

## PROCEEDINGS OF THE MOTT CITY COUNCIL

October 10, 2011

The Council met for their regular scheduled meeting on October 10, 2011. Present were Mosbrucker, Steiner, Zich, Scheeler, Messmer, Wangsvick and Riedlinger. Also present for the meeting were Sheriff Warner and Deputy Josh, Gene Buresh, Kevin Miller, David Miller, Pam Meier, Bernice Huether, Linda Huether, Dan and Lori Kelsch, Joleen Kautzman, and Kerry Mosbrucker. All motions are carried, unless otherwise stated.

The meeting was called to order and Zich moved to approve the previous minutes as presented, seconded by Messmer.

Gene Buresh presented council on how the City Comprehensive Planning and Zoning will be handled. We will meet before council meeting at 7:00 pm for the next months until plan is complete. Council meeting will follow.

Kevin and David Miller were present to check to see that when the property of Gary Schlosser's becomes city property, if they would be able to utilize it to park equipment on it.

As there was a lot of people present that had submitted public nuisance reports, council discussed the reports submitted regarding the Swindler Grain Bin Fan noise.

Council discussed the Noise Ordinance. Wangsvich moved and Riedlinger seconded the approval of the 1<sup>st</sup> reading of the following: AN ORDINANCE PROVIDING FOR THE REGULATION OF NOISE. BE IT ORDAINED BY THE CITY COUNCIL OF MOTT, NORTH DAKOTA, 1. Section 12.0302 of the Mott City Ordinances is hereby repealed. 2. Article 5 shall be added to Chapter Ten of the Mott City Ordinances as follows, with all other ordinances in conflict herewith being hereby amended or repealed.: **ARTICLE 5 - Noise**

### **10.0501.2 Declaration of Purpose and Intent**

The necessity for the provisions and prohibitions contained in this article is declared as a matter of legislative determination and public policy and in order to secure and promote the public health, safety and general welfare. It is further declared to be the policy of the city of Mott to minimize the exposure of citizens to the physiological and psychological dangers of excessive noise. It is the express intent of the city council to control the level of noise in a manner which promotes commerce, the use, value and enjoyment of property, sleep and repose, and the quality of the environment.

**10.0502 Definitions.** For the purpose of this article, certain words and phrases are defined as follows:

1. "dB(A)" means the A-weighted sound level in decibels, as measured with a sound level meter that meets the requirements for type 1, 2, S1A or S2A in American National Standard Specification for Sound Level Meters ANSI S1.4.

2. "Noise" means any sound.

3. "Noise Disturbance" means any loud, unnecessary or unusual noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the limits of the city.

4. "Person" means any person, partnership, association, corporation, joint venture or any other entity, public or private.

5. "Real Property Boundary" (or "property boundary") means an imaginary line along the ground surface, and its vertical extension, which separates the real property owned by one person from that owned by another person.

6. "Zoning District" (or "Land Use District") means the zoning districts identified in the City zoning ordinances. "Residential" shall include R-1, R-1A, R-2, MH-1 and MH-2 classifications.

### **10.0503 General Prohibition of Noise Disturbance**

1. No person shall make, continue, or cause to be made or continued, any noise disturbance.

2. The standards which shall be considered in determining whether a violation exists under this section include, but are not limited to, the following: a. The volume of the noise; b. The intensity of the noise; c. Whether the nature of the noise is usual or unusual; d. Whether the origin of the noise is natural or unnatural; e. The volume and intensity of the background noise, if any; f. The proximity of the noise to residential sleeping facilities; g. The nature and zoning of the area within which the noise emanates; h. The density of the inhabitation of the area within which the noise emanates; i. The time of the day or night the noise occurs; j. The duration of the noise; k. Whether the noise is recurrent, intermittent, or constant; and l. Whether the noise is produced by a commercial or noncommercial activity.

3. A noise need not exceed the decibel levels in Section 10.0505 to be in violation of this section.

**10.0504 Specific Prohibitions.** The following acts, or the causing thereof, are declared to be in violation of this ordinance.

1. Animals and Birds. Owning, possessing or harboring any animal or bird which frequently or for continued durations, howls, barks, yelps, squawks or makes other sounds which create a noise disturbance across a residential real property boundary.

2. Load and Unloading. Loading, unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 10 p.m. and 7 a.m. the following day in such a manner as to cause a noise disturbance across a residential real property boundary. This subsection does not apply to garbage pickup activities or agricultural hauling, loading or unloading and city street sweeping.

2. Television Sets, Musical Instruments, Radios, CD players and Similar Devices. Operating, playing of any television, musical instrument, radio, CD player, sound amplifier, or similar device which produces, reproduces or amplifies sound between the hours of 10 p.m. and 7 a.m. the following day in such a manner as to create a noise disturbance across a residential real property boundary

**10.0505 General Decibel-Based Limitations.**

It is also unlawful for any person to project a sound or noise onto to another property which exceeds the limits set forth for the receiving land use category in the following Table 1, when measured at or within the property boundary of the receiving property. Sound or noise projecting from one land use district into another land use district with a different noise level limit may not exceed the limits of the district into which the noise or sound is projected.

**TABLE 1  
Noise Level Limits for Zoning Districts**

	<u>Zoning District</u>			
	<b>Residential</b>	<b>Commercial</b>	<b>Industrial</b>	<b>Agricultural Residence</b>
<b>Residence</b>				
Maximum number of dB(A) permitted From 7:00 a.m. until 10:00 p.m. daily	55	65	80	80
Maximum number of dB(A) permitted From 10:00 p.m. until 7:00 a.m. of the Following day	50	60	75	75

**10.0506 Exemptions**

**10.0507 Enforcement/Penalties**

1. The City police department shall be authorized to administer and enforce the provisions of this article.
2. Any person violating any provision of this article shall be guilty of an infraction, for which the maximum penalty is a fine not to exceed \$500 per occurrence.
3. Each day in which a violation exists under this Article shall constitute a separate offense.

**10.0508 Variances**

1. The City Council shall have the authority, consistent with this section, to grant special variances, including extensions of time to comply, which may be requested. Any person seeking a special variance pursuant to this section shall file an application with the City Auditor. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this ordinance would constitute an unreasonable hardship on the applicant, the community or on other persons. Notice of an application for a special variance shall be published for two consecutive weeks in the official newspaper, with the last publication occurring at least 1 week before the schedule hearing before the City Council. Notice of an application shall also be mailed by applicant to adjacent property owners and residents.
2. Any person who claims to be adversely affected by the allowance of the special variance may file a statement with the City Council containing any information to support his claim and speak against the application at the hearing. In determining whether to grant or deny the application, the City Council shall balance the hardship to the applicant, the community, and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of the persons and property affected.
3. Any variance granted by the City Council shall contain all the conditions under which the variance has been granted and shall specify a reasonable time that the variance is effective.

**10.0509 Severability**

If any word, phrase or other portion of this chapter is for any reason held invalid, the remaining portions of this chapter shall not be affect.

Roll call vote was as follows: Steiner, aye: Zich, nay: Scheeler, aye: Riedlinger, aye: Wangsvich, aye: Messmer, aye. First Reading of ordinance passed.

Council will discuss zoning change request at next meeting.

Resner, of JDA, was present to discuss what he has been up to. Riedlinger moved and Wangsvich seconded appointing Resner to the SBCI Board to support the City of Mott.

Meier was present to discuss the type of building the Soil Conservation District would like to put up on the corner of Brown and 3<sup>rd</sup> Street.

Building permits were discussed. Wangsvich moved and Scheeler seconded to approve the following permits: #1691 Neil Jacobson, shed; #1692 Playhouse Theatre, steel roof over marquee; #1693 Troy Mosbrucker, deck; #1694 David Crane, wood shed; #1695 Trent and Lori Eggers, garage addition, Messmer moved and Steiner seconded the raffle application received from the Catholic Daughter’s Association.

Zich moved and Riedlinger seconded the pledge of assests.

Darrell Gobble would like to sell his lot and get out of his contract with the city. He would need them to send a building permit and time frame would be the same.

Sheriff Warner presented the police report. Steiner moved to approve the report, seconded by Riedlinger.

Kerry Mosbrucker gave the Superintendent's report. He mentioned that the water tower had a leak and had to be fixed and he had them clean the tower right away then.

Council reviewed the audit report for years ended December 31, 2010 and 2009 presented by Rath and Mehrer P.C.

Auditor is to check with Kadrmas, Lee and Jackson to get the next years street improvement set in motion and to check with the bonding to get that ready.

Council reviewed the Final Budget, Messmer moved to approve, seconded by Riedlinger.

Steiner moved and Riedlinger seconded to reissue lost check #33701 to Aron Scheeler for the amount of \$92.35.

Auditor to check with what other cities do for base rates when owners leave house for a duration of time. Bills were presented. Messmer moved to pay the following bills, seconded by Steiner.

The amount of \$10,183.14 in salaries and deductions were paid as authorized. 34138 AT&T, 83.69; 34139 MDU 3,338.21; 34191 Visa, 82.73; 34154 Hettinger County, 6,008.00; 34155 M&O Sanitation, 2,824.80; 34158 Consolidated, 158.85; 34159 Crane & Roseland, 500.00; 34160 Cross Country, 49.96; 34161 Dakota Pump, 4,477.63; 34162 Dale Zich, 306.00; 34163 Eido, 49.00; 34164 Fitterer Sales, 2,232.00; 34165 Frieze Auto, 131.17; 34186 Hettinger County, 1,984.00; 34167 Holiday Inn, Fargo, 664.65; 34168 James Stern, 27.54; 34169 Jeri Schmidt, 382.43; 34170 M&O Sanitation, 2,414.17; 34171 Maguire Iron, 19,228.70; 34172 Mott Equity, 171.57; 34173 Mott Grain, 4.00; 34174 Mott Park District, 1,865.00; 34175 NASASP, 39.00; 34176 ND One Call, 22.10; 34177 NDLC, 530.00; 34178 Northern Improvement, 2,181.66; 34179 Rath & Mehrer, P.C., 4,600.00; 34180 SBM, 100.98; 34181 SW Water, 6,954.53. Messmer moved to adjourn, seconded by Steiner.

ATTEST:

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Jeri Schmidt  
Auditor

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Troy Mosbrucker  
Mayor