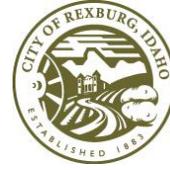


City Council Minutes

September 21, 2016



CITY OF
REXBURG
America's Family Community

35 North 1st East
Rexburg, ID 83440

blairk@rexburg.org
www.rexburg.org

Phone: 208.359.3020 x2313
Fax: 208.359.3022

September 21, 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

6:30 P.M. City Hall Council Meeting

David Davenport said the prayer.
Jadon Tietjen with troop 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.

Public Comment: not scheduled on the agenda (limit 3 minutes); issues may be considered for discussion on a future agenda. Please keep comments on point and respectful.

Presentations: NONE

Committee Liaison Assignments for 2016:

A. Council Member Mann: *Golf Board · Emergency Services Board · GIS Oversight · Development Workshop*

Council Member Mann commended the Rexburg Police Department for their service to the community and for their community outreach programs. He witnessed a Rexburg Police Officer changing the flat tire of a young lady's vehicle.

B. Council Member Busby: *· Airport Board · Traffic & Safety · Trails of Madison County*

Council Member Busby reported the committees have not met.

C. Council Member Benfield: *Police · MYAB · Parks & Recreation*

Council Member Benfield reported the committees have not met.

D. Council Member Smith: *Legacy Flight Museum · Beautification Committee · M.E.P.I.*

Council President Smith reported the Legacy Flight Museum Committee will meet on Friday.

E. Council Member Flora: *School Board · Rexburg Arts Council/ Museum of Rexburg*

Council Member Flora reported the Rexburg Arts Council met two weeks ago to discuss the different assignments each committee member is responsible for. The members have been involved

in helping with many community events including the Heritage Festival that will held on September 23rd – 24th. She asked for volunteers interested in joining the Turkey Choir.

Council Member Flora said the Madison School Board met to introduce 48 new teachers to the school district, which averages a 20% turnover rate in teachers. Today at the Burton Elementary School 200 students participated in a give me high-five “fiveathong” to show support for the High-five Grant, the City has applied for. The grant process is down to the final step and they hope the grant will be awarded to the City.

F. Council Member Wolfe: *Planning & Zoning · Urban Renewal Agency · IBC*

Council Member Wolfe reported Planning and Zoning met last Thursday. There was a request for a Comprehensive Plan Map Amendment at 141 and 135 South 2nd East from Low-Moderate Density Residential to Neighborhood Commercial/Mixed Use. The Planning and Zoning Commission approved the Comprehensive Plan Map Amendment. There was also a Conditional Use Permit request for 322 West Main to allow per the Rexburg Development Code Section 3.7.025, a “Boarding House” (i.e. nightly rentals; short-term rentals) in a Medium Density Residential 1 Zone. The request for a Conditional Use Permit for (322 West Main) was tabled due to an error in code interpretation. The Urban Renewal Agency will meet tomorrow.

Staff Reports:

A. **Finance:** - Matt Nielson did not have a report.

B. **Public Works:** John Millar

Public Works Director Millar reported the street projects for this year are being completed. The storm drain on 4th South was installed. The striping is near completion, the round-about was repaired, and the seal coating projects are complete. He said overall the street projects went well this year. The current water project is under construction; it is about 65% complete. There are four crews currently working on the water project that will help complete the project on time.

Public Works Director Millar reported on the wastewater project. There were pictures shown on the overhead screen of the pasteurization tanks, pumps, heat exchangers and other equipment being installed to the wastewater facility. He said the majority of the main equipment has been received and installed, the project is on schedule.

Public Works Director Millar reported they closed the airport for a week to seal coat, crack seal and striped the runway. The airport project was completed and successful.

Council Member Benfield asked if the ditch banks have been cleared of debris that would cause them to flood. She said the weather report is indicating heavy rain for tomorrow; she is concerned of possible flooding. Public Works Director Millar said since the flooding event two years ago the ditch banks are cleaned out monthly and documented. The new storm drain on the south side of town was installed and they are more prepared than ever before.

C. **Engineering:** Keith Davidson

Mayor’s Report:

Mayor Merrill showed a plaque that was award to the City from the Chamber of Commerce for the City’s significate contributions to the International SummerFest event. Mayor Merrill reported on the Heritage Festival scheduled for this Friday and Saturday. The opening ceremonies will start on Friday, September 23rd. President Gilbert of BYU-Idaho University will be a guest speaker followed by Lewis Clements who will give a historic account of the establishment of Rexburg. On Saturday there will a tractor parade, chili cook off, free potato bake, flag football and other activities on College Avenue. He hopes the Heritage Festival will be an annual event.

Mayor Merrill reported he spoke with two representatives with the Blue Cross Foundation. They are the representatives of the \$250,000.00 High-five Grant. The grant will be awarded to three Idaho cities. There are a total of seven cities in the running for the grant. The representatives toured Rexburg’s recreational facilities. They were informed of what Rexburg is doing to promote fitness,

healthy living and healthy eating. The representatives were impressed with Rexburg facilities and with what is being done already to make Rexburg a healthy place to live. They mentioned that even if Rexburg doesn't receive the grant, they want to partner with Rexburg to share Rexburg's story of what has been done to promote healthy living with other Idaho cities.

Public Hearings: – NONE

Items for Consideration:

A. **Town hall Discussion concerning “short term rentals”**

Written Input:

September 15, 2016

- 1) To: The Honorable Mayor Merrill and Council Members of the City of Rexburg

From: Tom Walsh
Chairman
Yellowstone Teton Territory
Region VI
Idaho Travel Council

Re: AirBnB Properties in the City of Rexburg, ID

Mr. Mayor and Council Members:

As Chairman of Yellowstone Teton Territory, I am writing you on behalf of a membership of nearly 100 tourism focused businesses, including 51 of which are lodging properties.

Yellowstone Teton Territory is a private not-for-profit tourism organization whose membership spans the six eastern Idaho counties of Bonneville, Clark, Fremont, Jefferson, Madison and Teton, covering over 7,500 square miles.

Our goals are to promote and to market eastern Idaho nationally and globally to future visitors and to promote all types of recreational activities, events and festivals not only in our region but also in the state of Idaho.

It is important to note that all lodging properties, as members of YTT, comply with all pertinent city, county and state regulations governing lodging properties, including but not limited to specificity of zoning regulations, licensing, permits, Idaho sales tax and 2% lodging tax collections as well as monthly or quarterly reporting and submission of revenues to the Idaho State Tax Commission.

YTT is a proponent of and an advocate for any tourism industry related business in this region as long as said business complies with city, county and state statutes and regulations.

Because of the significant increase of national and global tourism in this region, there is no question that the demand for lodging now has far exceeded the present inventory.

However, despite this increased presence of tourists and the burden of generating additional lodging, YTT must stand in support of each city, community and county statute and regulation and cannot condone or support the operation of non-conforming properties.

In addition to discussion regarding the City of Rexburg zoning issues for those properties operating as an AirBnB partner, as a corporate entity, AirBnB, to our most recent knowledge, does not collect the Idaho 2% Lodging Tax.

Membership of Yellowstone Teton Territory believes that to allow operation of AirBnB accommodations within the City of Rexburg in which said properties are not in full compliance with the aforementioned statutes and regulations would create an unfair playing field to all of the lodging properties which fully conform to city, county and state statutes and regulations.

Additionally, lodging properties currently conforming are zoned and/or regulated by stipulations not similar to those properties which are zoned residential, thus resulting in higher property tax appraisals and assessments, which non-conforming properties are escaping.

Furthermore, price points for stay overs at non-conforming lodging properties are not elevated by additional operating costs subjected to those which are conforming, and further price point reduction for non-conforming properties is gained by failure of AirBnB to charge and to collect the Idaho 2% Lodging Tax.

In summary, Yellowstone Teton Territory asks the Council Members of the City of Rexburg and its Planning and Zoning Commission that these AirBnB proprietors and their properties operate under and be governed by the same statutes and regulations as those current conforming properties so that it is a level playing field for all with city, county and state offices collecting the appropriate fees and taxes.

Respectfully submitted with the requests to be read into the minutes of this meeting and to be distributed to City of Rexburg Council Members and P&Z staff.

2) See below: **Sharon Demordaunt** read the letter she submitted to the Mayor and City Council.

Discussion:

Mayor Merrill explained the process of the town hall meeting to discuss short term rentals. He asked those interested in making a comment to speak into the microphone and to state their name and address. He also asked for the comments to be limited to four or five minutes.

Mayor Merrill indicated the purpose of the town hall meeting is for City Council to receive as much input as possible from those in favor and those oppose to short term rentals in Low Density Residential 1 Zones. The City ordinance in place at this time doesn't allow short term rentals in Low Density Residential 1 Zones; however, there have been many requests to change the ordinance to allow short term rentals in that zone. He said the input received will help City Council to determine what and if any changes are needed to be made to the City ordinance regarding short term rentals in Low Density Residential 1 Zones.

Mayor Merrill stated written input has been received regarding short term rentals. He and the City Council Members have read the letters submitted and will take the written input into consideration too.

Council Member Busby stated the letters written to City Council regarding short term rentals will be entered into the City Council Meeting Minutes as public record.

Terry Bagley said he lives in the Sherwood Hills Subdivision; he is also the president of that neighborhood's home owner's association. There are about 48 homes in the subdivision and about 98% of the Sherwood Hills residents are opposed to short term rentals in their subdivision.

Council Member Flora asked if the Sherwood Hill Subdivision residents are opposed to the entire home being rented out as a short term rental and or opposed to one or two bedrooms being rented out. Mr. Bagley said they discussed both options and agreed they are opposed to both because of the commercial aspect of short term rentals.

Council Member Benfield asked how many Sherwood Hill residents attended the meeting. Mr. Bagley said about 38 residents attended the meeting.

David Peck said he is representing the 3rd East home owner's association. There are about 13 homes in the association. He said 10 of the 13 residents that were polled were opposed to short term rentals. Their main concerns were the commercialization short term rentals would cause in their residential neighborhood. There were concerns with safety, resources and insurance liability. The residents were strongly opposed to any extension or scheme that would allow periodic short term rentals in the Low Density Residential 1 Zone.

David Peck stated Planning and Zoning laws were intelligently put in place, they are well maintained and part of a comprehensive plan. He read the purposes and objectives section of the development code concerning Low Density Residential 1 Zone **3.4.010. Purposes and Objectives**

The LDR1 zone is established to protect stable neighborhoods of detached single-family dwellings on larger lots. The limited conditional uses allowed in this district shall be compatible with an atmosphere of large, landscaped lawns, low building heights, ample setbacks and side yards, predominantly off street parking, low traffic volumes, and low nuisance potentials.

Jerry Adair said in his professional opinion as a realtor for 37 years, the allowance of short term rentals in Low Density Residential 1 Zone would cause lower home value in the neighborhoods. He stated he is opposed to any changes to the law that would allow short term rentals in that zone.

Maria Nate stated laws should not be passed out of fear or a perceived problem. She asked City Council to consider the people that purchased these homes many without these regulations and now their rights could be diminished. If new regulations are imposed that could constitute a taking of their property without compensation. She said we shouldn't be asking for laws that protect our very own self-interests, but are here to represent everyone. We are not a democracy; we are a representative republic and asked City Council to go back to principle. She expressed her concern when we demand our rights to be protected and at the same time limit others property rights.

Brian Lemon said he is in favor of allowing short term rentals in the Low Density Residential 1 Zone. He indicated he favors putting together a mechanism were a host would be able to apply for a permit or license to allow them to rent their home short term. The mechanism would create a high standard to maintain the integrity of the community. He said his property went through a Conditional Use Permit to allow him to rent out the basement of his home. The process included an inspection of the property, adequate parking, and proper egress for windows. His property is well suited for short term rentals.

Council Member Mann asked Mr. Lemon when he applied for the Conditional Use Permit. Mr. Lemon said in 2002 and there has not been a break in usage of the Conditional Use Permit.

Kelly McKamey stated he is in favor of allowing people to exercise their property rights. The issue isn't about allowing local government to take more control; it's about private property rights and going back to principle. He indicated the majority for the time it's about people wanting to control what their neighbor can and can't do with their property. He said many principles are violated when that happens. There are other types of businesses already allowed in the Low Density Residential 1 Zone for example; one to one daycares, music lesson providers, online business, etc. and all increase traffic. He explained by restricting one type of home business you would have to restrict all types of home businesses. There is a possibility City Council will have decided to come up with some type of registration, regulations and inspections for short term rentals; however, by increasing regulations it would diminish private property rights and take away peoples agency. He believes a balance needs to be created between one's private property rights and regulations to not become onerous.

Sharon Demordaunt read the letter she submitted to the Mayor and City Council before the meeting:

Please do not consider this personal. I am passionate about our community's heritage and want to defend it. That is why I am here tonight.

We invested in and purchased a home in a RESIDENTIAL community, a community of homeowners subject to zoning laws designed to give residents safety, tranquility, continuity and to protect the investments of homeowners. These characteristics defined life in a Rexburg neighborhood. We knew our neighbors, watched out for each other, helped each other, forged neighborhood. Traffic was light and children could play outdoors in safety.

The Rexburg City Council did not allow the introduction of business in our residential neighborhoods. Zoning law protected the character of our neighborhoods, protecting our investments and the character of our community.

Now a few people with a business idea want to change those neighborhoods. It is subtle. They want to turn homes that were build as residences into nightly rental businesses, transforming our communities from networks of families into networks of structures shaped like homes but functioning like motels, catering to nightly rental customers.

Historically, would this committee countenance a request to build a motel in one of these neighborhoods? No. Why? Because a nightly rental business is out of character. Nightly rental businesses are associated with all manner of difficulties, such as noise, crime, litter, increased traffic, etc. Zoning laws are designed to keep these elements OUT of residential areas. In every town, there is a place for nightly rental businesses, but that place is a properly zoned commercial area. If a motel is not appropriate to build in a residential neighborhood then why would this Planning and Zoning Committee ever conclude that the interests of Rexburg residential inhabitants would be served by legalizing the transformation of homes into mini-motels?

Is dispensing religious books a reason to change zoning? This rationale is completely inappropriate and irrelevant to the discussion at hand. Is this a ruse to further a financial agenda? Please do not mistake the point of my words. Would anyone here be uncomfortable if the next buyer of a nightly rental business used it to further the religion of Wicca? This is why we have separation of church and state. We cannot let our individual religious agendas color the manner in which we draft our laws.

The only conversation to be had here tonight is the conversation about what is best for the citizens of Rexburg, the parents, the grandparents, the children, the people who are the fabric of the neighborhoods that are slated for possible transformation into rental businesses, the people who rely on the City for protection.

I understand that the proponents of this zoning change are already ignoring zoning laws, having quietly transformed or bought up and surreptitiously turned them into rental businesses. The religion I grew up in taught obedience to the law, not breaking it. If anything this hearing should be about the topic of the fines and ^{penalties} ~~punishments~~ to be meted out to those who ignore our zoning laws, not emboldening and rewarding them by reimagining our zoning laws to cater to their business ideas.

Committee members, I thank you for your service, and I thank you in advance for your stewardship. You are the guardian body of the character of our town, a daunting task. The university is growing, times are changing, everyone has an agenda. If you identify your stewardship and keep the Rexburg heritage in tact, you can see a clear path and make the decision that will honor the character of the town that is our home.

Sharon B. DeMordaunt Sep 15, 2015
345 Shooksee Ave. Rexburg, ID 83440
"What will community look like in 20 years if zoning not enforced?"

John Snell reviewed the points to ponder that Mayor Merrill handed out at the last City Council Meeting and how he answered each point.

1. *People Move into a neighborhood for a reason. They want to know who their neighbors are and be able to rely on and trust them and we need to respect that.* The main reason one purchases a house is not because of the neighbors. The main factors considered are 1) price, 2) the structure itself and its compatibility to the owners intended use, 3) the location.

2. *We recognize that the world is changing and people want to take advantage of their homes now more than ever before and we need to adapt to this new economy.* Agreed, a person's house is typically the biggest financial investment they make. It is not unreasonable for one to use this investment to generate a return.

3. *How do we meet both needs and be able to live together harmoniously?* By being courteous to keep their rentals from interfering with their neighbors and the neighbors should not be bothered that their neighbors have guests.

4. *When you start renting rooms, you become a business and there are now other things to consider.* One who hosts through Airbnb cannot transfer ownership from one person to another, they may be able to sell their home, but they cannot sell Airbnb. Airbnb is a source of income, much like one who teaches an online university course. Just because one makes money by teaching a course from home, it doesn't make that person's home a college campus.

5. *Liability Insurance – higher premiums if you notify your insurance company or risk the chance of no coverage in case of an accident, if you don't notify them.* This is irrelevant to the City's decision. An extra insurance cost is the responsibility of the private citizen and is not the City's concern.

6. *PMI (Mortgage Insurance) also may require a higher premium for business use.* This is between the homeowner and his mortgage holder.

7. *Building Safety Requirements – larger escape windows for fire protection, etc.* Building safety should be a concern for the residence living in the home as well.

8. *ADA requirements – federal government requirements for handicapped access.* Do these requirements apply to home rentals?

9. *Parking requirements – so your business doesn't become a nuisance to the neighbors.* There are already ordinances in place allowing people to park on the street during spring, summer and fall months with off street parking during the winter months. Hosting guests has little impact for parking. It usually consists of one vehicle.

10. *Noise restrictions – same as above.* There are already noise ordinances in place. Most guest are interested in a place to sleep for the night, they tend to be fairly quiet.

11. *Other items that I haven't even thought about that could come up.* There is huge potential for economic growth. Money generated outside of our city, state and even country has the opportunity to be spent locally in Rexburg. Those hosting Airbnb guests will most likely spend that extra income at local businesses, paying for school fees and funding other local events. There is a constant flow of visitors to Yellowstone, BYU-Idaho and other surrounding areas. We should tap into these resources and keep them in Rexburg. If we don't accept them, others outside of our town will.

Mayor Merrill clarified the questions that have to do with insurance were meant for consideration and not implying that it's a City matter.

John Snell stated what better way to show off our town to the world? The experiences are rich and discovering a new culture has been mutually beneficial. There is a need for Airbnb. Local hotels often fill up and those traveling to Yellowstone have difficulties during the summer months to find places to stay between Pocatello to West Yellowstone.

John Snell said it has been argued in the past that an Airbnb will reduce home values. There is no evidence to show that is the case. The number one determinant for home prices is comparability. One could argue that a home with the ability to generate income may have more appeal to a buyer, thus it could generate a higher asking price. This would cause home values to increase.

John Snell continued, the first two purposes of the development code are i) to protect property rights and enhance property values and ii) to provide for the protection and enhancement of the local economy. He said allowing homeowners to host Airbnb guests fulfills both of these purposes. Another consequence of allowing Airbnb guests is that hosts are motivated and financially able to make improvements to their properties.

John Snell indicated the city might consider some legal issue they could be facing due to wording within the City's Development Code. For example, a property zoned Low Density Residential 1 Zone limits the use of the home to one resident, which the code defines as housing one family. Family is defined as at least one person in the household is related to every other member of the household within three degrees of relation, along with other restrictions and possible discrimination. He said he had a guest stay with his family for a week and the family spent money locally. His guests

look no different than an Airbnb guest. He questioned at what point is the City able to dictate who visits his home.

John Snell said ultimately, the purpose and intent of the zoning in Rexburg is to help the town stay organized and provide an intelligent layout to preserve family neighborhoods, establish commercial and business areas, etc. Airbnb can exist within the city with very minimal impact. The purpose of Low Density Residential 1 Zone is to keep the look and feel of a neighborhood with residential homes, not apartment buildings and doctor's offices. He said he believes that with very little restriction, the City can allow Airbnb to exist harmoniously, that personal property rights can be protected and the purposes of the Development Code can be met. There are bigger issues affecting the city (growth of BYU-Idaho) allowing Airbnb has little impact in comparison.

Community Development Director Christensen clarified the definition of "Family" allows for one non-related person to live in the home to say that a non-related couple can't live together in the home is untrue, the code allows for one non-related person.

Mary Handy proposed a resolution be made to allow short term rentals. There are residents concerned about safety, she is too. Airbnb allows hosts to screen their guest before allowing them to rent a room. There are tools in place and some could be added to make short term rentals even safer.

Mayor Merrill questioned if Airbnb is going to restrict the hosts from accepting or reject certain guest due to non-discrimination laws. Kristine Bennion said she received an email from Airbnb regarding changes to their non-discriminatory clause.

Mr. Handy said they stopped using Airbnb as soon as the City informed him short term rentals were not allowed in the Low Density Residential 1 Zone. He stated he is in favor of allowing short term rentals and strongly agrees a compromise needs to be made to allow Airbnb. He explained his experience in using Airbnb has been a positive one and he has enjoyed sharing his home with people from different backgrounds.

Lanae Poulter indicated when she purchased her home she was informed that the current City code would not allow short term rentals. She said she is concerned with the potential safety issues Airbnb could cause. There is also a concern about the commercial aspect of Airbnb. She explained she rented her home to four missionaries.

Council Member Flora asked if the missionaries paid rent while they lived in her home. Lanae Poulter replied she was paid \$75.00 per month.

Howard Randall stated if the Low Density Residential 1 Zone is going to be changed to allow Airbnb than it should also be changed to allow apartments. He said he doesn't believe the argument of private property rights is valid. Everyone is already subject to rules, laws and City ordinances. There are homes in the area that are not owner occupied being rented out as Airbnbs. When the owner is not present, safety concerns arise. He asked City Council to leave the zoning as it currently stands.

Council Member Flora asked about the difference between owner occupied and non- owner occupied and the difference in renting out the entire house verses one or two bedrooms. Mr. Randall said yes there is a difference; he recalled a situation where a non-owner occupied home was rented out to 20 people. He said if the City allows short term rentals, there wouldn't be a way to control how much of the home is rented out.

Council Member Flora said within the ordinance there is a home occupation section that states 20% of the home can be used for a home occupation in any zone. She asked if a compromise could be made between the two views. For example, if the home owner lives in the home and uses 20% of their home for an office or a bedroom to rent. The owner would be there to monitor what happens in the home. She stated it is the City Council's job to take the two opposing views and come up with a solution that will be fair to both views.

Rick Davis said he is representing the Indian Hills Home Owner's Association and they are opposed to short term rentals in their neighborhood. If laws are passed to allow short term rentals, quite neighborhoods will disintegrate into commercialized zones. If all zoning rules are removed we will have chaos, if all laws are removed we will have chaos, there has to be dividing lines and rules. The issue is not whether or not to allow Airbnbs, the issue is the location of where they are allowed.

There are zones already in place that allow short term rentals. He indicated City residents look to the Mayor and City Council to champion our cause in the City. Their job is to keep the peace to monitor the growth of both commercial and residential areas; to protect the residents of untoward practices.

Council Member Wolfe asked if the neighborhood home owner's association could institute by laws to prohibit short term rentals in their neighborhoods. City Attorney Zollinger replied that is correct.

Kristine Bennion questioned what constitutes a legitimate home owner's association. There has been some confusion regarding what constitutes a home owner's association and the difference between a group of people in the neighborhood that comes together and pay dues to each other. She shared her experience using Airbnb and VRBO (vacation rental by owner). The convenience of renting out an entire home has benefited her family. She said she is concerned about the idea that is permeating the city that people outside of Rexburg are scary. There are good people all over the world. She stated she is in favor of short term rentals because of her experience using Airbnb.

Hillary Jensen stated she believes in neighborhoods; however, she would like to rent one room in her home to a guest as a home occupation business. She suggested it be called home sharing. Under Rexburg's Development Code one room is excluded from the definition of a bed and breakfast in the carefully worded definition multiply rooms would have to be rented out to qualify as a bed and breakfast. She asked City Council to consider Rexburg's definition of a home occupation.

Hillary Jensen referred to the 17 articles listed in the City's Development Code under home occupation. 1. I won't use more than 20% of the square footage. 2. I won't storage on site. 3. I won't have a display of product. 4. I won't have a change of appearance. 5. I won't have advertising signage out front. 6. I won't have employees beyond myself. 7. I won't have traffic more than is normal. 8. I won't have had off-street parking. 9. I won't have an increase in utilities. 10. I won't have commercial vehicles. 11. I won't have extra motor power. 12. I won't have extra glare or fumes on site. 13. I won't have a radio or television receiver off premises. 14. I won't have a commercial telephone listing that advertises to the general public. 15. I won't have more than five daycare children in my home. 16. I won't have more than five students for classes. 17. Examples of home occupations permitted.

Hillary Jensen said this is her home occupation business and she will take the responsibility and liability risks associated with her business. City Council's decision doesn't just affect those using Airbnb it affects the people who have a home occupation.

Patrick Huish said he has lived in his neighborhoods for the past 13 years and 11 years ago a petition was signed to change the zoning to Low Density Residential 1 Zone to keep apartments from being built in their neighborhood. He indicated he understands the uses of property are regulated by zoning which limits what people can do with their property; however, it also protects the neighborhoods. The City has in place mechanizes that can change zoning if it be the will of the people. Before any changes are made the issue should be studied by speaking to other cities that have experienced the same issue to see what has worked for them. As citizens we need to obey the laws that are already in place. He recommended those wanting to change the zoning to allow short term rentals start a petition in their neighborhood and campaign their neighbors. Then present the petition to Planning and Zoning.

Patrick Huish said he would like the current zone in his neighborhood to remain the same. Council Member Flora asked what if the issue isn't zoning or the zone doesn't change. A home occupation would allow for one bedroom to be rented out to a guest. He indicated the City would need to be very clear on what is and isn't allowed; however, there are concerns regarding, safety, property values, parking, etc.

Council President Smith stated after listening to the comments that have been shared. She has come to understand the significant changes the Low Density Residential 1 Zones will experience if short term rentals are allowed. There are definitely pros and cons to allow or dis-allow short term rentals. She asked for everyone to keep in mind when a change is made to an ordinance, it doesn't just affect a couple of neighborhoods, it affects all of the neighborhoods in that zone. As a community we need to take this under consideration.

Council Member Mann asked for a zoning map to be displayed on the overhead screen to show where the Low Density Residential 1 Zones are located in the City.

Cindy Lemon said she appreciates the wisdom and hard work performed to make Rexburg what it is today. She is in favor of allowing Airbnb because it would allow the families struggling with financial hardship the opportunity to generate extra income.

Beverly Miller stated is in favor of allowing Airbnb. There have been comments made that Airbnb causes a nuisance. She said her neighbor was using Airbnb to rent her home and she hadn't even noticed a difference in the neighborhood.

Dan Roberts read a quote from a past United State President regarding government. He said he is in favor of private property rights and protecting the rights of the minority. In his opinion a home owner's association has more authority than the City Council if they are not ex post facto. He indicated it appears this is what has happened an attempt to make something after the fact. He also read a quote from David A. Bednar an Apostle of the Church of Jesus Christ of Latter-day Saints regarding entitlement. He indicated he agrees with Cindy Lemon of allowing people the opportunity to provide for their families.

Community Development Director Christensen clarified the definition of a single-family dwelling. The definition of "dwelling" as stated in the Development code states: A building or portion thereof that provides living facilities for one or more families. The definition of "Family" a group of one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit. He also clarified the disallowance of short term rentals isn't something new it has been in place since he started working for the City more than twenty years ago.

Jill McDonald said she doesn't operate an Airbnb; however, she has operated a bed and breakfast in Alaska. She believes very strongly that a business needs to fit within its zoning parameters. There is a difference between Airbnb and an actual bed and breakfast. Airbnb is basically an overnight stay where an actual bed and breakfast the host serves breakfast to their guests. Bed and Breakfast businesses are also held to higher standards, such as inspections, fire extinguishers are needed on site, working fire alarms, etc. They also paid hospitality taxes along with other compliances. She said she didn't experience any safety concerns while operating her business.

Council Member Benfield mentioned the City doesn't collect hospitality taxes; however, the State of Idaho does with a 2% bed tax.

Gloria Stone indicated she felt very proud when Rexburg, Idaho was named the safest place to live in the United States. She commended the Planning and Zoning Commissioners and City Council for making that possible and hopes Rexburg continues to be safest place to live.

Jonathan McMullen said he has an Airbnb in the zone that it currently is allowed in. He has taken the proper steps and has spent the money needed for the property to comply with the zoning code. He questioned who would be monitoring to make sure the business owners only use 20% of the home for their home occupation. Mayor Merrill answered the City's Building Department would be tasked with monitoring the home occupation businesses to make sure they comply with the 20%. Mr. McMullen mentioned changing the zoning to allow Airbnb's in Low Density Residential 1 Zone could open the door for apartments or other multi-family dwellings.

Bryan Lemon explained he is in favor of Airbnb because of the economic benefits to families that may need the extra income. Most of the opposition he has heard today is from those concerned with safety or the fear of the unknown. There are other home occupations already operating in Low Density Residential 1 Zones that are not intrusive.

Jay Fluckliger stated he has operated an Airbnb for the past two years and has had over 1,300 guests from all over the world. He has remained in contact with some of his guest and has become good friends with them. The social aspect has been a great experience for him and he would consider renting out his home even without a monetary value. He indicated the ordinance is already in place that allows a home occupation and with a few modifications by the governing boards a compromise could be made without it being a hardship on both parties.

Council Member Flora asked Mr. Fluckliger if his neighbors expressed having a problem with him renting a bedroom out of his home. Mr. Fluckliger said his neighbors have been very supportive and he hasn't experienced any problems.

Jason Williams asked Mr. Fluckliger if he informed his neighbors prior to renting out his home.

Mr. Fluckliger said he did not notify his neighbors prior to using Airbnb. Mr. Williams said there is a difference between having a guest you know stay at your home and a guest that you don't know, for example one is a paying customer.

Jason Williams indicated what he has heard tonight is people quoting City ordinances that favor their view. He believes a compromise needs to be made by both parties. He questioned the reason why the people using Airbnb didn't first research whether or not it would be allowed in their neighborhood. He mentioned he found it interesting that the people now know what is in the City ordinances concerning short term rentals in Low Density Residential 1 Zone when they should have known before they started renting out their home.

Kristine Bennion replied a City Council Member was contacted and she was informed by that Council Member that it was allowed.

Council Member Busby asked Ms. Bennion which Council Member she spoke to. Council Member Busby said for the record he was not contacted prior to this happening.

Broc Thompson stated he would like to keep the zoning as it stands. He mentioned his experience with short term rentals. There have been parties going on until 1:00 a.m. and people throwing up over the deck of the home. The people that are interested in operating an Airbnb they need to buy a home in the zone it is allowed in.

Ilene Olsen said she strongly agrees the zoning for Low Density Residential 1 Zone needs to remain as it stands. The Low Density Residential 1 Zone neighborhoods need to maintain their integrity and be protected. She indicated any changes to this zone would affect a large part of Rexburg. The people who are renting out their homes in this zone are breaking the law.

Jeanne Grimmert stated some of her neighbors are not complying with a number of different home owner's association by laws. People are concerned about safety; however even before Airbnb stated in her neighborhood her home was broken into. She explained she isn't sure if she is opposed or in favor of short term rentals; however, a compromise needs to be established and guidelines need to be set if City Council decides to allow short term rentals in the Low Density Residential 1 Zone.

Brock Hyam stated he is the owner of the Raspberry Garden Apartments and owns several other rentals. He operates an Airbnb as a form of extra income because of his disability he is unable to work. He said he doesn't want to cause any issue and has stopped; however, he is in favor of the City allowing Airbnb.

David Wood indicated he objects to any changes to the Low Density Residential 1 Zone because of the possibility of allowing commercial in that zone. If homeowners are interested in owning rental property they should purchase commercial property. Ms. Grimmert asked him how long his house is vacant for the winter months and if he has people stay in his home while he is gone. He replied for about five months and people stop by several times during those months. Ms. Grimmert said vacant homes are also a concern.

Council Member Wolfe asked Mr. Wood if he had a bad experience with Airbnb in his neighborhood. Mr. Wood replied there was an entire home rented out and things got out of hand that type of a situation concerned him. Mr. Wood also mentioned the monitoring of the 20% of the home use will be difficult to monitor.

Council Member Wolfe asked if a number of rules and guidelines were installed such as a limit to the number of people, adequate parking, owner occupied, etc. would Mr. Wood be in favor of short term rentals in Low Density Residential 1 Zone. Mr. Wood replied his main concern is allowing the commercial aspect into the zone.

Sue Robinson said she was renting out her home on Airbnb before she was notified that short term rentals weren't allowed in the Low Density Residential 1 Zone. She asked City Council to not make a decision based on fear. The people that rented her home were some of the best people she knows. She is concerned with safety as well because she is a single woman; however, she has not seen a threat to the safety of the neighborhood by allowing short term rentals. Many of her neighbors were renting out their homes on Airbnb; she didn't have a problem with them renting their homes.

Sue Robinson explained there have been false statements made regarding her short term rental home. The people that want to rent their homes short term shouldn't be punished by the false statements made about her rental. She said she values her property, the safety of the neighborhood and values her neighbor's property. The long term renting process is not easier than a short term rental.

Allen Call indicated he has a basement apartment he rents out on Airbnb. There is a difference when the owner is on site to supervise. He said has rented out his apartment for about two years with over 100 guests. With their two-bedroom apartment they have been able to host families and a number of tourist, contactors, fire fighters, and BYU-Idaho students. The driver of Airbnb in this area is due to a shortage of hotels and motels. He believes short term rentals bring additional business to the Rexburg area.

Bryce Tarnasky said he used Airbnb to rent out his basement and it has been a good source of income for his family. He understands City Council has some ideas of how a compromise can be reached. He said he has studied the City's zoning map and the properties in High Density Zones are expensive and he wouldn't be able to purchase property in that zone. Airbnb can be an incredible asset for the community because the guest will make purchases in local businesses. The revenues received from renting out their home has also been spent local.

Marybeth Lemon stated her situation is slightly different because when she purchased her home she went through the legal process to rent out her basement by applying for a Conditional Use Permit in 2002. She said at first renting her basement on Airbnb was for financial purposes to pay for her husband's medical bills; however, her purpose now is for the cultural experiences her family gains by hosting people from other countries. She questioned if she is able to rent out her basement short term or only long term with the Conditional Use Permit.

Mayor Merrill thanked all who gave input regarding short term rentals in Low Density Residential 1 Zone and said their input would be taken into consideration.

Calendared Bills and Tabled Items:

A. **"LAND USE ACTION"** – Bills Recommended/Approved in a Land Use Public Hearing Procedure (Recommend Suspension of the Rules):

B. **BILL Introduction:** – NONE

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

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

1. **Ordinance 1150** Amending the City of Rexburg Impact Area

Council Member Mann moved to consider **Ordinance 1150 amending the City of Rexburg Impact Area** second read; Council Member Smith seconded the motion; Mayor Merrill asked for a vote:

Those voting aye

Council President Smith
Council Member Flora
Council Member Benfield
Council Member Mann
Council Member Wolfe
Council Member Busby

Those voting nay

None

The motion carried

2. **Ordinance 1152 to rezone of property at 255 and 259 West 2nd North** from Low Density Residential Two (LDR2) to High Density Residential One (HDR1) – Wesley Haws

Council Member Wolfe moved to consider **Ordinance 1152 to rezone property at 255 and 259 West 2nd North** from Low Density Residential Two (LDR2) to Medium Density Residential Two (MDR2) second read; Council Member Benfield seconded the motion: Mayor Merrill asked for a vote:

Those voting aye

Council President Smith
Council Member Flora
Council Member Benfield
Council Member Mann
Council Member Wolfe
Council Member Busby

Those voting nay

None

The motion carried

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

Mayor’s Business:

Ratify Proclamation 2016 – 05 proclaiming the week of September 17th through September 23rd as CONSTITUTION WEEK.

PROCLAMATION

No. 2016 - 05

2016 CONSTITUTION WEEK PROCLAMATION

WHEREAS: The Constitution of the United States of America, the guardian of our liberties, embodies the principles of limited government in a Republic dedicated to rule by law; and

WHEREAS: September 17, 2016, marks the two hundred twenty-ninth anniversary of the framing of the Constitution of the United States of America by the Constitutional Convention;

WHEREAS: It is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary, and to the patriotic celebrations which will commemorate it; and

WHEREAS: Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week,

NOW, THEREFORE I, Jerry Merrill by virtue of the authority vested in me as Mayor of the City of Rexburg do hereby proclaim the extended week of September 17th through September 23rd as

CONSTITUTION WEEK

AND ask our citizens to reaffirm the ideals of the Framers of the Constitution had in 1787 by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Rexburg to be affixed this 21st day of September of the year of our Lord two thousand sixteen.

SEAL

APPROVED:

Jerry Merrill, MAYOR

ATTEST:

Marianna Gonzalez
DEPUTY CITY CLERK

Council Member Mann moved to **Ratify Proclamation 2016 – 05** proclaiming the week of September 17th through September 23rd as CONSTITUTION WEEK; Council Member Smith seconded the motion: Mayor Merrill asked for a vote:

Those voting aye

Council President Smith
Council Member Flora
Council Member Benfield
Council Member Mann
Council Member Wolfe
Council Member Busby

Those voting nay

None

The motion carried

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.

- A. Minutes from September 7th , 2016 meeting;
- B. Approve the City of Rexburg Bills
- C. Fall clean-up – October 17, 2016 to November 14, 2016

Council Member Busby moved to approve the Consent Calendar containing the minutes, city bills and Fall Clean-up Dates; Council Member Flora seconded the motion; Mayor Merrill asked for a vote:

Those voting aye

Council President Smith
Council Member Flora
Council Member Benfield
Council Member Mann
Council Member Wolfe
Council Member Busby

Those voting nay

None

The motion carried

Adjourned at 10:15 P.M.

APPROVED:

Jerry Merrill, Mayor

Attest:

Marianna Gonzalez, Deputy City Clerk