

Grand Junction, Colorado

April 21, 1965

ROLL CALL

The City Council of the City of Grand Junction, Colorado, met in regular session at 7:30 p.m., April 21, 1965. Councilmen present and answering roll call were Ray A. Meacham, R. B. Evans, Harry O. Colescott, Warren D. Lowe and Herbert M. Wright. Councilman Charles H. Love and President C. E. McCormick were absent. Also present were City Manager J. M. Lacy, City Attorney Gerald J. Ashby and City Clerk Helen C. Tomlinson.

It was moved by Councilman Meacham and seconded by Councilman Wright that Councilman Warren D. Lowe act as President Pro Tem. Motion carried Mr. Lowe took the chair and presided during the meeting.

INVOCATION

The invocation was given by Rev. Emil F. Wendt, Pastor, American Lutheran Church.

MINUTES

It was moved by Councilman Meacham and seconded by Councilman Evans that the minutes of the regular meeting held April 7, 1965 be approved as written. Motion carried. (5 AYES)

HEARING - 3.2 BEER - HOBBY FRAZER DBA 7-2-11 FOOD STORE #10, INC., 1134 N. 12TH STREET - GRANTED

An application for a 3.2 beer license was presented by Bobby Frazer dba 7-2-11 Food Store #10 Inc., 1134 No. 12th. A letter was read from Chief of Police Karl Johnson stating that his investigation had disclosed no reason why the license should not be granted. It was stated that Mr. Dean Fetzer would be the manager of the store. There were no opposing petitions or letters and no protests were made by anyone in the audience. President Pro Tem Lowe closed the hearing. It was moved by Councilman Wright and seconded by Councilman Meacham that the application be approved and license granted when the State license has been received. Motion carried. (5 AYES)

DAYLIGHT SAVING TIME - NO ACTION TAKEN

The 1965 State Legislature recently passed a law putting the whole State of Colorado on daylight saving time on April 24th in spite of the fact that the State had previously voted overwhelmingly that they did not want daylight saving time. Mr. Clayton Cheever, Manager of Westland Theaters, in Grand Junction, presented to the Council petitions signed by at least 100

businessmen and 1800 other people residing in this area, protesting daylight saving time and asking the Council to keep Grand Junction on Mountain Standard Time. This same request had been presented to the Mesa County Commissioners and to the School Board of School District No. 51. Both of these bodies had decided they had no authority to take issue with the State Legislature.

City Attorney Ashby stated it was his opinion that the Council could possibly have the authority to pass an ordinance keeping Grand Junction on Mountain Standard Time; however, in recent years, decisions have been rendered against home rule legislation. The City has no authority on liquor regulations, and the Morris decision on drunken driving gives home rule cities no more authority in this area than any other city. The sales tax is another area in which the Supreme Court has handed down a decision. He did not believe that the City could legislate in the matter of time standards.

Mr. Cheever stated that the change in time especially hurt the drive-in theater business. Several people in the audience spoke in favor of daylight saving time including Bill Baird, a teacher from Fruita, Howard Stern of Ultronix, Harold Hamel, John Patterson and Jack Gidney of AEC. Mr. Thomas Ramsay stated that he had been traveling all over the Western Slope and Eastern Utah in connection with the closing of the Veterans Hospital, and he had found a great many people were opposed to daylight saving time.

City Manager Lacy reported that a number of letters had been sent to the Council, Mayor and Manager's Office requesting that daylight saving time be observed and one letter had been received opposing it. The Council felt that daylight saving time might pose a problem for some people but felt that the Council had no authority but to uphold the State law. President Pro Tem Lowe closed the hearing.

It was moved by Councilman Meacham and seconded by Councilman Evans that the City Council take no action to endorse or not endorse daylight saving time. Motion carried. (5 AYES)

LIQUOR LICENSE - LEON D. NICHOLSON, EAGLES LOUNGE, 248 MAIN STREET - PROTESTS DECISION NOT GRANTING LICENSE 3-17-65

Mr. James Golden, Attorney for Leon Nicholson, applicant for a restaurant liquor license at the Eagle's Lounge, 248 Main St., wrote a letter to the Council as follows;

"In my opinion, the action of the City Council taken on March 17 Protests decision with reference to this license application, by reason of the fact that it resulted in a tie vote, does not amount to a determination of the merits of the application as required by the Colorado Liquor Code. Section 47 of Robert's

Rules of Order, at Page 201, provides as follows:

"Votes that are Null and Void even if unanimous. No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted, even by a unanimous vote, it is null and void. No rule that conflicts with a rule of a higher order is of any authority,..."

"I submit that the specific provisions of the Liquor Code have not been complied with inasmuch as it is necessary for the Council to resolve this application by a majority vote favoring or denying the application. 75-2-42, 1963 Colorado Revised Statutes, sets forth a specific requirement that the Council must arrive at a decision and give a written notice thereof, with supporting reasons, to the applicant within 30 days.

The motion considered by the Council the other evening was one to grant the application and was declared not to have passed by reason of the fact that it resulted in a tie vote of 3 to 3.

"To illustrate my argument, I pose the following situation. If instead of a motion to grant the license, the Council considered a letter setting forth its findings, conclusions and decision on the matter and a vote on the motion to adopt the letter ended in a tie, the Council in effect has taken no action on the matter. Obviously, an evenly divided Council cannot adopt and publish a finding a decision as the will of the majority, since none has been expressed.

"Basically, the primary purpose of having a 7-man Council, or odd numbered boards, is to avoid the result which took place on the 17th and to permit these bodies to arrive at a majority opinion.

"I believe that this matter should be reconsidered by the Council to allow it to arrive at a majority viewpoint. Failing the arrival at a majority viewpoint, I believe that the matter has not been disposed of and thus there has been no official action as required by law to be taken by the Council with reference to this matter.

"Sincerely yours,

"HAYNIE, GOLDEN & MUMBY
"By /S/ James Golden"

City Attorney Ashby stated that the Council could take one of two actions: (1) a letter could be sent to Mr. Nickolson stating the decision which the Council reached on March 17th on his application for a hotel and restaurant liquor license. This motion resulted in a tie vote; (2) Consider the point made by Mr. Golden in his letter which would necessitate the voting by Mr. Wright. Mr. Golden'S position is that the liquor code now requires that a

decision be reached - a decision meaning a vote by more members of the Council in one way than in another way. Mr. Ashby stated that there is nothing in the statutes to indicate that a decision cannot be reached in the manner in which the Council acted - on a basis of a tie vote.

Mr. Golden would have the right to proceed in District Court for a declaratory judgement to determine whether the action of the Council is correct. If the Court decides the action was not correct, a new hearing might be ordered and a decision reached by all seven members of the Council.

Councilman Wright stated that he preferred not to vote alone and would prefer that the whole Council vote again. He thought there was new information that should be presented and he wanted to ask questions of Mr. Nickolson, or his Counsel.

Mr. Andy Williams, Attorney for those who were opposed to the granting of the license, stated that he felt a decision had been reached and the Council in effect denied the application. He did not feel it was necessary for seven members of the Council to vote. The Hearing should not be re-opened unless both sides are to be heard.

City Attorney Ashby stated that any vote Mr. Wright made would have to be made on the information he received at the hearing. He has forfeited any right to ask questions of anyone. Councilman Wright stated that he could not vote fairly without having a matter cleared up in his mind. Mr. Golden stated he felt this should be a majority vote. The matter should be taken to Court if Mr. Nickolson decides he wants to contest the Council's decision on the tie vote.

It was moved by Councilman Evans and seconded by Councilman Meacham that a letter as prepared by City Attorney Ashby stating the action of the Council on March 17th be sent to Mr. Nickolson. Motion carried. (5 AYES)

COMMUNITY TV INC - REVOCABLE PERMIT FOR CABLE ROUTE THROUGH CITY - GRANTED

A request from Community Television, Inc.. for a revocable permit for trunk lines through the City was considered. The Planning Commission had approved three routes which coincide with present facilities. The following map was presented showing the route which Community Television, Inc. preferred:

It was moved by Councilman Wright and seconded by Councilman Colescott that the map be accepted and route granted as shown on the map. Motion carried. (5 AYES)

It was moved by Councilman Meacham and seconded by Councilman Evans that the following Resolution be passed and adopted. Roll

was called on the motion with all members of the Council present voting AYE. President Pro Tem Lowe declared the motion carried. (5 AYES)

R E S O L U T I O N

WHEREAS, Community Television Incorporated has petitioned the City Council of the City of Grand Junction for a revocable permit to install and maintain a cable, and necessary appurtenances thereto, to transmit television signals from the KREX facilities through the City to provide service outside of the City, using those streets and alleys as the same appear on the map attached hereto and made a part hereof by reference, together with the right to trim trees in protection of the cable so installed; and

WHEREAS, the matter has been considered by the City Planning Commission, and its recommendations submitted; and

WHEREAS, such action would not be detrimental to the use of the rights-of-way nor to the interests of the inhabitants of the City;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, on behalf of the City and as the act of the City, be, and he is hereby, authorized to grant such revocable permit to the said company for the purpose described upon the execution by the company of an agreement covering the following matters:

1. The company shall agree that no person within the City of Grand Junction will be sold or furnished service from said cable and no distribution of signals therefrom shall be made within the City.
2. The company shall agree to save and hold the City harmless from any claims or demands arising out of the installation, maintenance or use of the cable under the permit granted.
3. The company shall agree that all construction shall be under the control and supervision of the City Engineer and in accordance with his specifications.
4. The company shall agree that at any time the City shall lawfully elect to alter or change the grade of any street or alley, the permittee, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables. or other fixtures at its own expense.

PASSED AND ADOPTED this 21st day of April, 1965.

/s/ Charles E. McCormick

President of the City Council

ATTEST:
City Clerk

REVOCABLE PERMIT

WHEREAS, Community Television Incorporated has petitioned the City Council of the City of Grand Junction for a revocable permit to install and maintain a cable, and necessary appurtenances thereto, to transmit television signals from its place of business to the city limits of said City using those streets and alleys as the same appear on the map attached hereto and made a part hereof by reference, together with the right to trim trees in protection of the cable so installed; and

WHEREAS, the City Council is of the opinion that such would not be detrimental to the City or to any of the inhabitants thereof at this time and has directed the City Manager to issue a permit for such use;

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby granted to Community Television Incorporated a revocable permit for the purpose above-stated,, provided, however, that said permit may be revoked by the City Council at its pleasure at any time; and, provided further, that the company shall execute an agreement covering the following matters:

1. The company shall agree that no person within the City of Grand Junction will be sold or furnished service from said cable and no distribution of signals therefrom shall be made within the City.
2. The company shall agree to save and hold the City harmless from any claims or demands arising out of the installation, maintenance or use of the cable under the permit granted.
3. The company shall agree that all construction shall be under the control and supervision of the City Engineer and in accordance with his specifications.
4. The company shall agree that any time the City shall lawfully elect to alter or change the grade, of any street or alley, the company, upon reasonable notice by the City, shall remove, relay and relocate its poles, wires, cables, or other fixtures at its own expense.

Dated this 10th day of June, 1965.

/s/ J. M. Lacy
City Manager

ATTEST:

City Clerk

AGREEMENT

In consideration of the granting of the revocable permit by the City of Grand Junction to the undersigned, Community Television Incorporated, which permit is attached hereto, and this agreement is a part thereof, said corporation does agree and affirm that it is and will be bound by those four conditions of said permit stated therein, for itself and its successors and assigns.

Dated this day of June, 1965.

COMMUNITY TELEVISION INC.

By
President

ATTEST:

HEARING - 3.2 BEER VIOLATION SELLING TO MINORS - EUGENE D. & MARY B. ERICKSON DBA SOUTHSIDE GROCERY, 832 S. 7TH ST. - REPRIMANDED

This was the date set for hearing on the conviction of Eugene D. Erickson and Mary B. Erickson, dba Southside Grocery, 832 South 7th Street. They had been found guilty of selling beer to minors and fined \$300 in County Court on March 10, 1965. As the boys who purchased the beer were minors, the Council room was cleared and the radios requested to discontinue broadcasting the meeting.

Two boys, each seventeen years of age, purchased beer from Mr. Erickson on February 12th. Mr. and Mrs. Erickson were represented by their lawyer, Mr. William Ela. One boy testified that he purchased a six-pack and two quarts of beer and was not asked to furnish any identification. The other boy stated that he had purchased beer several times, and that he had been asked for identification. He had altered his yellow driver's license to show that he was past eighteen years of age. After the first time, he was not required to furnish any identification. It was brought out that it was understood among some of the younger boys that it was easier to purchase beer at the Southside Grocery than most other places. Mr. and Mrs. Erickson stated that they tried to be very careful in calling for proper identification. It was also stated that yellow, temporary driver's licenses are very easily altered, and it is hard to detect such alteration without a magnifying glass.

Attorney Ela stated that the Ericksons had pleaded before Judge Clausson nolo contendere and had been fined \$300 with \$200 suspended if there were no further violations. The Ericksons had no intention of violating any laws but had run afoul of the

statutes by selling to minors. They would present the same plea to the Council. They have been in business at the Southside Grocery for two and one-half years and have never had any trouble before. Apparently there is a difference of opinion in whether or not identification has been required.

Councilman Meacham moved that Mr. and Mrs. Erickson be reprimanded and that no further penalty be assessed for this first violation, but that any future violations would be dealt with in a tougher manner. Councilman Wright seconded the motion. Motion carried. (5 AYES)

SUGGESTED I.D. CARD FOR USE BY LICENSEES

Councilman Wright passed out cards which he had secured and that could be used for minors to sign when purchasing beer or liquor.

City Manager Lacy stated that he had sent for copies of the card which Mr. Wright had presented at the last Council meeting and also had asked the Oregon officials if this method was proving to be satisfactory, but had received no reply to his letter as yet.

The Council requested that Mr. Lacy start putting together whatever is needed to provide direction for the Council in matters pertaining to the granting of liquor licenses and enforcement of them.

AIRPORT - RATIFY AGREEMENT WITH FAA FOR RELOCATING NAVIGATION AIDS

From the minutes of the special meeting of the Airport Board, April 12, 1965, came a request to approve an agreement with F.A.A. for relocating navigation aids at Walker Field. This is an agreement covering part of the routine development costs for relocating the navigational lighting system at Walker Field ahead of the construction work for lengthening the runway. It is a reimbursable agreement in which the City will pay back to F.A.A. the money involved. It is budgeted in the regular budget.

It was moved by Councilman Wright and seconded by Councilman Colescott that the action of the Airport Board be ratified and the President of the Council authorized to sign the agreement. Roll was called on the motion with all members of the Council present voting AYE. President Pro Tem Lowe declared the motion carried. (5 AYES)

DAYS - AMERICAN CANCER SOCIETY TAG DAY 4-24-65

A letter from the American Cancer Society requesting permission for Girl Scout Troupe #36 to sell tags on the downtown streets on Saturday, April 24, 1965 was read. It was moved by Councilman Colescott and seconded by Councilman Evans that the request be granted. Motion carried. (5 AYES)

BONDS APPROVED

It was moved by Councilman Wright and seconded by Councilman Evans that the following bonds being on the approved forms be accepted and filed. Motion carried.

Lester J. Shepherd dba				
Credit Jewelry & Loans	Pawn Broker	Peerless Ins.	35 03 85	#175
Ralph E. Phipps				
Constr Co.	Gen Contr	USF&G 17142-13-655-65		#176
R. E. Stilson	Elect Contr	Travelers Idemnity		#177

BUILDING PERMIT FEE WAIVER - REQUEST BY SENIOR CITIZENS FOUNDATION - TABLED

A letter was read from Senior Citizens Foundation requesting that the fees paid by them on September 3, 1963 for the permit to build the Senior Citizens Home in the amount of \$348.50 be refunded.

City Manager Lacy stated that this request brings up a point that is fast pyramiding. That is, the Council's practice, without having a specific policy in writing, of waiving building permit fees for churches, parsonages, stake houses and welfare houses. This policy has not extended to non-profit organizations. The building permit fees are not taxes. They are not general collections for general government purposes. They are specific fees to offset the cost of specific services. Whether the fees are waived or not, the average cost of each 1964 building permit was \$11.72 and the average revenue for each permit was \$9.41. Mr. Lacy stated he thought the Council should give consideration to not waiving any fees.

It was moved by Councilman Colescott and seconded by Councilman Meecham that the matter of waiving building permit fees as well as free water for churches, etc. be considered at the next informal meeting of the Council. Motion carried. (5 AYES)

CEMETERY - SALE OF SMALL PORTION BLOCK H LAND TO MESA COUNTY VETERANS CEMETERY - APPROVED BY ELECTION 4-6-65

The following Resolution was presented and read:

R E S O L U T I O N

WHEREAS, the qualified electors of the City of Grand Junction did, at the regular general election of the City held on April 6, 1965, authorize the sale by the City to the Mesa County Veterans Cemetery Association, for the consideration of One Dollar of the following described property situate in Mesa County, Colorado:

Beginning at a point from whence the Northeast corner of the Southwest Quarter of the Northwest Quarter of Section 26, Township 1 South, Range West of the Ute Meridian bears due East a

distance of 917.0 feet; thence Southwesterly along a curve whose, radius is 228.6 feet and whose Central Angle is 133°41.6' for a distance of 472.8 feet, thence along a curve whose radius is 65.0 feet and whose Central Angle is 118°00' for a distance of 133.9 feet, thence North 16°24' East 84.5 feet, thence Due East 20.0 feet, thence Due South 147.5 feet, thence Due East 100.0 feet, thence Due South 19.5 feet, thence Due West 210.0 feet, thence North 45°25' West a distance of 287.8 feet, thence Due North 238.0 feet, thence Due East 268.2 feet to the place of beginning, subject to existing easements and road rights-of-way;

there being 2557 voting for such sale and 421 voting against the same;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

That the City Manager, J. M. Lacy, be, and he is hereby directed to convey, on behalf of the City and as the act of the City, the property above-described to the Mesa County Veterans Cemetery Association for the stated consideration.

PASSED AND ADOPTED this 21st day of April, 1965.

Charles E. McCormick
President of the City Council

ATTEST:

City Clerk

It was moved by Councilman Meacham and seconded by Councilman Evans that the Resolution be passed and adopted as read. Roll was called on the motion with all members of the Council present voting AYE. President Pro Tem Lowe declared the motion carried. (5 AYES)

SWIMMING POOLS

City Manager Lacy reported that in accordance with the finance study made a year ago and the 1965 budget, it would be necessary to adjust prices set for the two swimming pools. He suggested the following:

The price for single swims would remain the same as they are now. Towel and suit rentals would be the same excepting that towel rental at Moyer Pool would be 10 cents. Season tickets at Moyer Pool would remain the same.

A family ticket at Moyer Pool	\$19.00	
Lincoln Park Pool family ticket		35.00
with \$3 additional for use in both pools	38.00	
Fees for Adults in Lincoln Park Pool	12.00	

Fees for Children in Lincoln Park Pool

7.00

It was moved by Councilman Wright and seconded by Councilman Evans that City Attorney Ashby draw up an ordinance for the next meeting of the Council to set the fees as described by Mr. Lacy. Motion carried. (5 AYES)

**WATER - FEDERAL GRANT FOR PLATEAU CREEK STUDY BY R.J. TIPTON -
RELEASED**

City Manager Lacy reported that he had received a letter from the Federal Housing and Home Finance Agency concerning a grant of \$91,500 which the City used to have R.J. Tipton & Associates make a survey of the Plateau Creek Water Supply Project in 1948. The money was to be refunded if the City used the engineering survey. As Ute Water has since used the water available under the project, it will not be available to the City and therefore the City is not obligated to refund the \$91,500 grant. The following Resolution was presented and read:

R E S O L U T I O N

WHEREAS, the United States of America has heretofore made an advance, pursuant to an agreement dated Feb. 17, 1947 to the City of Grand Junction in the amount of \$91,500 for the purpose of plan preparation of the public work described in the agreement as a new water supply system consisting of filtration plant, clear water reservoir, and supply mains; and

WHEREAS, by the use of the Federal advance the City of Grand Junction caused to be prepared plans and specifications for the public work described in the aforesaid agreement; and

WHEREAS, no construction has been undertaken of the project or any portion thereof described in the aforesaid agreement dated as of the 17th day of February, 1947; and

WHEREAS, there is no reasonable likelihood of the planned project or any portion thereof being undertaken because the City subsequently embarked on development of its municipal water supply in the Kannah Creek drainage basin for which a total of \$1,895,000 in municipal water revenue bonds were authorized. In 1962 the Ute Water District was formed to utilize the water initially planned for use by the City under the Plateau Creek Water Supply Project. The Ute Water District has been constructed with a large Federal loan thereby precluding the City's use of the subject plan:

NOW, THEREFORE BE IT RESOLVED by the Grand Junction City Council that as there is no reasonable likelihood of the project or any portion thereof as planned with the Federal advance ever being placed under construction for the reasons set forth above, the Housing and Home Finance Administrator be requested to make a

determination that the agreement dated on the 17th day of February, 1947 be terminated and that the City of Grand Junction be relieved of all liability thereunder.

This Resolution is adopted pursuant to the authority provided by the Grand Junction City Charter this 21st day of April, 1965 by the City Council of the City of Grand Junction.

Charles E. McCormick
President of the City Council

Attest:

City Clerk

It was moved by Councilman Wright and seconded by Councilman Colescott that the Resolution be passed and adopted as read. Roll was called on the motion with all members of the Council present voting AYE. President Pro Tem Lowe declared the motion carried. (5 AYES)

ADJOURNMENT

It was moved by Councilman Meacham and seconded by Councilman Evans that the meeting adjourn. Motion carried. (5 AYES)

/s/ Helen C. Tomlinson
City Clerk