

# City Council Meeting

October 15, 2008



CITY OF  
**REXBURG**  
America's Family Community

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October 15, 2008

**Mayor Shawn Larsen**

**Council Members:**

Christopher Mann – Council President  
Rex Erickson    Randy Schwendiman  
Bart Steven    Richard Woodland  
Adam Stout

**City Staff:**

Stephen Zollinger – City Attorney  
Richard Horner – Finance Officer  
John Millar – Public Works Director  
Val Christensen – Building Official  
Blair Kay – City Clerk

**7:00 A.M. Work Meeting Roll Call of Council Members:**

**In attendance:** Council Member Mann, Council Member Stevens, Council Member Woodland, Council Member Erickson, Council Member Stout and Mayor Larsen.

**Excused:** Council Member Schwendiman.

**1. Employee Committee to discuss employee insurance:**

Financial Officer Horner discussed the employee insurance renewal plan and he stated going back to Archibald Insurance would probably be the best choice. He asked if there was anyone who was opposed to going back to Archibald Insurance to negotiate a new price. The general consensus was to renegotiate the Archibald Insurance agreement; however, Council Member Stout and Council Member Woodland were opposed to bypassing a lower bid to renegotiate with Archibald Insurance. The Employee Committee was in agreement to renegotiate with Archibald Insurance.

**2. Comprehensive Plan 2020** discussion of revising the proposed text.

**The City Council** reviewed the text for the draft Comprehensive Plan 2020 with discussion to amend the following areas:

- Clarified the meaning of “promote and encourage”.
- Discussed if compatibility would include things such as historic verses New Subdivision. Concept of overlays; are they possible in Rexburg? Will this text allow these things?
- Discussed the affordability of homes and landscaping in Rexburg.
- Discussed the zoning changes over time including Indian Hills changing from LDR2 to LDR1.
- Discussed controlling the developer’s options for design and develop of property.
- Requested language to support the Tree Ordinance.
- When looking at Ordinance 926, the City Council wants the Ordinance 926 to reflect the Comprehensive Plan including overlays for an option.
- Corrected duplication of Comprehensive Plan text.
- Corrected plan adoption date.
- Added wording to clarify University students make up about half of Rexburg’s population.

- Clarified “low building height” definition. Consensus to remove wording on building height.
- Re-word a section about local schools stating “Rexburg is expanding school facilities.”
- Remove unnecessary bullets on page 41.
- Change wording in the packet allowing the development of home based businesses.
- Reword golf course description to 27 holes instead of an 18 hole course.
- Change “property rate” to “property tax rate.”
- Clarify language concerning Rexburg’s susceptible to fires and exclude avalanches.
- Discussed language to modify street design.
- Include language on safety for pedestrians and safe streets.
- **Mayor Larsen** discussed his belief that narrower streets are safer for the public. Members present discussed street safety including various street and right-away sizes.
- **Council Member Stevens** and the representative from *Cooper, Roberts, Simonsen Associates* the Salt Lake City Planners, Soren Simonsen discussed the accessibility of streets narrower than 30 feet.
- **Council Member Stevens** was concerned about language stating Rexburg was interested in “Improving the look of all residential areas.” He thought this statement was too vague. Other members in attendance agreed.

**The meeting was suspended until the evening session:**

**7:00 P.M. City Hall – Pledge to the Flag**

**Roll Call of Council Members:**

**In attendance:** Council Member Mann, Council Member Stevens, Council Member Woodland, Council Member Erickson, Council Member Stout and Mayor Larsen.

**Excused:** Council Member Schwendiman.

**Mayor Larsen** welcomed three boy Scouts to the meeting.

**Mayor Larsen** wanted to share his opinions concerning the tragic events of last Saturday night. He wants the community to know that their lives are valued. In reference to a pedestrian/car crash fatality; he cautioned drivers to avoid using iPods, phones, or any other devices that could distract them. He announced a special meeting to address pedestrian issues on October 28, 2008 which is Tuesday evening at 6:30 P.M. at the Westwood Theatre. (Mayor’s Statement enclosed)



**Mayor Shawn Larsen** – Statement read at the start of Rexburg City Council Meeting – October 15, 2008.

Every citizen in Rexburg is valued and appreciated. As Mayor, I want the city to be doing everything possible to keep people safe on our roadways, in public areas, and in their homes. When a tragedy occurs it affects not only the victim and their family, but the community as a whole. While the city has made significant improvements to the intersection at 2<sup>nd</sup> West and 3<sup>rd</sup> South, including improved lighting, flashing lights and florescent banners; they were not enough to prevent Deloris Stanton’s death, nor Bonnie Warne’s serious injuries at the

intersection last Saturday; when a driver failed to yield to them in a crosswalk. This tragic accident follows a string of pedestrian/vehicle accidents including the untimely death of Chera Birch a BYU-Idaho student who was struck in this same intersection last November.

The media has put forth a significant effort in calling attention of both drivers and pedestrians to proceed cautiously in areas with crosswalks. Reminders about not using cell phones, iPods, and other distractions, when driving and walking all seem to be insufficient.

Public works director, John Millar, the city council and I are looking at what will be the best remedy to prevent loss of life and injury in the future. The solution may not be as immediately obvious as everyone believes, but expense will not take precedence over life. Our community can be pedestrian friendly and safe for our citizens if we all do our part to make it so.

We are a growing university community with many individuals walking and riding bicycles. Unfortunately, many of our city streets were primarily built to facilitate the smooth flow of motor vehicles. Yet, walking is the fundamental mode of human mobility; everyone is a pedestrian at some point in every journey that they take. This includes walking to a school, a business or a parking lot; and includes people of all ages from children to older adults.

As mayor, I believe that pedestrian and bicycle safety and mobility must be elevated to a top priority for substantial improvements to be made. I call upon our engineering department, police department, emergency services department, traffic and safety committee, city council, Brigham Young University-Idaho, Madison School District, and other concerned citizens to develop a bicycle and pedestrian safety action plan. This action plan will be based on recommendations from the U.S. Department of Transportation Federal Highway Administration guidelines. This action plan will focus on three elements:

Engineering  
Education  
Enforcement

This initiative will have both short term goals and long term goals with measurable outcomes. I believe that we can put into place by November 15, a number of improvements in high priority areas which will improve safety. We can then develop a plan that will prioritize other safety improvements that will be implemented over a period of time. We have a lot of work to do and I know that as a community, if we make this a top priority we can develop a comprehensive approach in helping to identify and implement effective safety improvements that will leave an important legacy of improved walking conditions and fewer pedestrian crashes and injuries for future generations.

To bring this scope of work I invite all interested organizations, public employees, officials, agencies, media, and individual citizens to a stake holders meeting on October 28, 2008 at 6:30 pm at the Westwood Theater.

Our hearts go out to the families that are affected by this tragic event and it is our desire to turn this tragedy into a call for action to improve pedestrian and bicycle safety in our community.

**Council Member Erickson** asked if there could be something done sooner? This cannot wait for a week to take action. This needs immediate action that probably would not be a permanent fix but we do need something. Maybe the city could have some red-flashing lights that would make the traffic yield to the pedestrians walking across the road.

**Mayor Larsen** stated we need a pedestrian walking zone keeping pedestrians and bikers safe.

**John Millar** stated in response to Council Member Erickson request; “if the lens were the same size in the yellow flashing light, then he had them in stock, but if not, it would take awhile to order more light covers.”

**Council Member Mann** agrees with all the City Council members on this subject and thanks them for their efforts, especially acknowledging the efforts put forth by Mayor Larsen to make the crosswalk safer.

**Public Comment:** on issues not scheduled on the agenda (limit 3 minutes) - None

**Presentations:** - None

**Committee Liaison Assignments for 2007:**

A. Council Member Chris Mann *Museum Committee · Beautification Committee · Emergency Services Board*

**Council Member Mann** reported Emergency Services meets tomorrow night; otherwise he has no additional information to report.

B. Council Member Rex Erickson *Golf Board · Planning & Zoning · Rexburg Redevelopment Agency*

**Council Member Erickson** reported there is a new member for the Golf Board pending. Four new greens were planted on the new nine hole golf course and the pumps are working. The new course is underway. It is too soon to play on the new course because it would ruin the new greens. Revenue was a little disappointing for the golf course this year.

C. Council Member Bart Stevens *Airport Board · Romance Theatre Committee · MYAB · School Board*

**Council Member Stevens** did not meet with the committees; however, Mayor Larsen reported the MYAB did meet this evening and they are doing a cash for cans stomp at the Friday night football game at 5:00 P.M. Everyone is encouraged to come and participate in the event by purchasing some drinks (aluminum cans) for the students to stomp. On Saturday, they are going to be selling pop for the Saturday high-way clean-up event. The Westwood Theater did get the roof finished.

D. Council Member Randy Schwendiman *Parks & Recreation · Traffic & Safety Committee*

E. Council Member Richard Woodland *Rexburg Arts Council · IBC Committee · Tabernacle Civic Center*

**Council Member Woodland** reported the ADA lift for handicap access is being installed and the Tabernacle has a first class music on Wednesday evenings. The hole on the north side of the building has been bricked and it looks good.

F. Council Member Adam Stout *Legacy Flight Museum · Trails of Madison County*

**Council Member Stout** reported Trails of Madison County Committee will have a fund raising report available for the next City Council meeting. Mayor Larsen asked Council Member Stout to convey the information on the bicycle/pedestrian plan to the Trails of Madison County Committee. Council Member Stout said the Trails of Madison County Committee has a list of improvements for the trails system started. Mayor Larsen would like them involved in the October 28<sup>th</sup> meeting at the Westwood Theatre concerning pedestrian safety.

**Public Hearings:** - None

**New Business:**

1. Approve “Family Fun Center” at 22 to 42 College Avenue – Keith Ferrin

**Keith Ferrin** owns the old Ida Mont Hotel on College Avenue. Their goal is to improve the downtown area and help restore it to be an interesting place. He reviewed the plan to make their building a gathering place for families in the way of a family fun center within the Rexburg area. They plan to have miniature golf, and a play area (arcade) to give the youth (5 years to 25 years). Grandparents would be welcome to play miniature golf and visit the small cafe. The goal is to restore the building to the look of the old Ida Mont Hotel. This would take some income. They want it accessible to the University and other business in the downtown area. It should be good clean entertainment with minimal noise. College Avenue could be a walking corridor with café tables on the sidewalk as discussed in the Downtown Revitalization Plan. It could be very entertaining. It is a couple of charming blocks between the University and the downtown area. The sidewalks could be widened with 45degree parking on one side of the street.

**Mayor Larsen** asked if there were questions; he had one question concerning revising College Avenue. Planning and Zoning Administrator Leikness indicated Planning and Zoning Commission recommended the proposal with some conditions. Conditions for this place were set within the Planning and Zoning meeting.

*“Gary Leikness stated that the last criterion listed in the Conditional Use Permit Standards (Section 6.13 in Development Code 926) addresses the preservation of historic features of significance to the community of Rexburg.*

***David Stein** motioned to recommend approval to City Council of a Conditional Use Permit for the properties as proposed - 22, 24, 28,30,32,40, and 42 College Avenue - for the Family Fun Center, with the conditions to include the standards for a conditional use permit as stated in Section 6.13 of the Development Code 926, and with special mention that exterior noise be kept within City nuisance laws, and that the exterior presentation of the building remain consistent with its historic nature. **Dan Hanna** seconded the motion. None opposed. **Motion carried.***

**Excerpt from the City Development Code: 6.13 Conditional Use Permits.**

*Pursuant to Idaho Code Section 67-6512, the Council and Commission may issue conditional use permits. Prior to issuing a conditional use permit, at least one public hearing shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the application shall be published in the official newspaper or paper of general circulation with the City of Rexburg. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notice shall also be provided to property owners within three hundred feet (300') of the boundaries of the property and any others that the Commission determines shall be substantially impacted by the proposed development.*

**Building Official Val Christensen** has reviewed the plan for the Family Fun Center.

**Mayor Larsen** made the comment this is a good addition to the downtown area, good service to the people.

**Council Member Erickson** moved to approve the Conditional Use Permit for the “Family Fun Center” on the basement and ground floor levels at the old Ida Mont Hotel on College Avenue; Council Member Woodland seconded the motion; all voted aye, none opposed. **The motion carried.**

**2. Preliminary Plat** for Trehusen Subdivision at NE Corner of 4<sup>th</sup> West and 2<sup>nd</sup> South – Neal Smith

**Neal Smith** indicated they are targeting the elderly population with a three unit project single building. Each unit is about 1,366 square feet. This project is on 2.1 acres of MDR1 zoned land located at the NE Corner of 4<sup>th</sup> West and 2<sup>nd</sup> South and it is a vacant lot facing the canal.

**Council Member Erickson** said this is a real great upgrade to have 3 units with double parking garages facing west. There were no objections from the Planning and Zoning Commission.

**Council Member Mann** moved to approve the Preliminary Plat for the Trehusen Subdivision; Council Member Stevens seconded the motion; all voted aye, none opposed. **The motion carried.**

**3. Final Plat for Everett Place Condominiums** - Kristopher Meek of Hopkins Roden Crockett Hansen & Hoopes, representing applicant Carlon Scott

**Kristopher Meek** from Hopkins Roden Crockett Hansen & Hoopes at 428 Park Avenue in Idaho Falls presented a plan for approval of an apartment building transitioning to condominiums. Planning and Zoning was concerned with the sidewalk which has been replaced. The other issue was the need to install three trees in the front of the property and some trees in the back of the property. New owners have to agree to abide by the CCR’s for the development.

**City Attorney Zollinger** said everything was in order with the CCR’s.

**Council Member Woodland** asked if there was adequate parking. Mr. Meek said the parking lot was reallocated to cover the required parking for this development.

**Council Member Bart Stevens** move to approve the Final Plat for Everett Place Condominiums; Council Member Erickson seconded the motion; all voted aye, none opposed. **The motion carried.**

#### 4. Engineering Report on L.I.D 36 for the Final Assessment Role - Staff

**City Engineer Keith Davidson** reviewed the engineering report for LID 36; areas include 2<sup>nd</sup> West from Main Street to 4<sup>th</sup> South, 4<sup>th</sup> North, 3<sup>rd</sup> East, and Sunrise Drive plus requested add on's. These numbers on the final assessment roll are based on these three areas. The public hearing for the approval of the final assessment roll would be set by Resolution 2008-20. The date for the public hearing is proposed to be the 19<sup>th</sup> of November, 2008.

**Council Member Erickson** asked if the funds were budgeted. Public Works Director Millar explained the city's portion of the project has been expensed with monies from Impact Fees and 2007/8 street budgets.

**Mayor Larsen** asked if the Sunrise Drive wall was included in this project. City Engineer Davidson explained it was part of this LID and it was paid with city funds. The 4<sup>th</sup> North came in under engineers estimates. Council Member Stevens asked about the time frame for the interest to start. Interim interest starts when the invoice is paid by the city until November 19<sup>th</sup>. Deputy Finance Officer Nielson explained the process of calculating the expense to be incurred by the LID properties with financing interest starting on November 19, 2008; if the final roll is passed by ordinance.

#### 5. Resolution 2008 – 20 for notice of public hearing for LID 36 Final Assessment Roll - Staff

**Mayor Larsen** asked for a motion to approve Resolution 2008-20 calling for a public hearing on the final assessment roll on the 19<sup>th</sup> of November, 2008 at 8:00 P.M.

**Council Member Woodland** moved to approve Resolution 2008- 20; Council Member Stout seconded the motion; all voted aye, none opposed. **The motion carried.**

#### Staff Reports

##### **A. Public Works:** John Millar

1. East Main was finished yesterday from 3<sup>rd</sup> East to 4<sup>th</sup> East.
2. HK Contractors are moving along with the 7th South project. A lot of rock had to be blasted.
3. Waste water flows meeting with the mayors from Sugar-City and Teton is planned. A follow up meeting will be held with developers to strategize how to accommodate the increased waste water flows from developing areas to the Rexburg Waste Water Treatment Plant.
4. Next year's street projects need to be prioritized. Mayor Larsen asked the City Council for the top priorities. Council Member Mann asked for some discussion on the cost of street improvements to 2<sup>nd</sup> West for pedestrian safety. It is Council Member Mann's top priority. Council Member Stevens mentioned the pedestrian crossing at the north end of Porter Park on 2<sup>nd</sup> West does not have any signage for pedestrian crossing. Council Member Mann suggested matching the improvements on 1<sup>st</sup> South and 2<sup>nd</sup> West with the ones planned for 2<sup>nd</sup> South and 2<sup>nd</sup> West due to new developments in the area and increased pedestrian traffic. Mayor Larsen indicated the funds needed for the top priority pedestrian crossing improvements are unknown at this time. The plan would be to select some safety priority improvements and develop some projected costs to allocate funds out of the street budget. The prioritized street projects would be allocated behind the pedestrian safety projects. Council Member Stevens suggested sharing the costs for safety improvements with other entities (partners and friends in the community) for possible financial assistance for implementation. Public Works Director Millar said the big ticket item would be a street light which runs about \$300,000.00. Mayor Larsen asked for Public Works Director Millar's street improvement priorities.
  - a. Comanche Drive is in poor condition
  - b. 4<sup>th</sup> block on 3<sup>rd</sup> East is in very poor condition
  - c. Frost heaves
  - d. 3<sup>rd</sup> East from Harvard to 4<sup>th</sup> South
  - e. 1<sup>st</sup> East from 2<sup>nd</sup> North to the canal
  - f. South 5<sup>th</sup> West from Main Street to the rail road tracks
  - g. 12<sup>th</sup> West is a major project
  - h. Airport Road is a major project

Pioneer Road and Main Street is a future project (based on the finalization of a purchase agreement).

**Mayor Larsen** asked the City Council to prioritize the top five projects. Council Member Stevens asked to have an estimated cost applied to the projects to help prioritize the 2009 street projects. Public Works Director Millar said North 2<sup>nd</sup> West needs water and sewer lines.

**Council Member Erickson** mentioned Pioneer Road and 12<sup>th</sup> West need attention. He asked if south Pioneer Road could be improved with an LID. Public Works Director Millar said Pioneer Road could be broken up into three projects.

- a. South of the canal to the new development
- b. Henderson section
- c. New development section

**Council Member Mann** asked for the sides of the Pioneer Road to be improved too.

**Mayor Larsen** reviewed the priorities mentioned by Public Works Director Millar:

1. Comanche Drive
2. 3<sup>rd</sup> East
2. 1<sup>st</sup> East
3. Portion of 5<sup>th</sup> West
4. Portion of Pioneer on the south end. The north end of Pioneer Road would require a bridge, new signal and new road would take up the majority of a year's budget.

**Council Member Erickson** recommended including the south half of Pioneer Road in the 2009 Street Construction Budget.

**Council Member Stevens** asked the City Council to be sensitive to the economy when requesting LID funding. People's budgets are tight right now. He suggested delaying projects requiring an LID. Public Works Director Millar added 3<sup>rd</sup> East would be a heavy LID project. Other projects may have lesser impact on the LID requirement.

**Public Works Director Millar** mentioned additional projects:

1. 2<sup>nd</sup> North reconstruction.
2. Valley River Drive between Sonic and McDonalds needs an overlay.
3. West Main Street from 2<sup>nd</sup> West to 3<sup>rd</sup> West.
4. Downtown project
5. 2<sup>nd</sup> South by 3<sup>rd</sup> East for two blocks.
6. 4<sup>th</sup> East just east of Smith Park.
7. West 7<sup>th</sup> South

**Mayor Larsen** asked if Impact Fees could be used to work on 7<sup>th</sup> South. Public Works Director Millar explained Impact Fees can only be used for additional street capacity not repairs. Mayor Larsen said other funding may be possible for 12<sup>th</sup> West (i.e. Urban Renewal District), so 12<sup>th</sup> West may have Urban Renewal funding. Public Works Director Millar explained a study was completed on 2<sup>nd</sup> East and 7<sup>th</sup> South concerning a traffic light. The study showed the intersection was only busy for a half hour per day; thus a traffic light at the Temple intersection would not be cost justified; plus a street light can't be located on an unfinished intersection. The property owner is not interested in contributing to the cost of a street light at this time. The city does not have any right-of-way on the south half of the intersection. The city would have to talk with the owner of the property; otherwise the right-of-way would have to be purchased. The estimated numbers for these projects will be completed by mid to the end of November.

Discussion on the size of new trees for East Main Street project going to the hospital. Mayor Larsen would like to have Christmas lighting on the trees going to the hospital.

#### **Calendared Bills and Tabled Items:**

1. **BILL Introductions:** - NONE

2. **BILL 1014 Amending Ordinance 911** for "Towing and Parking Enforcement"

**BILL 1014** Amending Ordinance 911 for "Towing and Parking Enforcement"

**City Attorney Zollinger** explained the document is put forth as a draft document to amend Ordinance 911. There are two significant changes to the document. 1) The presence of owner/agent to initiate a tow or a boot. 2) City involvement by mediating disputes. If the individual believed the tow or boot was being done illegally or inappropriately they could post a \$20.00 bond

and sign an affidavit stating they would agree to appear at a civil hearing before a committee. *Note: The makeup of the committee has not been formalized.*

If the booting/towing agent prevailed in the hearing, the affected individual would agree to pay the remainder of booting/towing fee. If the individual prevailed in the hearing, the \$20.00 bond would be refunded. If the individual fails to appear at the civil hearing, the result of the civil hearing transforms into a criminal misdemeanor case. The language is fairly aggressive to protect the towing and booting industry where the individual fails to appear at the civil hearing. The \$20.00 fee is not sufficient to cover the costs of labor and equipment when dispatching a towing vehicle.

**City Attorney Zollinger** said another issue that could be included in this document or in the Planning and Zoning code would be visitor parking around BYU-I. The University plans to provide parking information including visitor parking in their orientation packet to students enrolling at BYU-I. This document is before the City Council because complaints continue to come into City Hall from students and student's parents concerning towing and booting practices.

**Council Member Stevens** asked how often the civil committee would meet to review towing and booting complaints. City Attorney Zollinger explained the committee would meet a couple of hours once a month to minimize the time required conducting the hearings. There is a parking ticket hearing committee consisting of four individuals in the city (Captain Lewis, Chief Archibald, City Attorney Zollinger, and Assistant City Attorney Aaron Davis). They have reviewed signage in the field to verify the conditions and if the signage is not readable the parking ticket is dismissed. They have never had a parking case where a civil hearing was elevated to a criminal case. He has faith the towing companies will abide by the findings of the civil committee.

**Council Member Stout** asked who would be considered an "authorized agent of the owner". City Attorney Zollinger referred to the text of the document where an agent can't receive a commission based upon the towing occurrence. Apartment owners could engage a common agent who must be present to approve the booting or towing action.

**Reference proposed code amendment from original draft "paragraph 9 (I)":** *Property owners, managers, or their agents shall not receive any consideration whatsoever from any parking enforcement or towing company in exchange for utilizing such company's services to boot or tow unauthorized vehicles from the owner's property or for entering into a services contract with a parking enforcement or towing company.*

**City Attorney Zollinger** concluded the presentation explaining the current city code has failed to resolve ongoing problems with booting and towing practices.

**Mayor Larsen** opened the discussion up to the public.

**Virginia Pratt** at 642 Dell Drive was opposed to being present every time there is a parking problem. She did not want to hire an agent for booting and towing occurrences. She suggested the issues could be resolved by "accountability" for both apartment owners and students. If a student parks in the wrong place, let them be accountable. She was agreeable with the hearing process for students; however, she did not want to be required to be present when a car is booted or towed. She referred to a property where more parking permits were issued compared to available parking stalls. The overselling of parking is still a problem; however, the students think they can park wherever they want, whenever they want to park. She did not want to be available day and night to monitor the parking issues; thus recommending "accountability" to resolve the parking problems.

**Taylor Tibbitts** at 474 South 5<sup>th</sup> West #2, speaking for BYU-I students, emphasized the booting and towing issues will not be eliminated until each incident is dealt with individually. He referred to a recent activity where a student got booted because they could not park in visitor parking. There were two entrances into the parking lot and one of the entrances went to the visitor parking. The visitor parking was blocked by a towing employee's car; therefore, the student parked in the adjoining parking stall due to the visitor parking was unavailable. The student was booted and charged a fine. They did not have an avenue for a dispute of the incident. The arbitration clause in the amended city code would allow for review of the incident giving the student a chance for arbitration. BYU-I is emphasizing a pedestrian campus. They are encouraging less driving

(carpooling) and safety around crosswalks. They have seen some cars booted while dropping students off at apartments.

**Derek Haderlie** at 145 West 2<sup>nd</sup> South referred to an incident where a young lady was in an accident and got the car's back bumper repaired. The sticker was accidentally removed by the men who repaired her car. She did not know the parking sticker had been removed; so her car was towed; therefore she was unaware of the cars location. She had a language barrier, so she needed help to locate her car; the apartment managers were unaware of the cars location. The student acquired evidence of the existence of the parking sticker for her car; however, the towing company refused to negotiate the \$150.00 fee for towing and storage. Through the process to get her car back, her calls were screened, maybe because of the language barrier. In the final analysis, neither the student nor the apartment manager were aware of the car being towed away to an impound lot. This event shows a lack of accountability with the property owner and the towing company. The student may have filed a stolen car report because of the lack of accountability. Mr. Haderlie was concerned the city code allows people receiving a financial benefit to make decisions on towing and booting.

**Nathan Batcher** at 551 South 5<sup>th</sup> West#4 asked for accountability. The owner/manager needs to know if the car is towed. He did not know if the students are intentionally parking illegally. He felt it was unfair practices to patrol parking lots looking for cars to tow or boot in a drop off situation.

**Josh Roehl** at 235 South 4<sup>th</sup> West #206 in Rockland Apartments reviewed an incident with attendees at a dinner. In transporting the dinner guests, Josh was booted while parked for 15 minutes at their parking lot at Royal Crest Apartments by the University tennis courts. The towing company employee said Josh's car was not in visitor parking; therefore, the towing company employee waited 10 minutes before placing the boot on the car. Josh checked the parking stalls the next day and found the visitor parking stalls were not identifiable with any paint. Josh asked to have the amended ordinance passed to place some accountability on the apartment owners and the towing companies.

**Darren Helm**, owner of All American Towing, said he has come before the City Council every year for the last six years concerning these towing and booting issues. He operates his business in compliance with city code. He referred to Section 3 and Section 4 on page 10 of the amended city code under discussion:

*(3) A parking enforcement company that utilizes booting practices instead of towing shall be required to release the vehicle upon payment of Twenty Dollars (\$20) in conjunction with a completed Dispute of Parking Enforcement Action Form, which form shall include a promise to be bound by the terms of this Ordinance and to appear at the Rexburg Police Department within Fourteen (14) calendar days to schedule an appeal hearing. If after such form is submitted, the hearing results in the parking enforcement action being upheld, the parking enforcement company shall be entitled to payment in full of the regular fee associated with the parking enforcement action taken, if however, it results in a determination that the action was unwarranted, the Twenty Dollars (\$20) will be immediately reimbursed to the individual appealing the action.*

*(4) If the registered owner or authorized agent arrives at a vehicle before the parking enforcement or towing company has finished booting the vehicle and the required paperwork or before a tow truck operator has the vehicle in tow, the parking enforcement or towing company shall be required to release the vehicle in exchange for payment of Ten Dollars (\$10) in the case of booting, or Twenty-Five Dollars (\$25) in the case of towing (in consideration of cost of equipment associated with towing, and proximity of all towing companies distance to service). The representative of the parking enforcement or towing company shall not be required to wait for any longer than fifteen (15) minutes for the owner or authorized agent to produce the necessary payment to obtain the release of the vehicle.*

**City Attorney Zollinger** explained this language was in the original version; however, it was taken out of the current Ordinance 911. The amended ordinance will have this language reinstated with the passage of the proposed ordinance.

**Mr. Helm** explained they want to (1) inform students of the parking policy and (2) boot or tow those students that know the parking policy and park without a parking sticker at their own risk. He

has recommended better signage to the apartment managers under his contracts. He is looking for ways to direct people using the parking lot to the proposed signage showing where they can park and where they can't park. Better signage won't solve all of the problems. His towing company does not tow cars during mother's week at the University. City Attorney Zollinger explained the 9-A clause in the original draft which was taken out before the passage of Ordinance 911 is included in this draft with the same intent. Any property planning to have towing and booting will have to comply with the intent of the original language of 9-A. In the original draft, the language in 9-A was an exception to having the owner present to authorize a boot or tow. The language now states to authorize third party towing all of the following conditions must be met. Licensing and other regulations remain the same. City Attorney Zollinger noted to the City Council, the towing and booting industry has done remarkably well since the passage of Ordinance 911. The Ordinance 911 didn't alleviate some of the problems that continue to show up when the new students come to the University.

**Mr. Helm** explained one in every ten booting and towing cases have special circumstances. Some are true and some might not be true. He asked the city to keep a record of the complaints before making changes to Ordinance 911.

**Council Member Stevens** asked Mr. Helm for some specific concerns with the amended language for Ordinance 911. Mr. Helm requested the bond fee to be half the towing or booting fee due to his costs to start up a truck. Referring to Section 4 of the amended language, Mr. Helm said he can't cover his costs with a \$25.00 fee to leave the call without a tow where the individual responds to the situation before the car is towed. His costs are \$40.00 for a long call to have someone called out to do the tow. City Attorney Zollinger explained the \$25.00 fee was derived from input from three call out towing companies who do it for \$25.00. It was not arrived at arbitrarily.

**Mr. Helm** said his calls are not customers. Mr. Helms' calls are to tow or boot people's cars that may be impounded. He is required to pay for insurance and impound costs, so \$25.00 is not enough.

**City Attorney Zollinger** said the common problems in these cases come up whenever someone outside the industry makes the call. He noted Virginia Pratt has not had a complaint from her residents on parking compliance issues. Mr. Helm noted Virginia Pratt contacts him to monitor their parking lot whenever they have an event at the complex. The last event he towed six or seven cars at Virginia Pratt's complex due to cars without stickers. Mr. Helm noted complexes around campus have the most compliance issues. He goes through a parking lot two or three times per day. He can tow cars parked illegally every day.

**Council Member Stevens** said the challenge is to have a policy that covers all of the towing companies, so there is not a different set of rules for each place.

**Council Member Erickson** referred to a prior meeting where the apartment owners or representatives agreed with the city code two years ago. The apartment owners came in and stated they would like to police the parking issues themselves. City Attorney Zollinger indicated the discussion was never concluded. Mayor Larsen referred to the attempts of Dennis Summers to help clarify the city code to lend more protection and support to the students. City Attorney Zollinger explained the problem with the current code is the lack of a way for the students to be heard and the apartment owners desire to keep their employees out of the dispute. The city is offering a service to mediate between the students and the apartment owners/towing industry.

**Council Member Erickson** understood the city would not be in the middle of the controversy. He understood the apartment owners would be responsible for the towing with access to the city police when needed. City Attorney Zollinger explained the city formed a committee that has met with the booters, towers, apartment owners, and student representatives to bring closure to the booting and towing issues. Council Member Erickson questioned the reasoning for the city to be involved with a towing request from a parking lot owner like "Professional Plaza" to tow a car.

**City Attorney Zollinger** explained this example is a commercial parking lot which is not covered by the code. There are other residential parking lots all over the city with insufficient parking stalls to accommodate their residents. In order to accommodate these parking facilities with insufficient

parking, the city has allowed them to monitor their parking under a stricter set of rules, thus looking out for the apartment owner's customers. The law does not allow a property owner to tow cars just because they don't like them. There are towing laws in place to regulate a towing company, even if the car is in your own driveway. You have to meet a certain set of standards. The scale is on what standard the city is going to apply to multi unit residential parking lots as opposed to commercial enterprises such as "Professional Plaza".

**BYU-I Attorney Richard Smith** explained the reason we are here again is based on the failure of the code to work. He reviewed the history of Ordinance 911 indicating language was removed from the original document requiring the presence of owner/agent to initiate a tow or a boot. Everyone agreed at that time to allow time for Ordinance 911 to work. The ordinance hasn't worked because the person making the decision to tow or boot is sometimes basing the decision on financial basis. As long as the city allows the towing decision to be made based on personal financial gain, there will be parents, students, and others complaining. This towing business needs to be done fairly. If this draft ordinance is adopted, the many complaints will slow down or maybe stop coming, because the owners were the ones to call for the tow. The University gets bombarded with complaints on how the parents and students are treated when they come to Rexburg because there is no process to handle redress (remedy). There are no regrets, only a towing company to talk to concerning the towing incident; when in fact the tow was authorized by the apartment owner.

**Attorney Smith** agreed with Council Member Erickson there should be some way to mitigate the complaint with an appeals process. There should be some sort of redress for a young man or young woman to appeal the action. The University expects the students to abide by the city parking code. The University will continue to do everything in their power to require students to abide by the parking ordinance. The University will support the apartment owners in whatever they want to do to keep the unauthorized vehicles out of their parking lots during classes, etc. It is wrong and the student should be towed. You just can't turn blanket authority over to a parking company to tow and boot and receive all of the revenue from the action; that policy is irresponsible and it will continue to yield terrible results. This amendment to Ordinance 911 was decided a few years ago to be implemented if Ordinance 911 failed to address the issues. It hasn't worked. He complimented Mr. Helm for restricting towing during mothers week.

**Attorney Smith** reminded Council Member Erickson of a past City Council meeting in this room which was full of parents and students down the hall discussing these issues. Council Member Erickson was not aware the policy was not working because it has worked better each year the past three years. He did not want the city involved in deciding who would be fined and who would not be fined. He suggested having an arbitrator from the University to be between the student and the towing company if it is that important. Leave the city out of the arbitration process. Attorney Smith said it seem to be working better; because there has been some level of responsibility not to tow parents, bishops, or ecclesiastical leaders because that inflames the City Council and the city. The students are still being preyed upon many times. They don't have any place to respond. They simply have to pay the money to get their car back. There is no redress. There is no other option.

**Attorney Smith** is not suggesting the city become an arbitrator. When the city issues parking tickets, there is an appeals process in place to report a possible violation of the ordinance. He believed it was a reasonable expectation of the city to provide that avenue for discussion. Maybe \$20.00 is not the right approach. If the student has been wronged, there should be some place to go for redress (these guys didn't follow the ordinance).

**Council Member Stevens** asked if there was a difference with the parking tickets being issued under police powers and the parking issues are on private property. City Attorney Zollinger explained the city parking tickets are not issued under police powers. The city's primary parking ticket issuer is a civil servant. The distinction is the city does not issue parking tickets on private property. There is still a civil dispute process to have a hearing meeting with parking hearing officers acting as a civilly driven appeals board. If the parties do not like the civil process, they can take the issue to a judicial civil hearing in a court. Council Member Stevens asked if the appeals board could be done at the University.

**City Attorney Zollinger** explained the process would start with the person being towed to sign a document stating they would attend a hearing board to review their complaint. If the complainant

did not attend the appeals board meeting, the action could be raised to a civil hearing before the court. Attorney Smith would not be opposed to having the apartment owners as members of the hearing board. If a young man or woman felt they had been wronged; they should have a place to go for redress. The appeals board could be comprised of apartment owners and student representatives. City Attorney Zollinger explained Jeremy Moss a past city intern suggested the hearing board be part of the city parking board. City Attorney Zollinger said the community looks to the city to bring closure to these complaints. Attorney Smith said you have to take the control away from the person or entity that receives the money. The decisions are based on financial gain, instead of what is best for the parking lot.

**Mayor Larsen** said this has been an issue for six years since he was on the City Council. It is on the agenda for a first reading tonight. It will become a major issue this year with parking on the streets is restricted November 01. Mayor Larsen asked for a motion to approve the first reading. He supports the draft amendment to Ordinance 911.

**Council Member Mann** likes the idea to have a city representative on the committee with representation from apartment owners and BYU-I. He explained the students came to the city because they did not know where else to go with their concerns. The city has to get involved. Although the students come and go, they represent half of the population of Rexburg. The city needs to treat them with the same respect as permanent residents. This is a serious problem for the city. He agreed with Virginia Pratt's comments; however, he believes some consideration is in order when vehicle stickers are temporarily removed for vehicle repairs, etc. He is in favor of the proposed changes to Ordinance 911.

**Council Member Erickson** said this is going to be a potential problem every year that the city has the University. We have the University here, we want it here. He recommended leaving some authority with the property owners to keep their parking lots clear of unauthorized parking. Don't take any property owners rights away. He did not want the city to get involved in every little action that happens between the property owners and people driving cars. Council Member Erickson asked to have recorded that the city will have the same conversation next year at this same time with another solution that won't mean tinkers darn.

**Council Member Stout** questioned the additional cost to have the review hearings. City Attorney Zollinger said there is not a cost for the court hearing process.

**Council Member Erickson** asked who is going to pay the bill if the student does not show up. City Attorney Zollinger said the initial fee would be paid to get the car released and the hearing process would resolve the dispute. If the person does not attend the hearing, they would be given a citation for violating the parking ordinance and then there would be criminal charges where they would be subject to a misdemeanor fine of \$300.00 for failing to abide by the law. Council Member Erickson asked if the city would pick up the difference between the nominal fee to get the car back and the full fee from the towing and booting company. City Attorney Zollinger said the city is not agreeing to pay the fee for the offender; however, the city is agreeing to prosecute if the offender if he does not show up for the civil hearing. The city issues 5,000 citations annually and about 280 get dismissed.

**Council Member Stevens** asked if it would be possible to require the full fee paid at the time the offender has the car released. If they don't show up for the hearing, the towing company would win. The city would not have to prosecute for a criminal offense. City Attorney Zollinger was concerned if the towing company was in error, the city would be going after the towing company to refund the fee charged inappropriately. The initial fee could be changed to cover the towing companies' costs to tow the vehicle. The winter towing program (pick and drop for \$25.00) was discussed last year and will be instituted this year to avoid some past towing problems. The fee for pick and drop to clear parking lots and streets is still under advisement.

**Council Member Stevens** recommended having the full fee paid to get the car back and have the appeal process after the fact for those who feel the tow was not legitimate. City Attorney Zollinger recommended the City Council come up with another fee for cars that have been towed. The recommended initial fee of \$25.00 may be more applicable to booting.

**Attorney Smith** indicated the initial \$25.00 fee may not be enough; however, a \$150.00 fee is a lot of money; it is actually too much for most students. If the student has been wronged, is the city going to victimize them even more? He said if the student was in the wrong, they will pay the towing fee and move on; however, if they have been victimized, they will want to go through the entire appeals process. City Attorney Zollinger said the judicial system does not require the money up front unless it is a serious crime. He routinely gets fees out of University students after they have left the city to avoid the criminal charge. The appeals committee will be made up of an industry representative, University representative, and a housing representative.

**City Attorney Zollinger** asked Mr. Helm if \$35.00 would be a better number to cover his towing costs. Mr. Helm said he wanted his time paid to show up for the tow; however, he was more concerned with showing up to a bunch of civil hearings on the tows. He did want to plead his case for 50 different situations. City Attorney Zollinger indicated Mr. Helm is good about taking pictures and recording verbal confrontations; therefore, that information is provided to the city the next day to demonstrate Mr. Helm's activities were not criminal. It didn't make the people happy, but Mr. Helm was within his rights. The statute needs to be written to address the norm (average) because Mr. Helm will not be the only business doing the towing and booting activity.

**Council Member Erickson** moved to 1<sup>st</sup> read BILL 1014 Amending Ordinance 911 for "Towing and Parking Enforcement" with the idea of clearing up the issues in the bill; Council Member Mann seconded the motion;

**Those voting Aye**

Council Member Mann  
Council Member Erickson  
Council Member Stevens  
Council Member Stout

**Those voting Nay**

Council Member Woodland

**The motion carried.**

**First Reading:** Those items which are being introduced for first reading. – NONE

**Second Reading:** Those items which have been first read.

1. Bill 1012 Joint-Commission for working out the entity of impact

**Mayor Larsen** reviewed the history of BILL 1012 to have an agreement with city/county entities to coordinate the Impact Areas within Madison County.

**Council Member Woodland** moved to approve the 2<sup>nd</sup> reading of BILL 1012 for the Joint-Commission on Impact Areas in Madison County; Council Member Erickson seconded the motion; Discussion: Council Member Stevens asked why the second reading was delayed. Council Member Erickson explained the last meeting was missing some City Council Members. Council Member Stout explained he asked for the 2<sup>nd</sup> reading to be delayed for further review.

**Those voting Aye**

Council Member Mann  
Council Member Erickson  
Council Member Stevens  
Council Member Stout  
Council Member Woodland

**Those voting Nay**

None

**The motion carried.**

**Third Reading:** Those items which have been second read: - NONE

**Tabled Items:** Those items which have been the subject of an affirmative vote to a motion to table: - NONE

**Old Business:**

**A. Resolution 2008-19 (adoption of Comprehensive Plan 2020)**

**Mayor Larsen** explained Resolution 2008 – 19 will be on the next City Council agenda. The 7:00 A. M. work meeting today was spent reviewing the proposed text for the Comprehensive Plan 2020.

**Mayor's Report:**

**Calendar:**

October 28<sup>th</sup> – Public Pedestrian Safety meeting: Mayor Larsen has been responding to email input and other input from the public concerning the accident on 2<sup>nd</sup> West and 2<sup>nd</sup> South. He has met with people to hear their concerns. The meeting on the 28<sup>th</sup> of October is for additional public input. Council Member Erickson was concerned decisions should be made as soon as possible from a practical point of view. He did not want to make a decision based on emotions. Mayor Larsen challenged the City Council to read the handout document and provide feedback. People are calling and asking what they can do with the traffic problems. The meeting on October 28 is for stake holders (i.e. BYU-I, the school district, and the city) to share their thoughts and views on how to fix pedestrian problems in the city. He gave an example of a school widening a driveway, bringing the crosswalk into the middle of the driveway. Mayor Larsen does not want this decision to fall on his or Public Works Director Millar's shoulders without more input from other stake holders. Mayor Larsen said the city needs to be prepared with maps, traffic numbers, and other related information to go through a very defined process. It will not be a public hearing process.

**Council Member Mann** thought it would be an expensive issue and he wants the University to be part of solution because of the number of BYU-I students and cars on city streets. They are building a 15,000 seat auditorium causing additional congestion of city streets.

The City Council discussed having a third party from ITD or other entity to be the chair person for the October 28 meeting. (i.e. traffic safety engineer)

**Council Member Erickson** wants to go into this meeting with answers instead of questions.

**Council Member Woodland** wants to lower the speed limit on that street right now from R-Skating on 4<sup>th</sup> South to Main Street. City Attorney Zollinger indicated Public Works Director Millar can be directed to put speed signs to lower the speed limit immediately; however, stop lights or pedestrian signal lighting would take more time. A center island is not an immediate fix. In this accident, the driver did not see the caution yellow flashing lights. The lower the speed, the higher the probability of a pedestrian surviving an accident. This neighborhood has had two pedestrian fatalities in the recent past. The City Council discussed where to lower the speed to 25 MPH on 4<sup>th</sup> South coming into Rexburg.

**Council Member Woodland** moved to lower the speed limit on 4<sup>th</sup> South west of R-Skating to 25 MPH all the way to Main Street; Council Member Erickson seconded the motion; all voted aye, none opposed. **The motion carried.**

**Council Member Erickson** asked to have more explanation on a flashing "red" light. City Attorney Zollinger explained it would be a non-traditional stop for an intersection; a four-way stop would be a traditional spot for a flashing red light. If a flashing red light was installed before an engineering study, he would be concerned of the confusion caused by installing a stop sign (flashing red light) in an intersection where cars would be traveling through without expecting to stop. The Public Works Director will review the possibility of using a red lens at an A-typical location on the pedestrian yellow flashing light installation.

**Mayor Larsen** said the city will order some pedestrian traffic signage or other traffic slowing devices that will stick out to let people know of the pedestrian crosswalk.

**Mayor Larsen** said we talk about access management multi global transportation management; however on 2<sup>nd</sup> East there is an intersection that is dangerous to cross to go back to Main Street. He recommended accounting for all users when designing and redesigning city streets including, bicycles, pedestrians, and vehicles.

**Consent Calendar:** The consent calendar includes items which require formal City Council action, however they are typically routine or not of great controversy. Individual Council members may ask that any specific item be removed from the consent calendar for discussion in greater detail. Explanatory information is included in the City Council's agenda packet regarding these items.

Minutes:

- A. October 1, 2008 meetings
- B. Approve the City of Rexburg Bills

**Mayor Larsen** asked for a motion on the Consent Calendar:

**Council Member Mann** asked about a bill from Teton Communications for \$856,947.37. Mayor Larsen explained the expense is covered by a million dollar RMF grant from the federal government for radio interoperability at 700 megahertz between government agencies. This grant allows local agencies to lead the state in radio interoperability communications.

**Council Member Mann** moved to approve the Consent Calendar; Council Member Woodland seconded the motion; all voted aye, none opposed. **The motion carried.**

**City Attorney Zollinger** asked for an **Executive Session** pursuant to State Statute 67-2345 (F) deliberations concerning legal matters.

**Council Member Stout** moved to go into Executive Session; Council Member Woodland seconded the motion; Roll Call Vote:

**Those voting Aye**

Council Member Mann  
Council Member Erickson  
Council Member Stevens  
Council Member Stout  
Council Member Woodland

**Those voting Nay**

None

**The motion carried.**

**Executive Session**

**Executive Session Ended.**

**Adjournment**

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Shawn Larsen  
Mayor

Attest:

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Melissa Van Uitert, City Clerk's Assistant