10 p.m.

Section 11: Permit Application Review – Approval; Denial and Appeal provisions were discussed. Neil Anderson, Commission Chair commented that the City Clerk will be the reviewer and asked if she felt the provisions are adequate for what she feels is needed. Canda Dimick, City Clerk, commented that she feels the provisions pretty much cover everything but she does question who the hearing officer is as provided for under (d.) An informal hearing shall be conducted by an impartial hearing officer. Neil Anderson, Commission Chair questioned if the position would be volunteer or does the city have funding for a paid position. Canda Dimick, City Clerk reported that the only position the city has budgeted for is a code enforcement officer. Vicky Lyon, Commission Member feels that it could be a volunteered position. Curtis Waisath, Commission Member commented that the position will need training. Neil Anderson, Commission Chair instructed the City Clerk to talk with the City Council about the position. He agrees that whoever holds the position needs to be a non-city employee and not involved with the noise problem. Vicky Lyon, Commission Member commented that whoever holds the position has to be neutral. James Page, Commission Member feels that the position needs to be someone that lives in Lava. Vicky Lyon, Commission Member mentioned the Rent-A-Cop program. She

wouldn't be surprised if there isn't someone that travels around and provides the service like a circuit judge. She doesn't feel that a Lava citizen should do it or someone working for the city because it has to be a neutral person. Curtis Waisath, Commission Member feels that it could be a city paid position; no different than a police officer. Neil Anderson, Commission Chair commented that the individual may need to live outside city limits. Curtis Waisath, Commission Member feels that whoever the hearing officer is, they need to be present when the noise is being made. Neil Anderson, Commission Chair explained that the hearing officer doesn't need to be present when the noise is made, someone makes a complaint, the city's code enforcement officer issues the citation then if appealed it would be presented to a hearing officer to hear and consider facts.

Vicky Lyon, Commission Member questioned if the City's code enforcement officer will be working at 11 pm. Canda Dimick, City Clerk reported that the code enforcement officer is on call and would be obligated to respond.

Vicky Lyon, Commission Member questioned if the Bannock County Sheriff's Department officers could enforce the ordinance. Canda Dimick, City Clerk explained that it is a possibility but the city has ran into a situation; Bannock County is only willing to enforce some of the ordinances. Bannock County is willing to enforce disturbing the peace under Idaho Code but discussions will need to proceed regarding enforcing a city noise ordinance with Bannock County which she understands is a topic of discussion when the City Council meets with the City Attorney and Bannock County Prosecuting Attorney later this month.

Commission members agreed that more information is needed before the blank regarding the hearing officer appointment provision can be filled in. (An informal hearing shall be conducted by an impartial hearing officer appointed by the \_\_\_\_\_ who shall render a decision within thirty (30) days from the date of filing of the appeal.)

Review process moved onto Section 12: Permit Suspension; Revocation. No changes were made. All commission members agreed that Section 13: Waiting Period Before Becoming Eligible to Reapply for a Sound Amplification Permit looked good there were no changes made.

No changes were made to Section 14: Permit Non Transferable.

It was noted that Section 15: Permit Display simply requires that the permit be displayed so that it is easily visible by law enforcement officers and members of the public.

Section 16: Change of Information provision was reviewed and it was questioned why the City Clerk has highlighted the word article in red. Canda Dimick, City Clerk explained that she has it highlighted with the intention to ask legal counsel if the word article should be changed to ordinance. (It shall be the duty of each permittee to submit to the City Clerk or City Code Enforcement Officer any change in information required to be submitted pursuant to this **article**.)

Any change in information shall be submitted on the form prescribed by the City Clerk or City Code Enforcement Officer within ten calendar days of the change.)

Neil Anderson, Commission Chair asked commission members if they see anything in the defenses provisions that should be taken out or put in. Commission members expressed they did not have anything to add or change.

Discussion regarding penalty provision followed. City Clerk has noted in the ordinance the need to contact City Attorney to determine if penalty should be a misdemeanor or infraction.

Commission members felt that the penalty should be a healthy fine, not to exceed \$1,000 but no prison time. James Page, Commission Member asked who determines what the fine will be. Either bonds/fines or the judge would determine the amount of the fine.

It was explained that the severability provision just says that anything conflicting in the ordinance is hereby repealed.

The proposed ordinance has a provision waiving three separate readings and establishing an effective date.

Canda Dimick, City Clerk recommended getting a response back from the City Attorney on the legal questions before making a motion to pass the ordinance onto city council. The City Attorney has had the proposed ordinance for a while but he hasn't reviewed it.

The City Council was wanting to have a recommendation from the Planning & Zoning Commission next week because they wanted to have an ordinance in place by July 4<sup>th</sup>.

Canda Dimick, City Clerk reported that she doesn't see how the process is going to happen because there is a public hearing process to establishing a fee for the permit and there is not enough time to get everything in place by July 4<sup>th</sup>. The process may be finished in July but not by July 4<sup>th</sup>. Special meetings would have to be scheduled and a lot of it is going to depend on how soon the city's attorney can look it over.

Commission members agreed to continue working on the ordinance.

City Council needs to consider purchasing a sound level meter which the City Clerk will pass onto them at the City Council meeting scheduled for next week.

### **Other Business**

There was no other business discussed.

### **Schedule Next Meeting    ACTION ITEM**

Next regular meeting will be held June 22, 2020 with high hopes that it can be held at Lava City Hall. Status of the decibel meter purchase and city attorney's input on the noise ordinance will be agenda items.

**Adjournment ACTION ITEM**

Motion was made by Fred Hinz, Commission Member and seconded by Curtis Waisath, Commission Member to adjourn. Meeting adjourned at 7:15 p.m.

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Canda L. Dimick , City Clerk

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Neil Anderson, Commission Chair