

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE REGULAR MEETING**

April 2, 2014

The City Council of the City of Grand Junction convened into regular session on the 2nd day of April, 2014 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bennett Boeschstein, Martin Chazen, Jim Doody, Duncan McArthur, Phyllis Norris, Barbara Traylor Smith, and Council President Sam Susuras. Also present were Deputy City Manager Tim Moore, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Susuras called the meeting to order. Councilmember Norris led the Pledge of Allegiance, followed by a moment of silence.

Presentation

Kjersti Litzelman from the Incubator presented an update on Enterprise Zones. She explained the purpose of the Enterprise Zone (EZ) program and displayed a map of the current Enterprise Zones. In order for an area to be added to the Enterprise Zone, two criteria have to be met. She explained the steps of a boundary amendment. A local committee reviews it and then it is presented to the Mesa County Commissioners for a recommendation. That recommendation is taken to the Economic Development Commission (EDC) and the EDC approves or denies the boundary adjustment. The next review period has been delayed until 2015. Ms. Litzelman then explained contribution projects as defined and approved by the EDC. If a donor contributes to an Enterprise Zone project, they get an additional tax credit on their State income tax. As of 2010, the law requires that the donor provides their social security number or taxpayer identification number and they must file their taxes electronically. For tax years prior to December 31, 2013, there are investment tax credits, job creation tax credits, job tax credits, job training credits, building rehabilitation credits, research and development tax credits, and commercial vehicle investment tax credits. As of January 1, 2014, there were increases to many of these credits. Under Senate Bill 10-162, effective January 1, 2012, a business must get pre-certified to earn the EZ credit and State income taxes have to be filed electronically.

Councilmember McArthur asked what a donation to the Enterprise Zone means. Ms. Litzelman said it would be a donation to a qualified project such as Grand Junction Economic Partners, Grand Valley Catholic Outreach, etc. Councilmember McArthur asked if this would be a tax credit over and above their charitable contribution credit. Ms. Litzelman said yes, they can take regular credit and then an additional credit toward liability on State taxes. Councilmember McArthur asked about the status in regards to the rural criteria; Fruita became part of the metropolitan area but then exempted under the Farm Bill. Ms. Litzelman said there is different criteria for the two different programs.

Councilmember Traylor Smith said she wanted to confirm that when someone makes a contribution they have to provide their social security number up front. Ms. Litzelman said it is best if they do.

Councilmember Chazen asked if Council has inquiries about a business prospect, should they be sent to the Business Incubator. Ms. Litzelman said yes.

Councilmember Norris said this is a great economic development tool and it is beneficial for non-profit businesses also. She thanked the Business Incubator for all the hard work.

Councilmember Boeschstein said Foresight Park has been left out of the Enterprise Zone and he would like to get it back in. Ms. Litzelman said the Business Incubator is working on it. The design is to help improve a distressed area, and then move onto other distressed areas.

Council President Susuras thanked Ms. Litzelman and said it was a great presentation.

Proclamations

Proclaiming April 2014 as “Child Abuse Prevention Month” in the City of Grand Junction

Councilmember Norris read the proclamation. Meghan Ventling, with the Western Slope Center for Children, and Scott Aker, Department of Human Services, were present to accept the proclamation. Ms. Ventling thanked the City Council and noted her agency reacts to abuse; last year they saw 338 children that were alleged victims of abuse, and 96% of the abusers are people the children know. On April 15th they will have another training at the Community Services Building.

Mr. Aker said for all of 2013 his department took over 3,600 calls reporting abuse and neglect; nearly 500 unique children were confirmed victims. Thankfully there were no fatalities in 2013. He called upon the community to put a dent in those numbers and said it takes the whole community of partners, businesses, and other organizations. He noted the difficulty of parenting. He gave the 24 hour child protection hot line number, 242-1211, and said do not be afraid to report anything.

Proclaiming April 2014 as “Month of the Young Child” in the City of Grand Junction

Councilmember Doody read the proclamation. JoZan Kirk, Tanya Middleton, and Cheri Campbell with the Mesa District Group Association for the Education of Young Children, were present to accept the proclamation. They thanked the City Council and distributed

blue pinwheels. They announced a free event at Canyon View Park called the “Day in the Park for Young Children” on April 26th from 10 a.m. to 2 p.m. There will be free activities and food for families.

Proclaiming April 2014 as “Donate Life Grand Junction Month” in the City of Grand Junction

Councilmember Chazen read the proclamation. Andrea Smith, Director of Public Relations/Communications, Donor Alliance, and Debi Carson Youngerman, Donor Alliance Advocate for Life, and twenty-five year kidney recipient, were present to accept the proclamation. Ms. Smith explained that not only do they facilitate the organ donation process, they also work to educate and inspire others in the State to become organ and tissue donors. There are over 2,400 people waiting for an organ transplant. Donor Alliance facilitates around 400 transplants annually. She introduced Debi Carson Youngerman who is celebrating her 25th anniversary of her kidney transplant. Ms. Youngerman related her story and thanked the City Council for the proclamation.

Proclaiming April 2014 as “National Autism Awareness Month” in the City of Grand Junction

Councilmember Boeschstein read the proclamation. Doug Sorter, Director of Business Development for Strive, was present to accept the proclamation. Mr. Sorter thanked the City Council and noted Botanical Gardens is part of the Enterprise Zone. A national survey of several states showed the frequency of autism has increased. The numbers are up because it is being diagnosed earlier, with diagnosis higher in boys. The diagnosis usually occurs around the age of four but can occur as early as two years old. Strive has come to the aid of the community in this area. Patti Hoffman from Strive was also present and told of the number of calls she receives for a diagnosis. Their program helps children with treatment, counseling, and social concept groups.

Proclaiming April 16, 2014 as “National Health Care Decision Day” in the City of Grand Junction

Councilmember McArthur read the proclamation. Mary Watson, from Hope West Hospice, and Erica Eng, from Community Hospital, were present to receive the proclamation. Ms. Watson said they are part of an advanced directive group that includes Mesa County, St. Mary’s Hospital, Callahan Edfast Mortuary, and other organizations. On April 16th they will have a special presentation on advanced directives at St. Mary’s Hospital, one in the morning and one in the evening. She thanked the City Council for their support.

Certificate of Appointments

Laura Bradley was present to receive her Certificate of Appointment to the Commission on Arts and Culture. She thanked the City Council for the appointment.

David Murray was present to receive his Certificate of Appointment to the Grand Junction Regional Airport Authority. Mr. Murray thanked the City Council for the invitation to serve and he looks forward to his opportunity to advance the Airport.

Council Comments

Councilmember Boeschstein stated that many of the Councilmembers participated in the federal emergency drill. He attended the Business Incubator meeting that morning and the Maker Space is open. He attended the Riverfront Commission meeting on Tuesday and they will be hosting a group from Arizona that is interested in the Riverfront Project. The Riverfront trail construction from Fruita to Grand Junction should be completed this summer, the Las Colonias project is still being worked on, and the Riverfront Commission will be unveiling a strategic plan soon.

Councilmember McArthur said the Homeless Committee met with the Governor's Chief of Staff and members of the Homeless Coalition. He asked Jennifer Lopez with the Homeless Coalition for information on the next steps. He also attended the reception on March 20th to recognize Public Works, Utilities, and Planning Director Greg Trainor and congratulated him on his retirement.

Councilmember Traylor Smith referred to the emergency drill and what came to light is the notification is done through reverse 911 calls and only occurs for those that have home phone numbers. There is a way to sign up on the web site for notifications for cellular service, and she encouraged everyone to do that.

Councilmember Doody echoed what Councilmember McArthur said about Greg Trainor and said he was a great man and a great Public Works Director.

Councilmember Chazen said he attended a Downtown Development Authority (DDA) meeting on March 27th and there was a discussion on downtown housing development. They also awarded the remainder of the asbestos removal contract for White Hall. There will be a joint Downtown Development Authority/Downtown Grand Junction Business Improvement District (DDA/DGJBID) and City Council meeting and encouraged Councilmembers to submit agenda items. There was a meeting with Governor Hickenlooper focused on economic development and water. The possible listing of sage grouse as an endangered species and how that will affect the local economy was also discussed. He attended a Mesa County Commissioners meeting where the

Commissioners supported Mesa County Resolution No. 2477 to keep roads on public lands open. Brandon Siegfried brought this topic forward.

Citizen Comments

There were none.

CONSENT CALENDAR

Councilmember Doody read the Consent Calendar items #1-3 and then moved to adopt the Consent Calendar. Councilmember Boeschstein seconded the motion. Motion carried by roll call vote.

1. **Minutes of the Previous Meeting**

Action: Approve the Minutes of the March 19, 2014 Regular Meeting

2. **Setting a Hearing for the Vacation of Portions of Cannell and Elm Avenue and Adjacent Alley Rights-of-Way for Colorado Mesa University** [File #VAC-2014-40]

Request to vacate portions of Cannell and Elm Avenue and adjacent alley rights-of-way for Colorado Mesa University to facilitate the continued westward expansion efforts planned for the campus.

Proposed Ordinance Vacating Portions of the Cannell and Elm Avenue and Associated Alleys Rights-of-Way and Retaining a Utility Easement Located in the Colorado Mesa University Area

Action: Introduce a Proposed Ordinance and Set a Public Hearing for April 16, 2014

3. **Purchase a Single Axle 4x2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment**

This request is for the purchase of a scheduled equipment replacement of a single axle 5 yard dump truck with snow removal equipment. The purchase proposed is a hook lift truck with a separate dump body and snow removal equipment which can be interchanged at any point. Other versatile pieces of equipment will be added in the future that can be used with this same truck such as water truck, flat bed, stake bed, or any other needed body options.

Action: Authorize the City Purchasing Division to Purchase a Single Axle 4X2 Hook Lift Truck with a 5 Yard Dump Body and Snow Removal Equipment from Hanson International Kois Brothers Equipment for \$149,015

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Grand Valley Catholic Outreach Fee Request

A request to have the City pay certain development fees for Grand Valley Catholic Outreach's proposed 24 residential units adjacent to St. Martin Place on Pitkin Avenue.

Kathy Portner, Economic Development and Sustainability, presented this item. She noted that the Grand Valley Catholic Outreach (GVCO) is ready to break ground for this project. The existing homes have been demolished. GVCO is asking the City Council to consider paying certain development fees totaling \$110,078.60 on behalf of the project.

Councilmember Norris noted that this has been discussed at workshop and the Council had asked if GVCO could talk to Downtown Development Authority (DDA) about funding to help with this. Ms. Portner asked Councilmember Chazen as the Council's representative on DDA to respond. Councilmember Chazen said it did not fit due to the non-profit status of the organization and the mission of the DDA.

Councilmember Norris noted her disappointment on DDA's response as this project is an asset to the downtown and it is a great project. The residents of the project will shop in the downtown and the project has cleaned up the area.

Councilmember Doody said he supports the request on several levels: it impacts homelessness, veterans, blight, creates jobs, and these people will live and spend money downtown.

Councilmember Boeschstein said he is in favor of paying the fees; it is important housing and it is for veterans. The two previous projects are a benefit to the downtown. He too was disappointed that the DDA was not willing to help.

Councilmember Traylor Smith said she too is disappointed with DDA; more partners would have been a better solution. There are many factors as listed by Councilmember Doody. It is an area that is being rehabilitated and it benefits the downtown area. The previous projects have proven themselves and have been well maintained. Also, as previously presented, it will reduce police calls to the area.

Councilmember McArthur said his concern is with the procedures, such as the manner the fees are being paid, the amount of the fees, and that the School District is not being included. He said it would be beneficial to know the procedure to make decisions on these requests; Council needs to establish criteria. The cost of homelessness is astounding, so a project like this not only helps the homeless, it helps the budget. He voiced objections to how it is paid. Staff is working on responding to the issue. He wondered if the fees are too high and if that needs to be addressed.

Councilmember Chazen noted the project is a good project and noble cause. But, he still has a hard time resolving some issues. The Council has turned down other worthy projects. This request makes them play a shell game with their budget. Council will be reviewing other projects on April 16th for Community Development Block Grant (CDBG) funding. He will not support the resolution.

Council President Susuras said he supports the project and supports funding the project as it cleans up a blighted area and will replace it with housing for twenty-four men and women veterans. It will create jobs and is economic development.

Councilmember Boeschstein moved to adopt Resolution No. 09-14 with funds to be paid from the Council's economic development budget because it provides much needed housing for veterans, it benefits the neighborhood, and it enhances the vibrancy of the downtown. Councilmember Doody seconded the motion.

Councilmember McArthur called for a point of order. He moved to amend the motion by changing the reference to the word "pay" fees to "waive" fees until such time as the Council and Staff have come to an agreement on how to account for these monies, and to delete the school impact fees from the resolution. Councilmember Traylor Smith seconded the amendment.

Councilmember Norris expressed her concern about the amendment to the motion although she agrees with removing the School District fees, she supports the rest of the original motion.

Councilmember Traylor Smith asked if the amendment will hold up the project.

City Attorney Shaver said no, whether Council agrees to pay or waive the fees, the project goes forward.

Councilmember Chazen asked if Councilmember McArthur is asking for a delay.

Councilmember McArthur said no, he is proposing waiving of the fees rather than the City Council paying. Council still needs to finish the conversation on how to account for the money. The School District could be asked to see if they want to participate.

Councilmember Traylor Smith said that is her understanding also; it is to clarify where the funding comes from, this will not hold up the project, and the discussion is amongst the Council.

Councilmember Chazen asked for more clarification on “pay” versus “waive”.

Councilmember McArthur said GVCO won't pay, so it should be a decision of Council to waive the fees. The Council has the burden.

Councilmember Chazen asked for confirmation that there will be two separate votes.

City Attorney Shaver said that is correct.

Councilmember Doody said the policy has been that those fees are paid back to the different departments and Council can have a discussion on the policy but that should not affect the decision here tonight.

Councilmember Boeschstein said this is a priority of the City, it is in the Comprehensive Plan and the Greater Downtown Plan to provide affordable housing to homeless and veterans. Waiving fees short-changes other departments, it conflicts with the other two projects, and he opposes any change in his original motion.

The amendment passed by roll call vote with Councilmembers Doody and Boeschstein and Council President Susuras voting NO.

City Attorney Shaver clarified the amended motion upon the Mayor's request. He repeated that Councilmember McArthur's amendment changed the term “pay” to “waive” and excluded the \$10,640 in fees to the School District. He further advised that typically the Council has paid such fees from General Fund dollars to the specific operating departments like water and sewer.

Councilmember Norris presented another motion to amend to pay the fees but exclude the school impact fees.

Councilmember McArthur said the intent of his amendment does not preclude paying the fees at a later time.

Councilmember Norris withdrew her motion.

The City Clerk was asked to re-read the motion on the floor which she did.

The motion failed by roll call vote with Councilmembers Chazen, Norris, and Boeschstein, and Council President Susuras voting NO.

Councilmember Norris moved to adopt a resolution authorizing the City payment of certain development fees excluding the school impact fees of \$10,346 for the Grand Valley Catholic Outreach Project, St. Martin's Place Phase 2, located at 221 Pitkin Avenue. Councilmember Doody seconded. City Attorney Shaver noted the school impact fee is \$10,640. Councilmember Norris corrected the number and Councilmember Doody seconded the correction.

Councilmember McArthur questioned the manner of the payment of the fees, noting that depleting the Economic Development Fund would not help others or allow participation in other projects. He would like to continue the discussion. He objected to payment of the fees.

Councilmember Chazen said the water tap and sewer tap fees go to enterprise funds. If these are waived, is there an obligation to transfer money from the General Fund to these enterprise funds, or can these enterprise funds be short-changed.

City Attorney Shaver said Council has authority to not require the payment of fees. The policy question includes making the fund whole and the lost value by virtue of fees not being paid by development. Councilmember McArthur wants to revisit that with Council.

Councilmember Traylor Smith said it can be paid out of the General Fund rather than the Economic Development Fund. She then asked Deputy City Manager Tim Moore if without the discussion taking place, would this come from the Economic Development Fund?

Deputy City Manager Tim Moore said where the funding comes from does not have to be determined tonight, it can be looked at mid-year or even next year.

Councilmember McArthur said if the fees were not paid and then needed later, could it be transferred at that time. Deputy City Manager Moore said the transfer can be made at anytime. This can be an internal decision.

Councilmember Chazen said there needs to be caution; if funds are not transferred then the burden falls on rate payers. It will take some discussion at a later date. He asked that the vote be called.

City Attorney Shaver said there can be a deferment of specific source of the funds and identify for purposes of this project that they are not obligated to pay. Then Council can further discuss for what the source of those funds may be once there is resolution on the policy.

Councilmember McArthur said because Councilmember Chazen called the question, if it is seconded, then a vote will be called on the motion made rather than a resolution.

Councilmember Chazen withdrew his motion.

Council President Susuras asked City Clerk Stephanie Tuin to read the motion.

City Clerk Tuin read the motion: To authorize the payment of certain development fees excluding the school impact fees of \$10,640 as outlined in the Staff report for the proposed St. Martin's Project Phase II.

Council President Susuras asked City Attorney Shaver if the current motion would direct Staff to decide what source the funds will come from. City Attorney Shaver said no; no decision would be made until the Council provides direction.

Council President Susuras asked for the decision of where the money comes from to be made now.

Councilmember Doody moved that the motion be amended to include that the City pay the fees from the General Fund. Councilmember Boeschstein seconded the motion. Motion carried 6 to 1 by roll call vote with Councilmember McArthur voting NO.

A member of the public presented some cash to the Staff during the debate. It was provided to Financial Operations Director Jodi Romero.

Resolution No. 09-14—A Resolution Authorizing the City Payment of Certain Development Fees for the Grand Valley Catholic Outreach's Proposed St. Martin's Place II, Located at 221 Pitkin Avenue

A roll call vote was called on the amended motion. Motion carried 5 to 2 with Councilmembers Chazen and McArthur voting NO.

A recess was called at 8:40 p.m.

The meeting reconvened at 8:47 p.m.

Purchase 10 CNG Fleet Replacement Vehicles

Authorize the City Purchasing Division to purchase 1 CNG One Ton Pickup Truck, 3 CNG Utility Trucks, 4 CNG Half Ton Pickup Trucks and 2 CNG Tandem Axle Dump Trucks in the total amount of \$623,859.12 from the vendors detailed in actions A, B, C, and D.

Council President Susuras announced Internal Services Manager Jay Valentine's athletic accomplishments and noted that when Mr. Valentine was a college student at the University of Northern Colorado, he was a gold medalist at the NCAA final in the

3,000 meter race. The University of Northern Colorado has inducted Mr. Valentine into their Athletic Hall of Fame. Mr. Valentine also serves as a track coach to Fruita Monument High School during his spare time.

Jay Valentine, Internal Services Manager, presented this item. He provided an overview of the Compressed Natural Gas (CNG) project and how the City has moved to this alternative as a more sustainable fuel product. He recognized Kathy Portner's involvement in finding funding for the infrastructure. The action before the Council will bring the City's total CNG fleet units to 28. This amounts to a 42% displacement with CNG, a substantial decline in petroleum and diesel dependence. There is also a replacement program occurring with the Grand Valley Transit buses. CNG use has diminished the exposure to volatile gas and diesel prices. He offered to answer questions on the individual vehicles.

Councilmember Chazen asked if all vehicles are budgeted and money appropriated. Mr. Valentine said yes, with the exception of the dump trucks in Item D; the Persigo Waste Water Treatment Plant will pay the incremental cost for them; although it was appropriated, there was not a budget item for this.

Councilmember Chazen asked about the cost differential on all vehicles; is the payback time period less than the life of the vehicle? Mr. Valentine said yes. Councilmember Chazen asked about a sensitivity analysis: if CNG is exported, then prices could go up; has this risk been analyzed? Mr. Valentine said gasoline and diesel prices are much more. Since natural gas price is only a piece of the cost, the impact would still be less even with an increase. Since 2011, the highest CNG price was \$1.18. Councilmember Chazen asked if there is enough fueling capacity at the CNG Fueling Station. Mr. Valentine said all vehicles will be filled on the fast fill side, so it will not affect the larger vehicle fills (slow fill). Councilmember Chazen said in State government there is discussion to move to electric and CNG options, so there will be less money collected for road repairs; will there be a fuel tax on CNG? Mr. Valentine said the City does not pay fuel tax on any fuels as a government entity.

Council President Susuras noted that City pickup trucks will be filled on the fast fill side, and asked what arrangement the City has with Monument Fuel for the price of fuel. Mr. Valentine said because Monument Fuel receives the City's gas, the rate would be the City rate, programmed for City cards.

Councilmember Norris said the City is a leader in the State, and Staff has done a great job. This also supports the City's economy.

Councilmember Doody said it was a privilege to sit on the Conserving Our Resources Efficiently (CORE) Committee back in the day, and he lauded their efforts. In a valley

with inversions, burning diesel and breathing it, this is a great way to lead in the State by choosing the CNG option.

Councilmember Boeschstein agreed with Councilmembers Doody and Norris and thanked Staff. He is a big advocate for CNG; it is local fuel, and there is an air pollution benefit along with other many benefits.

City Attorney Shaver described how Council may want to make a motion regarding parts A, B, C, and D on the agenda.

Action: Authorize the City Purchasing Division to Purchase Ten Motor Vehicles and Equipment from Specified Vendors for a Total of \$623,859.12 as the Same are Detailed Below in Parts A, B, C, and D of this Agenda Item

Part A: Authorize the City Purchasing Division to Purchase a 2015 Ford F350 CNG Pickup with a Snow Plow, V Box Spreader, and Arrow Board from AutoNation Ford Littleton, Colorado in the Amount of \$52,685

Part B: Authorize the City Purchasing Division to Award a Contract to Purchase 3 CNG Powered ¾ Ton Utility Trucks from Johnson Auto Plaza in the Amount of \$115,740

Part C: Authorize the City Purchasing Division to Purchase 4 CNG Half Ton Pickup Trucks from Barbee's Freeway Ford in the Amount of \$118,752.12

Part D: Authorize the City Purchasing Division to Purchase Two CNG Tandem Axle Dump Trucks with 13 Cubic Yard Dump Beds from Trans West/McDonald of Grand Junction in the Amount of \$336,682

Councilmember Chazen moved to authorize the City Purchasing Division to purchase ten motor vehicles and equipment for a total of \$623,859.12 from the vendors detailed in actions A, B, C, and D. Councilmember Traylor Smith seconded the motion. Motion carried by roll call vote.

Public Hearing—2014 Supplemental Appropriation Ordinance

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction for major capital projects.

The public hearing was opened at 9:05 p.m.

Jodi Romero, Financial Operations Director, presented this item. She explained the reasons for the supplemental appropriation in order to provide the legal authority to spend the funds. She provided a list of the projects.

Councilmember McArthur asked about the General Fund supplemental item for the Avalon Theatre; is that for the expanded core? Financial Operations Director Jodi Romero said yes and that amount can be reduced if not needed. Councilmember McArthur noted that originally he was opposed, but since it was passed he will support the resolution.

There were no public comments.

The public hearing was closed at 9:08 p.m.

Ordinance No. 4625—An Ordinance Making Supplemental Appropriations to the 2014 Budget of the City of Grand Junction

Councilmember Doody moved to adopt Ordinance No. 4625 and ordered it published in pamphlet form. Councilmember Norris seconded the motion. Motion carried by roll call vote.

Public Hearing—Kelley Drive Rezone, Located at 2607 and 2609 Kelley Drive [File #RZN-2014-59]

Request to rezone two parcels, totaling 2.749 acres located at 2607 and 2609 Kelley Drive from an R-R (Residential Rural) to an R-1 (Residential 1 du/ac) zone district.

The public hearing was opened at 9:10 p.m.

Brian Rusche, Senior Planner, presented this item. He described the site, the location, and the request. The location is just east of 26 Road/First Street. The properties were zoned rural when annexed. The two property owners are asking for a rezone to reduce the building envelope and allow for accessory structures. The Comprehensive Plan designates the area as residential low and the requested zoning meets that designation. The rezone is compatible with the neighborhood. The minimum lot size for the rural zoning is five acres and these lots are one acre or less so the current zoning does not make sense.

Councilmember Traylor Smith asked about the R-E abbreviation on the map. Mr. Rusche said that is Residential Estate.

Councilmember McArthur asked about the width of the existing building envelope at 2607 Kelley Drive. The applicant said it is about 40 feet.

Council President Susuras asked if this rezone would increase property taxes. Mr. Rusche said the County Assessor taxes on use, not zoning.

There were no public comments.

The public hearing was closed at 9:15 p.m.

Ordinance No. 4626—An Ordinance Rezoning 2.749 Acres from R-R (Residential Rural) to R-1 (Residential 1 DU/AC) Located at 2607 and 2609 Kelley Drive (Kelley Drive Rezone)

Councilmember Boeschstein moved to adopt Ordinance No. 4626 and ordered it published in pamphlet form. Councilmember McArthur seconded the motion. Motion carried by roll call vote.

Community Solar Garden Subscription Agreement

Ratify the final agreement with Fresh Air Energy VIII, LLC (Ecoplexus, Inc.) for the City to be a subscriber to the Pear Park Community Solar Garden “Solar Garden” or “CSG”.

Kathy Portner, Economic Development and Sustainability, presented this item. She reviewed the previous discussions and direction to Staff to go forward with negotiations. The final form of the agreement is being presented to the Council. The School District also approved a subscription agreement as well as a site agreement. The first year annual savings will be \$90,000. The savings over the term of the agreement will be \$2 million.

Councilmember Traylor Smith asked if the School District concerns are all resolved. John Shaver, City Attorney, said they have worked extensively on the agreement and reached an agreement that is satisfactory to all. The new entity is Fresh Air Energy VIII, LLC created specifically for this agreement. He assured the City Council that the agreement is TABOR compliant, subject to annual appropriation, but the agreement is presumed to be for twenty years. The agreement is subject to the School District 51 site license; the panels and equipment will lie wholly within the School District property. The only burden to City property is an easement agreement.

Councilmember McArthur said he understands the reasons for a separate company for reasons including public access to financial records and to shelter assets, and asked what is the downside to the City? City Attorney Shaver said worst case scenario is the City would not get the credits and the benefit of reduced energy bills. There is no guarantee of the return, it is contingent on the sale of energy to Xcel Energy.

Councilmember Chazen asked for confirmation that this is TABOR compliant. City Attorney Shaver confirmed this. Councilmember Chazen noted the original subscription was 23% and would this capacity change. City Attorney Shaver said that percentage will stay the same.

Councilmember Chazen asked when construction will start and when will the benefits be seen. Ms. Portner said the breaking ground will start immediately, and the benefits will be seen by early summer.

Councilmember McArthur said Xcel Energy has given the impression that they will no longer buy this power. If there is no benefit from Xcel Energy, would that negate the benefit the City would see from this project? City Attorney Shaver said they have received written assurance that this project is under the current tariffs. The City cannot appropriate if tariffs change. Councilmember McArthur noted there is no guarantee. City Attorney Shaver said that is correct, there is no guarantee of projected returns although it is believed they will continue.

Council President Susuras said this facility will not be constructed on City property, the City just allows access. City Attorney Shaver said yes that is the only physical obligation the City has, with the exception of a little bit of landscaping.

Councilmember Traylor Smith asked if local vendors will be used. Ms. Portner said SunSense of Carbondale has been contracted for the work. This is the largest project on the Western Slope and a Western Slope contractor will be used.

Councilmember Boeschstein moved to ratify the final Community Solar Garden Subscription Agreement. Councilmember Norris seconded the motion. Motion carried by roll call vote.

Public Hearing—Emergency Ordinance Amending Ordinance No. 4618

On February 19, 2014 the City Council adopted Ordinance No. 4618 regulating certain panhandling activities in public places. Enforcement of Ordinance No. 4618 has been stayed due to litigation. The City became a party to the action on or about March 25, 2014.

The proposed Emergency Ordinance amends and/or eliminates some of the restrictions on panhandling in an effort to protect the public's interest and resources from being expended in unnecessary litigation.

The public hearing was opened at 9:29 p.m.

John Shaver, City Attorney, presented this item. This ordinance follows the filing of a lawsuit. For the record, no provisions have been found to be unconstitutional but in order to avoid further litigation, Staff is presenting this emergency ordinance which must be adopted by unanimous consent. He asked the City Council to review some of the important provisions of the ordinance with him. He read "9.05.010 Legislative Declaration (f) This Ordinance regulates the stopping, accosting or approaching someone for the purpose of soliciting him or her at certain times and places and in certain ways, without regard to the content of the message for which things of value may be solicited, and is not intended to be enforced in any manner that distinguishes conduct based on the content of the message delivered," "(g) This Ordinance amends Ordinance No. 4618 on an emergency basis to protect governmental resources from being expended in litigation, and because this Ordinance limits, rather than expands, governmental intrusion on private behavior, the City Council finds that the issues were fully and sufficiently vetted in the public hearing process involved in the passage of Ordinance No. 4618," and "(h) Although this Ordinance eliminates a certain previously adopted restriction on solicitation of at-risk individuals, the interests of such individuals are still subject to the protections of the Ordinance addressing unwanted or aggressive solicitation behaviors." Then he referred to 9.05.030 Applicability, declaration of emergency and effective date. He read "City Council hereby declares that a special emergency exists and that this ordinance is necessary to ensure the preservation of the peace and the public health, safety and welfare by effectuating the Council's publicly articulated purposes as stated herein and before of adopting an ordinance for the regulation of panhandling activities in public places. In declaring a special emergency, and by and with the adoption of this ordinance, the City Council is conscientiously stewarding the public's funds by reducing, managing and minimizing legal claims. This Ordinance, immediately on its final passage, shall be recorded in the City book of ordinances kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk. The full text of the amending ordinance, in accordance with the Charter of the City of Grand Junction, is to be published in full." The reasons for the inclusion of this text is because this is a little bit of a different process and is authorized by the Charter. City Attorney Shaver then referred to 9.05.040 and noted the provisions that are changing. Although subsection (a) was challenged, they are not recommending it be changed. City Attorney Shaver said that although he is confident of the constitutionality of Ordinance No. 4618, he feels to avoid additional cost to the City, Council should consider the adopting ordinance being presented.

Councilmember Boeschstein asked why the changes were made. City Attorney Shaver said the changes were made in recommendation to Council to respond and manage the litigation, minimize exposure, and to allow an ordinance to be effective immediately. Councilmember Boeschstein said he appreciated all the work done.

Councilmember Traylor Smith said she appreciates all the options presented; it is a good compromise to get the law in effect as soon as possible, and it is important for the citizens to be safe.

Councilmember McArthur complimented City Attorney Shaver and commended his efforts.

City Attorney Shaver said he would like to allow Police Chief John Camper to provide a few comments and also to remind Council that this is a public hearing and to solicit public comment.

Police Chief John Camper addressed section 9.05.040 (a) regarding time restrictions and said he believes it is a reasonable restriction for safety on both sides of the issue. When approached in the dark, it is more alarming and people seem to be less able to assess the reason for the approach. Also, the panhandler is an easy target at night and may be subject to a reaction by those being approached.

Council President Susuras asked for public comment.

Chuck Beauchamp, a resident, said five years ago this started with an emergency ordinance and still hasn't accomplished anything.

Eric Neiderkruger, 629 Ouray Avenue, said he appreciates the effort to address this quickly; he is a plaintiff in the lawsuit and he still has concerns. There is a specific group of people such as buskers, musicians, jugglers, and others being shut down at night. He is interested in how things turn out. Ideally he would like to work this out without litigation. He would like to share his concerns with Council via email.

Lora Khat, 999 Bookcliff Avenue, noted the American Civil Liberties Union (ACLU) brought an injunction against the last ordinance; will that now drop and will the ACLU have to bring a new suit? City Attorney Shaver said the injunction was in the form of a temporary restraining order and it applied to one sentence in one paragraph pertaining to activities on highways and interstates. There was no general injunction against the ordinance. Ms. Khat asked if the ACLU suit will be dropped. City Attorney Shaver said he cannot respond to what ACLU will do. Ms. Khat said she heard Greenpeace has also placed an injunction. Council President Susuras suggested Ms. Khat meet with City Attorney Shaver privately.

Ms. Khat said she was accosted by a woman who was asking for help; she was alarmed, and the woman told her she was a diabetic and asked her to please call her husband. Ms. Khat asked if that behavior would be punishable. City Attorney Shaver said the definition says without a person's consent; if no complaint is lodged by either party, law enforcement would not be involved.

Jim Haas, resident of Grand Junction for 26 years, said he is concerned about his first amendment rights to demonstrate, protest, and fly signs and flags. Is there a difference between the panhandlers and other citizens or will the Tea Party be arrested?

Police Chief Camper said nothing in that type of activity approaches the definition of panhandling, so that will clearly not be enforced.

City Attorney Shaver said a political speech and political dissent are constitutionally protected activities; neither ordinance pertains to those types of activities.

Police Chief Camper said there has been training on this and political speech is not the activity the City is trying to address with this ordinance.

Ms. Khat said the issue is still not clear to her; it is her understanding that panhandling is ok so long as the person being panhandled is not offended and calls the police. City Attorney Shaver said there is difficulty in dealing with generalities because it depends on the conduct, and the when and where of the situation.

Chuck Beauchamp said the previous ordinance prevented political speech. Chief Camper said that is not true. Mr. Beauchamp said the previous ordinance outlawed free speech, and said to read how the previous ordinance states a median is defined.

Police Chief Camper read the previous ordinance definition of panhandling, and he said there is no intent to address political speech of any kind.

There were no other public comments.

The public hearing was closed at 9:56 p.m.

Ordinance No. 4627—An Emergency Ordinance to Amend Ordinance No. 4618
Regulating Panhandling Activities in Public Places

Councilmember Boeschstein moved to approve Ordinance No. 4627. Councilmember Traylor Smith seconded the motion.

Councilmember McArthur asked if Council needs to include declaring an emergency with the motion. City Attorney Shaver said it is already included in the ordinance.

Motion carried by unanimous roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 10:00 p.m.

Stephanie Tuin, MMC
City Clerk