

City Council Meeting

November 04, 2009



CITY OF
REXBURG
America's Family Community

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November 04, 2009

Acting Mayor Christopher Mann

Council Members:

Christopher Mann – Council President
Rex Erickson Randy Schwendiman
Bart Stevens 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 P.M. City Hall – Pledge to the Flag

Roll Call of Council Members:

Council Member Woodland, Council Member Erickson, Council Member Stevens, Council Member Schwendiman, Council Member Stout, and Council President and Acting Mayor Mann were in attendance.

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

Items for Consideration:

A. Resolution 2009 – 16 Canvas the vote for the 2009 City Council Elections – City Clerk

Mayor Mann referred to Resolution 2009 – 16 to canvas the vote for new City Council Members:

RESOLUTION NO. 2009-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REXBURG, IDAHO, CANVASSING AND DECLARING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION HELD IN SAID CITY ON TUESDAY, NOVEMBER 3, 2009

WHEREAS, all nominees for the offices of Councilpersons for the City of Rexburg, Idaho, have heretofore been nominated as provided by law, said nominees being as follows:

*Nominees for Councilperson for a four-year term
(Three Vacancies)*

<i>Christopher J. Mann</i>	<i>758 Yost Street</i>
<i>Christopher West</i>	<i>330 East 1st South Apt # 3</i>
<i>Bruce Sutherland</i>	<i>126 Birch Avenue</i>
<i>Donna L. Benfield</i>	<i>201 Millblow Road</i>
<i>Lynn M. Betts</i>	<i>66 North 1st East</i>
<i>Kelly H. McKamey</i>	<i>87 Douglas Drive</i>

and a 1st and 2nd Notice of Election of said election having been duly published in the Rexburg Standard Journal, Rexburg, Idaho, as provided by law; and

WHEREAS, the Clerk of said City has caused ballots containing the names of the candidates for said office to be printed as required by law; and,

WHEREAS, after the due and legal election held in said City on November 3, 2009, the Judges of said election have made their returns thereof and this City Council has found that in all manner said election was conducted according to law and has canvassed the same.

NOW, THEREFORE, BE IT RESOLVED BY THE
MAYOR AND CITY COUNCIL OF THE CITY OF
REXBURG, IDAHO:

That the City Council of the City of Rexburg, Idaho, sitting as a canvassing board and having before it the proceedings and returns from the General Municipal Election held in the City of Rexburg, Idaho, on Tuesday, November 3, 2009, does hereby canvas and certify the returns of said election and the results of the voting as shown on Exhibit A.

That said election was duly held during the hours prescribed by law and at the polling places designated.

That the number of ballots cast corresponds with the check list of the voters.

*That Donna L. Benfield, candidate for the office of **Council person**, received 1,545 votes and is hereby declared to be duly elected as a Councilperson for a four year term.*

*That Christopher J. Mann, candidate for the office of **Council person**, received 1,325 votes and is hereby declared to be duly elected as a Councilperson for a four year term.*

*That Bruce Sutherland, candidate for the office of **Council person**, received 1,086 votes and is hereby declared to be duly elected as a Councilperson for a four year term.*

*That the City Council of the City of Rexburg, Idaho, shall issue **certificates of election** to Donna L. Benfield, Christopher J. Mann, and Bruce Sutherland, for four-year terms as Council people of the City of Rexburg, Idaho.*

PASSED by the Council on November 4, 2009.

SIGNED by the Mayor on November 4, 2009.

*Christopher Mann
Acting Mayor*

ATTEST:

*Blair D. Kay
City Clerk*

Council Member Erickson moved to accept Resolution 2009 – 16 canvassing the vote for the 2009 City Council Elections as stated; Council Member Schwendiman seconded the motion; all voted aye. **The motion carried.**

B. Review candidates for selection (appointment) to the office of mayor – City Council

Mayor Mann read a letter stating he was removing his name for consideration to be mayor.

Council Member Stout was impressed with those who applied. After reviewing the candidates, he was not convinced there was a single best candidate “on who to go for” for the position. Therefore, he thought the mayor’s position could be filled within the City Council.

Council Member Schwendiman was very grateful for all of those people who applied for the position. He was glad to see citizens in this wonderful community were involved and willing to take part. He read all of the résumés and he sat in on the meeting where the candidates presented their information to the City Council and the public. He appreciated everyone’s participation.

Council Member Stevens mentioned the new City Council room was needed for larger gatherings like this meeting. He said “if you build it they will come” referring to the new facility. He appreciated those who have expressed interest in student government including Council Members Stout and Schwendiman. He was excited and enthused to see the amount of people attending the meeting verses the normal meeting attendance of five or six people. There are a lot of things transpiring and a lot of business takes place in city government with little outside interest. He indicated it was exciting for all of the City Council to seeing those who have expressed interest in being involved. He encouraged all of those who have expressed interest to continue to maintain that interest and be involved in the process and run for City Council/Mayoral elections in two years. It was so impressive to see the qualifications of folks who were willing to lay down other things they were in the middle of coming forward (including those on the City Council, community, and those running in the previous/current City Council/Mayoral election campaigns.) He was excited about the process and he hoped for a good discussion at the meeting

tonight. He knew the solution the City Council comes up with will not fit everyone. He referred to the past mayor's "State of the city address" at the Legacy Flight Museum at the airport a year or so ago. It was an eye opener being one of his first experiences in politics. Mayor Larsen gave the state of the city address at the event and Council Member Stevens explained when there is a weighty matter in front of the City Council, about 50% of the people want the vote to go one way and the other 50% want the vote to go the other way; so, it only takes two votes to offend everyone in town. He hoped regardless of the outcome, everyone could rally behind the City of Rexburg and understand everyone involved here is doing the best they can for the city and the citizens of Rexburg.

Mayor Mann stated it is important the City Council do what they think is the very best for Rexburg. It is our obligation to choose a mayor we think is the best for Rexburg. He knew the decision would not make everyone happy. He referred to a quote for President Gerald Ford "If you don't want to get into politics, you can be a shoe salesman in Ohio". Whether you think this is politics or not, you have to worry about who agrees with you and who does not agree with you. He met with Donna Benfield a week after the interviews and he told her, she would be his 2nd choice for mayor. Now, he thought Donna would be a good choice for mayor of the City of Rexburg. He was also impressed with Scott Ferguson, who would be his second choice for mayor; Donna would be his first choice for mayor. He appreciated what everyone has done. He will support whoever is selected as mayor.

Council Member Erickson agreed with the comments expressed by some up to this point. He said it is too bad Mayor Larsen is not here. He wanted to thank Mayor Larsen personally for getting the City Council into this situation; however, he did and there is nothing the City Council can do about it except the responsibility that comes with the City Council's office. We can sit here and wish we had an open election to select the mayor. He said "Believe me, there will be an open election two years from now". The results of the election will reflect what the people in town want. At the present time it is up to the City Council to make that decision. The last three weeks have been pure hell from a lot of directions. He showed the Chief of Police a letter tonight he had received over this situation. He got the letter a couple of weeks ago concerning the mayoral appointment. He thought the Chief of Police should know what is going on. There is a lot of animosity out there; believe me. That does not deter the fact that the City Council has the responsibility. When the City Council makes that decision tonight, whoever it is, he thought it would be bad for anyone to disagree; you can always disagree without being disagreeable. So, just keep that in mind.

The City Council Members have spent hours individually the last little while digesting the information provided by the thirteen candidates who applied. As a City Council member, he wanted someone to be mayor for two years. If they did not want to run for mayor in two years, that would be fine. If someone doesn't get in tonight and they want to run in two years, then that is fine. He indicated the city needed some good strong leadership in a lot of positions (areas) within the city; it was his opinion, whether anyone liked it or not. He did not infer everyone on the City Council felt the same way. He stated no one was a better friend than Mayor Larsen. He supported Mayor Larsen from day one and he supported him while he was in office; but he had some qualities in him that Council Member Erickson did not appreciate in the city. One concern was the city offices being run like a country club.

Council Member Erickson did not like that approach and he discussed it with Mayor Larsen a number of times. Whoever is put in to the mayor's position tonight will address that situation. He thought some of the city personnel may take exception to whoever goes in to the position because of the change needed to move the environment away from a country club atmosphere of coming and going as you want and watching expenses.

It is going to take a very assertive individual to draw that in and make it work. He thought when the City Council approved whoever it is (him or her); they would demand to have a change. With that in mind, he thanked everyone who applied. He indicated we spent a lot of hours going over it. When this comes out tonight, whoever it is; he requested everyone support that individual.

Council Member Woodland expressed thanks for each City Council Member and Mayor Mann's remarks. He appreciated the quality of the applicants. He was impressed with the résumés of some really great people. They are good and honest people who want to serve the City of Rexburg as he does as well. He has a great faith in the City Council and he is convinced the decision of the City Council will be the best for the City of Rexburg. He said this so the people might know that we are doing the very best we can and we have your very best interests in mind. Mayor Mann referred to City Attorney Zollinger to go over the protocol for proceeding with the process of selecting an interim mayor.

City Attorney Zollinger provided a handout reviewing the process for selecting a mayor by appointment. He asked if there were questions relating to the procedure. These are the issues raised over the last several weeks dealing with how the process would take place. Mayor Mann asked to read

the first paragraph and he summarized the remainder.

§ 50-608. Vacancy in office of mayor

In case of a temporary **vacancy** in the office of **mayor** due to absence or disability, the president of the council shall exercise the officer [office] of **mayor** during such disability or temporary absence, and until the **mayor** shall return. When a **vacancy** occurs in the office of **mayor** by reason of death, resignation or permanent disability, the city council shall fill the **vacancy** from within or without the council as may be deemed in the best interests of the city, which appointee shall serve until the next general city election, at which election a **mayor** shall be elected for the full four (4) year term.

Question 1: Is it true that the president can vote only to break a tie?

Answer: No, it is not true that the president can vote only to break a tie. If the president is a member of the assembly, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, speak in debate and to vote on all questions.

Question 2: Isn't it true that a member who has a conflict of interest with respect to a motion cannot vote on the motion?

Answer: Under the rules, no member can be compelled to refrain from voting simply because it is perceived that he or she may have some "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or pecuniary (monetary) interest in a motion under consideration not common to other members, the rule is that he *should not* vote on such a motion, but even then he or she cannot be *compelled* to refrain from voting.

After concluding reading portions of the document and asking City Attorney Zollinger for any other comments or direction, Mayor Mann asked if anyone would like to make a motion for an appointment to the office of mayor.

Council Member Stout indicated he would like to make a motion; however, first he would like to clarify what he had expressed earlier. As we have gone through this process, he has looked through the résumés and applications very closely. There are a lot of impressive people who have done great things with their lives (great experience with great qualifications). In making this decision, the City Council needs to make with who we feel is the best person. He has confidence in the City Council to do this. It is not to the detriment of anyone who has applied or who is interested in the position. The fact is we can only choose one person and we have to do what we can. He feels most comfortable appointing someone who he knows well, someone he has worked with; and that is the motivation for his comments on saying the selection should be someone who is on the City Council. With that explanation:

Council Member Stout moved to appoint Council Member Richard Woodland to be the Mayor of Rexburg; Council Member Erickson seconded the motion; Discussion: Council Member Stevens indicated he did not know the motion would come this quickly. He felt he should say he could support Richard Woodland. Council Member Stevens indicated Richard Woodland is as good and honest of a man as he has known. He hated the situation of no consideration; noting there has been consideration referring to Donna Benfield's community support. He referred to the previous day's City Council elections where Donna ran for City Council and won. She has run for mayor in the previous mayoral election. He can support that election. He would like to see unanimous support for someone; however, he would vote for Council Member Woodland in the interest of showing unanimous support. He noticed in the City Council debates the other night Mayor Sutherland mentioned he was unanimously appointed in a previous City Council mayoral appointment. Council Member Stevens felt that was important.

Mayor Mann understands the desire to have a unanimous decision. He wishes it could be that way. He thinks a Council Member has to vote what he thinks is best and he has to do it. It is not a dislike of another person; it is a commitment doing what this simple little rule says. "In the best interest" if you can't vote, you can't vote. He hoped people would give him forgiveness later. Council Member Stout said the City Council has an obligation and responsibility to vote their conscious to make the best decision, the best vote that they can make. If it is not unanimous it does not matter. Whoever is appointed, long as the nominee is supported by the City Council and the community, and it will be OK. He did not think anyone on the City Council would take it personal. He could not speak for the entire City Council.

Council Member Stevens said he would do anything Council Member Woodland asked him to do 100%.

Council Member Erickson expressed reasons why Council Member Woodland's would be good in the position for the next two years. He is a very modest guy. With his previous presentation before the City Council and again tonight, he failed to tell you some of his strengths as seen that we see in him while working with him on a daily and monthly basis. He referred to Council Member Woodland as a strong conservative. He received a call from a man living in the county who has held many positions in state government. He has received may other calls from people urging him to vote one way or the other. The man living in the county said he needed to take into consideration "we are a very conservative type community." Council Member Woodland is not particularly political. He doesn't do things for the glory or for pomp and ceremony. He won't be a fluff type mayor. He will be on the job making decisions on how to run the city in the best conservative way that he can. That has interest for Council Member Erickson. This is the biggest decision in the past six years, since Council Member Erickson has been on the City Council; except for spending \$10,000,000 for upgrading the sewer system to accommodate the growth of Rexburg in the coming years. Council Member Woodland is the one the City Council put their confidence in to travel and view existing wastewater systems (plants) in California to make recommendations to take care of the growth in Rexburg. He knows the in and out workings of the plants; he knew it before and that is why the City Council appointed him to go. He will have to oversee the wastewater plant expansion. He will have to make some quick decisions in regard to the wastewater plan expansion. He understands what that project will be all about. He has had a lot of experience in life doing several successful efforts including his personal life. He is the person with experience Council Member Erickson would like to see lead Rexburg. His vote would be Richard Woodland.

Mayor Mann asked for a vote for Richard Woodland to be the Mayor of Rexburg for the next two years.

Roll Call vote;

Those voting aye

Bart Stevens

Rex Erickson

Randy Schwendiman

Adam Stout

Those voting nay

Christopher Mann

The motion carried.

Break:

C. Resolution 2009 – 17 Amending the Employee’s Cafeteria Plan including a Dependent Care Flexible Spending Account and Health Flexible Spending Account. – Richard Horner

RESOLUTION NO. 2009-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REXBURG, IDAHO, AMENDING THE EMPLOYEE CAFETERIA PLAN INCLUDING A DEPENDENT CARE FLEXIBILITY SPENDING ACCOUNT AND HEALTH FLEXIBLE SPENDING ACCOUNT EFFECTIVE JANUARY 01, 2009.

The undersigned Principal of City of Rexburg (the Employer) hereby certifies that the following resolutions were duly adopted by the Employer on **November 04, 2009**, and that such resolutions have not been modified or rescinded as of the date hereof:

RESOLVED, that the form of amended Cafeteria Plan including a Dependent Care Flexible Spending Account and Health Flexible Spending Account effective January 1, 2009, presented to this meeting is hereby approved and adopted and that the duly authorized agents of the Employer are hereby authorized and directed to execute and deliver to the Administrator of the Plan one or more counterparts of the Plan.

RESOLVED, that the Administrator shall be instructed to take such actions that are deemed necessary and proper in order to implement the Plan, and to set up adequate accounting and administrative procedures to provide benefits under the Plan.

RESOLVED, that the duly authorized agents of the Employer shall act as soon as possible to notify the employees of the Employer of the adoption of the Cafeteria Plan by delivering to each employee a copy of the summary description of the Plan in the form of the Summary Plan Description presented to this meeting, which form is hereby approved.

The undersigned further certifies that attached hereto as Exhibits A and B, respectively, are true copies of City of Rexburg Cafeteria Plan as amended and restated and the Summary Plan Description approved and adopted in the foregoing resolutions.

NOW THEREFORE, the City of Rexburg does hereby accept and adopt the Cafeteria Plan including a Dependent Care Flexible Spending Account and Health Flexible Spending Account effective January 1, 2009.

RESOLVED this 4th day of November, 2009 by the City Council, City of Rexburg, Idaho.

SIGNED BY:

Mayor

ATTEST: Blair D. Kay
City Clerk

PASSED by the Council on November 4, 2009.

Finance Officer Horner explained section 25 of the Employee’s Cafeteria Plan. This amendment is for house keeping. Council Member Schwendiman explained it would be paid by employees as a salary reduction. The summary plan document will be distributed to employees after passage. It is all voluntary.

Council Member Stevens moved to approve Resolution 2009 – 17 Amending the Employee’s Cafeteria Plan; Council Member Schwendiman seconded the motion; all voted aye. **The motion carried.**

D. BILL 1035 Amend the Downtown District Redevelopment Plan “Hemming Site”
(First Reading on Calendared BILLS)

Finance Officer Horner explained the upcoming public hearing on the ordinance December 02, 2009. The plan will merge Hemming's Development into the Downtown Redevelopment District. The funds will be universally available in this Downtown Redevelopment District from new building construction.

Council Member Stout moved to first read BILL 1035 Amending the Downtown District Redevelopment Plan "Hemming Site"; Council Member Erickson seconded the motion to first read BILL 1035; all voted aye. **The motion carried.**

Presentations: - NONE

City Council allowed for all scouts in the room to introduce themselves.

Committee Liaison Assignments for 2009:

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

Council Member Mann did not have a report.

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

Council Member Erickson did not have a report.

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

Council Member Stevens reported on the Airport Board: The lighting project will begin on Monday, and airport cleanup has been taking place. The Mayor's Youth Advisory Board met and they are planning to work on the space above the City Hall as a youth center. They hope to get input from the Madison High School students. They are planning to move forward with youth center at city hall with voluntary labor and materials.

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

Council Member Schwendiman did not have a report.

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

Council Member Woodland reported the Tabernacle Concert is coming up for thanksgiving. The fund raising effort for Tabernacle windows is moving forward. The window casings (wood) are decaying.

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

Council Member Stout did not have a report.

Acting Mayor Mann asked the City Clerk to swear in **the new mayor of Rexburg:**

Official Oath

STATE OF IDAHO,

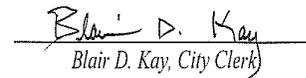
} SS

County of Madison

I, Richard Woodland do solemnly swear (or affirm) that I will support the
(Print Name of Elected or Appointed Official)
Constitution of the United States and the State of Idaho, and the Laws and Ordinances of
Rexburg City, and that I will to the best of my ability, faithfully perform the duties
of the office of Mayor in Rexburg City, Madison County, Idaho, during
my continuance therein, so help me, God.


(Signature of Elected or Appointed Official)

Subscribed and sworn to before me this 04th day of November, 2009.


Blair D. Kay, City Clerk

Mayor Woodland took his place as Mayor of Rexburg on the Dias.

Council Member Erickson complimented Mayor Mann for his services as acting mayor.

Public Hearings:

- A. 8:00 P.M. BILL 1014 (TOWING and BOOTING) – Staff**
(The BILL is up for 2nd Reading)

City Attorney Zollinger provided some history on the towing and booting issues.

Council Member Stout asked for the starting date for changes to towing and booting in BILL 1014. City Attorney Zollinger explained the visitor parking changes would take effect Sept 01, 2010.

Mayor Woodland opened the public hearing.

Those in favor of the proposal:

Ken Durrell represents general management for Cambridge Court with 80 apartments on 417 West Main Street does not understand the proposed Towing and Booting Ordinance.

City Attorney Zollinger explained the changes for signage requirement, licensing, visitor parking, minimal visitor parking established and time frame for visitor parking. Bill 1014 has been presented in past years. BILL 1014 establishes the minimal number of visitor parking stalls and time frames giving opportunities to visitors. It has placed restrictions on towing and booting. This requires (Agent) direct input from a manager that is not affiliated with the towing and booting company to do away with predatory booting for certain hours. It will also require (Visitor Parking) at 5% as part of the change. The signs stay the same 18X24 for primary signs and 12X18 for secondary signs. Partial pay is proposed for boots using a (bond payment) until it has been appealed. The towing company will provide the form to appeal. If the appeal fails the required full payment would be due. The penalty of \$25.00 should come out of the ordinance. The City Council will not regulate towing fees. There will be a secondary proposal in the future for snow removal towing.

Mr. Durrell asked if the ordinance is city wide. City Attorney Zollinger explained it takes into account all residential and commercial facilities using towing and booting.

Attorney Phil Packer representing BYU-I mentioned competing interests. He hoped best choices are made. People parking illegally are not protected.

Group 1 – people saying I did not know. This one can be addressed by signage and education.

Group 2 – people knew however, it was a calculated risk. They should not be protected.

Group 3 – people say there was a reason and you should forgive, because I was giving blessings, cookies, etc. These are the ones that cause the problem. We must decide how to deal with them. (Let the manager decide) Financial interest has less judgment. Rules are rules; however, this act does require 5% visitor parking. Some developments have extra parking. Visitor parking could be effective. In closing, the University is a player and wants to participate in the constructive solution.

Neal Campbell – BYU-I student who was towed illegally sparked his interest. Two years ago he served on student council. Visitor parking is towed before curfew by complex owners, managers, and towing companies. Mr. Packer stated there is a conflict of interest when money is introduced. When there is money involved, the interest becomes predatory towing, waiting for someone to tow. He was towed in a girl's complex. He parked in a parking spot; when he came out, his car was gone. The parking lot only had 2.97% visitor parking. He was hung up on twice by the towing company. A lot of students would have paid the fine without contesting it. He does support the bill. It allows more people to have control. It may not be easy to go out at 11:30 P.M. to authorize a tow but it is the job of the manager. It is in favor of the vast majority of the public. Towing and owners make the money.

DJ Barney at 410 West 1st North helped create Ordinance 911. His company fixed the problem internally. He has driven a tow truck for several years. The towing business is very energetic. Predatory towing is the cancer of the industry. For one bad thing we do it takes away 100 good things we do. He has received many thank yous and also hate mail from towing around the University. He agrees with the excuses noted by the University.

DJ Barney is in favor of the ordinance. Someone would always be there having authority to make decision.

There are times cars need to be towed. His problem with BILL 1014 comes down to a 48 hour contact rule on pages 6-7. It is the same as Law enforcement. The state police use “**due diligence**”; he asked to add “due diligence.” It is easy to notify an in state vehicle. An out of state vehicle like California licenses may take two weeks to get information on the car. He would like to get rid of the 48 hour rule. The Industry standard is 50% of normal fee instead of \$25.00. Council Member Stevens asked about the notification process to find the car. The driver is notified on the parking lot signage or dispatch is notified.

Neal Campbell asked what constituted due diligence? It varies, others will determine.

DJ Barney asked to have a possessory lien when they have the car. Storage would accumulate after 24 hours. He does not discount DUI, Insurance companies, etc.

Those Neutral to the proposal:

Kelly McKamey at 87 Douglas Drive asked to hand the towing issue over to the University. City Attorney Zollinger said there is a percent of housing that does not have any affiliation with the University. Mr. McKamey said it is not the responsibility of the city to solve these problems.

Dan Larsen from Logan, Utah complained about trying to control private property. Predatory towing is the right of private business. He suggested sending it back to the private sector to let business take care of business.

Those Opposed to the proposal:

Robert Scott at 440 South 2nd West is a student manager who expressed opposition; he said it was a private property owner problem. The same excuses from the same person get old. There are not a ton of people getting towed. People should just obey the signs. He made a comment on an article in the Scroll, Oct 27, 2009. The article made the comment to the effect of giving a charge of trespassing instead of being towed. He would rather have his car towed than to have trespassing on his record; for the most part students are really good. There are two sides to the whole thing. He has placed cones where students have still parked. It bothers him when he has to go out after curfew to check whether a car shouldn't be there. He didn't see any problem with Ordinance 911.

Council Member Stevens asked if BILL 1024 covers towing and booting up to curfew. City Attorney Zollinger explained it applies until 1:00 P.M...

Ben Bruebaker at 520 Yale Avenue has managed Sunrise for 1 ½ years. His tenants are paying for a parking spot. With this ordinance there will still be issues with students. Predatory parking and towing is trying to make money off students. Walking is the emphasis. He is worried about his tenants already paying for parking and needing to park. Having to walk around every fifteen or twenty minutes to make sure there tenants have parking spots its ridiculous; they hire towers to check for the managers because that's their job.

Darren Helm at 223 Ricks Avenue said there is no easy fix. He has towed a guy five times. Main Street requires a parking agreement. The bill is not the key to our solution. Making it harder to tow will not fix the problem; education is the key. He tries to make a living the best way he can.

Comment from the audience: Why aren't towers, who are more familiar with the law than students not obeying visitor parking law?

DJ Barney said it is the city's problem with parking complaints with towers. The city is spending money on it all of the time. We are here to have the city help the towers regulate themselves. The University and towers can do more. He does not want to have to determine if the lot's legal before he tows. He believes it is the private property owner's responsibility to make the lots legal.

Linda Delanco is a member of Kevin Miyasaki's Committee on towing and booting for the University. The committee had some likes and dislikes concerning BILL 1014. They had some recommendations submitted to City Attorney Zollinger. The committee later met with Attorney Phil Packer. The proposed ordinance is not the solution at this time. She said it comes down to two sides, the owners/managers verses students. The owners and managers need to be aware of the ordinance and the rules. Students need to be educated to follow the rules.

Council Member Stevens asked which portion of the BILL she opposed. She believes it is more of a private property issue. She is opposed to being dictated to be the signoff agent. Predatory towing is an odd term. The hours supported curfew hours. It is a full time job. They contract with the towers and she tries to keep residents happy. Council Member Stevens said those towed are sent to the city to resolve complaints. Sign off is the biggest objection. Manager's signoff is her problem. Council Member Stevens indicated both towing companies and property owners have said "go talk to the city." There needs to be some continuity.

Cindy Sharp at 4034 Molly Drive is a manager at Colonial House. It is one of the lucky ones to have about 50-70 extra spaces. If there were so many extra spaces, why do they need to go through the extra expenses? Council Member Erickson had a few questions concerning her letter. He appreciated her good work. His commercial property is patrolled and half the cars that get towed are parked illegally. Violators park on his boy's lot go to Colonial House. His complaint for six years is that the vocal minority (who get towed) speak up and they are the ones who request City Council change the ordinance. He appreciated Cindy's letter.

Lynn Betts said they should not have to comply. If you assign parking spots, managers have to constantly deal with problems. The problem should be turned back to the property owner.

Heather Johnson owns Sunrise Village parking. She said since parking has changed to University parking there are people that need short term parking in order to go to the Snow Building to drop off music instruments, etc. Her concern was if there is visitor parking, they will use their visitor parking to go to the snow building. People will still choose to park illegally. Visitor parking will not do a lot of good. It is great to let the students walk. Visitor parking would be a mistake. She is against manager signoff. Her solution is to use an appeal process. Pay \$50.00 non-refundable if they lose the appeal. They can appeal because it gives them a voice. If they win the complex pays the \$50.00 and the tower refunds the towing fee.

Council Member Erickson commented that people are responsible for their actions. He mentioned his speeding through the years. He has never been stopped by a patrolman when he was not violating the law. He does not blame the police officer when he gets a ticket; he blames himself. He believes the mistake comes from not teaching the students the responsibility that comes with parking responsibly. He concurred with Mr. Betts; the city does not need to be in the parking enforcement business. If there is police action needed at the towing time, the police department can handle it.

Mrs. Johnson agreed completely with Council Member Erickson. If they could just say sorry and not park there again the problem would go away, but the problem keeps coming back.

Council Member Erickson changed his mind with going to President Clark with the parking problems; now he will be going to Attorney Packer with parking complaints instead of having the city in the first place.

Mrs. Johnson suggested using small claims court. Landlords pay 40% of property taxes; she pays \$48,000 for her complex.

Council Member Schwendiman referred to the popcorn paper we make national news towed with empty parking lot. And that is why the problem keeps coming back. He leans toward free enterprise. Treat the same as other property owners.

A complex manager in the audience who has been through the process explained that complex managers are told to go the city; however, the towing companies contradict themselves because they are so willing to tell the managers to go to the city.

Discussion on the need to follow the law for towing companies and people parking illegally.

Virginia Pratt at 632 Dell Drive said it's either marked or not marked; take it as a learning experience. If you park illegally, you take a chance.

Cambridge Park does not support the bill.

Mayor Woodland closed the public hearing.

Council President Mann said it is a city problem because the citizens came to us. 2,300 citizens signed a petition concerned with the problem. It is a police problem, because of fist fights and the dangers facing citizens. There was a recent complaint by a mother whose daughter walked eight blocks to get her car out at 1:30A.M. and she couldn't get it so she had to walk back; now there is an upset parent. However, he was not saying the girl should have done that; he believes it is reasonable compromise. He runs a business with requirements. The college supports it and he is in favor for the compromise.

Council Member Stout referred to Ordinance 911 and contracts. He said the city is into the issue as far as it should go. He would not support the bill.

Council Member Schwendiman would like to do away with this BILL. The complaints will never go away.

Council Member Erickson referred to a blog from a grand daughter in Washington DC. The first week her vehicle was towed twice. His grand daughter was parked illegally. Other areas in the east have horrendous parking problems. They are still with the same problem they had six years ago. New people come to Rexburg every few months who need trained on parking. He asked to second read tonight. The next meeting they can make exactly what changes they want and if there is no changes they should vote.

Council Member Erickson moved to 2nd read BILL 1014; Council Member Mann seconded the motion; Roll call vote:

Those voting aye
Bart Stevens
Christopher Mann
Rex Erickson

Those voting nay
Adam Stout
Randy Schwendiman

The motion carried.

5 Minuet break

Staff Reports:

Public Works: – John Millar

Public Works Director Millar reviewed the following projects.

1. Waste Water Treatment plant influent step screen. The current screen is failing. The plan is to bid next week. The overall project plan is at the 30% phase.
2. Pioneer Road paving is completed with some tie in finishing tomorrow. The new road will open next week. The stop light is moving forward.
3. The Hawke Signal is waiting for an adapter base being fabricated.
4. 12th West rebuild is being designed. Paving can be done with grant money.

Other road/culvert work, water/wastewater extensions, etc. may be done with city staff.

5. Airport study has been sent to FAA. Contract for about \$120,000 pending.
6. Airport runway lighting will start Monday.
7. 7th South signal at 2nd East is moving forward with financial commitment pending.
8. Storm drain 7th South project piping is connected with backfill pending.
9. Storm drain pond on 7th South and 4th West is being bid next week. It needs to be operational for the spring runoff.
10. 2010 Street plan was presented to the City Council for review.
11. Main Street signals are being planned for Center and 1st East.

Council Member Erickson reviewed the width of 12th West at 24 feet. It could be widened an additional two feet on each side of the road. There is a grant for \$450,000 to help on the 12th West rebuild. He reviewed the Main Street set aside money as money that could be used to help with the 12th West rebuild. Council Member Schwendiman suggested fixing 12th West the first time to reduce costs in the future. The field survey for 12th West has not been started. Council Member Erickson would be in favor of moving Main Street funding to 12th West. Council Member Stout would support using the Main Street funds too. He mentioned Valley River Drive needing some street repairs.

Council President Mann reminded the City Council that they made a commitment to finish the Main street project.

Council Member Schwendiman asked to consider ending the reverse angle parking.

Mayor Woodland said reverse angle parking is a novel idea; however, it will be a training problem every three or four months. They have had a lot of complaints. Public Works Director Millar explained it was part of the parking plan around the University. Council Member Schwendiman asked to have it on the agenda for the next meeting.

Calendared Bills and Tabled Items:

- A. **BILL Introductions:** NONE
- B. **First Reading:** Those items which are being introduced for first reading. - NONE
 1. **BILL 1027 – Amend Ordinance 908 Temporary Sign Sections** – Staff
(Deferred to the next meeting)
 2. **BILL 1035 – Amend the Downtown District Redevelopment Plan “Hemming Site”**

Finance Officer Horner reviewed approved areas. Funds can be transferred from the Hemming Site to Main Street, as not to isolate specific site areas.

Council Member Stout moved to first read BILL 1035 Amending the Downtown District Redevelopment Plan “Hemming Site”; Council Member Erickson seconded the motion; all voted aye. **The motion carried.**

- C. **Second Reading:** Those items which have been first read.
 1. **BILL 1014 – Towing and Parking enforcement** – Staff
- D. **Third Reading:** Those items which have been second read.
 1. **BILL 1024 Amending Ordinance 926** by modifying Architectural Design Standards in Industrial Zones; modifying Architectural Design Standards; and modifications to the Architectural Design standards review process – Staff
 2. **BILL 1026 Amending Ordinance 926** by increasing building height, remove Pro-Zone, reduce parking requirements for Medical Clinics, and other substantive and non-substantive items – Staff

Building and Planning Official Val Christensen explained the changes to the BILL. He commented some of the major changes on the first 67 pages were presented at the last meeting. Council Member Erickson said some trust is in the hands of Planning and Zoning and the staff. Council Member Stevens said there are some concerns with difficulty to comply. Building and Planning Official Christensen explained the ordinance amending committee of Watson, Leikness, Dyer, Mayor Woodland, and Council Member Stevens decided some zones could be combined. He explained there were some redundant zones that took up pages in the document and they couldn't

see the difference between the two different zones. They made a decision to make the document smaller, but a public hearing is needed to make those changes.

Council Member Stevens said the effort was to make the document user friendly. It is for those coming into town, so it doesn't take a year to get familiar with the rules to start a project. The document will still contain the same basic principles and control. Building and Planning Official Christensen said there are more changes needing a public hearing. At a planning and zoning level they don't have the mixed use zones. Sexually Oriented Business (SOB) is being included. The Cell Tower Ordinance will be added. They took out detail features from the code which needed removed. They removed community features by reducing two to one. They raised building heights across the board which was approved by the Planning and Zoning Commission and the committee. Parking lots stalls were made wider; if there were parking garages, the parking stalls could be smaller.

Council Member Stevens said none of changes were made singularly. Planning and Zoning and the committee agreed together. Building and Planning Official Christensen said he had a lot of the changes done three years ago.

Mayor Woodland asked for the history of the document. Building and Planning Official Christensen said a previous employee put it together 4 ½ years ago for the City Council before it was finished. It's hard to work with contradictory items. Many parts of the code were cut and pasted from other municipalities. The planning and zoning staff went through another revision on specific items at different times; including removing Light Industrial land standards, allowing landscape strip and street to be buffered for Light Industrial.

Council Member Erickson reviewed the history of the code. The city was run and dealt by Development Code book until 2005 when Kurt Hibbert was giving the charge of updating the code. The result was a cut and paste ordinance. There is still confusion. This is an issue because of one important document to accommodate one builder. There needs to be corrections and a workable document; there is no need to pass anything until it is completed. He believes it is necessary to have a design standard, but not for every section. He supports the committee recommendations. The committee recommendations are what it ought to be, he has relied on Council Member Stevens in reviewing design and building codes. He suggested working on the development code with Henderson's addition and Kartchner's addition on the recommendation the planning committee and move forward. Later bring it forth when it is completed. It is up for third reading.

Council Member Stevens said they have worked on it since May or June. The concern is that there will be no type of design standard.

Building and Planning Official Val Christensen is comfortable with these changes to move forward. It still holds a lot of the original code.

Council Member Stevens explained typos and other clerical changes have been completed.

Building and Planning Official Christensen explained there are more changes needed; however it is heads and tails over the current ordinance. It has been shelved for three years. It was ready three years ago; however, things have changed including a ladder truck and wider parking stalls.

Council Member Erickson asked if the City Council felt the BILL's were ready for passage.

Council Member Stevens said the BILL's were an improvement to Ordinance 926. It is just an improvement to allow Building and Planning Official Christensen a workable instrument. Current Pro-Zones would not be affected.

Council Member Erickson asked if the modifications to architectural design standards in Industrial Zones are in place. Yes. Are increased building heights in place? Yes. Is Pro-Zone removed? Yes. They didn't remove any Pro-Zone; they removed the section to build a new Pro-Zone. Are reduced parking requirements at medical clinics and other substantive and no substantive items complete? Yes.

Council Member Mann asked if removing the Pro-Zone they have doctor's offices and professional plowing under the Pro-Zone. They already have a Pro-Zone.

Council Member Stout asked about changing parking stalls for Pro-Zones; noting the small isles were too tight. Building and Planning Official Christensen explained the existing Pro-Zones won't change. **Council Member Stout** asked if removing the Pro-Zone would affect commercial development. Discussion:

Council Member Mann said a Conditional Use Permit (CUP) may work on a case by case basis.

Council Member Erickson said a Pro-Zone hasn't been used except for the Hemming Development.

Council Member Erickson moved to 3rd read **BILL 1024 Amending Ordinance 926** by modifying Architectural Design Standards in Industrial Zones; modifying Architectural Design Standards; and modifications to the Architectural Design standards review process and 926 plus 3rd reading **BILL 1026 Amending Ordinance 926** by increasing building height, reduce parking requirements for Medical Clinics, and other substantive and non-substantive items; Council Member Schwendiman seconded the motion; Discussion: The Pro-Zone is cumbersome; the developer has to create their own Pro-Zone. Council Member Mann believes the Pro-Zone is a great tool for redevelopment. City Attorney Zollinger explained the PEZ was thought to substitute for the Pro-Zone; however, it does not allow flexibility needed in some developments.

Council Member Erickson amended his motion to strike "remove Pro-Zone" from BILL 1026; Council Member Schwendiman concurred;

Those voting aye

Bart Stevens
Christopher Mann
Rex Erickson
Adam Stout
Randy Schwendiman

Those voting nay

None

The motion carried.

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

Mayor's Report:

There is an Idaho Congressional Delegation meeting tomorrow night at County Court House featuring Senator Brent Hill, Congressman Dell Raybould, and Congressman Mack Shirley.

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 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 21 and October 28, 2009 meeting
- B. Approve the City of Rexburg Bills

Council Member Stout reviewed bids for a garbage truck. The truck was budgeted in 2009; however, the budget was moved to 2010. The truck was bid out and there were no bids received. Public Works Director Millar is negotiating on the cost of the garbage truck. The rush to buy the truck now is due to the availability the truck engine. New emissions standards will cost an extra \$12,000 for the engine due to upcoming EPA pollution requirements. If purchased now it is four to six months out. The department has committed to purchase the truck. Council Member Erickson asked if the city will be short on funding after taxes. It is not based on taxes it is an enterprise fund. Discussion on the engine. Caterpillar Corp. has terminated engine manufacturing due to regulations. Council Member Schwendiman asked about swimming lesson charges at the University. Discussion on gloves.

Council Member Mann moved to approve Consent Calendar with noted changes; Council Member Schwendiman seconded the motion; all voted aye. **The motion carried.**

Attest:

Richard Woodland, Mayor

Blair D. Kay, City Clerk