

City Council Meeting

September 15, 2010

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CITY OF
REXBURG
America's Family Community

September 15, 2010

Mayor Richard Woodland

Council Members:

Christopher Mann – Council President
Rex Erickson Donna Benfield
Bruce Sutherland Brad Egbert
Adam Stout

City Staff:

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

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

Troop ____ of the Boy Scouts led the Pledge.

Rachel Brutsch at 151 S 1st E Apt A10 Rexburg Idaho 83440 gave the opening prayer.

Roll Call of Council Members:

Attending: Council President Mann, Council Member Erickson, Council Member Benfield, Council Member Sutherland, and Mayor Woodland.

Council Member Egbert asked to be excused.

Council Member Stout asked to be excused.

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

Presentations: - NONE

Committee Liaison Assignments for 2010:

A. Council Member Adam Stout *Trails of Madison County · Traffic & Safety Committee · Airport Board*

Council Member Stout was excused.

B. Council Member Brad Egbert *Legacy Flight Museum · Parks & Recreation · IBC Committee*

Council Member Egbert was excused.

C. Council Member Bruce Sutherland *Museum Committee · Beautification Committee · Traffic & Safety Committee*

Council Member Sutherland reported the Museum and Beautification Committees have not met. Traffic & Safety Committee met to discuss a few issues. One important issue was the road markings at 7th South and 2nd East. The markings will need to be redone to make the outer lanes right-turn-only lanes. The committee also discussed the 5th West rail road crossing and the need for the trees to be trimmed near the tracks. They discussed fixing a few traffic signals that have gone out. The committee could also use some more members.

D. Council Member Christopher Mann *Emergency Services Board · School Board · MYAB*

Council President Mann reported Emergency Services has not met. He commented on the Veteran Memorial Ceremony last Saturday, September 11th. The Firefighters conducted the unveiling of the September 11th Memorial. He congratulated Chief Childs on the impressive

presentation. Ken Anderson spoke as President of the Emergency Services Board and did a great job. The ceremony was very well attended by City Council Members and residents alike.

Mayor's Youth Advisory Board met last Wednesday night. They are working on events including Pride Day and the Masquerade Ball. MYAB also helped last Saturday with children's games at the Farewell to the Troops.

E. Council Member Donna Benfield *Police Department · Romance Theatre Committee · Rexburg Arts Council · Tabernacle Civic Center · School Board*

Council Member Benfield reported on the Police Department. At the last meeting they discussed applicants for the new position. That position has since been filled by a reserve officer, Jimmy Cohler. She attended a training session at the station on a new substance called spice. City Attorney Zollinger discussed a new ordinance to be presented for First Reading on October 6th that will prohibit the ingestion of that substance. Spice is used by ingesting incense that creates a toxic high. Use of the substance is not illegal under current laws.

The Arts Council met last week. Chris Jacobson is still serving as President of the committee, although they are looking for a new person willing to fill that role. If anyone knows of someone willing to lend a hand, please let Chris Jacobson know.

The Tabernacle Committee met. They are working very hard; so many things are getting done. They discovered the groundbreaking was done in 1911, but the dedication took place in 1912. They have decided to hold the Centennial Celebration from June 2011 to June 2012. This will allow for two summers to celebrate the Tabernacle.

The School Board Superintendant is putting together a student committee. The committee will include five junior high students and five high school students that can provide feedback on how students view the school system. They are also working on the joint training center on school grounds that will help Emergency Services personnel.

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

Council Member Erickson reported Planning & Zoning has not met. The Rexburg Redevelopment Agency is doing well. They discussed the budget for next year. The Golf Board met to discuss their budget as well. Golf revenue for this summer has decreased from last year's revenue. September has been a good month considering the slow summer.

Council Member Benfield commented on the finance department's outstanding job with the budget report that went out as a billing insert. She has received a lot of positive comments from the public. It was easy for people to understand.

Council Member Erickson commented some found it easy to understand, but he also received feedback that it was difficult to understand. There was discussion on the way monies reported in the budget are presented to the public. Some funds are reported on the city budget when the city does not actually have the right to use of those funds, for example the monument that went it at the Veteran's Memorial.

Mayor Woodland introduced the boy scouts in attendance and welcomed them to City Hall.

Public Hearings: - NONE

Items for Consideration:

A. Review Ordinance 841 – Dog Licensing – Larry & Audra Snow

Mr. Larry Snow at 433 West 2nd South read from Ordinance 841, Section 6 **Disturbing the peace:**

It is unlawful for any person to own keep or harbor within the limits of the City, where tethered, caged or otherwise, any dog which by barking, howling, yelping, whimpering or whining, or by the making of other noises, disturbs the quiet of any neighborhood or person. Disturbing the peace determination will be made by a law enforcement officer after an investigation of said complaint. Violation of this section of the Ordinance will punishable as set forth in Appendix 3. (Ord. 841 §6, 2001).

Mr. Snow shared that a city is to follow state ordinances unless the city adapts an ordinance to meet specific local needs. He proposed that section 6 be amended to maintain what the State-level noise ordinance advises, that dog noise be controlled from 9:00 p.m. to 7:00 a.m. This

amendment would create equal criteria for noise at late hours. He stated that there are many things that cause disturbance, not just dogs. Cars, children playing, construction, and many other things create noise during the day. Dogs should not be considered any different. People have dogs for pets, as well as for protection. Dogs cannot warn their owner of danger unless they bark; current ordinances do not allow them to do so.

Council Member Erickson asked if he is recommending to not control dog noise during the day. Mr. Snow responded dogs bark whenever people go by. He said that owners can see what is causing their dogs to bark during the day and they can hush them. Council Member Erickson thinks it is more likely that dogs will need to bark to scare off intruders at night.

Council Member Sutherland shared a situation in the past where his own dog would bark all day long. He had to consider the neighbors, so they ended up giving the dog away to someone who lived out in the country. It is not good for dogs to bark incessantly. He feels the ordinance should not be changed because it states the determination will be made by the investigating officer.

Mr. Snow agreed that something should be done about a dog that barks incessantly. He feels amending the ordinance would align Rexburg with the state requirements. It is up to homeowners to be courteous enough to their neighbors that they will check on their barking dogs.

Council President Mann asked Officer Buzzle how often they issue warnings and citations.

Officer Steve Buzzle shared the officers try to give warnings the first few times. They base the decision off the amount of time the barking has gone on without a stimulus; usually around 15 minutes will prompt a citation. Generally the complaints are brought to their attention.

Council Member Erickson asked Officer Buzzle about Mr. Snow's situation. A citation was issued against Mr. Snow in response to complaints by neighbors. Mr. Snow stated in defense of his dogs that if someone stands by his fence the dogs will continue to bark. A complaint has not been made against his dogs in three months. Council Member Erickson commented that the citation fulfilled its purpose in this situation because it changed the way Mr. Snow controlled the noise of his dogs.

Mayor Woodland asked City Attorney Zollinger to comment on the city's ordinance in comparison to the state's noise ordinance. Mr. Zollinger stated that there are some time restraints for dogs, as Mr. Snow mentioned. For disturbing the peace in general, it can be enforced any time of the day if the investigating officer sees fit. The city could use the state disturbing the peace ordinance any time of the day, or they can refer to the city ordinance specifically for dogs.

Council Member Benfield commented that it is understandable to keep the noise requirements the same for day and night considering some people work nights and sleep during the day.

City Attorney Zollinger shared there have been significantly more warning issued than citations in the past fifteen years; only a small margin of approximately ten tickets have been issued to owners of barking dogs in that time. The Snow's ticket was ultimately dismissed. They understand that sometimes dogs just want to be heard.

B. Approve renewal of "Beer and Wine" Licenses – Staff

City Attorney Zollinger referenced the list of applicants wanting to renew their annual beer and wine licenses. These have all been reviewed by the City Clerk.

BEER Licenses:

ALBERTSONS #171

BROULIMS

HB BOYS LC (Chevron One Stop)

HORKLEYS SELF SERV #1

HORKLEYS SELF SERV #2

MAVERICK COUNTRY STORE

MAVERICK COUNTRY STORE

TETON LANES

APPLEBEE'S BAR AND GRILL

VALLEY WIDE COOP

JOE'S FILLING STATION, LLC

WINGER'S

WINE Licenses:

- ALBERTSONS #171
- BROULIMS
- HB BOYS LC (Chevron One Stop)
- HORKLEYS SELF SERV #1
- HORKLEYS SELF SERV #2
- MAVERICK COUNTRY STORE
- MAVERICK COUNTRY STORE
- JOE’S FILLING STATION, LLC
- WINGER’S

Council Member Erickson asked why Horkley’s needs two licenses. They have a Beer and Wine license for on premises consumption.

Council President Mann asked City Attorney Zollinger to explain the ordinance to the city residents because he is often asked about alcohol licenses. Within the city there are an unlimited number of beer and wine licenses issued. There are three categories of alcoholic beverages: malted (beer), fermented (wine), and distilled. Within city limits, a business cannot serve distilled liquor by the drink. The county does allow distilled liquor by the drink; however, there are not currently any of those licenses in use. There are also on-premises and off-premises consumption licenses.

Council Member Sutherland moved to approve the renewal of beer and wine licenses for the applicants as noted; Council Member Erickson seconded the motion; Mayor Woodland called for a vote:

<u>Those voting aye</u>	<u>Those voting nay</u>
Council Member Erickson	None
Council Member Sutherland	
Council Member Mann	
Council Member Benfield	

The motion carried.

Staff Reports:

C. Public Works: – Keith Davidson

Engineer Keith Davidson had previously been asked by Council President Mann to bring the 2010-2011 Street Projects priority list. It is basically the same list as last year with a few modifications. The City Council will be doing a drive-around to see the streets on the list on October 6th before the City Council meeting. There was some discussion about projects happening in the city that are not on the current project list.

Public Works Engineer Keith Davidson gave the status of 12th West. They have pulverized the entire road. Tomorrow they will be mixing in the cement with the material that was pulverized. Then on September 22nd the road will be shaped and paved. It should take 4 days to pave. It will be 38 feet wide at most areas. They are going to widen it to allow for a turn lane at the intersection on 7th South. There will be two 12-foot travel lanes and a 7-foot shoulder on each side. It will be a nice improvement for the residents near 12th West.

Council Member Erickson asked about putting in a round-about at the 12 West and University Boulevard intersection. A traffic light could cause traffic to back-up out to the highway. A round-about is slower, but it keeps traffic moving.

Keith Davidson stated that once traffic patterns are established then Public Works can survey the area to get a traffic count. Then they can figure out how to best proceed with developing that intersection.

Mayor Woodland commented they should move quickly. They would not have to wait to put in the round about.

Council Member Benfield shared she drove by the other morning when an officer was patrolling traffic. She asked how the patrol is going.

Police Chief Archibald said the police officers have been patrolling every morning for the past two weeks. There have still been accidents, but those are due to drivers not paying attention, not the flow of traffic. The officers try to let the traffic flow by itself; they only step in if they see it blocking the south-bound highway ramp.

Council Member Sutherland asked about the cost of engineering and constructing a round-about versus a traffic light. Keith Davidson responded the two can be comparable, depending on how elaborate the plans are for a round-about.

Council Member Erickson asked if the decision would affect funding from the state. Keith Davidson responded the state would not participate in funding the intersection either way.

Mayor Woodland asked about the status of the Wastewater Treatment Plant. The project is moving along. They are still working on putting in 1,200 stand pipes. A grid will go on top of the pipes and then the media will go in.

Keith Davidson said most of the ground is leveled out at the Riverside Aquatic Facility site. Zollinger Construction will be putting in the main sprinkler line. They were just waiting for more dirt to be brought in, so now the ground can be shaped and the sprinklers installed. There was discussion on the timing of seeding the ground. Masonry work for the curb and gutter of the parking lot will be started soon as well.

Mayor Woodland asked about the Hemming Project. Paving will be completed tonight. It will still be closed for a while because they are planning to cut into the street to pour a concrete crosswalk. After the concrete is poured it will need to sit for a week to cure without traffic.

Calendared Bills and Tabled Items:

D. BILL Introductions:

1. BILL 1054 Cable TV Franchise Agreement with Cable One, Inc.

Cable One, Inc. would like to meet with City Council to discuss the agreement. No representative is present tonight. City Attorney Zollinger clarified the city requested to use the same contract, just extending the dates.

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

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

1. BILL 1053 Electronic Pawn Tracking Ordinance

Mr. Bruce Preheim at 26 North 2nd West asked if this ordinance is only applicable to pawn brokers and pawned items.

City Attorney Zollinger stated the ordinance includes anyone who transfers funds for the holding of property. It would not affect Deseret Industries or a thrift shop where they are taking a donation of property. It is an electronic copy of records kept for lending property. This ordinance is intended to assist law enforcement across the nation to locate stolen goods.

Mr. Preheim was concerned about the new ordinance because it would not allow him to sell his purchased items for 60 days instead of 30. He was also concerned with the seven or eight minutes it takes for each entry.

City Attorney Zollinger stated there is a small inconvenience. This process will help expedite the location of stolen goods. He does not have to report the purchase of property under this ordinance, only pawned items.

Mr. Preheim suggested the time requirement for holding items after reporting be reduced to ten days, as has been the requirement with previous ordinances. Any property held as a pledge needs to be reported.

Council President Mann was concerned with creating a loophole for someone to sell a stolen item by only reporting pawned items. The public is better served if they report guns and other items. City Attorney Zollinger said it is a protection for pawn brokers to report pawned items in the event that they are stolen. There are no protections afforded to the purchaser of stolen property. You can be prosecuted for purchasing stolen items. Mr. Preheim views this as an extra expense with no benefits.

City Attorney Zollinger explained we want to implement this reporting requirement because it has been proven nationwide to be an extremely effective mechanism in tracking stolen property. The fact that Mr. Preheim has not had any stolen guns come through his shop is good fortune or good community, but we want to take advantage of other communities that are providing us with this important information for law enforcement purposes. It behooves us to join the group that participates.

Mr. Preheim asked how many items have been recovered in other areas under the use of this system by Rexburg Police. City Attorney Zollinger responded we have not been in use of this system yet; we do not have anyone registered under this system. As of a few months ago, our Police force was given access to search pawn shops in surrounding areas, but other cities are asking us why they cannot search our pawn shops for similar information.

Audra Snow had a question concerning the ramifications of purchasing pawn property. If a customer purchased something from a pawn shop that was stolen property, would they be held accountable? Customers of the pawn shop are not held accountable for knowing what is stolen.

City Attorney Zollinger stated that the longer a pawned item is held, the more likely it is Police can recover the item if it was stolen; however, we do not want to impede on a pawn brokers business. At the next meeting City Attorney Zollinger will come back with reasons for the longer period of time or with a recommendation to shorten the time an item must be held.

Council Member Sutherland moved to approve the second reading of BILL 1053 Electronic Pawn Tracking Ordinance; Council Member Erickson seconded the motion; Mayor Woodland called for a vote:

<u>Those voting aye</u>	<u>Those voting nay</u>
Council Member Erickson	None
Council Member Sutherland	
Council Member Mann	
Council Member Benfield	

The motion carried.

G. Third Reading: Those items which have been second read.

1. BILL 1052 Amend Appropriation Budget 2010

Council President Mann moved to approve the second reading of BILL 1052 **Amend Appropriation Budget 2010**; Council Member Benfield seconded the motion; Mayor Woodland called for a vote:

<u>Those voting aye</u>	<u>Those voting nay</u>
Council Member Erickson	None
Council Member Sutherland	
Council Member Mann	
Council Member Benfield	

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:

Mayor Woodland asked City Attorney Zollinger about presenting an ordinance prohibiting the use of spice or any similar synthetic substance. The City Attorney's office plans to have the ordinance prepared for presentation at the next City Council meeting on October 6th. Since their initial training on the substance 45 days ago, southeast Idaho has been overrun by it. Word spreads quickly. It has caused traffic accidents, hospitalizations, etc. Chemists are still testing the drug to see what chemical causes the high; until then the hope is to make the use of these kinds of drugs illegal and eliminate the loophole in the law. City Attorney Zollinger will give City Council Members a copy of the ordinance for their review. Surrounding areas are already working to outlaw the drug as well.

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. September 01, 2010 meeting
- B. Approve the City of Rexburg Bills

Council Member Benfield moved to approve the Consent Calendar consisting of the minutes, and the city bills; Council President Mann seconded the motion;

<u>Those voting aye</u>	<u>Those voting nay</u>
Council Member Erickson	None
Council Member Sutherland	
Council Member Mann	
Council Member Benfield	

The motion carried.

Council Member Erickson moved to go into Executive Session per Statute 67-2345 (f) to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement; Council Member Sutherland seconded the motion;

Mayor Woodland asked for a roll call vote:

<u>Those voting aye</u>	<u>Those voting nay</u>
Council Member Erickson	None
Council Member Mann	
Council Member Sutherland	
Council Member Benfield	

The motion carried.

Executive Session.

Executive Session ended.

Council Member Erickson moved to adjourn; Council Member Sutherland seconded the motion; all voted aye. **The motion carried.**

Adjournment

Richard Woodland, Mayor

Attest:

Marianna Gonzalez, Deputy City Clerk

