

SEPTEMBER 14, 2000

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, September 14, 2000, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Linda Milam
Councilmember Bruce Rose
Councilmember Joe Groberg
Councilmember Mike Lehto
Councilmember Mary Klingler
Councilmember Ida Hardcastle
Councilmember Brad Eldredge

Also present:

Dale Storer, City Attorney
Rosemarie Anderson, City Clerk
All available Division Directors

The City Clerk read a summary of the minutes for the Regular Council Meeting held August 24, 2000. It was moved by Councilmember Klingler, seconded by Councilmember Lehto, that the minutes be approved as printed. Roll call as follows:

Aye: Councilmember Klingler
Councilmember Hardcastle
Councilmember Rose
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

CONSENT AGENDA ITEMS

The City Clerk presented monthly reports from various Division and Department Heads and requested that they be accepted and placed on file in the City Clerk's Office.

The City Clerk presented several license applications, including a BEER TO BE CONSUMED ON THE PREMISES LICENSE to Shooters (Transfer Only); BEER NOT TO BE CONSUMED ON THE PREMISES LICENSE to Funland (Transfer Only); BARTENDER PERMITS to Jerry A. Campbell, Sandra Charboneau, Bryan R. Likes, Kimberly Mickelsen, Brenda L. Muir, Robert L. Rish, Suzanne S. Smith, and Charles D. Thomason, all carrying the required approvals, and requested authorization to issue these licenses.

The City Clerk requested Council ratification for the publication of legal notices calling for public hearings on September 14, 2000.

The Parks and Recreation Director submitted the following memo:

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City of Idaho Falls
September 1, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: David J. Christiansen, Parks and Recreation Director
SUBJECT: PINECREST GOLF COURSE ENTRANCE

The Parks and Recreation Division Director hereby requests Council ratification for the publication of the Invitation to Bid for the Pinecrest Golf Course Entrance Project. The proposed project includes new landscape, fencing, retaining wall and incidental work and will be funded from the Golf Course Capital Improvement Fund. It is, therefore, submitted for your approval.

s/ David J. Christiansen

The Public Works Director submitted the following memo:

City of Idaho Falls
August 31, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: BID AUTHORIZATION – PANCHERI DRIVE STREET OVERLAY
AND IMPROVEMENTS – SOUTH BELLIN ROAD TO SKYLINE
DRIVE

Public Works requests authorization to advertise to receive bids for the Pancheri Drive Street Overlay and Improvements, South Bellin Road to Skyline Drive.

s/ Chad Stanger

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, that the Consent Agenda be approved in accordance with the recommendations presented. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Rose
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

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REGULAR AGENDA ITEMS

The City Clerk presented the following Expenditure Summary dated August 1, 2000 through August 31, 2000, after having been audited by the Fiscal Committee and paid by the Controller:

<u>FUND</u>	<u>SERVICE AND MATERIALS</u>	<u>GROSS PAYROLL</u>	<u>TOTAL EXPENDITURE</u>
General Fund	\$1,049,529.89	\$1,164,690.70	\$2,214,220.59
Street Fund	238,845.77	59,006.04	297,851.81
Airport Fund	69,241.58	30,323.97	99,565.55
Water and Sewer Fund	386,353.78	135,539.34	521,893.12
Electric Light Fund	2,593,044.65	259,870.37	2,852,915.02
Sanitation Fund	29,126.22	62,276.18	91,402.40
Recreation Fund	20,467.63	46,534.44	67,002.07
Municipal Capital Improvement Fund	184,331.35	.00	184,331.35
Library Fund	53,287.96	52,720.33	106,008.29
Street Capital Improvement Fund	25,828.18	.00	25,828.18
Ambulance Fund	40,086.89	62,639.24	102,726.13
Municipal Equipment Replacement Fund	219,225.25	.00	219,225.25
Electric Light Public Purpose Fund	108,956.06	.00	108,956.06
TOTALS	\$5,018,325.21	\$1,873,600.61	\$6,891,925.82

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, to ratify the payment of Check No. 20823 in the amount of \$909.05 and Check No. 55089 in the amount of \$84.00, both made payable to the American Red Cross. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Klingler
Councilmember Hardcastle

Nay: None

Abstain: Councilmember Rose (As he is Director for the American Red Cross)

Motion Carried.

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, to ratify the payment of the remainder of the expenditures for the month of August, 2000. Roll call as follows:

Aye: Councilmember Rose
Councilmember Groberg
Councilmember Lehto
Councilmember Klingler
Councilmember Hardcastle

Councilmember Eldredge

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Nay: None

Motion Carried.

Mayor Milam requested Councilmember Rose to conduct Annexation Proceedings Prior to Platting for The Dunes at Sand Creek. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
July 20, 2000

MEMORANDUM

TO: Mayor and Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION PRIOR TO PLATTING, THE DUNES AT SAND CREEK

Attached is the Annexation Agreement and Annexation Ordinance for The Dunes at Sand Creek. This annexation encompasses 44 acres and is north of Township Road and west of Hitt Road. The requested initial zoning is R-1 (Single-Family Residential). The Planning Commission considered this annexation request at its April 18, 2000 Meeting and recommended approval to the Mayor and Council. This annexation request is now being submitted for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo outlining the annexation request
Slide 3	Preliminary Plat
Exhibit 1	Planning Commission Minutes dated April 18, 2000
Exhibit 2	Staff Report dated April 18, 2000

Paul Snarr, Benton Engineering, 550 Linden Drive, appeared to answer any questions about the proposed annexation.

Councilmember Lehto questioned Mr. Snarr as to how many homes are in the proposed development. Mr. Snarr explained that there are 30 lots proposed for Division No. 1, with the total development being approximately 120-130 lots.

Councilmember Rose requested those present who wished to speak to this issue to come forward at this time. There being no comment either in favor of or in opposition to this annexation request, Mayor Milam closed the public hearing.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Annexation Agreements for the property north of Township Road and west of Hitt Road and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Rose
Councilmember Eldredge
Councilmember Lehto

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Councilmember Klingler
Councilmember Hardcastle
Councilmember Groberg

Nay: None

Motion Carried.

At the request of Councilmember Rose, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2387

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Rose moved, and Councilmember Eldredge seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with and the Ordinance be passed on all three readings. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Eldredge
Councilmember Hardcastle
Councilmember Groberg
Councilmember Rose
Councilmember Klingler

Nay: None

Motion Carried.

A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Rose, seconded by Councilmember Eldredge, to establish the initial zoning of The Dunes at Sand Creek as R-1 (Single-Family Residential) as requested and, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Rose
Councilmember Groberg

Councilmember Klingler
Councilmember Hardcastle

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Nay: None

Motion Carried.

Mayor Milam requested Councilmember Rose to conduct Annexation Proceedings for The Dunes at Sand Creek, Division No. 1. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
July 20, 2000

MEMORANDUM

TO: Mayor and Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: THE DUNES AT SAND CREEK, DIVISION NO. 1

Attached is the Final Plat, Annexation Agreement and Annexation Ordinance for The Dunes at Sand Creek, Division No. 1. This annexation encompasses 23 acres and is south of Township Road and west of the Little Sand Creek. The requested initial zoning is RP-A (Single-Family Residential). The Planning Commission considered this annexation request at its April 18, 2000 Meeting and recommended approval to the Mayor and Council with the stipulation the City Engineer review the Plat for compliance with storm water management guidelines. The City Engineer has reviewed this Final Plat and adequate provision has been made for storm water management. This annexation request is now being submitted for your consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Land Use Map
Slide 3	Aerial Photo with Final Plat superimposed
Slide 4	Final Plat
Slide 5	Southern Portion of Preliminary Plat for The Dunes at Sand Creek
Exhibit 1	Planning Commission Minutes dated April 18, 2000
Exhibit 2	Staff Report dated April 18, 2000

The Planning and Building Director stated that this has been reviewed by City Staff and has been found to be in compliance with the City's Subdivision Ordinance and the land use is in compliance with the City's Comprehensive Plan.

Councilmember Groberg requested the Planning and Building Director to explain what Lot 1A was. The Planning and Building Director stated that Lot 1A is for landscaping and will be maintained by the Homeowner's Association. There are also jogging trails proposed on the Final Plat and indicated where they are located.

Paul Snarr, Benton Engineering, 550 Linden Drive, appeared to state that he was present to answer any questions.

Councilmember Hardcastle requested to know how wide the jogging paths were proposed to be. Mr. Snarr stated that the jogging paths would be 16 feet in width. There will also be a 20-foot access for emergency vehicles on the northwest corner of this proposed

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development. Then it will change to a 16-foot jogging path around the rest of the subdivision. Councilmember Hardcastle asked if the only accesses to the jogging path were through private properties. Mr. Snarr stated that easements are provided.

There being no further discussion either in favor of or in opposition to this annexation request, Mayor Milam closed the public hearing.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Annexation Agreement for The Dunes at Sand Creek, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

Aye: Councilmember Klingler
 Councilmember Hardcastle
 Councilmember Rose
 Councilmember Eldredge
 Councilmember Lehto
 Councilmember Groberg

Nay: None

Motion Carried.

At the request of Councilmember Rose, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2388

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY WITH THE APPROPRIATE COUNTY AND STATE AUTHORITIES; AND ESTABLISHING EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Rose moved, and Councilmember Eldredge seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with and the Ordinance be passed on all three readings. Roll call as follows:

Aye: Councilmember Rose
 Councilmember Eldredge
 Councilmember Lehto
 Councilmember Klingler
 Councilmember Hardcastle
 Councilmember Groberg

Nay: None

Motion Carried.

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It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to accept the Final Plat for The Dunes at Sand Creek, Division No. 1 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Rose
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Rose, seconded by Councilmember Eldredge, to establish the initial zoning of The Dunes at Sand Creek, Division No. 1 as RP-A (Single-Family Residential Park) as requested and, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Eldredge
Councilmember Hardcastle
Councilmember Groberg
Councilmember Rose
Councilmember Klingler

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Rose to conduct Annexation Proceedings for Credit Union Plaza, Division No. 1. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: CREDIT UNION PLAZA, DIVISION NO. 1

Attached is the Annexation Agreement, Annexation Ordinance, and Final Plat for Credit Union Plaza Subdivision, Division No. 1. The requested initial zoning is HC-1, Highway Commercial. The Planning Commission considered this annexation request at its August 8th Meeting and recommended approval with

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the condition access onto Coachman be at least 160 feet from the intersection with Broadway. The intersection, according to site plans submitted, will be over 190 feet from the intersection with Broadway. This Department concurs. The annexation request is being submitted for consideration by the Mayor and City Council.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this annexation request:

Slide 1	Vicinity Map showing surrounding zoning
Slide 2	Aerial Photo
Slide 3	Final Plat
Slide 4	Site Photo looking across site from across West Broadway
Exhibit 1	Planning Commission Minutes dated August 8, 2000
Exhibit 2	Staff Report

Councilmember Groberg requested to know why HC-1 Zone is being requested. The Planning and Building Director stated that the areas that are immediately adjacent to the proposed annexation are zoned HC-1.

Jeff Freiberg, Harper-Leavitt Engineers, 985 North Capital Avenue, appeared to answer any questions from the Mayor and City Council.

There being no discussion either in favor of or in opposition to this annexation request, Mayor Milam closed the public hearing.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Annexation Agreement for Credit Union Plaza, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Rose
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

At the request of Councilmember Rose, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2389

AN ORDINANCE ANNEXING CERTAIN LANDS TO THE CITY OF IDAHO FALLS, IDAHO; DESCRIBING THESE LANDS; REQUIRING THE FILING OF THE ORDINANCE AND AMENDED CITY MAP AND AMENDED LEGAL DESCRIPTION OF THE CITY

WITH THE APPROPRIATE COUNTY AND STATE
AUTHORITIES; AND ESTABLISHING EFFECTIVE
DATE.

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The foregoing Ordinance was presented by title only. Councilmember Rose moved, and Councilmember Eldredge seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with and the Ordinance be passed on all three readings. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Rose
Councilmember Groberg
Councilmember Klingler
Councilmember Hardcastle

Nay: None

Motion Carried.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to accept the Final Plat for Credit Union Plaza, Division No. 1 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

Aye: Councilmember Rose
Councilmember Groberg
Councilmember Lehto
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

A public hearing was conducted to consider the initial zoning of the newly annexed area. There being no discussion, it was moved by Councilmember Rose, seconded by Councilmember Eldredge, to establish the initial zoning of Credit Union Plaza, Division No. 1 as HC-1 (Highway Commercial) as requested and, that the comprehensive plan be amended to include the area annexed herewith, and that the City Planner be instructed to reflect said annexation, zoning and amendment to the comprehensive plan on the comprehensive plan and zoning maps located in the Planning Office. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Rose
Councilmember Klingler

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Rose to conduct a public hearing for consideration of an amendment to the Zoning Ordinance to add a new chapter entitled “Wireless Telecommunication Towers and Antennas”; providing definitions; providing for a

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tower overlay zone and other permitted locations; providing standards for permitted and conditional uses; providing for applications for permits; providing for areas adjacent to First Street, Fremont Avenue, Hemmert Avenue, Yellowstone Highway, U. S. 20, North Boulevard, I-15, Lincoln Road, Woodruff Avenue, 17th Street, and Hitt Road (25th East) for tower zones. At the request of Councilmember Rose, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: TELECOMMUNICATIONS ORDINANCE

Attached is an Ordinance amending the Idaho Falls Zoning Ordinance by adding Article 10, which delineates locations, and overlay zones in which telecommunications towers and antennas are permitted. The Planning Commission considered this Ordinance at public hearings on May 9, 2000 and July 11, 2000. After hearing testimony on July 11, the Commission recommended approval with eight amendments, which have been incorporated into this draft. This Ordinance is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

Councilmember Rose stated that there are two issues before the Mayor and City Council at this time, one regarding the Ordinance and one regarding the Overlay Zones.

Mayor Milam gave a brief history regarding the necessity for this Telecommunications Ordinance. In 1996, there was a Telecommunications Act that was passed by Congress. It was considered and developed over a couple of years' time before it was finally enacted. As written, all zoning authority for towers was removed from local governments. For example, if a neighbor wanted to build a tower in their backyard and lease that ground to a company, and an adjoining neighbor did not want that tower adjoining his property, any appeal would have to be made to the Federal Communications Commission in Washington, DC. With the thousands of communities in this nation, it would have been very difficult to get any action on that appeal. At that time, Mayor Milam started correspondence with Senator Kempthorne requesting that portion of the Federal legislation be changed to retain for local governments their traditional zoning authority for that kind of activity. That was reinstated into the legislation and was passed. She learned afterwards, that only 19 communities in this Country raised that concern and requested the language to be changed. Had the language not been changed, the City would not have had authority to address this type of an Ordinance.

The Planning and Building Director explained that, as anticipated originally, the location of Overlay Zones would be considered in conjunction with the Ordinance. As there was an omission from the advertisement for the public hearing in terms of the Overlay Zones, she asked that the text only of the Ordinance be considered for this public hearing. There

will be a second public hearing scheduled for October 12, 2000 to discuss the locations of the Overlay Zones if the Ordinance is passed at this time.

The Planning and Building Director stated that the purpose of the text amendment is to protect residential areas and land uses as the City can and to encourage

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the towers be located in non-residential areas. It is also to encourage collocation for service providers to the extent feasible that cellular telephone providers and PFC providers use existing towers. If this Ordinance is passed, there are certain areas in the City where a tower could be built or an antenna could be installed as a use by right, which means a public hearing is not required. Under the existing Ordinance, a tower can be built in the Industrial and Manufacturing Zone as a use by right and it can be any height. The new Ordinance proposes that there be two overlay zones created. One is the T-1 Overlay Zone, which would allow towers and antennas close to residential uses. They would be allowed along major highways, the tower height being limited to 90 feet, and the tower would have to be designed to allow at least one other provider to collocate on that tower. The tower would have to be located at 100% of the tower height from the nearest residential use and noise levels would be limited at the property line. The other overlay zone proposed is the T-2 Overlay Zone. This Zone is proposed primarily in commercial and industrial areas. In those area, towers can be built up to 150 feet, depending on the ability to collocate providers in the T-2 Zone. Under the proposed Ordinance, there are other areas where an antenna could be placed. One area is on an existing structure. An antenna for a service provider could be provided on an institutional building, a commercial building, a professional building, or an apartment building of 8 units or more. That antenna is limited in height to 30 feet. An antenna could be placed on an existing tower. The Planning and Building Director gave examples of how antennas could be located on towers.

Following is a list of exhibits used in connection with this amendment request:

- | | |
|---------|---------------------------------------------------------------------------------------------------------------------------|
| Slide 1 | Text of Ordinance, describing the Overlay Zones, T-1 and T-2 |
| Slide 2 | Tower Photo – Laminated Monopole (could be located in the T-1 Zone) |
| Slide 3 | Tower Photo – Galvanized Monopole (could be located in the T-2 Zone) |
| Slide 4 | Photo showing antenna on existing building (Bonneville Hotel) |
| Slide 5 | Photo showing another antenna on existing tower (U. S. West Building) |
| Slide 6 | Photo showing that an antenna could be placed in an existing sign |
| Slide 7 | Photo showing that an existing flagpole could be replaced or an existing light standard could be replaced with an antenna |

The Planning and Building Director explained that the purpose of the Ordinance is to provide a little more flexibility to the providers than the City is presently providing in the current Ordinance by allowing them only in the Industrial and Manufacturing areas. There is a need to have antennas and infrastructure elsewhere in the City. This Ordinance provides balance against the public need of not having too many towers. This would primarily encourage the use of existing towers and structures to minimize the need for additional towers.

Councilmember Rose questioned the construction of a tower along Utah Avenue and whether it was in the proper zone. The Planning and Building Director stated that the tower at that location met the requirements of the existing Ordinance. Councilmember Rose questioned whether Bonneville County had a similar Telecommunications Ordinance. The Planning and Building Director stated that Bonneville County considers all towers to be Conditional Uses.

Councilmember Groberg requested the Planning and Building Director to summarize the difference between which places would be a use by right and which places

would require a Conditional Use Permit. The Planning and Building Director stated that there are no Conditional Use Permits in the Ordinance as it is drafted. The Ordinance

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outlines where towers are permitted as a right. If someone needs a large tower and it is not in the designated zone, that person would have to appear before the Planning Commission and the City Council to request a zone change for the location of the tower.

Councilmember Groberg stated that according to the proposed Ordinance, the maximum height of a tower or structure would be 150 feet. The Planning and Building Director agreed.

Councilmember Eldredge requested to know whether there is a height limitation in the Industrial and Manufacturing Zone. The Planning and Building Director stated that the T-2 Overlay Zone is proposed primarily in existing industrial areas and commercial and industrial areas. This Overlay Zone would replace the I & M Zone for towers. There are certain areas where industrial and manufacturing zones are located that are not suitable for towers as they are too close to residential development.

Councilmember Lehto stated that the City Council is being asked to approve an Ordinance that defines the height of a tower and the zone. Without the Overlay Zone, the Council is not certain that they would be able to accomplish what the Ordinance is proposing. The Planning and Building Director stated that the proposed Ordinance provides for a variance, which would allow the Planning Commission and City Council to address an increase in height for a specific tower. Councilmember Lehto stated that he did not understand how the two issues can be delineated, meaning the adoption of the proposed Ordinance and not considering at the same time the Overlay Zones. The Planning and Building Director stated that the proposed Ordinance should be looked at as the authorizing legislation, which would allow the Council to designate the T-1 Zones and the T-2 Zones. Without the Ordinance, the City does not have the ability to do that.

Mayor Milam stated that the Ordinance defines the zone. It does not have to state where the zone is to be located, but it defines what can be done in that zone.

The Planning and Building Director explained that the proposed Ordinance would give the City a tool to work with in the future. If the Council passed the Ordinance, the City would have the ability to tell providers that they could collocate on an existing tower, they could put an antenna on an existing building, and they could conceal an antenna in an existing structure.

Councilmember Rose requested those present who wished to speak in favor of the proposed Zoning Amendment to come forward at this time.

Jay Greenberg, 2582 Granite Way, appeared to thank the Planning and Building Director for taking the suggestions of the Amateur Radio Operators.

Doug Ray, 325 West 17th Street, appeared to thanked the Planning and Building Director for taking the provisions of the FCC Rules for a limited pre-emption of local Ordinances where it deals with Amateur Radio Operators into account.

Rose Magnuson, 940 Clarence Drive, appeared to submit the following letter addressed to the Idaho Falls City Councilmembers:

September 14, 2000

To Idaho Falls City Councilmembers,

I would like to commend you for addressing the question of cellular unit sites or towers placement before there is a call for a multitude of towers and while there is opportunity for identifying alternative places to place needed cellular units.

I favor there being an individual siting permit for each cell site and the inclusion guidelines or a checklist that will be considered before such new permit is given.

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Included in such checklist I would like to see questions such as:

1. Is there an existing structure that could hold the cellular unit? Is there a storage elevator, church bell tower, tall building, or tall commercial sign along a freeway or water tower that could accommodate a unit?
2. Is there an opportunity for collocation of units from various companies? I have been told the federal law allowing cellular towers and allowing local governments to oversee their placement also requires collocation.
3. Is there a need for a 200-foot tower when two or more lower sites would provide the same broadcasting coverage?
4. Are there alternative structures to big metal towers? Alternatives such as the artificial trees now used in North Dakota and as the attached article from the New York Times illustrates the use of an artificial Saguaro cactus in Arizona.

Since too many towers can detract from your City's aesthetic appearance and they can also affect private property values it seems each placement needs great consideration. Your effort in exploring this issue is very timely.

With appreciation,

s/ Rose Magnuson
Rose Magnuson
940 Clarence Drive
Idaho Falls, Idaho 83402

Attached is a copy of a New York Times article entitled "A Spreading Techno-blight of Wires".

John McGimpsey, 2122 Calkins, appeared to commend the Planning and Building Director and the Planning Commission for an Ordinance that is remarkably clear and easy to follow. He questioned the definition of "height" and "tower" in the "Definitions" section of the Ordinance regarding whether the top of the tower structure itself would be the height restriction, or whether as the FAA requirements of the "tallest point attached to the tower" to be the height of the tower. He indicated that this usually includes a lightning rod from 5% to 10% of the height of the tower. If the intent of the Ordinance is to include the lightning rod specifications, it needs to be made clear in the Ordinance.

Councilmember Eldredge questioned Mr. McGimpsey as to whether the City's Ordinance needs to have the same specifications that the FAA has with regard to the height of the tower. Mr. McGimpsey stated that the FAA requires that when an application is submitted for a tower that the tallest attachment to the tower would be to what height.

Mr. McGimpsey expressed his concern that under Section 10-1-5(B)(1), the definition of height and whether the 90 feet would include or exclude any lightning protection. Under current technology, only two providers may be located on that size of a tower. He explained further that under Section C of the same provision, there is no tower being built today that would fall any farther than 50% of its total height. The engineering design is such that it will crumple as it falls. Under the T-2 Overlay Zone, Section 10-1-

5(B)(2)(b)(1) states that 75% of its total height must be the setback requirement. That should be sufficient. Under 10-1-5(G)(8) written documentation that all applicable requirements of the FCC and FAA have been satisfied, there will be a timing issue. FAA is

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very slow with returning final approval. Table 2 under 10-1-6(B) shows the separation distance for a Lattice to a Monopole less than 70 feet in height. He did not understand why that was not 500 feet as the rest that have been listed. Under Section 10-1-8, it states that the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment. Mr. McGimpsey suggested making that "within ninety (90) days from the date of notice", as the tower company may have gone out of business and no one would be available to receive the notice. Under Section 10-1-4(J), it states that owners and/or operators of towers of antennas shall certify that all franchises required by law for the construction and/or operation of a wireless communication system in Idaho Falls have been obtained and shall file a copy of all required franchises with the Zoning Administrator. Mr. McGimpsey stated that the industry practice today, is that very few of the wireless companies or companies with charters for broadcast are actually going to own or operate the towers. They will contract with a company to operate the towers for them. He wondered whether this was put in the Ordinance to eliminate "built-to-fill" sites, where a tower company would pick a good site for a collocation without having a signed agreement and then try to contract with 2-4 carriers on that location. If the intent of this provision was to prevent a tower from being built without having a signed client, this will do that. If that was not the intention, then a clarification will need to be made showing that it is not required to have a communication franchise for tower operators that are constructing a "built-to-fill". Also, from the industry's point of view, under Section 10-1-10(D)(5), the applicant must demonstrate that an alternative technology that does not require the use of towers or structures, such as a cable microcell network is unsuitable. In the next 5-6 years, there will be a lot of different technologies becoming available that will be alternatives to this network. Communications companies are not going to want to prove each time that a new technology being introduced is suitable. The provision, further, states that costs of alternative technology that exceed new tower or antenna development shall not be presumed to render the technology unsuitable. He stated that if he were turned down by the Planning Commission or the City Council were to find that the cable microcell network was unsuitable, he would take that to court. He would be able to show that this was an unreasonable burden being placed by the community on his company. Mr. McGimpsey stated that a galvanized tower would be less obtrusive than a galvanized pine tree. He commended the efforts of the Planning and Building Director and the Planning Commission on the development of this Ordinance.

Councilmember Rose requested those present who wished to make any comments, positive or negative, with regard to this Zoning Amendment to come forward at this time.

Tom Hunsaker, 2925 Carolyn Lane, appeared to state that he is from the City of Ammon. He commented that the City has done a wonderful job in compiling this Ordinance. He expressed his concerns over a few provisions in the Ordinance as follows:

1. The provision regarding franchise was put in, not so much to regulate towers, as to regulate the backhaul network of land lines or telephone lines. If the City has a franchise with the telephone company, and if you do not have a franchise for the backhaul network, the City could lose the right to have a franchise over the regular telephone lines.

2. The microcell networks with low power PCS were good as there were not all of the ugly towers being constructed. It was determined, later, that PCS communications cause interference with hearing aids and pacemakers. This implies that the microcell networks need to be installed on higher towers and the towers must be further apart.

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3. In the T-1 Overlay Zone, where the ratio of the setback to the tower height is 1-1, more needs to be added to the provisions to state that it will be something like a laminated pole where the diameter does not get huge.

4. In the T-2 Overlay Zone, it states that for residential purposes the separation distance needs to be 200 feet or 3 times the height of the tower, whichever is greater. He did not believe that the towers needed to be the distance of 3 times the height of the pole in a high-density residential area.

5. One thing might need to be added to the setback requirements. There is a concern that if the tower topples that it be a certain distance from power lines, as a metal tower hitting power lines would be dangerous.

6. The City has stated that if a tower is built in Idaho Falls, it will be built to allow for collocation. In Ammon, one such tower has been constructed. Another company has requested to collocate on that tower. In checking with the original builder, they returned to the City of Ammon stating that it would be cost prohibitive. If it can be legally done, language should be placed in the Ordinance to require the original tower builder to state what will be charging for collocations. The other issue was the length of time it would take for the antennas to be installed on the tower. That should be addressed also.

7. Another issue with collocation might be that there will be interference between the systems on the same tower. Language needs to be added to the Ordinance stating that it needs to be significant interference. Language needs to also be added that sharing a single antenna amongst the transmitters, as well as sharing a single antenna amongst the receivers, has overcome this problem for fire and police.

There being no further discussion either in favor of or in opposition to this Zoning Amendment, Mayor Milam closed the public hearing.

Councilmember Groberg stated that the Planning and Building Director is to be commended for the compilation of this Ordinance. This Ordinance can be amended and refined with experience, but it is a great effort.

Councilmember Lehto stated that a lot of good comments have been made about this Ordinance. He questioned the City Attorney as to how the City Council should proceed in light of the comments that have been made.

The City Attorney stated that he has been highly impressed with the quality of comments that have been offered. Much of what has been said has merit. He recommended that a strong look be taken at incorporating some of the suggestions that have been received. Having said that, he recommended that the City Council go forward with the Ordinance as drafted by the Planning and Building Director. He also recommended that the City meet with some of the people that have presented testimony.

Councilmember Lehto stated that the Council should be considering this and the Overlay Zones in one public hearing. He questioned whether there would be time to incorporate some of the comments into the Ordinance to be considered with the Overlay Zones on October 12. The City Attorney stated that in dealing with the Zoning Ordinance, if a material change is made, the Statute requires that it be brought back to the Planning Commission for consideration. The City Attorney recommended, again, that the Ordinance be approved as written. He would not recommend holding the Ordinance, while the Council considers some of the points that have been raised.

Councilmember Rose asked the Planning and Building Director as to whether she was prepared to address any of the comments or questions that have been raised.

The Planning and Building Director stated that, as she read it, the lightening rod would be exempted from the height restrictions. This should be clarified in the

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Ordinance. She stated that she did understand that towers were designed to collapse into themselves. The restriction in the T-1 Zone had more to do with the proposed locations of the T-1 Zone and creating the distance from the residential uses. The comment regarding the laminated monopole was a good comment, and that provision has been put into the Ordinance, then it was removed. If the City Council decides to move forward on this Ordinance, the Planning and Building Director stated that she would contact those persons who testified to discuss amendments that would need to be presented to the City Council for consideration. She stated, further, that she appreciated the comments that were made.

Councilmember Eldredge commended the Planning and Building Director for compiling this Ordinance. This is probably the most technical piece of work that he has seen since he began serving on the Council. The comments that have been made by those present have been excellent. He stated that he was grateful for people that were willing to give the City Council the benefit of their expertise to make the Ordinance better.

At the request of Councilmember Rose, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2390

AN ORDINANCE AMENDING ORDINANCE NO. 1941
BY ADDING A NEW ARTICLE X ENTITLED
"WIRELESS TELECOMMUNICATIONS TOWERS AND
ANTENNAS"; PROVIDING DEFINITIONS; PROVIDING
FOR PERMITTED LOCATIONS; PROVIDING
CONDITIONS FOR PERMITTED USES; PROVIDING
FOR PERMITS; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEALER; AND PROVIDING FOR
AN EFFECTIVE DATE.

The foregoing Ordinance was presented by title only. Councilmember Rose moved, and Councilmember Eldredge seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on all three readings, and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Lehto
 Councilmember Groberg
 Councilmember Hardcastle
 Councilmember Eldredge
 Councilmember Rose
 Councilmember Klingler

Nay: None

Motion Carried.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to recess the public hearing on the locations of the Overlay Zones for the above Ordinance to the October

12, 2000 Regular Council Meeting and that said hearing be re-advertised. Roll call as follows:

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Aye: Councilmember Hardcastle
Councilmember Klingler
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Rose

Nay: None

Motion Carried.

Following a brief recess, the Airport Director submitted the following memo:

City of Idaho Falls
August 21, 2000

MEMORANDUM

TO: Honorable Mayor and Council
FROM: Mike Humberd, Airport Director
SUBJECT: AIRPORT OPERATIONS ORDINANCE

Attached for City Council approval is the Airport Operations Ordinance. The Ordinance adopts the Rules and Regulations as well as the Minimum Standards for commercial aeronautical activities at the Airport. The previous Ordinance was approved in 1979.

The Airport Division recommends approval of the Ordinance and requests the Mayor be authorized to execute the documents.

s/ Mike Humberd

Councilmember Groberg commented that this Ordinance was passed on the first reading only at the Council Meeting held August 24, 2000. He, also, indicated that there has been no public comment received since that time. At the request of Councilmember Groberg, the City Attorney read the following Ordinance by title:

ORDINANCE NO. 2391

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, RELATING TO THE OPERATION AND MANAGEMENT OF THE IDAHO FALLS MUNICIPAL AIRPORT, FANNING FIELD; REPEALING ORDINANCE NO. 1024; ADOPTING NEW OPERATIONAL RULES AND REGULATIONS FOR THE OPERATION OF THE AIRPORT; REQUIRING RULES AND REGULATIONS TO BE KEPT AND MAINTAINED AT THE OFFICE OF THE DIRECTOR OF AVIATION; ALLOWING FOR PUBLICATION OF SUMMARY OF THIS ORDINANCE; ESTABLISHING

PENALTY; PROVIDING FOR SEVERABILITY AND
ESTABLISHING EFFECTIVE DATE.

SEPTEMBER 14, 2000

The foregoing Ordinance was presented by title only. Councilmember Groberg moved, and Councilmember Hardcastle seconded, that the provisions of Idaho Code Section 50-902 requiring all Ordinances to be read by title, and once in full, on three separate dates be dispensed with, the Ordinance be passed on the second and third readings, authorization be given for the City Clerk to publish a Summary of said Ordinance as prepared by the City Attorney and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Rose
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

The memo from the Municipal Services Director regarding the Lease Agreement with Newcom Wireless, LLC (TELCO) was withdrawn by the Division Director.

The Municipal Services Director submitted the following memos:

City of Idaho Falls
September 7, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-00-29, SURPLUS USED EQUIPMENT

Attached for your consideration is the tabulation for Bid IF-00-29, Surplus Used Equipment.

It is the recommendation of Municipal Services to accept the high bid for each item of surplus equipment as listed on Attachment "A".

s/ S. Craig Lords

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, to accept the high bid for each item of surplus equipment as listed on Attachment "A". Roll call as follows:

Aye: Councilmember Rose
Councilmember Groberg
Councilmember Lehto
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

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City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: BID IF-00-30, EQUIPMENT FOR HATCH SUBSTATION

Attached for your consideration is the tabulation for Bid IF-00-30, Equipment for Hatch Substation.

It is the recommendation of Municipal Services to accept the lowest evaluated bid meeting specifications per Attachment "A".

It is also recommended that we reject all bids for Section IV, Item 1 – Materials Only for a Control Building and request authorization to rebid or re-quote at a later date.

s/ S. Craig Lords

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, to accept the lowest evaluated bid meeting specifications per Attachment "A" for the equipment for Hatch Substation. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Rose
Councilmember Klingler

Nay: None

Motion Carried.

It was moved by Councilmember Klingler, seconded by Councilmember Lehto, to reject all bids for Section IV, Item 1 – Materials Only for a Control Building and give authorization to rebid or re-quote at a later date. Roll call as follows:

Aye: Councilmember Klingler
Councilmember Hardcastle
Councilmember Rose
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg

Nay: None

Motion Carried.

The Parks and Recreation Director submitted the following memo:

SEPTEMBER 14, 2000

City of Idaho Falls
August 30, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: David J. Christiansen, Parks and Recreation Director
SUBJECT: WEST BROADWAY/OLD BUTTE ROAD LANDSCAPING AND
PATHWAY ENHANCEMENT PROJECT - STATE/LOCAL
AGREEMENT

Attached are copies of the State/Local Agreement for preliminary engineering for the West Broadway/Old Butte Road enhancement project. The Agreement requires that the City pay the Idaho Transportation Department (ITD) \$7,500.00 for incidental services. This enhancement project is to provide landscaping of the northern intersection of Old Butte Road and West Broadway and to construct a pedestrian/bicycle pathway. The pathway will be constructed from the north end of the pedestrian tunnel located on West Broadway and travel north to the Old Butte Road Soccer Complex. The City Engineer has reviewed and recommends approval of the Agreement. It is, therefore, submitted for your approval and to have the Mayor and City Clerk sign said document.

s/ David J. Christiansen

Following is a Resolution attached to the Idaho Transportation Department's Agreement:

RESOLUTION

WHEREAS, the Idaho Transportation Department, hereafter called the **STATE**, has submitted an Agreement stating obligations of the **STATE** and the **CITY OF IDAHO FALLS**, hereafter called the **CITY**, for design of West Broadway/Old Butte Road Highway Path; and,

WHEREAS, the **STATE** is responsible for obtaining compliance with laws, standards and procedural policies in the development, construction and maintenance of improvements made to the Federal-Aid Highway System when there is federal participation in the costs; and,

WHEREAS, certain functions to be performed by the **STATE** involve the expenditure of funds as set forth in the Agreement; and,

WHEREAS, the **STATE** can only pay for work associated with the State Highway System; and,

WHEREAS, the **CITY** is fully responsible for its share of project costs; and,

NOW, THEREFORE, BE IT RESOLVED:

1. That the Agreement for Federal Aid Highway Project STP-6420(105) is hereby approved.

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2. That the Mayor and the City Clerk are hereby authorized to execute the Agreement on behalf of the **CITY**.

3. That duly certified copies of the Resolution shall be furnished to the Idaho Transportation Department.

CERTIFICATION

I hereby certify that the above is a true copy of a Resolution passed at a regular meeting of the City Council, City of Idaho Falls, held on September 14, 2000.

s/ Rosemarie Anderson
City Clerk

(SEAL)

Councilmember Hardcastle explained that this project is due to be completed in 2002. It was moved by Councilmember Hardcastle, seconded by Councilmember Rose, to approve the State/Local Agreement for preliminary engineering for the West Broadway/Old Butte Road Enhancement Project and, further, give authorization for the Mayor and City Clerk to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Klingler
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Rose

Nay: None

Motion Carried.

The Planning and Building Director submitted the following memos:

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: CHAFFIN ADDITION, DIVISION NO. 8

Attached is the Development Agreement and Final Plat for Chaffin Addition, Division No. 8. The property is within the City of Idaho Falls and is zoned C-1, Limited Business. The Planning Commission considered this Final Plat at its August 8th Meeting and recommended approval. This Department concurs.

The annexation request is being submitted for consideration by the Mayor and City Council.

s/ Renée R. Magee

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The Planning and Building Director located the subject area on a map and further explained the request. Following is a list of exhibits used in connection with this request:

Slide 1	Aerial Photo
Slide 2	Vicinity Map showing surrounding zoning
Slide 3	Final Plat
Slide 4	Lot under consideration is shown on a Preliminary Plat that was approved in the past
Exhibit 1	Planning Commission Minutes dated August 8, 2000
Exhibit 2	Staff Report

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Development Agreement for Chaffin Addition, Division No. 8 and, further, give authorization for the Mayor and City Clerk to sign said Development Agreement. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Rose
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Lehto

Nay: None

Motion Carried.

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to accept the Final Plat for Chaffin Addition, Division No. 8 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign said Final Plat. Roll call as follows:

Aye: Councilmember Eldredge
Councilmember Lehto
Councilmember Rose
Councilmember Groberg
Councilmember Klingler
Councilmember Hardcastle

Nay: None

Motion Carried.

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: AMENDMENT TO ANNEXATION AGREEMENT, BAYWOOD PARK ESTATES, DIVISION NO. 1

Attached is the Amendment to the Annexation Agreement for Baywood Park Estates, Division No. 1. This Amendment covers the cost to connect an existing

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French Drain into the storm drain system in Troy Avenue. The Department respectfully requests approval of the Amendment.

s/ Renée R. Magee

It was moved by Councilmember Rose, seconded by Councilmember Eldredge, to approve the Amendment to the Annexation Agreement for Baywood Park Estates, Division No. 1 and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Rose
Councilmember Groberg
Councilmember Lehto
Councilmember Klingler
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

City of Idaho Falls
August 21, 2000

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ORDINANCE ESTABLISHING REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

Attached is the Ordinance establishing regulations for sexually oriented businesses. This Ordinance has been prepared after staff has reviewed land use studies on the secondary effects of sexually oriented businesses in our own and other communities, and in light of such studies, this division respectfully requests approval of this Ordinance.

s/ Renée R. Magee

Councilmember Rose stated that this Ordinance has been passed on the first reading only by the City Council to allow for additional comment from the public.

The Planning and Building Director appeared to state that most items were addressed at the August 24, 2000 City Council Meeting to create the record, to discuss the surveys distributed in our community, and to discuss surveys from other communities. When the local surveys were discussed, residents strongly supported the idea that sexually oriented businesses be regulated in this community. They should be regulated because of their effects on property values in the area and on other side effects that may be generated by concentration of sexually oriented businesses (i.e., crime rates). The Planning and Building Director explained that the Ordinance needed to be read carefully, as assumptions have been

made that this Ordinance would regulate what goes on behind closed doors. The Ordinance addresses public activities – being in areas that are owned by the public or that are open to the public. The definitions need to be read carefully regarding what a sexually oriented

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business entails. A sexually oriented business is not any business, which may carry, own, or trade in adult activity, it is those businesses that concentrate in that area.

Councilmember Rose questioned the Planning and Building Director as to whether this Ordinance has any effect on currently operating Massage Therapists. The Planning and Building Director stated that the proposed Ordinance does not include Massage Therapists who are licensed under the City. They are exempt under this Ordinance.

The City Attorney clarified that the only time this Ordinance would affect Massage Therapists is if the massage involved what the Ordinance defines as specified sexual activities or involved the exposure of specified anatomical areas. Under the City's current Massage Therapist's Ordinance, that is essentially prohibited. The proposed Ordinance is not designed to impose a second licensing scheme upon Massage Therapists.

Joe Burgess spoke from the audience to recognize a point of order. He commented that he believed that Robert's Rules of Order had been adopted by the City Council for conduct of its meetings. Mayor Milam and the City Attorney stated that the City Council has not adopted Robert's Rules of Order. Mayor Milam explained that the City Council is taking comment for a proposed Ordinance and told Mr. Burgess that he may address any concerns he has at the podium. Mr. Burgess thanked the Mayor and took his seat.

Gayla Nickel, 445 Marjacq Avenue, appeared to state that she was representing the American Massage Therapy Association recognizing that not all Massage Therapists in the City of Idaho Falls are members of that organization. Mr. Groberg informed her that the City Council admitted into the record a letter that she had written several months previous. She thanked the Council for taking her letter seriously, for considering the issues that she discussed, and for showing consideration in the proposed Ordinance. Ms. Nickel stated that Massage Therapists do not have a State Licensing Procedure in the State of Idaho. In spite of the fact that a City License is required for Massage Therapists, she did not believe that would protect them with regard to the Sexually Oriented Businesses. Ms. Nickel stated that her first concern, more than her profession, is to protect the health and welfare of the public. She presented a proposal for a solution, although it may only be a temporary solution. She is preparing legislation for State Licensure for Massage Therapists, but it will not be submitted until a year from January. Under the current Massage Therapist Ordinance with the City, anyone can get a license to practice massage. That means that anyone who is interested in running a sexually oriented business can apply for a Massage Therapist License through the City and they will be exempted from the Sexually Oriented Business Ordinance. At the time that the Massage Therapist Ordinance was being considered, Massage Therapists requested that an education requirement be provided for licensing. She was told that it would be too difficult to police the education requirement on a City level.

Mayor Milam clarified that there was a question as to what provisions that the Council would consider as there were differing organizations with differing standards.

Ms. Nickel stated that this issue would be resolved with State Licensing as there will be a standard adopted that would be statewide. She submitted to the Mayor and Council copies of pages from a recently passed Ordinance for Massage Therapy in the City of Ammon. This addresses the education issue. Ms. Nickel stated that she would be more than happy to screen Massage Applicants as a part of the licensing process. She stated again that this is only a temporary solution for the reasons that she addressed above in that anyone can apply for a Massage Therapist License and therefore become exempt from the Sexually Oriented Business Licensing requirements. Ms. Nickel questioned that if Massage Therapists are exempt from the Sexually Oriented Business Ordinance, whether they would be exempt from all stipulations. The City Attorney stated that they would be exempt. Ms. Nickel stated

that she wanted everyone present to know that Massage Therapy is not a Sexually Oriented Business; it is a health care profession. She questioned whether “nude” meant nude body that is draped or whether it meant fully exposed nude body. The City Attorney stated that it

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meant fully exposed nude body. She requested clarification regarding the term "licensed". She indicated that it was explained to her that the term "licensed" meant State Licensure. The City Attorney stated that the Ordinance, in this particular case, does not make a distinction between a licensure by the City or the State, so, as drafted if the State ultimately elects to adopt a State Licensure, what they usually do is pre-empt local licensing authority. If that is done, the Ordinance would incorporate State Licensure. Ms. Nickel questioned whether the term "Massage Parlor" came from a federal law. The City Attorney stated that he was not familiar with the federal licensing requirements.

The City Attorney stated that he met with Ms. Nickel during the Massage Therapist and Establishment Licensing procedures for the City of Idaho Falls and thanked her for her comments.

Dino Lowrey, 169 6th Street, appeared to state that she is an archeologist and geologist. She stated that she has been perusing a book by James Q. Wilson, entitled "The Moral Sense" which explores origins of morality. In that book she came across the "Universal Rules of Morality" of which there are two: 1) Murder; and, 2) Incest. There are many definitions for sexuality and obscenity, and differ from country to country. She questioned the need for such a detailed Ordinance and why laws needed to be introduced to regulate certain types of sales. The Council may be walking a fine legal line. She cited several examples of what might be obscene to her. Ms. Lowrey told the story of a 4th of July Parade held in Salt Lake City. On one particular float, there were little girls scantily clad. One of the brethren leaned over and asked President McKay whether he was scandalized and embarrassed by the procession. She quoted the Prophet David O. McKay from the L.D.S. Church as follows, "All I see are very lovely young women." Perceptions are in the mind of the beholder. She does not believe that Idaho Falls has a sexually oriented problem, at least not collectively. It is not government's job to intrude into this arena. An individual has the right to choose to walk in or out of an adult store, in or out of a massage parlor or tattoo parlor, and that individual can also choose to turn off the television.

Amy Bradley, 11603 South 10th East, appeared to state that she is the owner of the Center of Massage Therapy in Ammon, Idaho. To continue with some of the comments that Gayla Nickel made earlier, a national board has been put together for therapeutic massage and bodywork with a 500-hour minimum requirement. The requirements that have been established within that board are very well done. Students who comply with those requirements are very well educated to begin massage therapy and practice massage therapy. That is something that the Ammon City Council adopted as a method of showing the ability to practice massage therapy. National certification is available and she has that information and would be more than happy to supply the Mayor and City Council with that.

Bob Pierce appeared to state that he was from Pocatello, Idaho but had association with the Silver Foxx at 320 B Street in Idaho Falls. He requested the Mayor and City Council to reject the proposed Ordinance. After reviewing the proposed Ordinance, he recognized that the cases cited have been overturned. The Ordinance is vague. The Silver Foxx has been in business in Idaho Falls for the past two years and has been in business in Pocatello for the past ten years. They are a major contributor to all charitable and non-profit organizations around the State in the amount of \$120,000.00. Out of \$375,000.00 in inventory, only \$22,000.00 is dedicated to the sale of adult material. The Supreme Court cannot decide to this date what obscenity is. He requested to know how the City Council could make that determination.

Craig Moore, 7255 East Ririe Highway, appeared to state that the residents of Idaho Falls do not realize what the proposed Ordinance entails. There are some things that need to be regulated. There are many convenience stores and established corporate stores

that carry adult magazines and videos. They should not be coined to be a sexually oriented business. An adult should be able to purchase an adult marital aid or novelty. Mr. Moore believed that these types of businesses were characterized to be criminals. They are just

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trying to provide a service. There are laws that prohibit public nudity and prostitution. He had a concern with some of the definitions of sexually oriented businesses. He stated that the Ordinance is discriminatory and contradictory. The Ordinance needs to be reviewed, as it is confusing. The City of Idaho Falls does not have a problem with sexually oriented businesses. The Mayor and City Council need to go to the businesses that are already operating and ask them the best way to regulate these issues. This Ordinance will affect many businesses. Mr. Moore stated that regulation is needed, as it should not get out of hand. There is not a problem at this time.

Lloyd Kindred, Manager of Silver Foxx, 320 B Street, appeared to read from and submit the following letter:

September 11, 2000

Linda Milam
Mayor, City of Idaho Falls
308 Constitution Way
Idaho Falls, Idaho 83402

Dear Madam Mayor,

In the two years that the Silver Foxx has been open here in Idaho Falls, there has never been a problem arise with any Law Enforcement Agency here in Bonneville County. This means City, County, or State.

We opened October 1, 1998. We opened the adult section February 7, 1999. Before I opened the adult section of the store, I contacted the Idaho Falls Police and told them of my plans to open the adult section of the store.

I asked them to come down and to check out the material I was planning on putting in the adult section of the store. Two detectives came down and checked out what I had to put in the adult section.

There wasn't anything that went against City Code. They told me that after I had the room set up to give them a call and they would come back again. About a week later, after the room was set up, I called the detectives and they came back again. I had the room posted 18 years or older to enter, ID required.

Again, there weren't any problems with the way I had the room set up or the material in it.

I have since made the area more restrictive to enter, and put up a curtain to separate the adult section from the rest of the store.

I again called the detectives to come down and visit the store again as I had made changes and wanted to be sure that I was still in compliance. Again they told me that they couldn't see any problems.

The detectives told me at the time that they had never received any calls or complaints about the store since I had opened.

I have worked to maintain a positive relationship with the Idaho Falls Police Department, and will work harder to maintain that relationship with them.

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As far as the store decreasing property values or running other business away, that has not happened. My neighbors enjoy the store and shop here regularly. I have an excellent rapport with the other businesses in the area. There isn't one of them that thinks or feels my store is in any way harming their business.

Property taxes have gone up in the downtown area, so I don't see that I have caused any decrease in property values, in fact it would seem the value has gone up.

I have talked to the realtor that we rented from, and they told me that we have in fact been an asset to the downtown area.

I also have never had any customers complain about my store nor have I had any threatening calls about the presence of the store.

The only problems that I have had in the two years we have been open is with two customers that I had to ask to leave because they were mouthy and rude.

My customers are honest, respectable, hard-working people. Some are professionals, others are "blue collar". Most I know by name, most know me by name and speak when they see me outside the store.

I have worked hard to achieve the rapport I have with my customers, and feel I can call them my friends.

I don't see that there is the problem that the City Council is inferring that there is out there.

I fail to see the need for the City Council to regulate us more than we already are.

Respectfully,

s/ Lloyd L. Kindred

Lloyd L. Kindred

Manager, Silver Foxx

320 B Street

Idaho Falls, Idaho 83402

Greg Fisher, 370 Moonlite Drive, Apartment No. 4, appeared to state that a person has the right to look, buy and sell whatever he wants to pertaining to sexually oriented material. Who has the right to infringe on another human being's rights. There is no one that has the right. He stated that this proposal is the product of religious values of people who want to have that enforced on other people because they believe that they are wrong. He did not understand how the use of pornography by some infringe on the rights of those that do not for the reasons as follows:

1. The people in Idaho Falls who sell pornography do not advertise it openly enough so that someone who does not want it will see the advertisement.

2. They do not sell it to children and it is impossible for a child to purchase it or read it where retailers are selling it.

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3. Whoever does use pornography does it in an enclosed area, where anyone who is opposed to pornography does not see it.

Mr. Fisher stated that making it illegal to sell vibrators, muzzles, whips and other tools designed for sado-masochistic abuse is wrong. Anyone who uses these tools should have the right to buy them. He agreed that sex shops should be 2,500 feet away from day care centers, preschools and schools. Requiring sex shops to be 1,000 feet away from each other and inside industrial zoning is wrong because it infringes upon the people who do use these products and those who sell them. No matter where they are, people have the option whether or not to purchase them. Mr. Fisher stated that it is not necessary for these shops to be located a distance from churches because it is a person's religious values making these proposals. It becomes wrong when someone sells pornography on the church's property when the church is against it. He stated that the definitions of massage parlors and escort services needed to be taken out of the Ordinance, as they do not provide sexual services. Mr. Fisher stated that religious values are what the proposed Ordinance is made of.

Scott Dees, 685 Lomax Street, appeared to state that he has been to the sexual stores and parties being discussed. The in-home sex toy sales have not been addressed under the proposed Ordinance. He questioned whether these would be considered a sexually oriented business. He stated that there are more offensive acts going on at the Grand Teton Mall every day than what goes on at the dance shows that he has attended. He questioned whether dress codes would soon be put into place for public appearances. Dance shows are conducted under a controlled environment. Mr. Dees opposed any further regulations. He abides by all existing laws and has stricter regulations than can be imposed by the City Council. The Mayor and Council should meet with people that are in the business to write an appropriate Ordinance.

Megan Sieverson, 3835 East Sunnyside Road, appeared to state that the Mayor and City Council needed to meet with people in the industry to write an Ordinance. She stated that the Council should not stop the nude model studios in a classroom setting. This should be available for those that want to do that. If people want lap dances in their home, they will find a way to have that. It is not up to the City Council to regulate it.

Darcy Wold, 690 Winston, appeared to request how a tattoo and body-piercing studio is considered a sexually oriented business. She stated that they raise their children in this business. She was concerned that she will be arrested for introducing a child to sexually oriented things. With regard to exotic dancers, why is it then appropriate to go to a swimming pool where a woman is wearing a very small swimsuit that covers little. Ms. Wold expressed her concern over a child over the age of 10 not being able to touch their butt, private parts or breasts in a public place. Young children do not know the difference. She stated that 12-17 year olds could go to the State of Idaho, District 7 Health Department to request birth control. This should be considered a sexually oriented business. According to the Ordinance, her business would have to turn away those that are under 18 years of age.

Councilmember Lehto questioned where she was reading from regarding the children not touching themselves. Ms. Wold stated that this is written under Section 24, Public Nudity Prohibited. She asked again how a tattoo and piercing shop was considered a sexually oriented business.

The City Attorney stated that a tattoo and piercing shop is not a sexually oriented business. Under Section 30 of the proposed Ordinance, tattooing and body piercing are not done for sexual stimulation purposes. By virtue of that, they would not fall within the prohibition described. He explained, further, that the Ordinance contains a number of regulations that affect anyone that falls within the definition of a sexually oriented business. To the extent that the regulatory aspect of the Ordinance affects existing businesses, it will

relate to those existing businesses; however, with respect to location aspects of the business, if a business were already established, then they would have a grandfather right to continue

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at that location. The law calls this a non-conforming use. The business would still have to apply for a permit to do business.

Cecil Withrow, Owner of Visual Expressions Tattooing and Body-Piercing, 312 Park Avenue, appeared to state that he does not understand how this Ordinance is not going to affect his business. He does body piercing and tattooing of any part of the body. He requested to know who will make the distinction between whether the body piercing is a decoration or whether it is for sexual stimulation. He also implants pearls and has done for 7 years. When he opened his business, the City did not require him to have a license. The State of Idaho does not require that he have a license. Mr. Withrow stated that he will now be required to have a business license and he believes that all sexually oriented businesses should have a license as the health and welfare of the public should be the main concern. He explained that he provides these services for people across the nation and did not understand how the City Council can tell his clients that they can no longer come to him for his services.

The City Attorney explained that the prohibition listed in the Ordinance focuses upon the sale of devices, instruments, or paraphernalia. It does not focus upon the implantation. He encouraged Mr. Withrow to look carefully at the definition section of the Ordinance to make sure that the type of activities he is engaged in do not encroach into what is regulated here. The Ordinance is designed to not affect Mr. Withrow's business and, further, would not require licensure. Mr. Withrow stated that he read a section of the Ordinance that differs with what the City Attorney just stated. In the Ordinance it states that these types of businesses cause urban blight. Another section talks specifically about body piercing as anything that may stimulate the genitals. Mr. Withrow wanted to know who would make the determination as to whether the person came in to get body piercing to stimulate the genitals. Anyone over the age of 12 can get body piercing, as the federal government has legislated. Mr. Withrow stated that the proposed Ordinance is poorly written and should be reconsidered. If people want to get tattoos and have body piercing done, they will get it done elsewhere. That money will leave the community, then the community will fall.

Craig Shoher, 280 First Street, Apartment No. 5, appeared to state that legitimate business people are in attendance and they are selling legitimate products. If an Ordinance is placed prohibiting these activities, people will go to other places to get the products. Organized crime will deliver the services that legitimate people are now giving. Keep these services legitimate and legal.

Michelle Meyer, Karnation Intimate Apparel, 651 North Skyline Drive, appeared to state that she picked up a copy of the proposed Ordinance as she was concerned for her business and her employees were concerned for their jobs. She stated that she had to read it 7 times in order to understand it. She stated that she is a mother of four boys and she has morals. She raises her children around this business, as she has an office out of her home also. What people do in the privacy of their own homes is up to them. No one should dictate another person's morals. As a business owner, she believes that she has a sexually oriented business.

The City Attorney requested to know why Ms. Meyer feels that she falls within the definition of a sexually oriented business. Ms. Meyer stated that she sells marital aids. It is not a substantial portion of her business. They do not let anyone under the age of 18 in her store. The marital aids are not displayed with the rest of the merchandise. Customers must ask for those aids in order to view them. She stated that she has a classy store, and they have just remodeled. She stated that the proposed Ordinance makes her nervous that she will not be able to operate under the proposed regulations. She has been in business for

approximately 2-1/2 years and has not had any complaints about her business. She is a member of the Chamber of Commerce. Ms. Meyer questioned why the Mayor and Council are considering such an Ordinance at this time.

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Mayor Milam explained that in this instance, it was better to be proactive. Large cities have been cited for the secondary effects of these types of businesses. Garden City, Idaho, is approximately the same as Idaho Falls and is having a large problem with sexually oriented businesses. It is more difficult after a problem has been created, to take care of that problem.

Ms. Meyer requested to know how the survey process was conducted. Mayor Milam stated that the survey was a random selection based upon the first name on each page of the telephone directory for the first 100 pages. Ms. Meyer stated that her business is busy on a daily basis. Good comments have been made by those present. The community supports the businesses that in the community.

Wade O'Neil, 1690 Lindsay Boulevard, appeared to question the Council as to whether this was still a free enterprise country. The people present are entitled to their rights. The Council does not have a right to change Ordinances that apply to consenting adults.

Brian Farr, Rexburg, Idaho, appeared to state that he manages the Rocking Horse Saloon in Idaho Falls. He stated that he and his wife own a hair salon near Karnation Intimate Apparel. There are a lot of issues in the proposed Ordinance that the business owners agree with. Some things need to be monitored. He does not want his business hurt by the Ordinance. The proposal needs to be revamped. Under the definition of semi-nude, he would not be able to have dancers come to his club to perform any longer.

Tristin Smith, 417 First Street, Apartment No. 2, appeared to state that she has seen some of the dancers. This is not something that she would want her daughter to see, but she does not like that fact that her daughter sees women running around in bikinis at the Aquatic Center. The dance shows are regulated. These shows do not affect her moral standards as a mother or her family values, as they are regulated. Coverings could be put on windows where the dancers perform or where adult novelty items are sold. She would not want her daughter exposed to that.

Joe Prophet, 310 Park Avenue, appeared to state that he owns Sugar and Spice. He has read through the Ordinance several times and he agreed with a lot of what was in the Ordinance. He did not want an employee working for him that has a criminal background. He has been to the other stores in Idaho Falls. They are very classy well-done stores. He requested that the Mayor and Council come to the stores, talk with the owners, and listen to what they have to say.

Jeremy Deede, 145 2nd Street, appeared to state that as an adult citizen, he knows his rights. If he were to walk into a store and found it to be offensive, he could walk right back out. He stated that he should not have to go to another city to be able to get adult novelty items, in case this Ordinance forces some businesses in Idaho Falls to close down.

Councilmember Rose stated that he appreciated the 18 people who have come to testify before the Mayor and Council regarding the Sexually Oriented Businesses Ordinance. There have been a variety of comments and some are sounding repetitive. He requested that if there were any new comments and information, the Council would be happy to listen to those.

Sherry Walker, 242 North 4200 East, in Rigby, Idaho, appeared to state that she is the mother of three girls and the grandmother of two. She is a single-mother and has raised her children alone. She has a full-time job, pays her taxes, purchases her own groceries and does not receive State aid. She prefers to spend her consumer dollars here because if she goes to one of the shops, her money goes to a grocery store or a local service. It does not leave the area. Health issues are a great concern. She could go to a bar and pick up a different man every night or she can go to one of the shops and purchase one of their adult toys, go to the privacy of her own home, and she can know that she is not going to be

exposed to a disease. It is important to her, regarding health issues, that the proposed Ordinance does not pass as it stands.

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John McGimpsey, 2122 Calkins, appeared to comment on Mayor Milam's comment that this Ordinance is a proscriptive method to make sure that things do not get out of hand. He commended that as a goal. One of the goals should be to not be to proscriptive. A 38-page Ordinance is not really for Idaho Falls. As such, it is too proscriptive. To regulate down to marital aids, is addressing a problem that does not exist and will not exist in the near future.

Craig Moore, 1755 East Ririe Highway, re-appeared to quote from Section 25, Prohibition of Live Adult Entertainment, "No person shall perform, cause or allow the performance of Live Adult Entertainment in any Public Place within the City or at any private place or location where any individual admissions charge or consideration is charged to or collected from persons attending such performances". There might be a problem with this, as the Council is addressing a private home. These businesses do not want to be classified as a Sexually Oriented Business, because a small portion of what they do involves such items. Because it is only a small portion of their business, they should not have to pay for a permit to operate. This issue should be reviewed.

Cecil Withrow, 312 Park Avenue, re-appeared to question whether anyone has stopped to think what the spread of disease could be if there were not tattoo shops, body-piercing shops, or sexual toys to use. Most of the infections that he has heard of come from people who do the piercing at home or by their friends. Oftentimes a sterilizer is not used. The spread of disease could be great.

Councilmember Eldredge stated that, from the comments that have been received, that there is a lot of misunderstanding about the businesses that would be covered by the proposed Ordinance. He requested the City Attorney to review the definitions of businesses where this would apply. There are some limitations on the quantity of business and the area of business. He thought that most of the people who addressed Council probably would be excluded from this Ordinance because of those numbers.

The City Attorney stated that the Ordinance does not prohibit Sexually Oriented Businesses. It does allow Sexually Oriented Businesses to operate. It requires that they be licensed. The City licenses many businesses throughout the City. The proposed Ordinance is not a prohibition of Sexually Oriented Businesses. With regard to the sale of adult videos or adult books, Section 2 specifically confines the definition of an adult bookstore, as one in which there is a significant or substantial portion of the stock and trade. The term "significant" is defined to mean something in excess of 25%. With regard to the length of the Ordinance, the genesis of this Ordinance comes from a model Ordinance that was prepared by the Family Legal Foundation. He spent an extensive amount of time reviewing it. It is so thick because it has the potential for affecting speech with First Amendment concerns being implicated. As a result, the Ordinance has to be precisely drafted in order to insure that as it is read, it can be understood as to what is affected. The Ordinance also defines "specified sexual activities" and "specified anatomical areas" essentially meaning nudity or semi-nudity. Beyond that, it does not prohibit dancing. As far as the public nudity provisions, State Law already prohibits that. It is not the intent of this Ordinance to license massage parlors or tattoo parlors. The intent is not to subject those types of businesses to this Ordinance. The City Attorney stated that he appreciated the public comment. The Mayor and Council learn much from hearing from citizens. Some of the things heard tonight suggested to him that there are areas that need to be examined. Ordinances are not cast in concrete and are continuing works. The Mayor and Council are constantly reviewing and revising Ordinances to address concerns that respond to the City's businesses.

Councilmember Lehto gave a brief explanation of what took place at the previous Council Meeting when the proposed Ordinance for Sexually Oriented Businesses

was addressed. He asked two questions at that time and requested the City Attorney to answer those questions again:

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1. How did the Ordinance come about? The answer was given at the last Council Meeting that this resulted from a great deal of research and an Ordinance that mirrored another Ordinance that stood the test from the Supreme Court.

The City Attorney added that the Supreme Court recently addressed a similar-type Ordinance in Erie, Pennsylvania. The Supreme Court upheld the Ordinance in that particular case. The Ordinance has had a lot of thought and experience incorporated into it.

2. Does this Ordinance, as it is currently proposed, affect businesses that are currently operating in Idaho Falls? The answer at the last Council Meeting was that it does not affect any other businesses in Idaho Falls, perhaps one. The test of the volume of material was the indicated answer. Today's Post Register basically said that no business is currently being operated in Idaho Falls that would be affected by this Ordinance.

The City Attorney stated that he certainly would not go on the record saying that no business in Idaho Falls will be affected by this Ordinance. The question is whether or not they fit into the definition of a Sexually Oriented Business. If they do, it is clear that they will be affected by this Ordinance to the extent of the licensure requirements. It is important to recognize that in terms of the location issue, if they are existing businesses not within a zone that is allowed in this Ordinance, they would qualify as a non-conforming use or a "grandfather" and would not be required to relocate.

Mayor Milam commented that if such a business were to voluntarily relocate, had lost their lease, or wanted to build a building, then they would have to conform to the zoning requirements.

Councilmember Lehto stated that there were a number of comments that were relevant. He questioned regarding the 10-year old who does the "cup check". The City Attorney stated that the operative word is "fondle". Councilmember Lehto questioned the "escort service" and whether the Ordinance effectively bans any business that would try to operate for the purposes of dating. The City Attorney stated that this was not correct. This Ordinance is a Licensing Ordinance. Councilmember Lehto questioned how the Ordinance affects motels or hotels with cable-operated televisions offering adult movies. The City Attorney stated that focus needed to be placed on advertising. If those types of videos are shown within the hotel, but is not advertised as a selling feature, then it would not be considered to be an adult motel. Councilmember Lehto questioned whether the proposed Ordinance bans modeling for life studies. The City Attorney stated that, again, the proposed Ordinance is not a ban, it is a Licensing Ordinance. There are provisions that may subject a nude modeling studio to licensure, but it is not a ban. There are some exemptions, even with respect to the nude modeling studios. Councilmember Lehto stated that he picked up a sense that there might be a stigma in being licensed as a Sexually Oriented Business. Under Section 30, Councilmember Lehto stated that he was having trouble understanding whether the proposed Ordinance was banning marital aids, etc. He questioned whether that section was telling business owners who are selling such devices at this time, that they would not be able to sell them in the future. The City Attorney stated that this is one area that is a legitimate concern that needs to have further consideration. The Ordinance as it is currently drafted would incorporate such a ban.

Following a brief discussion regarding whether to pass the Ordinance as it stands or whether to make changes and bring it back to another Council Meeting, it was

moved by Councilmember Rose, seconded by Councilmember Eldredge, to table this Ordinance. Roll call as follows:

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Aye: Councilmember Hardcastle
Councilmember Klingler
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Rose

Nay: None

Motion Carried.

Mayor Milam commented that she hoped that those present were leaving with the understanding of what has happened. The Mayor and Council have worked for years and has determined what would survive constitutional challenges. There is a concern for this community. It was passed on the first reading only at the last Council Meeting solely for the benefit of people to be able to read it and make comments. The Mayor and Council have taken those comments to heart, just as was done with the Telecommunications Ordinance. She hoped that those present would leave understanding that the Mayor and City Council wanted to hear comments. The City does not want laws that cannot be enforced. The City does not want laws that are overly restrictive. The Mayor and Council just want to protect the community.

The Public Works Director submitted the following memos:

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: SUPPLEMENTAL AGREEMENT – SUNNYSIDE ROAD
ENVIRONMENTAL ASSESSMENT

Attached is a proposed Supplemental Agreement to the City's Contract with SERG, Inc. for environmental assessment on the Sunnyside Road Improvements Project. The Supplemental Agreement extends the scope of work to include that portion of Sunnyside Road between Rollandet and Holmes Avenue and was done so at the request of the Federal Highway Administration. If approved, the Supplemental Agreement increases the contract by an amount not to exceed \$30,000.00.

Public Works recommends approval of this Supplemental Agreement; and, authorization for the Mayor and City Clerk to sign the Contract Documents.

s/ Chad Stanger

It was moved by Councilmember Lehto, seconded by Councilmember Groberg, to approve the Supplemental Agreement with SERG, Inc. for environmental assessment on the Sunnyside Road Improvements Project and, further, give authorization for the Mayor and City Clerk to sign the necessary documents. Roll call as follows:

Aye: Councilmember Lehto
Councilmember Groberg

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Councilmember Hardcastle
Councilmember Eldredge
Councilmember Rose
Councilmember Klingler

Nay: None

Motion Carried.

City of Idaho Falls
September 11, 2000

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Chad Stanger, Public Works Director
SUBJECT: AERIAL PHOTOGRAPHY SERVICES AGREEMENT

Attached is an Agreement with Intermountain Aerial Surveys to provide the City with digital mapping services in the amount of \$11,533.00.

Public Works recommends approval of this Contract; and, authorization for the Mayor and City Clerk to sign the Contract Documents.

s/ Chad Stanger

It was moved by Councilmember Lehto, seconded by Councilmember Groberg, to approve the Agreement with Intermountain Aerial Surveys to provide the City with digital mapping services and, further, give authorization for the Mayor to sign the necessary documents. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Klingler
Councilmember Eldredge
Councilmember Lehto
Councilmember Groberg
Councilmember Rose

Nay: None

Motion Carried.

There being no further business, it was moved by Councilmember Rose, seconded by Councilmember Lehto, that the meeting adjourn at 10:55 p.m.

CITY CLERK

MAYOR
