

## May 11, 2020

The City Council of the City of Idaho Falls met in Council Work Session, Monday, May 11, 2020, in the Council Chambers in the City Annex Building located at 680 Park Avenue in Idaho Falls, Idaho at 3:00 p.m.

### Call to Order and Roll Call:

There were present:

Mayor Rebecca L. Noah Casper  
Councilmember Michelle Ziel-Dingman (by WebEx)  
Councilmember John Radford (by WebEx)  
Councilmember Thomas Hally  
Councilmember Jim Freeman (by WebEx)  
Councilmember Jim Francis (by WebEx)  
Councilmember Shelly Smede

Also present:

Ryan Tew, Human Resources Director (by WebEx)  
Eilene Horne, Human Resources Manager  
Pamela Alexander, Municipal Services Director  
Bryce Johnson, Police Chief  
Duane Nelson, Fire Chief  
PJ Holm, Parks and Recreation Director (by WebEx)  
Ed Morgan, Civic Center for the Performing Arts Manager  
Michael Kirkham, Assistant City Attorney  
Randy Fife, City Attorney  
Kathy Hampton, City Clerk

Mayor Casper called the meeting to order at 3:00 p.m. with the following items:

### Acceptance and/or Receipt of Minutes:

It was moved by Councilmember Francis, seconded by Councilmember Freeman, to receive the April 22 and May 5 recommendations from the Planning and Zoning Commission pursuant to the Local Land Use Planning Act (LLUPA). Roll call as follows: Aye – Councilmembers Radford, Freeman, Smede, Francis, Dingman, Hally. Nay – none. Motion carried.

### Calendars, Announcements and Reports

May 13, Association of Idaho Cities (AIC) conference call for City-elected officials with Governor Brad Little  
May 14, Governor Brad Little Press Conference; Idaho Falls Power Board Meeting; and, City Council Meeting

Mayor Casper stated the Energy Communities Alliance (ECA) will be distributing a letter for Environmental Management (EM) regarding emergency dollars/stimulus money. She indicated her name will be included on the letter representing the City of Idaho Falls. She is hopeful a letter will be submitted for Nuclear Energy (NE) as well. Mayor Casper stated as of May 9, 2020, 2,230 Coronavirus (COVID-19) cases have been reported in Idaho, including 25 new cases. She believes new cases are consistently reported each day. She also noted during the month of May, Bonneville County has more community-spread cases versus direct-contact cases. She indicated the feedback reflects those residents who are not concerned with recommended requests, although approximately 70% of residents are using all precautions. She believes a great deal of residents do not believe the Governor's order represents the law.

### Liaison Reports and Council Concerns:

Councilmember Dingman had no items to report.

Councilmember Freeman stated Andi Anderson will be retiring from dispatch following 41 years with the City. As a former employee with the Idaho Falls Fire Department (IFFD), Councilmember Freeman expressed his appreciation to Ms. Anderson.

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Councilmember Francis stated the Library has opened to the public; the City's golf courses are seeing a high demand; the Zoo will be opening May 16; Animal Control Supervisor Irene Brown will be retiring; Idaho Falls Police Department (IFPD) Officer Dustin Howell has been promoted to sergeant; a memorial for fallen officers will be occurring May 15 and 16; and, the IFPD will be presenting the annual report at Rotary on June 10.

Councilmember Radford had no items to report.

Councilmember Hally stated the driving ranges at Sand Creek and Sage Lakes Golf Courses are now open with social distancing. He noted meat processing plants across the nation are experiencing a high number of COVID-19 cases.

Councilmember Smede stated several purchases will be forthcoming at the May 14 Council Meeting within the Municipal Services Department.

### Personnel Manual Discussion:

#### Shift Differential Policy –

Ms. Horne defined shift differential as extra pay given to an employee who works the less-desirable shifts such as the evening or night shift. The shift differential pay is added to the employee's hourly wage. Ms. Horne stated the proposed change to the policy will be to condense the shift differential pay to one (1) rate versus the different rates (according to the time of the shift). She indicated this change will help with the new TimeClock Plus software program. The shift differential, \$.50 per hour, will be added to those employees working any hours between 7:00 p.m. and 7:00 a.m. To the response of Councilmember Hally, Director Alexander believes the economic impact will be minimal. She stated this policy will allow consistency within the departments. Mayor Casper clarified this change will streamline an existing policy. Brief comments followed. Mayor Casper stated this item allows a 30-day period for employee input to be submitted to the Human Resources (HR) Department. Final approval of the policy will be required at a future Council Meeting.

#### Overtime, Comp-time, and Time Keeping for Exempt Employees –

Director Tew stated per the Fair Labor Standards Act (FLSA), employees are divided into exempt or non-exempt categories. Non-exempt employees are paid overtime beyond a 40-hour work week, exempt employees are not paid overtime. Director Tew stated the federal government would reimburse the City for overtime of exempt employees if they were working specifically for a crisis, in this particular case for COVID-19. Unfortunately, the City did not have this policy in place at the time of the COVID-19 crisis. This proposed change would be for future declared emergencies and would allow overtime of straight time to exempt employees. Mayor Casper believes it is not reasonable or fair to those salaried employees who work numerous hours during a time of crisis. To the response of Councilmember Hally, Director Tew clarified the overtime hours would only be per the declared emergency. Mr. Kirkham confirmed this policy would pay overtime to exempt employees from a legally-declared emergency regardless of reimbursement and, this policy is allowed per the Department of Labor. To the response of Councilmember Hally, Director Alexander stated these funds would likely come from the contingency fund. Director Tew noted straight time versus time-and-a-half was proposed for the potential financial impact. General comments and discussion followed. Councilmember Francis requested Bonneville County be included as an entity in the policy. Mayor Casper stated this item also allows a 30-day period for employee input and will also require approval at a future Council Meeting.

### Employee Handbook/Personnel Items Discussion:

Chief Johnson stated, per requirements of the Police Personnel Manual, meetings were previously held. From those meetings, two (2) recommendations were proposed. 1) Court Pay – the proposed change would allow the distinction between in-person appearance or the use of a call-in method. The employee would be paid a minimum of two (2) hours for the call-in method versus the four (4) hours. This will have a small/minimal savings in the IFPD budget. 2) Holiday Substitute Compensation (HSC) – this is due to TimeClock Plus software. HSC would change to hour for hour versus the current day per day accrual. This would allow the employee to use HSC in one-hour increments with an accrual cap of 120 hours. Mayor Casper stated this item allows a 30-day comment period. This item would require approval at a future Council Meeting.

### Coronavirus (COVID-19) Impact on Parks and Recreation (P&R) Summer Operations:

Director Holm reviewed the following P&R operations:

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- Golf – the courses have been open although adjustments have been made. Director Holm reiterated there is a high demand on the golf courses. He also reiterated the driving ranges are now open although golf lessons are minimal to allow social distancing.
- Parks – 14 parks restrooms (out of 29 restrooms) are now re-opened. The restrooms will continue to be monitored for cleaning and sanitizing.
- All parks – there has been a reduction in force with the elimination of an unfilled position, two (2) Full-time employees have been laid off, and, seasonal employment at Sandy Downs has been reduced by \$20,000 as most events have been cancelled for the year. The horse stall rentals will be closing in the near future.
- Parks Maintenance – seasonal employment has been reduced by \$50,000 which will have a large impact on the general maintenance of all parks. The level of service will be reduced due to smaller staff/work force.
- Weed control – budget has been reduced by \$50,000. Priorities will be on herbicide application and the canal banks for Phase 1 of the Canal Trails Grant Agreement. Undeveloped property will be maintained as resources are allowed.
- Noise Park – has been closed for the year for motor cross practices and races. This has resulted in \$98,000 savings. P&R is working with the Stock Car Association per the maintenance agreement. The OHV trail, maintained by State of Idaho P&R, remains open.
- Horticulture – budget has been reduced by \$25,000. No additional flowers will be purchased, flower beds and pots will be maintained mainly by volunteers, and, there is priority on tree care and future zeroscaping. Director Holm confirmed, per previous discussion, the annual cost for watering the downtown flower pots/baskets/planters is \$82,000. P&R is working with the Idaho Falls Downtown Development Corporation (IFDDC) to maintain the downtown hanging flower pots/baskets with a seasonal worker.
- Recreation – softball and baseball programs will begin June 1 and June 8. Mandatory sanitation stations will be provided and masks will be required for those who cannot social distance. There has also been a reduction in force with the layoff of one (1) FTE. Staff from the Aquatic Center has been relocated to Parks Maintenance and Cemetery Divisions. Director Holm stated P&R has been working with the multiple user groups per the Governor’s order. Programs will begin in Phase 3. There have been no field charges for the month of May. Director Holm reiterated the zoo will open on May 16. Modified hours, a reduction in force, and, social distancing protocols will be implemented. A Funland committee has been formed to help guide the development of Funland. Director Holm is hopeful for external fundraising for Funland. He noted 2022 will be the 75th anniversary of Funland.
- War Bonnet Roundup Rodeo – has been cancelled. Director Holm stated this was not an easy decision. He noted the 110th War Bonnet will occur in 2021.

Director Holm stated \$744,000 has been cut from the current P&R budget due to these changes. He also stated the green spaces and trails are open for the public.

To the response of Mayor Casper, Director Holm stated P&R is struggling with volunteer groups. P&R will rely heavily on user groups to help maintain fields and is hopeful to rely on volunteers, while following social distance requirements, to maintain the flower beds. To the response of Councilmember Hally, Director Holm stated the Aquatic Center will open at the end of Phase 4, on June 27. To the response of Councilmember Freeman, Director Holm stated season golf passes have decreased although green fees have increased. To the response of Councilmember Radford, Director Holm stated playground equipment will open in Phase 3, on May 30. General discussion followed.

### Discussion of Draft Non-discrimination Ordinance:

At the request of Mayor Casper, Mr. Fife reviewed principles of the First Amendment. He stated the Idaho Constitution is allowed to govern under the State authority which includes health, safety, and, welfare of local jurisdiction. Idaho is considered a Dillon’s Rule State which allows limited delegated jurisdiction to cities. Mr. Fife stated in 2013, the City decided it was important for the health, safety, and, welfare of the community to extend protections of status for all parties from any discrimination that might occur because of their sexual orientation. Protections were passed for employment and housing although the Council declined to pass protections to those in commerce/public accommodations. The idea was to allow a balance of individuals’ freedom from and of religion. Mr. Fife stated the draft language for the current non-discrimination ordinance is taken from a variety of sources,

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including language from Utah Senate Bill 296. He believes, from observing discussions across the country, religion has been a focus of the discussions and society requires people are treated the same. He stated there is a balance between what the State can and should do relative to religions and what they should not do. This also applies to the other first amendment rights. Mr. Fife stated the engine of the ordinance revolves around the definitions of sexual orientation and gender identity and expression. The idea should be fair for everyone without giving special rights to anyone. The draft ordinance also addresses places of public resort/public places. The exemptions do not apply to other governments, school districts, cities, counties, or, State. This ordinance only applies to the City of Idaho Falls. It does not inhibit or control religious or secular institutions. The system of complaints has not changed although non-binding mediation has been added. It also addresses permitted acts inside and outside of the workplace. To the request of Mayor Casper, Mr. Fife explained the standard of scrutiny. He stated the court would normally look to see if there is a rational basis (makes sense to the governing body). This is the lowest level of scrutiny. There is also an intermediate scrutiny and a strict scrutiny, which imposes restrictions on the highest level. Mr. Fife believes this draft ordinance meets the conditions of court standards. Councilmember Hally stated, as being involved in the first two (2) legs of the ordinance, the ordinance was acceptable at that time. He also stated during the two-week period between the Council Work Session and the Council Meeting there were a number of threatening and disturbing comments, therefore, the Council chose not to approve the public accommodations. He indicated the personal emails he has currently received are more favorable to include personal accommodations. To the response of Councilmember Smede, Mr. Fife stated false accusations are against the law. He believes the current law would address this as the process of any complaint/violation would be similar to other complaints/violations of City Code. Also to the response of Councilmember Smede, Mr. Fife stated this is not a commitment to establish religion and it would be difficult to educate individuals about their religion. Councilmember Smede believes everyone should be treated with respect and humility. To the response of Councilmember Francis, Mr. Fife stated American government is not hostile to religion or religionists. The Constitution has tried to be neutral to religion. However, the first amendment allows individuals to be free as individuals, not just because of religion. To the response of Councilmember Radford, Mr. Fife reviewed the process of complaints for the victim and the offender and, penalties for violations. Brief discussion followed regarding 'all persons' and religions. Councilmember Radford stated he is very positive to the ordinance. Also to the response of Councilmember Radford, it was noted there was public input and a public hearing in 2013. Mayor Casper stated, due to the limitations of COVID-19, a public hearing would not be advised although she believes there has been a greater effort for public input. She also believes more public input has been received at this time. To the response of Councilmember Smede, Mr. Fife stated this ordinance would allow more protections to vulnerable individuals and any violations would be processed accordingly. He noted this is not the same as Americans with Disabilities Act (ADA) public accommodations. Mayor Casper stated this ordinance provides a recourse for poor behavior, it does not prevent poor behavior as is the case with all law. Councilmember Smede stated she supports the ordinance, she just wants to ensure the process is followed. She also believes community feedback has been overwhelmingly supportive. Councilmember Francis believes there has been more exchange and interaction with the public due to COVID-19. Councilmember Dingman concurred. She believes the majority of conversations would not have occurred during a public hearing. She also indicated a FAQ is located on the City website. Councilmembers Radford and Freeman also concurred regarding the exchange with the public input. Councilmember Freeman also believes there has been overwhelming support to this ordinance. Mayor Casper expressed her appreciation to the Councilmembers for their level of commitment. She also expressed her appreciation to the City Attorney's staff. Mayor Casper stated this item will be included on the May 14 Council Meeting agenda.

There being no further business, the meeting adjourned at 5:43 p.m.

s/ Kathy Hampton  
CITY CLERK

s/ Rebecca L. Noah Casper  
MAYOR