

CITY OF GRAND JUNCTION, COLORADO MINUTES OF THE REGULAR MEETING OF
THE CITY COUNCIL

March 1, 1978

ROLL CALL

The City Council of the City of Grand Junction, Colorado, met in regular session at 7:30 p.m., March 1, 1978, in Council Chambers at City Hall. Council members present: Larry Brown, Robert Holmes, Karl Johnson, Bill O'Dwyer, Jane Quimby, and President of the Council Lawrence Kozisek. Councilman Elvin Tufly was absent. Also present were City Attorney Gerald Ashby, City Manager Jim Wysocki, and City Clerk Neva Lockhart.

INTRODUCTION OF NEW CITY EMPLOYEES

The following new City Employees were present and introduced to Council:

Virginia Fee, Purchasing

Vivian Smith, Police Dispatcher

Paul Bowers, Assistant Airport Director

APPOINTMENTS TO BOARD OF ADJUSTMENT AND APPEALS

The following were appointed to serve on the Board of Adjustment and Appeals:

Mrs. Cheryl Lynn, one-year term

Mr. Mearlen Brown, two-year term

The following were reappointed to the Board:

Mr. Bernard Buescher, three-year term

Mr. Cecil Hobbs, three-year term

It was moved by Councilman Brown and seconded by Councilwoman Quimby that the appointments be ratified. Motion carried.

REQUEST NAMES FOR APPOINTMENT TO THE RECREATION BOARD

Alan Workman and Judy Prakken have moved outside the City Limits and have, therefore, resigned from the Recreation Board. The term of Rich Baca has expired. President Kozisek requested applications from anyone residing within the City who would be interested in serving on this Board.

REQUEST NAMES FOR APPOINTMENT TO THE PLANNING COMMISSION

Mr. Blake Chambliss has resigned after more than ten years as a member of the Planning Commission. President Kozisek requested applications from City residents who would be interested in appointment to the Planning Commission.

3.2% BEER - RENEWAL APPLICATION FOR PIZZA HUT NO. 3, 601 N. FIRST STREET

Submitted for consideration was the application by Pizza Hut No. 3, 601 N. First Street for the renewal of its 3.2% fermented malt beverage license. Fire Department advises that all life safety requirements are being met. The Health Department approved the renewal. The Police Department advised there have been no complaints or violations reported during the past licensing period.

It was moved by Councilman Johnson and seconded by Councilwoman Quimby that the application be approved and the license issued when the State license has been received. Motion carried with Councilman Holmes voting NO.

LIQUOR - APPLICATION FOR HOTEL-RESTAURANT LIQUOR LICENSE - DALE AND JUDY COLLINS, UTE CATERING, TWO RIVERS PLAZA, SECOND AND MAIN

Submitted for consideration was the application by Wilbert Dale Collins and Judy Collins for a hotel-restaurant liquor license, doing business as Ute Catering, Two Rivers Plaza, Second and Main. The license is presently owned by Galley Restaurant, Inc. A report from the Mesa County Health Department approved the change. The Fire Department advised that life safety requirements are being met; clean--one of finest in Grand Junction. The Police Department advised that Wilbert Dale and Judy Lee Collins are clear NCIC, CCIC, and local files. Teletypes sent to places of former residency returned indicating "no record found" but there was a note of one minor speeding violation on each subject. Print cards were mailed 2/22/78 with no return to date.

It was moved by Councilwoman Quimby and seconded by Councilman Johnson that the application be approved and the license issued when the State license has been received. Motion carried.

ASSIGNMENT OF LEASE AND CONCESSIONAIRE AGREEMENT AT TWO RIVERS PLAZA FROM GALLEY RESTAURANT, INC. TO WILBERT DALE AND JUDY LEE COLLINS

It was moved by Councilman Johnson and seconded by Councilman O'Dwyer that the City accept the assignment of the Lease and Concessionaire Agreement for Two Rivers Plaza from the Galley Restaurant, Inc., to Wilbert Dale and Judy Lee Collins. Motion carried.

REGISTRATION OF MICHAEL HALDEMAN AS MANAGER AT RAMADA INN - HOTEL-RESTAURANT LIQUOR LICENSE

Submitted for consideration was the application by Bryndon Enterprises, Inc., to register Michael Haldeman as manager of Ramada Inn, 718 Horizon Drive, which has a hotel-restaurant liquor license. The report from the Police Department advised that Mr. Haldeman is clear NCIC, CCIC, and local files. Teletypes were sent to former places of residence and returns received indicated "no record found." Print card was mailed 2/22/78 with no return to date.

It was moved by Councilman O'Dwyer and seconded by Councilman Brown that Michael Haldeman be approved as Manager for Ramada Inn. Motion carried with Councilman Holmes voting NO.

HEARING - 3.2% FERMENTED MALT BEVERAGE VIOLATION BY SOUTHLAND CORPORATION DBA SEVEN-ELEVEN FOOD STORE NO. 1813-19225, 1117 N. FIRST STREET-LICENSE SUSPENDED 5 DAYS

After service of Notice of Hearing to Southland Corporation and issuing subpoenas to former Police Officer Doug Rushing, former clerk at Seven-Eleven Store No. 1813-19225 located at 1117 N. First Street Sandra Elizabeth Lewis, and to the purchaser of the beer, Chris James Burns, 2032 N. 22nd, a hearing was held on the alleged violation which involved sale of beer to a minor on August 17, 1977. Mr. Donald LaMora, attorney for Southland Corporation was present, and Mr. Richard Arnold, attorney appeared with Mr. LaMora.

Mr. Ashby stated that as Council is aware, there has been an action filed against the City concerning the denial of the application by Southland Corporation for a fermented malt beverage license at 7th and Patterson. These two alleged violations by Southland Corporation Seven-Eleven stores then came to the Council at a time which might indicate to some that this is by way of retaliation for the filing of the action. Mr. Ashby continued that when he sent the information over to Mr. LaMora, he assured Mr. LaMora that this was not so, that they are entirely separate issues and will be considered separately by the Council and that these two alleged violations came to the Council in what has been the City's rather slow due course which the City hopes to and is speeding up in the future.

Mr. Ashby read the following statement submitted by Mr. LaMora:

BEFORE THE CITY COUNCIL OF)	
THE CITY OF GRAND JUNCTION,)	

COLORADO.)	
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Re: SEVEN TO ELEVEN STORE NO. 1813-19225

The Southland Corporation, appearing by its attorneys, denies the allegations against it and alleges that the charges should be dismissed on the following grounds:

1. That it affirmatively appears from the notice that the City has prejudged this hearing, which is quasi-judicial, thereby denying the respondent due process of law.
2. Southland admits that there was a sale of fermented malt beverage to a person under the age of 18 years but denies that there was a violation of the statutes in that the employee making the sale had obtained proper identification of the minor previously that day; that said actions in obtaining proper identification is a complete defense to this charge under 12-46-105(3) and 112 (1) (6).
3. That the notice of this alleged violation was not timely given, which delay prejudiced the respondent and resulted in denial of due process of law.

Respectfully submitted.

Donald E. LaMora
Attorney for Southland Corporation

With reference to item No. 1, Mr. Ashby said this comes from the manner in which the Notice of Hearing is stated which is given to the alleged violator. Mr. Ashby stated that since the Council does not see the Notice of Hearing and since the language is entirely his own and is seen only by himself and perhaps by the officer who serves it, and by the Clerk, he thought that particular allegation was without any basis, and the Council, of course, has in the past, and he was sure with this one also, treated these as alleged violations only until some evidence is heard concerning the violation.

With reference to paragraph 2, Mr. Ashby said this is essentially a statement of what is going to be involved in this particular matter and that is that there is an admission that this particular sale was made to the particular person named and that that person was a minor, but that this sale resulted from the fact that at a previous time or times identification which indicated that the minor was in fact an adult, or at least was over the age of 18 years, had been furnished and, therefore, this was a continuing

process at this point even though perhaps identification had not been asked for at this particular time, and as is indicated if, in fact, false identification of the category which is listed within the Statutes was given it is a complete defense to the charge.

The third paragraph concerns a matter that Council has considered from time to time "that the notice of this alleged violation was not timely given, which delay prejudiced the respondent and resulted in denial of due process of law." Mr. Ashby stated he would let the Council weigh that as it hears the evidence tonight. This matter came to the Council after the time that it was determined what had happened to each of the individuals involved--that is, the juvenile who was involved and the store employee who was alleged to have committed the violation.

Appearing and giving testimony were:

Chris James Burns, 2032 N. 22nd, birth date July 22, 1961

Douglas Kenneth Rushing, former Grand Junction Police Officer

Jim Billiam, State Liquor Enforcement Officer

Sandra Elizabeth Lewis, 2577 Music Lane

Sgt. Harvey Gorby, Grand Junction Police Officer

District Manager Arthur Cos, Southland Corporation

It was moved by Councilman Johnson and seconded by Councilman O'Dwyer that the 3.2% fermented malt beverage license issued to Southland Corporation doing business as Seven-Eleven located at 1117 North First Street be suspended for ten days with that suspension to be held in abeyance for a period of one year on the condition that no further violations come before the Council. Council members QUIMBY and JOHNSON voted AYE. Council members HOLMES, O'DWYER, BROWN and KOZISEK voted NO. Motion carried.

It was moved by Councilman Brown that the license for this outlet be suspended for two days beginning at 12:01 a.m. tomorrow. Motion lost for lack of a second.

It was moved by Councilman Holmes and seconded by Councilman O'Dwyer that the license be suspended for five days commencing March 2.

It was moved by Councilman Brown and seconded by Councilwoman Quimby that the motion be amended to two effective tomorrow. Upon roll call Council members QUIMBY and BROWN voted AYE. Council members HOLMES, JOHNSON, O'DWYER and KOZISEK voted NO. The motion to amend was declared lost.

Vote upon the main motion carried with Council members JOHNSON and BROWN voting NO.

HEARING - 3.2% FERMENTED MALT BEVERAGE ALLEGED VIOLATION BY
SOUTHLAND CORPORATION SEVEN-ELEVEN STORE NO. 1813-19224, 1134 N.
12TH - NO ACTION

President Kozisek disqualified himself from participating in this hearing. President Pro Tem Johnson assumed the chair. Notice of Hearing and subpoenas were filed and all parties were present for the hearing.

Mr. Ashby introduced and read the statement made by Mr. LaMora:

BEFORE THE CITY COUNCIL OF)	
THE CITY OF GRAND JUNCTION,)	
COLORADO.)	

RE: SEVEN TO ELEVEN STORE NO. 1813-19224

The Southland Corporation, appearing by its attorneys, denies the charges against it on the following grounds:

1. That is affirmatively appears from the notice that the City has prejudged this hearing, which is quasi-judicial, thereby denying the respondent due process of law.
2. Investigation by the agent of the Colorado Department of Revenue indicated that there was no probable cause of a violation.
3. That the notice of this alleged violation was not timely given, which delay prejudiced the respondent and resulted in denial of due process of law.

Respectfully submitted.

Donald E. LaMora
Attorney for Southland Corporation

Mr. Ashby stated that paragraph one is the same as the first allegation on the other hearing and for the same reasons that it is without validity. For the second paragraph, Mr. Ashby asked

Council to consider there is a requirement in the Statute that there be probable cause before these matters are brought before the Council. He stated that it is his position that the evidence will show probable cause but that is an arguable thing and Mr. Gilliam will have to present that particular issue. The third item is that the notice of this alleged violation was not timely given, which delay prejudiced the respondent and resulted in denial of due process of law, and Mr. Ashby requested Council to again consider that in the consideration of all of the evidence as to the availability of the Southland Corporation of a real opportunity to defend themselves in this particular matter. He noted that in this instance the Southland Corporation because of the circumstances is denying entirely the many wrong doing.

Mr. Jeffrey Hutson, 2896 Darla Drive, appeared and gave as his birth date 1/26/62.

Also appearing were:

Jim Gilliam, State Liquor Enforcement Officer

Susan Rogers, birth date 8/17/57

Mrs. Logue, Assistant Manager at Seven-Eleven Store, 1134 N. 12th

It was moved by Councilman O'Dwyer that the charges be dismissed and the alleged violation at Southland Corporation Seven-Eleven Store located at 1134 N. 12th Street. Motion lost for lack of a second.

The President Pro-Tem declared the issued closed.

The President declared a five-minute recess. Upon reconvening the six members of Council were present.

HEARING - LIQUOR CODE VIOLATION BY CITY LIQUOR DRIVE-IN, 901 N. FIRST STREET - 10-DAY SUSPENSION

Notice of Hearing was served to Ralph L. Quarles and Mary Quarles dba City Liquor Drive-In, 901 North First Street, and subpoenas were served on Ralph Barnett Quarles and Lin Milburn. Mr. Victor Daniels, attorney for Mr. and Mrs. Quarles, was present.

Present and giving testimony were:

Teresa Milburn, birthdate 10/7/1959 White City Autel

Mrs. Ralph Quarles, 264 1/2 27 1/2 Road

Mr. Ralph Barnett Quarles, owner of City Liquor Drive-In

Ralph B. Quarles, Jr., 1860 Palisade Street

Mrs. Bonnie Faust, 585 25 1/2 Road, Space 200

Leroy Faust, 585 25 1/2 Road, Space 200

It was moved by Councilman Brown and seconded by Councilman Johnson that the retail liquor store license issued to City Liquor Drive-In, 901 North First Street, be suspended for a period of ten days starting Thursday, March 2. Motion carried.

LAND - CONSIDERATION OF BIDS ON HALLENBECK HOUSE AND PROPERTY - JAMES L. WHALEY, \$52,600

At 2:00 p.m. on February 22, 1978, seven bids were received and opened for the house and property known as the Hallenbeck house on Purdy Mesa. The bids were:

Doug Hawke \$12,250.00

Terrance L. Hammer \$19,900.00

Donald L. Sheffield \$36,125.86

Howard C. Nickolson \$36,500.00

Robert W. Brown \$37,000.00

Florence Marie Schaffer \$38,000.00

James L. Whaley \$52,600.00

It was recommended by Staff that the bid of James L. Whaley in the amount of \$52,600.00 be accepted subject to the conditions of the bidding documents. It was noted that domestic water to this property is available through the Purdy Mesa Livestock Water Company.

It was moved by Councilman Johnson and seconded by Councilman Brown to accept Staff's recommendation and approve the sale of the Hallenbeck house and specified property to James L. Whaley for the amount of \$52,600.00 subject to the conditions of the bidding documents. Motion carried.

RESOLUTION DENYING CONDITIONAL USE APPLICATION BY BURGER KING FOR DRIVE-UP WINDOW AT 1730 NORTH AVENUE

The following Resolution was presented and read:

RESOLUTION

OF DECISION ON APPLICATION FOR A CONDITIONAL USE.

This application by Burger King for a conditional use permitting a drive-up window at the business in the 1700 Block of North Avenue in Grand Junction came on for hearing before the City Council on the 15th day of February, 1978, and the Council having considered

the evidence presented at that hearing,

FINDS:

1. That the hearing was properly held after due notice thereof.
2. That the operation of the Burger King at this location has continued for some period of time without the drive-up window, the window now being desired for competitive equality with other fast food outlets with such windows in most cases planned into the outlet to minimize any difficulties which might arise from the drive-up concept.
3. That the vehicular congestion caused by the business of the applicant and the other businesses in the vicinity in relation to ingress and egress from North Avenue and alley access onto 18th Street past the Fire Station presents a problem which will be worsened by the proposed use.
4. The configuration of the traffic pattern proposed to serve the window presents a potential hazard to pedestrian and vehicular traffic in the area using the applicant's facility and others in the neighborhood and a potential blocking of the alley access to the neighborhood.

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

That, for the reasons stated, the application of Burger King for a conditional use permitting a drive-up window is denied.

PASSED and ADOPTED this 1st day of March, 1978.

President of the Council

Attest:

City Clerk

It was moved by Councilman Brown and seconded by Councilman O'Dwyer that the Resolution be passed and adopted as read. Upon roll call all Council members present voted AYE. The President declared the motion carried and the Resolution duly passed and adopted.

Councilman Brown commented that he would hope that the people in that area would look at that area as a group and would try to solve some problems as a group that might allow other types of action.

INDIAN VILLAGE SUBDIVISION FINAL PLAT, R-2 TRANSITIONAL, NW OF 29
1/2 ROAD AND PATTERSON

County Planner Larry Rasinski reviewed the Indian Village Subdivision Final Plat R-2 Transitional located northwest of 29 1/2 Road and Patterson. Proposal is for 65 lots on 22.86 acres. Filing No. 1 was 33 lots on 10.25 acres. This has been submitted and approved by the Mesa County Commissioners, and the Grand Junction Planning Commission subject to staff comments regarding design considerations of the Subdivision, the road specifications specifically. The regulations call for a vertical curb on the R-2 transitional cross section, and this proposal is for a Hollywood curb and City Engineer Ron Rish was waiting for a letter from the petitioners stating the reasons for going with the Hollywood curb and he has had that letter and has accepted the reasons for the Hollywood curb so he has no objections at this time to the Subdivision. Mr. Norris was present and stated that the reason for the Hollywood curb is because they will not be building themselves so the curb cuts will be unknown as to location.

It was moved by Councilman Brown and seconded by Councilman Johnson that Indian Village Subdivision Final Plat R-2 Transitional be approved subject to Planning Commission conditions and subject to staff conditions and subject to vertical curb with four-foot detached sidewalk. Motion carried with Councilwoman Quimby voting NO.

ORDINANCE NO. 1727 - REGULATING SMOKING IN CERTAIN AREAS WITHIN
THE CITY

The Proof of Publication to the following entitled proposed ordinance was presented: AN ORDINANCE REGULATING SMOKING IN CERTAIN AREAS WITHIN THE CITY. It was moved by Councilman Johnson and seconded by Councilman Brown that the Proof of Publication be accepted for filing. Motion carried.

It was moved by Councilman Brown and seconded by Councilman O'Dwyer that the proposed ordinance be called up for final passage and read. Motion carried.

The Ordinance was read. There being no comments, it was moved by Councilman Johnson and seconded by Councilman Brown that the Ordinance be passed, adopted, numbered 1727, and ordered published. Upon roll call all Council members present voted AYE. The President declared the motion carried.

RESOLUTION CONCERNING WALKER FIELD GRANT AGREEMENT (JOINT
RESOLUTION WITH MESA COUNTY TO PARTICIPATE IN 1978 CONSTRUCTION OF
AIRCRAFT RAMP AND AUXILIARY FACILITIES IN THE EVENT OF THE
DISSOLUTION OF THE AIRPORT AUTHORITY)

The following Resolution was presented and read:

JOINT RESOLUTION

In respect to certain application of the Walker Field, Colorado, Public Airport Authority for Airport Development Aid Program participation for the construction on its airport in the construction season 1978 of aircraft ramp and auxiliary facilities and because there has not been a final court determination that we may not be so required, the County of Mesa, Colorado and the City of Grand Junction, Colorado hereby represent that they will to the extent required contribute sufficient funds to assure effective operation and maintenance of the facility for the purposes constructed and will execute the Grant Agreement containing the following contingency stipulation specified by the FAA and on other:

The City of Grand Junction, Colorado and the county of Mesa, Colorado, in their support of the Walker Field, Colorado Airport Authority will, in the event of the dissolution of the airport authority - or upon an FAA determination that said airport authority is in noncompliance or default under the terms and conditions of this grant agreement, jointly and severally accept the responsibilities for such performance. No other responsibility is accepted or assumed by said county and city under this grant agreement.

Further, we the undersigned, in making these representations, express confidence in Walker Field, Colorado, Public Airport Authority acting separately, that it will meet all such required terms and conditions.

County of Mesa, State of Colorado

RESOLVED in regular meeting this 27 day of February, 1978.

By /s/

ATTEST

§ Earl Sawyer

City of Grand Junction, State of Colorado

RESOLVED in regular meeting this 1st day of March, 1978.

By

ATTEST Lawrence Kozisek

It was resolved by Councilman Johnson and seconded by Councilwoman

Quimby the adoption of the Resolution. Upon roll call all Council members present voted AYE.

RESOLUTION CONCERNING PLANNING COMMISSION MEETINGS - TUESDAYS

The following Resolution was presented and read:

RESOLUTION

ESTABLISHING MEETING TIMES OF THE GRAND JUNCTION PLANNING COMMISSION.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

That meetings of the Grand Junction Planning Commission shall be on those Tuesdays of a month as determined by the Development Department and said Planning Commission.

Further that the Grand Junction regulations be amended to reflect such meeting time.

PASSED and ADOPTED this 1st day of March, 1978.

President of the Council

Attest:

City Clerk

It was moved by Councilman Brown and seconded by Councilman O'Dwyer that the Resolution be passed and adopted as read. Upon roll call all Council members present voted AYE. The President declared the motion carried and the Resolution duly passed and adopted.

TRANSPORTATION TASK FORCE - EXTENSION OF TIME TO JULY 1 GRANTED

President Kozisek presented the request from Mr. Mac Sisson, a member of the Transportation Task Force, to extend the 90-day deadline to July 1. He stated that the Task Force will provide Council with a progress report by March 15.

It was moved by Councilman Brown and seconded by Councilman Johnson that the request for the extension of time to July 1 be granted. Motion carried.

CIVIL DEFENSE

Mr. Maxie Carroll, Civil Defense Director of Mesa County, appeared to advise that on Wednesday, March 8, there will be an exercise to

test the communication system.

ADJOURNMENT

It was moved by Councilman Brown and seconded by Councilman O'Dwyer that the meeting be adjourned. Motion carried.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk