

City Council “Work Meeting” Minutes

October 03, 2016



CITY OF
REXBURG
America's Family Community

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October 03, 2016

Mayor Jerry Merrill

Council Members:

Christopher Mann Jordan Busby
Donna Benfield Tisha Flora
Brad Wolfe Sally Smith

City Staff:

Stephen Zollinger – City Attorney
Matt Nielson – Finance Officer
John Millar – Public Works Director
Val Christensen – Community Development Director
Scott Johnson – Economic Development Director
Blair Kay – City Clerk

4:30 P.M. City Hall Council Meeting

Council Member Wolfe gave the Prayer

Mayor Merrill led the Pledge

Roll Call of Council Members:

Attending: Council President Smith, Council Member Flora, Council Member Benfield, Council Member Mann, Council Member Wolfe, Council Member Busby and Mayor Merrill.

Items for Consideration:

A. Short term rentals

Community Development Director Val Christensen reviewed some proposed changes to the Development Code. He reviewed the proposed definitions to Boarding House units, Bed and Breakfast units and Short Term Rental units.

Current Code Definitions:

1. *Bed and Breakfast Inn: A structure containing multiple guest **room or** rooms where lodging, with or without meals, is provided on a daily rate basis, and a manager maintains a residential presence on site.*
2. *Boarding House: A building that is the primary residence of the owner in which rooms are provided on a weekly or monthly basis for compensation, by the owner, to three or more persons not related by blood, marriage, or adoption to the owner.*

Community Development Director Christensen indicated a bed and breakfast requires a residential presence where in the boarding house you have to live in the actual unit. He recommended to consider adding the “room or” to the bed and breakfast definition; and

He gave an example of a bed and breakfast by Gettysburg, PA. where he stayed. It was a Civil War General’s Mansion. The people managing the Mansion with multiple rooms were living next door. They came in and cooked breakfast in the morning. They did not live in the mansion; however, they did have a presence on-site. He thought a review of these definitions could help the process.

Council Member Wolfe asked if the change in definitions would solve the problem discussed in Planning and Zoning a couple of weeks ago. CD Director Christensen said, no; that discussion was in the use tables of that particular zone. That discussion would only be solved if the bed and breakfast-boarding house uses were to be allowed in that particular zone being discussed.

Community Development Director Christensen indicated these are only definitions to be applied to particular zones. He offered a new definition for “Short Term Rentals” to be:

“Any rental of a dwelling unit rented for a time period less than 30 days; is not the primary residence of the property owner; and is managed on or off-site; Bed and Breakfast and Boarding House uses require owner occupancy as defined in the definitions section. He recommended the use of “Short Term Rentals” to be applied in HDR Zones.

Council Member Flora said it would be like a VRBO rentals.

VRBO.com “Why Rent A Room When You Can Have The Whole House.”

Community Development Director Christensen recommended as one solution in LDR Zones to have a minimum standards overlay for bed and breakfast and boarding house units. The area would have to be defined with a super majority vote (notarized signatures) by the neighborhoods with a certain number of houses like 10 or 20 houses. The group of connected houses would have to have a super majority vote or 67% of the neighborhood would have to agree to the proposed overlay.

Council Member Flora asked how this would work for Jay Fluckiger?

September 29, 2016

Subject: What should the City do about the House sharing/ hosting (Air BnB) business?

Answer: Nothing. Here’s why.

After the public hearing of September 21, several things are apparent:

Those objecting to having out of town guests in their neighborhoods have these arguments:

<u>Argument:</u>	<u>Answer</u>
Traffic and parking	Shown to be groundless. In 2 years it hasn’t been an issue.
Stranger invading	Not a problem. Screened guests eliminate the danger.
Home owners Assns. disapprove	To take a poll without hearing both sides is meaningless.
Decreased property value	Hosting is not building a rental unit or a commercial business. On the contrary, host families’ property must be clean and inviting.
Neighborhoods degenerate	Simply not true. We’re not building rental units or businesses.
Liability insurance increase	Handled by home owners; not a concern to neighbors.
Relegate hosting to high density areas	To do so kills the business. Hi density areas prohibit this activity.

I fail to recall any evidence presented by any testimony at the hearing that hosting has caused any disruption in any neighborhood. The single incident that triggered the whole controversy in the first place was a dance festival group or an unsupervised vacation rental. Present ordinances, if enforced will address that problem.

Dilemma: One might conclude that home sharing is a violation of the City’s short term rental ordinance. At the same time, *Home sharing clearly meets the requirements of the Rexburg code for home businesses.* What does one do? Any attempt to enforce one ordinance could possibly lead to a court challenge under the other. I saw this happen in Salt Lake City. Also, one must not forget the recent Idaho Supreme Court decision allowing home sharing.

That’s why it’s best that the city does nothing. If no one takes a position, that position cannot be challenged. In time the issue will go away, especially since it was not home sharing that caused the issue in the first place. To attempt to write another ordinance will just muddy the water farther. The easiest and best solution is simply to quietly let the matter die.

Yours truly,

Jay Fluckiger

Community Development Director Christensen indicated Mr. Fluckiger would have to get the 67% of neighbors to agree with his proposal for short term rentals. He likened this proposal to a neighborhood request for a zone change which puts the burden on the neighborhood to propose the change.

Council President Smith recommended calling them sleeping rooms to comply with the fire code. The building code requires certain requirements for a sleeping room like egress windows, etc. (Some people have been putting air mattresses in laundry rooms, etc.)

Council Member Wolfe indicated the residence would require an inspection from the fire department, etc.

Discussion on the code description for a legal duplex.

Community Development Director Christensen indicated there are still owners of property thinking they have a legal duplex after the senior owner dies leaving the property to their posterity where the property has not maintained the duplex use for the past year. *(If the use lapses for more than a year, the duplex permit is voided).*

Economic Development Director Scott Johnson reviewed the challenges of allowing Airbnb's. Staff members are concerned with short term and long term consequences of allowing Airbnb's. Owners of a proposed hotel are waiting for the decision of the City Council on this issue.

Council President Smith indicated a short term rental by a conditional use permit has been recommended.

Community Development Director Christensen said they are working on code changes to help with the clarification of bed and breakfast unit's verses boarding house units. *(residential presence on site verses the primary residence)*

Melanie Davenport suggested a change to short term rental definitions. What does on-site management or presence mean? Community Development Director Christensen said the idea is the manager or owner would not have to live in the actual dwelling unit; however, their living unit would have to be on-site; this on-site definition would need to be clarified.

Steve Oakey recommended a simple and fair code for the public to understand. He referred to the need to have an on-site manager. This issue was explored by Council Member Flora in a recent meeting with the public. She asked if they would be opposed to the proposal for a bed and breakfast if the owner was on-site. A resident would not answer her question directly if he would be ok with an on-site manager. He danced around the question because he would be conceding his position. Another resident was asked the same question and he was ok with an on-site manager saying "I am not hard core on this issue". Almost without exception, Rexburg's Bed and Breakfast owners live on-site.

Mayor Merrill indicated the decision on Airbnb is a decision that will be far reaching affecting all of Rexburg's neighborhoods. He went back to the US Constitution and Declaration of Independence.

The [United States Declaration of Independence](#) was drafted by [Thomas Jefferson](#), *and then edited by the [Committee of Five](#), which consisted of Jefferson, [John Adams](#), [Benjamin Franklin](#), [Roger Sherman](#), and [Robert Livingston](#). It was then further edited and adopted by the [Committee of the Whole](#) of the [Second Continental Congress](#) on July 4, 1776.^{[21][3]} The second section of text in the Declaration contains the phrase **"Life, Liberty and the pursuit of Happiness"**.*

Jefferson's "original Rough draught" is on exhibit in the Library of Congress.^[4] This version was used by [Julian Boyd](#) to create a transcript of Jefferson's draft,^[5] which reads: We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness; ...

Mayor Merrill said *"Life, Liberty and the pursuit of Happiness"* should be the goal where the people are allowed to pursue their dreams. If the event does not bother the neighbors; they should be allowed to do it. We should not be making a lot of rules and regulations to follow. One person said the easy answer to these questions is to "Love Your Neighbor". If you are renting and your renters are causing problems; have them stop. If your neighbor's renters are causing problems, go talk to them. He has a neighbor with a sick child at the Primary Children's Hospital in Salt Lake City. She would like to rent out a couple of rooms to make some money to pay hospital bills. Mayor Merrill does not have a problem with her doing a short term rental. He gave another example of a friend in a neighborhood who was letting their daughter and husband stay in their home; the neighbors called the City and turned them in as short term renters. Taking money or not taking money was the issue.

Council Member Flora said there are a couple of valid concerns; neighborhoods with LDR1 Zones have up zoned to a neighborhood that does not allow commercial apartments. They do have grandfathered apartments in this neighborhood that will lose their rental apartment status if the apartment is not used for a year.

Mayor Merrill said there are concerns with people moving out and renting their homes in the neighborhood; however, if they remain in their homes, he was ok with the Airbnb concept. He thought supply and demand would balance out the use of Airbnb's and hotels. He referenced the Idaho Supreme Court's decision to uphold a Home Owners Association right to restrict short term rentals of real property; however, this discussion is not an HOA discussion. It is a different issue.

Council President Smith said the stability of a residential neighborhood is having neighbors knowing what is going on in the neighborhood. There are home uses now in residential neighborhoods like five child day care and piano lessons, etc. The other thing is why do we want to allow something that is being prohibited in other communities. Those communities that have allowed Airbnb's are now going back and dis-allowing them. She was concerned with allowing some long-term changes to Low Density Neighborhoods by allowing Airbnb's. The City of Rexburg does allow Airbnb's in Medium Density and High Density Residential areas. She recommended for people to run Airbnb's in town houses where it is already allowed. She agreed with the personal property rights issue; however, people also have the right to live in safe neighborhoods.

Mayor Merrill was also concerned with neighborhood safety; however, he is supportive of Airbnb's.

He used the example of watching his grandchildren walking down the street four houses to make sure they get home safely.

Council Member Flora suggested allowing the practice of Airbnb's in certain zones LDR2 or in a Short Term Rental Overlay with a Conditional Use Permit. She suggested trying it for a year with a sunset clause. Let's try it for a year and see what happens. Let the neighbor's see if it will work.

Steve Oakey said the issue is having an owner occupied unit to allow an Airbnb. Owner occupied rentals vet their renters verses a hotel renter. Put that in the code.

Council Member Mann wanted explore a compromise. He gave an example of a buyer buying a home and putting a couple in the home and then renting the rest of the home out as an Airbnb. He was concerned with a neighborhood having too many short term rentals and changing the nature of the neighborhood. The thought it should be up to the neighborhood to change the neighborhood to allow Airbnb's. He has good friends on both sides of this issue.

Council Member Busby asked about the process of vetting the occupants by Airbnb. Steve Oakey said when he stays at an Airbnb he makes the bed and fold the towels etc.; his conduct will be evaluated by the owner of the Airbnb and his conduct will be rated and displayed on-line. He has stayed in both high and low end Airbnb's.

Council Member Flora called Airbnb to get clarification on their new policy. They will find the buyer a place if the owner does not allow an Airbnb applicant to stay in their home.

Mayor Merrill was comfortable with the Airbnb user if the neighbor was ok with them. The risk factor is pretty low if the neighbors are ok with the short term renters.

Melanie Davenport gave an example of a manager not staying on-site to run a college student apartment. They conveyed to the college that they were an on-site manager. They had not stayed at their apartments for months. She said you need to plan for the worst case scenario and hope for the best.

Council Member Flora reviewed the need for an Airbnb applicant to have a business registration which requires them to live on-site and have a fire inspection, etc. She indicated that she stayed at an Airbnb in Kanab, Utah. She asked the owner how they were allowed to have an Airbnb in Kanab. The owner said they got a business license from Kanab which required an on-site inspection by the City of Kanab. She asked the neighbors if they cared about an Airbnb next door. The neighbors did not care.

Mayor Merrill reviewed the full house rental proposal; He said most neighbors were ok with an Airbnb rental if the owner lived in the home.

Discussion on the Home Occupation definition in the code. 20%; no storage of equipment outside the dwelling, no add signs, etc. Mayor Merrill reviewed the Home Occupation requirements.

Home Occupation: An accessory use of a dwelling unit or the accessory building for gainful employment which is clearly incidental and subordinate to the use of the dwelling unit as a residence.

a. Home Occupation Requirements.

- i. Permitted Uses.** In all residential Zones, home occupations in compliance with the following regulations are permitted as accessory uses. A home occupation which meets the following conditions shall be issued a permit by the City Clerk, upon application and payment of a permit fee, provided that the home occupation is conducted by the applicant, who shall reside on the premises, and provided the home occupation does not constitute a significant impact on the neighborhood.*
 - 1. A home occupation shall be conducted entirely within a dwelling and shall not occupy more than twenty percent of the floor area of the residence.***
 - 2. There shall be no storage of equipment, vehicles, or supplies associated with the home occupation outside the dwelling.***
 - 3. There shall be no display of products visible in any manner from the outside of the dwelling.***
 - 4. There shall be no change in the outside appearance of the dwelling or premises or any visible evidence of the conduct of a home occupation.***
 - 5. No advertising signs shall be permitted.***
 - 6. No one other than members of the immediate family residing in the home shall be employed in the conduct of a home occupation.***
 - 7. The use shall not create greater pedestrian or vehicular traffic than normal for the neighborhood.***
 - 8. The use shall not require additional off-street parking spaces for clients or customers of the home occupation.***
 - 9. No home occupation shall cause an increase in the use of any one or more public utilities (water, sewer, and garbage collection) so that the combined***

total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.

- 10. The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises other than vans regularly involved in commercial delivery such as United Parcel Service, Federal Express, or the United States Postal Service. The applicant may use his/her personal vehicle, provided it does not exceed three quarter (3/4) ton, for deliveries.*
- 11. No motor power other than electrically operated motors shall be used in connection with a home occupation. Home occupations shall not involve the use of electric motors of more than three (3) h.p.*
- 12. No equipment or process shall be used in a home occupation which creates noise, glare, vibration, or fumes, or odor detectable to the normal senses off the property.*
- 13. No equipment or process shall be used which creates visual or audible electrical interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises.*
- 14. No commercial telephone directory listing, newspaper, radio, or television service shall be used to advertise the location of a home occupation to the general public.*
- 15. Examples of home occupations permitted under this section shall include but not be limited to painting, sculpturing, writing, sewing and tailoring, individual tutoring, computer programming, home crafts without on premise sales, secretarial service, telephone solicitation work and answering services, and home cooking, baking and preserving.*
- 16. Under this section, a family child care may have up to five (5) children at any one time. The care of additional children shall require a conditional use permit under paragraph b. below.*
- 17. If the home occupation is the type in which classes are held or instruction is given to more than one person at a time, there shall be no more than five (5) students or pupils in the dwelling unit or on the premises at any one time. No more than two sessions shall be held daily.*

Council Member Busby thought the neighborhoods have the sanctity of the zone the bought into. They should have the right to control their destiny. There could be an elephant in the room that would affect the entire city.

Mayor Merrill said it is an education process.

Council Member Busby was ok with the sunset clause proposal.

Council Member Benfield was like Council Member Busby; she was on the fence. She would like to hear more from the City Attorney and City Staff. She is seeing the possibilities of the practice expanding. She referenced the folk dance festival as a volunteer (non-profit) event. Conditions could be a possibility like parking, etc. She was concerned with the practice spreading to all neighborhoods in the City.

Mayor Merrill reviewed the rentals on 2nd South. All the old homes have been bought by out of town owner and use them as rentals. The fear is the rentals will go downhill. He thought the owners living in the home would make the difference.

Discussion on the awareness of the current law. Council Member Flora said the business application could require paying the state bed tax. Council Member Benfield was ok with trying the sunset clause with conditions like owner occupied, safety inspections, etc.

Council President Smith said that by declaring part of the home as a business on your taxes; that portion of your home could not be part of the home owner's exemption. When you sell your house, an IRS document declaring the percent of the home used as a business will be required.

Council Member Benfield asked Police Chief Turman about his concerns on security, etc. Chief Turman was concerned with hotel vetting process, etc. The biggest concern is the fact that criminals do use the Airbnb system as the perfect traveling system. If we had a bank robber; where do we go to check his housing possibilities, etc. Mayor Merrill said business registrations would be required to track Airbnb locations.

Council Member Wolfe asked if everyone had seen the proposal noted below from the committee on how to manage Airbnb's. His number one concern was the protection of the City.

- 1. Home Occupation Businesses are required to register with the City of Rexburg and they must comply with all local, state and federal laws.*
- 2. Home occupation is conducted by the applicant, who resides on the premises.*
- 3. Short term rentals shall be limited to two sleeping rooms and the owner shall carry liability insurance for short term rentals. The residence must have an occupancy permit meeting building safety requirements for occupant ingress and egress from the bedrooms in the residence.*
- 4. The use shall not require additional off-street parking spaces for clients or customers of the home occupation. Short term rentals are required to provide one additional space for each bedroom offered for short term rentals in addition to the residences' approved off-street parking.*

He asked "Where do you draw the line". He was not sure. He was concerned with going down the same road as other cities that are now changing their position to dis-allow Airbnb's. He personally found owner occupied units with a maximum of two bedrooms would work. You can't protect everyone with laws.

Council Member Flora said a couple who have done this business for a few years have slowed from every night to a couple of times a week. There are City Council members sitting on the fence.

Council Member Mann's biggest concern was changing the zone where people had bought houses where apartments were dis-allowed.

Mayor Merrill said the neighbors on West Main Street in Medium Density Residential Zoning are not fine with the Airbnb proposal in their neighborhood. He suggested to treat everyone the same. It is not fair to let people in an MDR Zone to have the opportunity to use Airbnb and dis-allow the opportunity in the Low Density Residential 1 Zones.

Council Member Wolfe said a code change would allow the practice to expand. He would support the idea of owner occupied.

Mayor Merrill said the city needs to treat everyone the same.

Council Member Mann reiterated his concern to change the rules after the fact.

Mayor Merrill said we need to decide what we are going to do. To change the code or not. He suggested putting together a compromise to be presented at the Planning and Zoning Commission in a public hearing.

Melanie Davenport said while listen to the discussion, she put together a list in columns for yes's, no's and more information needed for a bed and breakfast:

Yes	No	More Information Needed
Primary residence of owner Owner occupied Rented a few times a week All participants vetted Only a few residences in one neighborhood Subject to fees, taxes, inspections and Business license required Clear definitions Off-street parking Maximum of two bedrooms Nuisance ordinances adhered to	Entire house rented Extra traffic Noise Dynamically changing the neighborhood Many houses in one neighborhood Preempted by HOA Commercialization of neighborhood Law enforcement concerns including: Criminals who attempt to stay undetected Superficial vetting processes Why have zoning at all if the lowest zones are allowed commercial uses City wide effect	How to best protect the city Density - which zones to allow Property rights Legal issues Future subdivisions created with vacation rentals in mind Large homes with many sleeping rooms Conditions with a sunset clause Neighborhood approval Overlay

YES

1. Primary residents of owner
2. Owner Occupied
3. Rented a few times a week
4. All Participants vetted
5. Only a few residences in one neighborhood
6. Subject to fees, taxes, inspections and business licenses required
7. Clear definitions
8. Off-street parking
9. Maximum of two bedrooms
10. Nuisance ordinance adhered to

NO

1. Entire house rented
2. Extra traffic
3. Noise
4. Dynamically changing the Neighborhood
5. Many houses in one neighborhood
6. Preempted by HOA
7. Commercialization of neighborhood
8. Law enforcement concerns including: criminals who attempt to stay undetected
9. Superficial vetting processes
10. Why have zoning at all if the lowest zones are allowed commercial uses
11. City wide effect

More Information Needed

1. How to best protect the city
2. Density – which zones to allow
3. Property rights
4. Legal issues
5. Future subdivisions created with vacation rentals in mind
6. Large homes with many sleeping rooms
7. Conditions with a Sunset Clause
8. Neighborhood approval
9. Overlay

Council Member Benfield said the overlay proposal was confusing.

Council President Smith said St. George is doing an entire subdivision for Airbnb’s and stopping the Airbnb’s in residential neighborhoods.

Council Member Mann reviewed the problem of changing the rules after people have purchased their homes.

Mayor Merrill proposed to bring the discussion of these items talked about tonight to the public for discussion.

Another Work Meeting at 4:00 PM next week.

Adjourned at 6:02 P.M.

APPROVED:

 Jerry Merrill, Mayor

Attest:

 Blair D. Kay, City Clerk