

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE REGULAR SESSION OF THE
PLANNING & ZONING COMMISSION
September 8, 2016**

Vice-Chairman Mikolajczyk opened the meeting at 6:30 p.m.

ROLL CALL:

The following Commissioners were present: Vice-Chairman Eugene Mikolajczyk. Commissioners: Stan Connick, Howie Jones, Susan Dempster and Roger Owners. Also in attendance were Bob Rodgers, Interim Development Services Director and Paula Woodward, Executive Assistant and Recorder of the minutes. Chairman Michael Archambault and Commission Jeremy Strohan were absent.

Vice-Chairman Mikolajczyk requested participation in the Pledge of Allegiance and a moment of silent reflection.

CALL TO THE PUBLIC

No one wished to speak.

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE PLANNING AND ZONING COMMISSION MEETING MINUTES DATED August 11, 2016.

Commissioner Howie Jones **MOVED** to **APPROVE** the meeting minutes dated Thursday, August 11, 2016 as written. Commissioner Stan Connick **SECONDED** and the **MOTION CARRIED UNANIMOUSLY.**

AGENDA ITEMS #2 - PUBLIC HEARING TO RECEIVE COMMENTS ON ORDINANCE 16-08, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 5, SECTION 5.19, AND CHAPTER 18, SECTION 18.06, BY REVISING PROVISIONS RELATED TO NOISE VIOLATIONS. CASE #Z2016-05

AGENDA ITEMS #4 - PUBLIC HEARING TO RECEIVE COMMENTS ON ORDINANCE 16-04, PROPOSED AMENDMENTS TO THE FOUNTAIN HILLS ZONING MAP OF APPROXIMATELY 63 ACRES IN SIZE, AND PROPOSED TEXT AMENDMENTS TO THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 12 – COMMERCIAL ZONING DISTRICTS AND, ADDING A NEW CHAPTER 25, ENTERTAINMENT OVERLAY DISTRICT. IF ADOPTED, THE AMENDMENTS WOULD CREATE AN ENTERTAINMENT OVERLAY DISTRICT WHICH OVERLAYS PORTIONS OF THE DOWNTOWN AREA. CASE #Z2016-02

Vice-Chairman Mikolajczyk opened the Public Hearings at 6:32 p.m. for agenda items #2 and #4.

Bob Rodgers gave a presentation about the Noise Regulations.

Mr. Rodgers explained that the recommendations were brought forth in 2010 by a Noise Committee that was appointed by the P&Z Commission. Their regulations were simplified, illustrations were added, and enforcement was provided with a reasonable and easy to enforce 2-part process for determining if there is a violation. This ordinance was actually initiated in 2011 but due to an upcoming event in the downtown area the ordinance was temporarily tabled.

The P&Z Commission established a second subcommittee in February 2016 with the charge to return with recommendations for a consistent set of regulations primarily for the downtown area and also to look at the previous proposal. The committee presented its report on April 14th, 2016. The report

recommended some minor changes to the previous proposal and also that a Downtown Entertainment Overlay District be established in order to provide the entire downtown area with consistent rules regarding events and other outdoor activities. The Commission discussed the proposed ordinance changes with the Town Attorney on July 28th. At that meeting there were a few differences between the noise ordinance proposal and the Downtown Entertainment Overlay District proposal that needed to be sorted out. The Commission explained their intentions and the Town Attorney has revised both ordinances accordingly. The Commission instructed staff to initiate the ordinance amendment. Mr. Rodgers said the Town Attorney's revised versions of the noise ordinance, along with the Downtown Entertainment District Overlay map amendment and its accompanying regulations are before the Commission tonight.

Mr. Rodgers reviewed highlights of the proposed **Noise Ordinance**: (ORD 16-08)

1. There are currently two noise ordinances.
One in the Zoning Ordinance (5.19.A) & One in the Town Code (11-1-7)
This proposed revision removes the noise regulations from the Zoning Ordinance entirely and places everything in the Town Code for ease of reference. It also better enables the Sheriff's office to enforce the ordinance.
2. The noise ordinance establishes specific, measurable maximum decibel levels that will be allowed during specific times of the day, specific days of the week, and specific months of the year.
3. The noise ordinance establishes an equitable two-part test to determine if/when a violation has occurred.
 - This test requires that a decibel meter reading be taken approximately 30' from the source of the noise.
 - The test then requires that another decibel meter reading be taken at the location of the complaint.
 - A violation is judged to have occurred if both locations register as being in excess of the permitted decibel levels.
4. Violations have been defined as Civil offenses, which if repeated often enough may become criminal offenses according to already established Town Code provisions.
5. And, there is a list of relatively standard exemptions, that will include noise that is generated by an event being conducted under an issued Special Event Permit.

Mr. Rodgers referred to an overhead screen slide and provided highlights of the proposed Downtown Entertainment Overlay District: (ORD. 16-14)

1. Amends the Zoning Map by establishing a defined boundary for the overlay district.
The Overlay also includes the commercial end cap of the Copper Ridge property just west of La Montana.
2. Creates a new Chapter 25 in the zoning ordinance that outlines the overlay's regulations.
 - Outdoor entertainment will be permitted at any establishment that has a dedicated outdoor seating area for food and/or beverage service.
 - Music will be allowed in these outdoor areas
 - It allows the use of public sidewalks with an appropriate encroachment permit.
 - It requires compliance with the State Dept of Liquor & Control regulations.
 - And it requires compliance with the Town's noise regulations.

Mr. Rodgers said the Commission's intent with this overlay district is to allow the businesses in the C-2 and C-3 zoning districts north of the Avenue of the Fountains to operate under the same regulations as the TCCD zoned properties south of the Avenue of the Fountains and across Saguaro Boulevard near the lake.

Mr. Rodgers stated that staff has reviewed both these ordinance proposals and believes that they are superior to the current regulations in fairness, understandability and enforceability.

Staff recommends that the Planning & Zoning Commission forward recommendations to Town Council to approve Ordinance #16-08 (the noise ordinance amendment) and Ordinance #16-04 (the Downtown Entertainment Overlay District) as presented.

Vice Chairman Mikolajczyk asked how the 2010 committee was formed.

Mr. Rodgers said the committee was appointed by the Planning and Zoning Commission and consisted of some members of the Planning and Zoning Commission, town residents which included an ASU professor and a Hollywood sound professional.

Commissioner Jones asked why there was so much time allowed to pass since the creation of the committee.

Mr. Rodgers said some time ago, there was a major event in town and the ordinance change was postponed because it would have affected that particular event.

In response to Vice-Chairman Mikolajczyk Mr. Rodgers said the committee originally considered a "generic" ordinance for the entire town. The change with the downtown district is that everyone can have outdoor entertainment as long as they abide by the noise ordinance.

Vice-Chairman Mikolajczyk stated that the current ordinance measures noise at the property line and the proposed ordinance has two methods to measure noise, why a change in the way noise is measured.

Mr. Rodgers said the previous ordinance measures noise at the property line. A golf course property line compared to a residential property to measure noise is inconsistent. By measuring not only at the source of the compliant but also at the source of the noise demonstrates whether or not both measures are in compliance.

Commissioner Jones asked if Mr. Rodgers reviewed any other municipalities noise ordinance and were any of them more stringent ordinances.

Mr. Rodgers stated he reviewed Phoenix, Mesa, Tempe, Scottsdale, Paradise Valley and Maricopa County. The cities reviewed were all different and none seemed to have ordinances any more stringent than Fountain Hills. Some did not define the point of sound measurement.

Commissioner Owers asked how the decision was made about the 85 decibels and 55 decibels for a residence. What is the current test for decibels.

Discussion took place amongst the commissioners and Mr. Rodgers about the difference decibels and a sliding scale.

Mr. Rodgers said it depends on the time of day, frequency and the Town doesn't have the equipment to test decibels. The sheriff's office most likely would enforce the ordinance since code enforcement does not work evenings or weekends. They will be provided equipment if the ordinance is passed.

Commissioner Dempster asked if there have been any recent noise complaints.

Mr. Rodgers said he had not received any noise complaints recently.

Commissioner Connick asked what is 55 - 60 decibels. He then spoke louder and Vice-chairman Mikolajczyk stated it was at 89 decibels on his phone app.

Vice-chairman Mikolajczyk asked if there was any one from the public who wished to speak.

Mr. Bill Hinz, a Copperwynd resident and owner of Copperwynd Resort spoke in favor of the proposed noise ordinance. Mr. Hinz stated the letter submitted by the HOA on behalf of the resident from the Villas does not represent him nor every resident of the Villas. Mr. Hinz stated he owns three of the units and was never asked. He said if the proposed changes in the letter are implemented it will be detrimental to his business and many businesses in Fountain Hills. Copperwynd has been in business for 16 years providing special event services such as weddings, corporate events and private parties. The homeowners at the Villas signed CC & R's that specifically state they live next to a resort and will not complain about noise. Mr. Hinz said he has made adjustments to accommodate sound coming from events such as turning speakers in towards the building. He offered to control decibel levels and he asked music providers not to use sub woofers. Mr. Hinz urged the Town to approve the proposed ordinance as is without any changes.

Mr. Mark Sahl, Attorney for the Villas at Copperwynd spoke against the proposed Noise Ordinance. Mr. Sahl provided a handout (A Guide to New York City's Noise Code) to the Commissioners. Mr. Sahl stated, there is an issue between the Villas at Copperwynd HOA and the Copperwynd Resort. This is more than about one business, it's about all of Fountain Hills. Mr. Sahl spoke about the two prong test, and that both must be met. The first criteria is the noise must be thirty feet from the sound source at eighty-five decibels. Mr. Sahl gave examples of sounds at different levels of decibel. Mr. Sahl said that New York City and other cities do not have such a high decibel allowance and Fountain Hills could be the noisiest city in Arizona. He said the Fountain Hills Ordinance is not the same as other cities and there is not enough current information to support the proposed ordinance. Mr. Saul said, they, (Villas at Copperwynd HOA) would ask the Commission not to recommend this ordinance to Town Council.

Vice-chairman Mikolajczyk closed the public hearing at 7:01 p.m.

AGENDA ITEMS #3 - CONSIDERATION OF ORDINANCE 16-08, AMENDING THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 5, SECTION 5.19, AND CHAPTER 18, SECTION 18.06, BY REVISING PROVISIONS RELATED TO NOISE VIOLATIONS. CASE #Z2016-05

AGENDA ITEMS #5 - CONSIDERATION OF ORDINANCE 16-04, PROPOSED AMENDMENTS TO THE FOUNTAIN HILLS ZONING MAP OF APPROXIMATELY 63 ACRES IN SIZE, AND PROPOSED TEXT AMENDMENTS TO THE TOWN OF FOUNTAIN HILLS ZONING ORDINANCE, CHAPTER 12 – COMMERCIAL ZONING DISTRICTS AND, ADDING A NEW CHAPTER 25, ENTERTAINMENT OVERLAY DISTRICT. IF ADOPTED, THE AMENDMENTS WOULD CREATE AN ENTERTAINMENT OVERLAY DISTRICT WHICH OVERLAYS PORTIONS OF THE DOWNTOWN AREA. CASE #Z2016-02

Vice Chairman Mikolajczyk asked the Commissioners for any comments, questions or discussion regarding agenda items three and five.

In response to Commissioner Jones, Mr. Rodgers said he did not have details regarding towns with designated resort areas.

Commissioner Dempster commented that residents are going to make complaints about bothersome noise. Residents are not going to know or measure the decibel level of the noise. Commissioner Dempster also stated that the low attendance of the meeting did not reflect the amount of concerned residents.

Commissioner Owers said that Mr. Saul stated Fountain Hills would be the noisiest city if it were to pass this ordinance. Commissioner Owers asked Mr. Rodgers for clarification.

Mr. Rodgers said Fountain Hills cannot be compared to other cities. The eighty-five decibels may be one of the highest in the state. Each city's situation is unique when it comes to noise. Fountain Hills would not be the noisiest town in the state if the ordinance was adopted. Mr. Rodgers also stated that the disturbing the peace ordinance is for lesser noises which the sheriff's office could respond and enforce.

Commissioner Connick stated he is in support of the ordinance. He gave an example of his residence and the noise he may hear from an outdoor residential party in his neighborhood. He stated the noise is tolerable.

Commissioner Owers stated he is in support of the proposed ordinance but was unclear of what decibel level would fit Fountain Hills the best. He suggested more current information and research is needed for a conclusive decision.

Commissioner Jones stated he is sympathetic to both sides. He agreed to further research compiled and studied by staff.

Vice-chairman Mikolajczyk stated there is no formal motion. He said he researched common noises and their measure of decibels; normal conversation at 3 to 5 feet is 60-70 decibels, phone dial tone is 80 decibels, city traffic from inside your vehicle is 85 decibels, average home ambient noise is 40-50 decibels, refrigerator running is 50-55 decibels.

Vice-chairman Mikolajczyk went on to say that music would be the most common noise affected by the proposed ordinance. His research included the following decibel measurements of musical instruments; piano practice is 60-70 decibels, solo violin is 84-103 decibels, clarinet is 92-103 decibels, an auditorium with a small chamber group with 4 – 5 string instruments is 75-85 decibels.

Vice-chairman Mikolajczyk said he found the handout (A Guide to New York City's Noise Code) from Mr. Saul interesting in that it lists a specific regulation that commercial establishments playing music must limit the level of unreasonable or disturbing noise that escapes into the streets or heard in nearby residences by requiring sounds levels not to exceed; 42 decibels as measured from inside nearby residences which is more stringent when compared to the proposed Fountain Hills ordinance. Vice-chairman Mikolajczyk said he was unsure of what the measurable decibel should be and suggested passing the proposed ordinance on to the Town Council to decide. They can receive the feedback from the community. He explained it would make more sense to pass it on now than to have staff do research and submit it again to the Commission when it would go to council anyway. He said he would be comfortable forwarding both ordinances to Council.

Commissioner Connick moved to recommend both ordinances to Town Council.

Vice-chairman Mikolajczyk said he would like to see each ordinance motioned separately.

Commissioner Jones agreed with the Chairman to vote on each ordinance separately.

Commissioner Connick **MOVED** to forward a recommendation to the Town Council to approve Ordinance 16-04, related to the Downtown Entertainment Overlay Zoning District regulations and Zoning Map amendments, as presented. Commissioner Dempster **SECONDED** and the **MOTION CARRIED UNANIMOUSLY 5/0.**

Commissioner Dempster suggested the new noise ordinance is matched with the Downtown Overlay and the remainder of the town keep the existing ordinance.

Mr. Rodgers stated that would be a different ordinance and a new public hearing must take place. There would need to be revisions in the ordinance. It would be hard to leave one ordinance and have the other moved to the town code which then conflict with each other.

Commissioner Jones asked if a Special Use Permit would still need to be used for events?

Mr. Rodgers explained there are 3 different type of permits issued currently; Special Event Permit for larger organization's events held downtown & around the park area, Temporary Use Permit for smaller size events around town, and the Administrative Use Permit which is what Copperwynd applies for after hours. These regulations would not change.

Vice-chairman Mikolajczyk asked for a motion.

Commissioner Connick **MOVED** to forward a recommendation to the Town Council to approve Ordinance 16-08, related to the noise regulations in the Zoning Ordinance, Chapter 5 and Chapter 18, as presented. Motion failed.

Commissioner Jones said he got the impression he is not the only one that sees both sides of the story. He suggested two separate levels of ordinances such as one residential and another for resorts.

Vice-chairman Mikolajczyk said this would go to Town Council regardless of the vote outcome. He said he did not want to guess what the Commissioners wanted such as going back to staff for research or on to Council.

Commissioner Dempster said the Commission is making this more complicated than it needs to be. They are trying to correct an ordinance that is hard to follow and enforce.

Commissioner Dempster **MOVED** to forward a recommendation to the Town Council to approve Ordinance 16-08, related to the noise regulations in the Zoning Ordinance, Chapter 5 and Chapter 18, as presented. Commissioner Connick **SECONDED**.

Commissioner Owers said he would prefer further research by staff before any decisions are made.

Commissioner Connick said he agrees with Commissioner Dempster that they are making this much too difficult.

Vice-chairman Mikolajczyk asked for anymore discussion and then called for a vote by roll call.

Commissioner Connick	Aye
Commissioner Dempster	Aye
Commissioner Jones	Nay
Commissioner Owers	Nay
Vice-chairman Mikolajczyk	Aye

MOTION CARRIED 3/2.

AGENDA ITEM #6 - COMMISSION DISCUSSION/REQUEST FOR RESEARCH TO STAFF.

Items listed below are related only to the propriety of (i) placing items on a future agenda for action or (ii) directing staff to conduct further research and report back to the Commission.

In response to Commissioner Owers, Mr. Rodgers stated the outdoor lighting ordinance is scheduled to appear on the October 13th Planning and Zoning Commission agenda.

AGENDA ITEM #7 - SUMMARY OF COMMISSION REQUESTS FROM SENIOR PLANNER.

Mr. Rodgers asked for a recap regarding the reasons for the commission's 3 / 2 vote. The recap would be forwarded to Town Council. Commissioner Jones volunteered to compose and submit the minority position. Vice-chairman Mikolajczyk said he would write the recap for the majority position.

AGENDA ITEM #8 - REPORT FROM SENIOR PLANNER AND ZONING ADMINISTRATOR, PLANNING AND ZONING DIVISION OF DEVELOPMENT SERVICES.

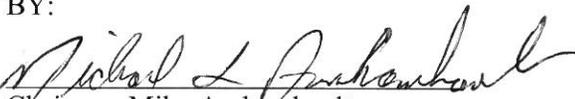
None

AGENDA ITEM #9 - ADJOURNMENT.

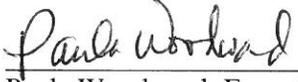
Commissioner Jones **MOVED** to adjourn the meeting at 7:32 p.m. and Commissioner Owers **SECONDED** and the **MOTION CARRIED UNANIMOUSLY.**

FOUNTAIN HILLS PLANNING & ZONING COMMISSION

BY:


Chairman Mike Archambault

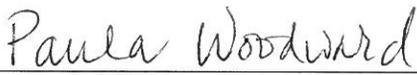
ATTEST:


Paula Woodward, Executive Assistant

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the meeting of the Fountain Hills Planning and Zoning Commission held on the 8th day of September 2016, in the Town Council Chambers, 16705 E. Avenue of the Fountains, Fountain Hills, AZ 85268. I further certify that the meeting was duly called and that a quorum was present.

Dated this 12th day of October 2016


Paula Woodward, Executive Assistant