

OCTOBER 14, 1999

The City Council of the City of Idaho Falls met in Regular Council Meeting, Thursday, October 14, 1999, in the Council Chambers at 140 South Capital Avenue in Idaho Falls, Idaho.

There were present:

Mayor Linda Milam
Councilmember Joseph Groberg
Councilmember Gary Mills
Councilmember Ida Hardcastle
Councilmember Brad Eldredge
Councilmember Larry Carlson

Absent was:

Councilmember Beverly Branson

Also present:

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

Mayor Milam requested Boy Scout Forrest Martin to come forward and lead those present in the Pledge of Allegiance.

The City Clerk read a summary of the minutes for the September 23, 1999 Regular Council Meeting. It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, that the minutes be approved as printed. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

CONSENT AGENDA ITEMS

Mayor Milam requested Council ratification for the appointment of Stephanie Austad to serve on the Board of Adjustment (Term to expire on December 31, 2000).

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 BEER LICENSES to Blues Bar (Transfer Only), Spinners (Transfer from Bopoz Korner), and Winger's; BARTENDER PERMITS to Lance G. Carpenter, Harrison C. Dixon, Sandra L.

Garvin, Jack K. Jensen, and Robert J. Thronson, 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 October 14, 1999.

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The Electric Director submitted the following memo:

City of Idaho Falls
October 12, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Director
SUBJECT: REQUEST FOR BIDS FOR POWER PLANT IMPROVEMENTS

The Electric Division respectfully requests Council ratification of advertisements to receive bids for the following projects:

- The Old Lower Power Plant Tailrace Concrete Refurbishment Project
- Gem State Bank Stabilization Project
- Upper Power Plant Dam No. 1 Access Road Project

These projects are all budgeted items.

s/ Mark Gendron

The Municipal Services Director submitted the following memo:

City of Idaho Falls
October 6, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: ADVERTISEMENT FOR BIDS

Municipal Services respectfully requests authorization to advertise and receive bids for the following items approved in the 1999-2000 budget.

1. Equipment;
2. Equipment and Materials for Electrical Generation, Transmission, Distribution, Metering and Signalization;
3. Water Pipe Fittings and Other Water Line Equipment and Materials;
4. Sewer Department Materials and Supplies;
5. Road Salt and Sand (Street Department);
6. Aggregate (Crushed Gravel) (Street Department);
7. Asphalt Plant Mix/Modified Crack Sealant (Street Department);
8. Traffic Striping Paint and Solvent; and,
9. Motor Fuels, Lubricants and Services; and the Fuel obtained through a computerized fuel dispensing system.

We would also like to request authorization to extend the current contract with Conrad and Bischoff per Bid IF-99-3, from December 31, 1999 to February 29, 2000, for them to continue to supply the required fuel products from said Bid.

s/ S. Craig Lords

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

Aye: Councilmember Mills
 Councilmember Groberg
 Councilmember Carlson
 Councilmember Hardcastle
 Councilmember Eldredge

Nay: None

Motion Carried.

Jo Fikstad, Power Coordinator for the Electric Division appeared to introduce Jessica Sparks, Y2K Youth Director representing the City of Idaho Falls in the Idaho Consumer-Owned Utility Association. Jessica is a Sophomore at Shelley High School.

Jessica Sparks appeared to express her thanks to the Mayor, City Council, and Electric Division for the opportunity to attend the ICUA Youth Rally. She, further, thanked Jo Fikstad for the time she spent in supporting the Youth Rally. Jessica explained that the Youth Rally was held in Lewiston, Idaho. She reviewed, for the Mayor and Council, the Youth Rally Program and activities associated with the Rally.

REGULAR AGENDA ITEMS

The City Clerk presented the following Expenditure Summary dated September 1, 1999 through September 30, 1999, 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	\$1,024,333.31	\$1,051,103.36	\$2,075,436.67
Street Fund	148,577.62	57,730.40	206,308.02
Airport Fund	130,335.43	27,902.85	158,238.28
Water and Sewer Fund	832,655.33	129,009.81	961,665.14
Electric Light Fund	2,616,188.53	230,367.50	2,846,556.03
Sanitation Fund	29,793.21	62,544.54	92,337.75
Recreation Fund	14,845.54	23,620.86	38,466.40
Library Fund	69,143.08	50,151.93	119,295.01
Street Capital Improvement Fund	316,748.96	.00	316,748.96
Bridge and Arterial Street Fund	74,989.00	.00	74,989.00
Ambulance Fund	138,840.38	60,822.58	199,662.96
Municipal Equipment Replacement Fund	115,389.39	.00	115,389.39
Energy Conservation Loan Fund	71,068.41	.00	71,068.41
Surface Drainage Fund	30,514.65	.00	30,514.65
TOTALS	\$5,613,422.84	\$1,693,253.83	\$7,306,676.67

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to ratify the payment of Check No. 48305 in the amount of \$85,667.00 made payable to Shook Construction. Roll call as follows:

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Aye: Councilmember Hardcastle
Councilmember Eldredge
Councilmember Groberg
Councilmember Mills

Nay: None

Abstain: Councilmember Carlson

Motion Carried.

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to ratify the payment of the remainder of the expenditures for the month of September, 1999. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Mills
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Mills to conduct Annexation Proceedings for Melaleuca Addition, Division No. 1. It was moved by Councilmember Mills, seconded by Councilmember Groberg, to recess Annexation Proceedings for Melaleuca Addition, Division No. 1 to the October 28, 1999 Regular Council Meeting. Roll call as follows:

Aye: Councilmember Carlson
Councilmember Eldredge
Councilmember Hardcastle
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Mills to conduct Annexation Proceedings for a Metes and Bounds Description of City of Idaho Falls Property south of the Idaho Falls Municipal Airport and extending to and including portions of West Broadway, located in the South One-Quarter Corner of Section 15, Township 2 North, Range 37, East of the Boise Meridian, located generally north of West Broadway, west of North Bellin Road, and east of Old Butte Road. At the request of Councilmember Mills, the City Clerk read the following memo from the Planning and Building Director:

OCTOBER 14, 1999

City of Idaho Falls
October 11, 1999

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION AND INITIAL ZONING – CITY PROPERTY SOUTH OF AIRPORT

Attached is the Annexation Ordinance for 26.38 acres lying south of the Idaho Falls Municipal Airport and extending to and including portions of West Broadway. This property was acquired by the City of Idaho Falls to protect the Airport Clear Zone. The requested zoning is M-1, which is the same zone applied to the remainder of the Airport property. The Planning Commission reviewed this annexation request at its September Meeting and recommended annexation and the initial zoning of M-1, Manufacturing. The Department concurs. This matter is now being submitted to the Mayor and Council for consideration.

s/ Renée R. Magee

The Planning and Building Director located the subject area on a map and further explained the request. The following exhibits were presented in relation to this annexation request:

Slide 1	Vicinity Map
Slide 2	Aerial Photo
Slide 3	Photo at West Broadway, looking west of Reed's Dairy
Exhibit 1	Planning Commission Minutes
Exhibit 2	Staff Report

It was explained, further, that the City of Idaho Falls would lease this land as farm ground.

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

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

ORDINANCE NO. 2349

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 Mills moved, and Councilmember Groberg 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:

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Aye: Councilmember Hardcastle
Councilmember Mills
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg

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 Mills, seconded by Councilmember Groberg, to establish the initial zoning of the Metes and Bounds Property in the South One-Quarter Corner of Section 15, Township 2 North, Range 37, East of the Boise Meridian, located generally north of West Broadway, west of North Bellin Road, and east of Old Butte Road as M-1 (Manufacturing) 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 Hardcastle
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

Mayor Milam requested Councilmember Mills to conduct Annexation Proceedings for Stonebrook Addition, Division No. 14. At the request of Councilmember Mills, the City Clerk read the following memo from the Planning and Building Director:

City of Idaho Falls
October 11, 1999

MEMORANDUM

TO: Mayor and City Council
FROM: Renée R. Magee, Planning and Building Director
SUBJECT: ANNEXATION, FINAL PLAT, AND INITIAL ZONING -
STONEBROOK ADDITION, DIVISION NO. 14

Attached is the Final Plat, Annexation Agreement, and Annexation Ordinance for Stonebrook Addition, Division No. 14. This Division consists of 5.63 acres and 14 single-family lots and is located east of Nathan Drive, west of Stonebrook Lane, and approximately 300 feet south of Sunnyside Elementary. The requested zoning is RP-A. The Planning Commission reviewed this annexation request at its September Meeting and recommended approval of the

Final Plat and the initial zoning of RP-A, Residence Park. The Department

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concur. This matter is now being submitted to the Mayor and Council 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
Slide 2	Aerial Photo
Slide 3	Final Plat for Stonebrook Addition, Division No. 14
Exhibit 1	Planning Commission Minutes
Exhibit 2	Staff Report

It was, further, explained that this Division complies with the requirements of the RP-A Zone and the Subdivision Ordinance.

Councilmember Groberg stated that he abstained from participating on any discussion and vote on this annexation request due to a possible conflict of interest.

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 Mills, seconded by Councilmember Eldredge, to accept the Final Plat for Stonebrook Addition, Division No. 14 and, further, give authorization for the Mayor, City Engineer, and City Clerk to sign the Final Plat. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Mills
Councilmember Eldredge
Councilmember Carlson

Nay: None

Abstain: Councilmember Groberg

Motion Carried.

It was moved by Councilmember Mills, seconded by Councilmember Eldredge, to approve the Annexation Agreement for Stonebrook Addition, Division No. 14 and, further, give authorization for the Mayor and City Clerk to sign said Agreement. Roll call as follows:

Aye: Councilmember Carlson
Councilmember Eldredge
Councilmember Hardcastle
Councilmember Mills

Nay: None

Abstain: Councilmember Groberg

Motion Carried.

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

ORDINANCE NO. 2350

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 Mills 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 Mills
Councilmember Hardcastle
Councilmember Eldredge
Councilmember Carlson

Nay: None

Abstain: Councilmember Groberg

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 Mills, seconded by Councilmember Eldredge, to establish the initial zoning of Stonebrook Addition, Division No. 14 as RP-A (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 Eldredge
Councilmember Carlson
Councilmember Mills
Councilmember Hardcastle

Nay: None

Abstain: Councilmember Groberg

Motion Carried.

The Electric Director submitted the following memo:

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City of Idaho Falls
October 12, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: Mark Gendron, Electric Director
SUBJECT: ENVIRONMENTALLY PREFERRED POWER AGREEMENT WITH
BONNEVILLE POWER ADMINISTRATION

Attached for your consideration is an Agreement with BPA for the purchase of environmentally preferred power for one year. The City Attorney has reviewed this Agreement.

The Electric Division respectfully requests City Council approval and authorization for the Mayor to execute the Agreement.

s/ Mark Gendron

Councilmember Eldredge stated that there are three different projects that make up this environmentally preferred power, one of those being the City of Idaho Falls Bulb Turbines. In essence, the City of Idaho Falls is purchasing power from the City of Idaho Falls, but the City is also buying a resource that has been certified as environmentally preferred and one that fulfills the wishes of the citizens to be able to participate in such purchase of environmentally friendly power supplies. It was moved by Councilmember Eldredge, seconded by Councilmember Mills, to approve the Environmentally Preferred Power Agreement with Bonneville Power Administration and, further, give authorization for the Mayor to execute the necessary documents. Roll call as follows:

Aye: Councilmember Hardcastle
Councilmember Eldredge
Councilmember Carlson
Councilmember Groberg
Councilmember Mills

Nay: None

Motion Carried.

The Municipal Services Director submitted the following memos:

City of Idaho Falls
October 6, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: REQUEST TO PURCHASE NEW AMBULANCE

Municipal Services respectfully requests authorization to purchase a second ambulance from City of Idaho Falls Bid IF-99-20. This bid was awarded on May 20, 1999, to Pacific Emergency Vehicles, Inc. to furnish One (1) New Type III

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Ambulance mounted on a 1999 Ford Super Duty Cab and Chassis. They will provide a 1999 Apollo Model Ambulance Body constructed by Medtec Ambulance Corporation. The total purchase amount is \$92,844.00. This amount includes a deduction of \$3,000.00 for trade-in of Unit No. 822 and a deduction of \$3,600.00 for a Pro Pac Monitor.

This second purchase will be for the exact same unit and for the same price.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to approve the purchase of a second ambulance from the City of Idaho Falls Bid IF-99-20. Roll call as follows:

Aye: Councilmember Mills
Councilmember Groberg
Councilmember Carlson
Councilmember Hardcastle
Councilmember Eldredge

Nay: None

Motion Carried.

City of Idaho Falls
September 24, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: CHANGE ORDER NO. 2 FOR ANIMAL CONTROL FACILITY

Attached for your consideration is the Change Order No. 2 for the new Animal Control Facility in the amount of \$2,933.00 for the items as specified on the documents.

It is respectfully requested the Council approve and authorize the Mayor to sign said documents.

s/ S. Craig Lords

It was moved by Councilmember Eldredge, seconded by Councilmember Groberg, to approve Change Order No. 2 to Shook Construction for the Animal Control Facility and, further, give authorization for the Mayor to sign said Change Order. Roll call as follows:

Aye: Councilmember Groberg
Councilmember Mills
Councilmember Hardcastle

Councilmember Eldredge

Nay: None

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Abstain: Councilmember Carlson

Motion Carried.

City of Idaho Falls
October 7, 1999

MEMORANDUM

TO: Honorable Mayor and City Council
FROM: S. Craig Lords, Municipal Services Director
SUBJECT: ORDINANCE FOR CABLE FRANCHISE

Attached for your consideration is a Cable Franchise Ordinance. Also, attached is a summary for the Ordinance.

s/ S. Craig Lords

Councilmember Eldredge stated that this item has been worked on for a very long time.

Steve Proper, Franchise Director for A T & T Cable Services, formerly known as TCI Cablevision appeared. He stated that Dean Jones, Local General Manager for the local A T & T Cable Services is also in attendance. Mr. Proper submitted the following letter to be submitted into the record:

October 14, 1999

Honorable Mayor Linda Milam
City of Idaho Falls
P. O. Box 50130
Idaho Falls, Idaho 83405

RE: City of Idaho Falls "Cable Service Provider Ordinance"

Dear Mayor Milam:

It is with sincere regret that TCI Cablevision of Idaho, Inc. (A T & T Cable Services) must formally rise in opposition of the City of Idaho Falls' (City) proposed "Cable Service Provider Ordinance" (Ordinance), as it stands in its present form. As such, we would once again ask for serious reconsideration of this Ordinance to limit its scope to those items which are appropriate for the City's management of its right-of-ways, so that we may move on to a franchise agreement that is consistent with the terms and conditions discussed in our respective renewal discussions to date, along with a demonstrated need for such terms.

A T & T Cable Services has appreciated the opportunity afforded us over the past months to provide comments with regards to the City's proposed Ordinance, as well as the manner in which the City has remained engaged in these discussions. However, it is our opinion that even with the modifications that have been made to the Ordinance since its inception, the Ordinance

continues to go well beyond the reasonable boundaries of anything that we have witnessed in over twenty-five years of cable options in the State of Idaho. By way of illustration, the Ordinance continues to contain terms and conditions

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that appear to have no demonstrated need; places overly burdensome administrative and reporting requirements on both parties; creates inequality in the treatment of like users of the City's right-of-ways; contains terms and conditions outside the City's legal authority and will significantly increase the time for both parties to develop a workable franchise agreement.

Our specific comments with regards to the Ordinance have been well documented and we would ask that these previous comments become a matter of record with respect to these discussions. Our concern now turns to the very real possibility of continued protracted renewal discussions. As it stands, these discussions commenced in earnest over three years ago with our initial letter to the City, indicating our desire to renew our cable franchise. In all likelihood, if the Ordinance passes in its present form, untold hours of discussion with regards to waivers of certain Ordinance provisions will occupy future franchise agreement discussions, long before any other substantive issues can be discussed.

As we reflect back on this franchise renewal process to date, a number of perplexing questions begin to surface. For instance ... what has occurred that fundamentally makes these renewal discussions so much more difficult than those which we have experienced in other Idaho communities? Who stands to benefit from continued protracted discussions? Why after three years of discussions are we still at this point of disagreement? Where are these discussions headed? When will these discussions conclude? How do we turn this process around for the mutual benefit of all parties concerned?

Mayor Milam, despite our opposition to the City's Ordinance in its present form and the questions raised above, you have our assurance and our commitment to continue to attempt to achieve a mutually successful conclusion to our franchise renewal discussions.

Sincerely,

s/ Steve Proper
Steve Proper
Franchise Director

cc: Dale W. Storer, Idaho Falls City Attorney
Idaho Falls City Council Members
Craig Lords, Municipal Services Director
Mitchell Wyatt, City Consultant
Dean Jones, A T & T Cable Services General Manager

Councilmember Eldredge questioned Mr. Proper as to whether there were any specific provisions that he needed to request waivers for.

Mr. Proper stated that during the review process, several issues have been documented that represent concerns regarding this Ordinance, along with several recommendations to alleviate those concerns. He noted that modifications have been made

to this Ordinance since its inception, but it continues to be a document that A T & T needs to rise in opposition to.

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Councilmember Eldredge stated that this Ordinance is a provider-neutral Cable Ordinance and does not specifically state any particular provider. This Ordinance is not formally part of the renewal process.

Mr. Proper stated that A T & T understands that this Ordinance is provider-neutral, but they have had experience with these documents in the past. He commented that he has never witnessed anything of this volume and magnitude before. In working with documents similar to this, the Franchise Agreement becomes page after page of waivers. Mr. Proper explained that A T & T feels that some right-of-way discriminatory issues need to be addressed, where all like users of rights-of-way are required to do what is contemplated in some of the provisions listed in this Ordinance.

Councilmember Groberg questioned Mr. Proper as to whether he was aware of any uniform, model Cable Franchise Ordinances available through any legal organization.

Mr. Proper stated that, internally, A T & T has a model document. He explained that other providers may have their version, but there is not one mandated model Cable Franchise Ordinance.

Mayor Milam commented that since the Telecommunications Act was passed in 1996, that this Act is still evolving along with the rules and regulations at the federal level. It makes it difficult to produce a model Ordinance until this Act is settled.

Councilmember Groberg stated that the City has other equally complicated ordinances, but they are Ordinances that have been worked out by specialized societies, such as the Building Codes, Fire Codes, etc. He did not believe that the City has ever come up with such a complicated Ordinance on its own.

Mr. Proper stated that A T & T has sample Ordinances from cities in Idaho, as well as cities outside Idaho. These sample Ordinances are not as extreme as the proposed Ordinance with the City of Idaho Falls.

Councilmember Carlson questioned the City Attorney regarding why this Ordinance cannot be cut down from 100 pages, to simplify it.

The City Attorney explained that this industry is evolving rapidly, and is riding the tail of a technological revolution. The Cable Franchise Ordinance, which is very complex and comprehensive, is primarily designed to put an umbrella over the changing industry. This will give the City of Idaho Falls a handle over this rapidly evolving industry as can be retained. This Ordinance is designed to give the Mayor and Council a framework for addressing a broad variety of potential other providers in this industry.

Councilmember Eldredge stated that the Ordinance being considered is essentially a model Ordinance developed by Wyatt and Associates, the City's Consultant. This was developed based upon the experience of Wyatt and Associates, along with the experience of others throughout the country in dealing with Cable Franchises in a rapidly evolving and complex industry.

The City Attorney stated that the Ordinance is not cast in concrete. As changes occur in the industry, the Council will have the opportunity to amend this Ordinance. There are litigations pending now that will resolve some of the uncertainties. The reason for an umbrella regulatory ordinance, rather than to put the information into the Franchise Agreement, is because the Franchise Agreement becomes a contract and there is not the flexibility to unilaterally amend a Franchise Agreement.

Councilmember Groberg restated the previous comments of the City Attorney and requested comment from Mr. Proper. Mr. Proper stated that this is one of the fundamental concerns that A T & T has with one of the provisions in the Ordinance. He understood that the Cable Franchise Ordinance can be unilaterally amended, and if there is a conflict between this Ordinance and an Agreement, the Cable Franchise Ordinance is the ruling document. This would create an illusionary contract that could be changed at any

time. Mr. Proper explained that in recent negotiations with the City of Boise, the Franchise Agreement is the prevailing document over the Enabling Ordinance. The Franchise Agreement is not unilaterally amendable.

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Councilmember Groberg questioned Mr. Proper whether he would like the certainty that comes with a negotiated contract, as opposed to the uncertainty that comes with a complex ordinance that could be unilaterally changed. Mr. Property stated that this was a fair assessment. He stated that while A T & T is in the business and that they know the business pretty well, their crystal ball is not a lot clearer than the City's. This is a changing industry. A T & T has incorporated in their Franchise Agreements a number of provisions that have been acceptable to Cities to satisfy concerns. Periodic reviews can be scheduled and held for almost any provision in the Franchise Agreement. If those reviews do not meet with either party's satisfaction, there is a termination process of the Franchise. The City's Consultant raised a legitimate concern, "You know us today, but is A T & T going to be the folks you see tomorrow." Mr. Proper explained that there are a number of federal laws that continue to protect cities with regard to transferring Franchises. Cities have the right to review the legal, technical, and financial qualifications of an assuming company. The assuming company would have to unconditionally accept the terms of the Franchise Agreement, and in that Franchise Agreement there should be enforcement and revocation proceedings. If that happened, during the renewal process, there is a formal federal renewal process available to cities to deny renewals based on very specific conditions. A T & T has been able to come up with language that is agreeable, to both parties, with respect to this concern.

Councilmember Carlson questioned whether there was anything that would make A T & T change their operation to charge the consumers higher rates.

Mr. Proper stated that, by federal law, there are certain customer services and operating standards that all cable operators have to operate by. Anything that goes beyond the reporting requirements and franchise requirements is considered as an external cost by the FCC, and can be charged for additionally.

Councilmember Mills commented that if a provider were in attendance stating that this Cable Franchise Ordinance was wonderful, then he would think that maybe the Council was not doing their job in protecting the interests of the taxpayers.

Mayor Milam stated that she has read the Boise Ordinance, and it does reserve the right for the development of further regulations. This is not in the base Ordinance, but they have reserved that right. When the Telecommunications Act was being developed in Congress, there were a number of areas where rights and authorities that had previously accrued to local government (such as zoning), were taken out and turned over to the FCC. With this Ordinance, an effort has been made for the City, as well as its citizens, to know what will happen, as opposed to the changing regulations that come from the FCC in Washington.

Mr. Proper stated that A T & T is completely in agreement with the City, in that the Ordinance addresses only Cable Franchises. A T & T has been able to come up with agreeable terms with other cities, in far less cumbersome terms than the Cable Franchise Ordinance does. Mr. Proper stated that he very much appreciated the time spent and the consideration of the Mayor and Council.

Councilmember Eldredge questioned the City Attorney as to whether both parties would have the right of review and be in agreement with the periodic reviews and changes. The City Attorney stated that if the City wanted to incorporate any changes into the Franchise Agreement, then it would require mutual consent. If there were a change to a provision in the Ordinance, then it would be done unilaterally.

Councilmember Groberg stated that the Council could negotiate into the Franchise Agreement, a provision that Ordinances would prevail. The City Attorney stated that he would not recommend that it be that broad. He commented that Mr. Proper's concern has some merit in the sense that what they look for is certainty in a number of

areas. The City recognizes that. There are areas that they are entitled to certainty, in terms of the Franchise Agreement. They need to be able to project where they are going and what they are looking at. There are items that need to be a matter of contract and should not be

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changed unilaterally by the City. On the other hand, when basic fundamental standards are concerned, the City needs to reserve the ability to respond more flexibly without having hands tied by the Franchise Agreement.

Councilmember Eldredge stated that this has been a very complex issue and one that the Council has spent a great deal of time discussing. At the request of Councilmember Eldredge, the City Attorney read the following Ordinance by title:

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF IDAHO FALLS, IDAHO, RELATING TO THE REGULATION OF CABLE TV FRANCHISES; ESTABLISHING SCOPE OF ORDINANCE, PROVIDING DEFINITIONS FOR CERTAIN TERMS; ESTABLISHING DISPUTE RESOLUTION PROCEDURE; ESTABLISHING REGULATIONS REGARDING DURATION OF FRANCHISES AND RENEWALS; DEFINING LIABILITY OF THE PARTIES AND PROCEDURES FOR CONSIDERATION OF CONSUMER COMPLAINTS; SETTING FORTH PROVISIONS FOR REGULATION OF RATES; ESTABLISHING REQUIREMENTS FOR PUBLIC ACCESS CHANNELS; REGULATING CONSTRUCTION OF CATV SYSTEMS; PROVIDING REPORTING REQUIREMENTS AND FOR SYSTEM TESTING AND PERFORMANCE EVALUATIONS; ESTABLISHING TECHNICAL REQUIREMENTS AND STANDARDS AND STATING PROVISIONS FOR FRANCHISE TERMINATION, TRANSFERS AND ASSIGNMENTS; PROVIDING FOR SEVERABILITY AND ESTABLISHING EFFECTIVE DATE.

It was moved by Councilmember Eldredge, seconded by Councilmember Hardcastle, to pass this Ordinance on the first reading only. Roll call as follows:

Aye: Councilmember Mills
Councilmember Hardcastle
Councilmember Eldredge

Nay: Councilmember Groberg
Councilmember Carlson

Motion Carried.

Councilmember Groberg expressed several concerns regarding this Cable Franchise Ordinance. He stated that he was not sure what the City was introducing itself into. He is concerned with the City passing a complex law that introduces the City into this business. He knows that the City has passed complicated Ordinances, but those Ordinances have been developed by trade organizations and have been worked out in detail.

Councilmember Groberg stated that the City should only pass Ordinances that are really essential. He is not persuaded that at this point, that this one is necessary.

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Mayor Milam stated that she has read three drafts of this Ordinance. She stated that she did not find it hard to follow. She requested that the Council re-read this Ordinance, make comments, and bring those comments to the Work Session so that all issues might be addressed.

Councilmember Eldredge stated that until the Council resolves this Cable Franchise Ordinance, they are not prepared to go forward with the Franchise Agreement with a Cable Provider.

Councilmember Hardcastle stated that the Council has had opportunity to address their concerns at other Work Sessions regarding this Cable Franchise Ordinance.

Councilmember Groberg stated that his submittal is a much shorter, less complicated, and less intrusive Ordinance.

Councilmember Eldredge stated that the City has returned to Mr. Wyatt, the City's Consultant, and removed several provisions. The Ordinance before Council at this time is the revised and shorter version.

Mayor Milam stated that the Council Meetings for November will be Tuesday, November 9, 1999 and Tuesday, November 23, 1999, due to the Veteran's Holiday and the Thanksgiving Holiday being on the regularly scheduled Council Meeting dates.

There being no further business, it was moved by Councilmember Carlson, seconded by Councilmember Hardcastle, that the meeting adjourn at 8:35 p.m.

CITY CLERK

MAYOR
