

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

November 7, 1990

The City Council of the City of Grand Junction, Colorado, convened in regular session the 7th day of November, 1990, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were John Bennett, R.T. Mantlo, Paul Nelson, Earl Payne, Conner Shepherd, Reford Theobald, and President of the Council William E. McCurry. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Neva Lockhart.

Council President McCurry called the meeting to order and Councilman Bennett led in the Pledge of Allegiance.

INVOCATION - Rev. John Wagner, Grand Junction Open Bible Standard Church.

MINUTES

Upon motion by Councilman Mantlo, seconded by Councilman Nelson and carried, the minutes of the October 17, 1990, City Council Meeting were approved as submitted.

APPOINTMENTS TO THE ANIMAL CONTROL APPEALS BOARD - PULLED FROM AGENDA

COLORADO COUNCIL ON THE ARTS AND HUMANITIES PRESENTATION OF \$7500 GRANT TO THE ARTS COMMISSION

Barbara Neal, Executive Director for the Colorado Council on the Arts and Humanities, along with Maryo Ewell, Community Program Director, and Allison Sarmo, local Community Program member, presented a \$7500 grant to the Grand Junction Arts Commission. Upon motion by Councilman Nelson, seconded by Councilman Shepherd and carried, the Mayor was authorized to accept the \$7500 grant by the Colorado Council on the Arts and Humanities.

BOY SCOUT TROOP 386 ACKNOWLEDGED

HEARING - I.D. ST-90, PHASE B - ALLEY FROM 3RD TO 4TH STREETS, BETWEEN CHIPETA AND GUNNISON AVENUES - RESOLUTION NO. 77-90 CREATING DISTRICT FAILED TO PASS

A hearing was held after proper notice on I.D. ST-90, Phase B, the alley from 3rd to 4th Streets, between Chipeta and Gunnison Avenues.

Councilman Nelson abstained from all discussion and voting regarding this item.

City Property Agent Tim Woodmansee reviewed the petition for the improvement district stating that just over 51% of the property

owners had signed the petition, with one property owner present at this meeting wishing to withdraw his signature from the petition (328 Chipeta Avenue), and thus exactly 50% participation.

An excerpt from People's Ordinance No. 33 regarding the percentage of participation in improvement districts was presented and read . . . "we shall not order the construction of improvements where assessments are to be levied against property owners as provided by the State Statute, except after approval by a majority of the property owners to be assessed within the improvement district." . . . "No petitioner shall be permitted to withdraw his name from the petition after the same has been filed with the Council unless the Council fails to order such improvements upon such petition within the time specified in the petition so filed." City Attorney Wilson stated there was no deadline given by which you could evaluate if the Council has "failed to order such improvements upon the petition."

Tim Spagner, co-owner of property at 328 Chipeta Avenue, was present and stated he had signed an affidavit wishing to withdraw his name from the petition for improvements.

The following Resolution No. 77-90 Creating I.D. ST-90, Phase B, was presented: (Full copy in P.R.).

Laurie Cahn, 305 Gunnison Avenue, commended Council and Staff for the fine job of organizing the improvement district.

Councilman Shepherd recommended that future petitions contain a deadline date for withdrawal.

Donna Patton, 341 Gunnison Avenue, also commended Council for its effort and cooperation with the property owners.

There were no other opponents, letters or counterpetitions. The hearing was closed.

Upon motion by Councilman Theobald, seconded by Councilman Payne and carried by roll call vote with Councilman NELSON ABSTAINING, the Resolution was defeated.

ORDINANCES ON FINAL PASSAGE - PROOFS OF PUBLICATION

Proofs of Publication on the following Ordinances proposed for final passage have been received and filed. Copies of the Ordinances proposed for final passage were submitted to the City Council prior to the meeting.

ORDINANCE NO. 2490 - PAINTED BOWL ANNEXATION NO. 1 - LOCATED AT MONUMENT ROAD, 2 1/2 MILES NORTH OF COLORADO NATIONAL MONUMENT

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ANNEXING

TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO (PAINTED BOWL ANNEXATION NO. 1).

There were no comments. Upon motion by Councilman Payne, seconded by Councilman Mantlo and carried by roll call vote, the Ordinance was passed and adopted as amended, numbered 2490, and ordered published.

ORDINANCE NO. 2491 - PAINTED BOWL ANNEXATION NO. 2

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO (PAINTED BOWL ANNEXATION NO. 2).

There were no comments. Upon motion by Councilman Theobald, seconded by Councilman Shepherd and carried by roll call vote, the Ordinance was passed, adopted, numbered 2491, and ordered published.

ORDINANCE NO. 2492 - PAINTED BOWL ANNEXATION NO. 3

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO (PAINTED BOWL ANNEXATION NO. 3).

There were no comments. Upon motion by Councilman Nelson, seconded by Councilman Mantlo and carried by roll call vote, the Ordinance was passed, adopted, numbered 2492, and ordered published.

ORDINANCE NO. 2493 - PAINTED BOWL ANNEXATION NO. 4

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO (PAINTED BOWL ANNEXATION NO. 4).

There were no comments. Upon motion by Councilman Shepherd, seconded by Councilman Bennett and carried by roll call vote, the Ordinance was passed, adopted, numbered 2493, and ordered published.

ORDINANCE NO. 2494 - PATTERSON PARKWEST ANNEXATION - NORTHWEST CORNER OF PATTERSON ROAD AND 25 ROAD

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO (PATTERSON PARKWEST ANNEXATION).

There were no comments. Upon motion by Councilman Bennett, seconded by Councilman Mantlo and carried by roll call vote, the Ordinance was passed, adopted, numbered 2494, and ordered published.

ORDINANCE NO. 2495 - MAKING SUPPLEMENTAL APPROPRIATIONS FOR 1990

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: AN ORDINANCE MAKING SUPPLEMENTAL APPROPRIATIONS TO THE BUDGET OF THE CITY OF GRAND JUNCTION.

There were no comments. Upon motion by Councilman Mantlo, seconded by Councilman Nelson and carried by roll call vote, the Ordinance was passed and adopted as amended, numbered 2495, and ordered published.

ORDINANCE NO. 2496 - REPEALING AND REENACTING AN ORDINANCE CONCERNING THE LOCATION IN CERTAIN AREAS OF THE CITY OF GRAND JUNCTION OF ADULT ENTERTAINMENT ESTABLISHMENTS AS DEFINED HEREIN. THIS ORDINANCE SHALL CONSTITUTE ON FINAL PASSAGE AND ADOPTION SECTION 5-13 OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE AND SHALL BE CODIFIED THEREIN AND AT CHAPTER 32 OF THE CODE OF ORDINANCES OF THE CITY OF GRAND JUNCTION AS SECTION 32-2

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: THE REPEAL AND REENACTMENT OF AN ORDINANCE CONCERNING THE LOCATION IN CERTAIN AREAS OF THE CITY OF GRAND JUNCTION OF ADULT ENTERTAINMENT ESTABLISHMENTS AS DEFINED HEREIN. THIS ORDINANCE SHALL CONSTITUTE ON FINAL PASSAGE AND ADOPTION SECTION 5-13 OF THE GRAND JUNCTION ZONING AND DEVELOPMENT CODE AND SHALL BE CODIFIED THEREIN AND AT CHAPTER 32 OF THE CODE OF ORDINANCES OF THE CITY OF GRAND JUNCTION AS SECTION 32-2.

There were no comments. Upon motion by Councilman Theobold, seconded by Councilman Payne and carried by roll call vote, the Ordinance was passed, adopted, numbered 2496, and ordered published.

ORDINANCE NO. 2497 - ESTABLISHING POLICY FOR THE CONSTRUCTION OF WATER WORKS AND SEWER SYSTEMS; PROVIDING FOR THE UPGRADING OF WATER LINES TO PROVIDE ADEQUATE FIRE PROTECTION WITHIN THE CITY OF GRAND JUNCTION; PROVIDING FOR THE RELOCATION OF WATER AND SEWER LINES WITHOUT COMPENSATION TO THEIR OWNERS WHEN REQUIRED BY THE PUBLIC HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE GRANTING OF FRANCHISES TO CONSTRUCT WATER WORKS AND SEWER SYSTEMS IN THE PUBLIC WAYS OF THE CITY; PROHIBITING THE CONSTRUCTION OF WATERWORKS AND SEWER SYSTEMS WITHIN THE CITY WITHOUT A FRANCHISE; PROHIBITING WORK IN ANY PUBLIC WAY WITHOUT OBTAINING A PERMIT; PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND

AMENDING CHAPTER 3 OF THE GENERAL ORDINANCES OF THE CITY OF GRAND JUNCTION BY THE ADDITION OF ARTICLE 3.

Upon motion by Councilman Bennett, seconded by Councilman Payne and carried, the following entitled proposed ordinance was called up for final passage and read by title only: ESTABLISHING POLICY FOR THE CONSTRUCTION OF WATER WORKS AND SEWER SYSTEMS; PROVIDING FOR THE UPGRADING OF WATER LINES TO PROVIDE ADEQUATE FIRE PROTECTION WITHIN THE CITY OF GRAND JUNCTION; PROVIDING FOR THE RELOCATION OF WATER AND SEWER LINES WITHOUT COMPENSATION TO THEIR OWNERS WHEN REQUIRED BY THE PUBLIC HEALTH, SAFETY AND WELFARE; PROVIDING FOR THE GRANTING OF FRANCHISES TO CONSTRUCT WATER WORKS AND SEWER SYSTEMS IN THE PUBLIC WAYS OF THE CITY; PROHIBITING THE CONSTRUCTION OF WATERWORKS AND SEWER SYSTEMS WITHIN THE CITY WITHOUT A FRANCHISE; PROHIBITING WORK IN ANY PUBLIC WAY WITHOUT OBTAINING A PERMIT; PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND AMENDING CHAPTER 3 OF THE GENERAL ORDINANCES OF THE CITY OF GRAND JUNCTION BY THE ADDITION OF ARTICLE 3.

City Attorney Dan Wilson explained that this ordinance has been amended by the addition of the following words in the title only: PROHIBITING WORK IN ANY PUBLIC WAY WITHOUT OBTAINING A PERMIT."

Attorney Bill Prakken was present representing Ute Water Conservancy District.

Bill Prakken: I want to address some comments to the proposed ordinance. It is obviously no secret to the Council that there is a contract presently in existence between the Ute Water Conservancy District and the City of Grand Junction that was entered into in 1976, subject to the provision of water services in the area where the Ute District and the City boundaries overlap. It is also no secret to the Council that a controversy is currently brewing and exists between the Council and the Ute Water Conservancy District as to who has the right and authority to provide water service to new customers within this overlap area. It is in that setting that this new ordinance is now being proposed.

Part of my purpose here tonight is to come down here and look you folks in the eye and tell you what the position of the Ute Water Conservancy District is on the Statute. We have some very serious concerns, frankly, about the legality of the Statute, particularly as it applies to the Ute District, and I want to address those. And we have some concerns about how that ordinance affects the City's contractual obligations of Ute Water.

We recognize that under State Law, the City has the right to set forth reasonable rules and regulations pertaining to construction activity on the streets and highways, and we don't quarrel with that. The City does not have the right, under Statute, in fact it is specifically prohibited, to require water conservancy districts to post bonds and pay permit fees, and that has been addressed in the ordinance. To the extent that the ordinance imposes reasonable

regulations, those are not objected to, but there are a number of provisions in the ordinance that the Ute Water District does find objectionable, and I'd like to give you some examples. To begin with there are I believe 9 "WHEREAS" clauses in the ordinance. I recognize they are not substances, but they state the City's policy, its beliefs, and the City's intent. I would respectfully submit that the 3rd, 4th, 6th, 7th, and 8th WHEREAS clauses incorrectly state the Law, and imply that the City has total and unbridled authority in that overlap area. That, I would submit, is not the Law, nor is it the City's contractual position. The ninth WHEREAS clause states that the City's policy is that "it will be the sole owner and provider of water within its boundaries," which includes, of course, a considerable portion of the Ute Water District. This kind of policy statement ignores not only the State Law, but again the City's contract with Ute, and for that reason Ute objects to those particular provisions and would urge that those be stricken from the ordinance.

There are several other provisions that we likewise would contend are improper and unlawful, in particular, Section 31-99. That section purports to give the City the power to condemn, among other things, publicly owned water systems within its boundaries. Again, I would respectfully submit that the City does not have the constitutional or statutory authority to do that. I will be happy to be more specific about the statutes and the constitutional provisions if we want to get into a legal discussion, but I don't think that's terribly productive at this point. Likewise, that provision would be in violation of the City's contract again with the Ute Water District, which contract provides that Ute is to provide the water in the overlap area.

Other provisions which we submit are objectionable are Sections 31-94 and 31-95. These are the sections that pertain to certain specifications for pipeline size and pressure, and which purport to give the City authority to require entities such as the Ute Water Conservancy District to upgrade and enlarge their pipeline systems within the City at the expense of the Ute Water Conservancy District or whatever the other entity might be. The Ute Water District doesn't have any objections to meeting these requirements for any new construction, certainly, nor does it particularly have an objection to upgrading the pipelines that are in place, but not at the expense of the Ute customers. Likewise, I would submit that the same legal objections apply here that I cited earlier, that there is some constitutional and statutory problems involved as well as contractual provisions. In fact the contract specifically refers to the provision of pipeline in accord with a certain code and when that pipeline was installed it did meet those requirements, so we would urge that those provisions be stricken as well.

Lastly, Sections 31-88 and 31-93 dealing with relocation costs, those section would permit the City to require the Ute Water District to move its line at any time the City concluded it was necessary to do so, at the Ute Water District's expense. Again,

Ute doesn't have any particular objection to moving its pipelines in order to prevent road construction or other activity to go forward, but the cost should be part of the project cost, not a cost that has to be borne by the Ute customers. So we would likewise urge that that be stricken, again citing the same clause.

In summary, the Ute Water Conservancy District would suggest that you either strike entirely these provisions that I've referred to, or that language be added which specifically exempts the Ute Water District from those provisions. I want to make the record clear that by referencing only these sections, we're not intending to waive any objections that we might have to any of the other provisions. But these were simply the most objectionable, if you will. Actually, I suppose our real preference would be that Council not adopt the ordinance at all, or that the Council add language totally exempting Ute, but short of that, striking those provisions, or exempting Ute from those provisions, would be acceptable.

As you gentlemen are well aware, we are attempting to reconvene negotiations between the City and the Ute Water District in an effort to get a discussion going, with a view toward ultimately unifying two systems. I would submit that the adoption of an ordinance as questionable legality, which appears on the surface at least, directed very much at the Ute Water District, and at establishing the City's supremacy and authority over the Ute Water District is highly calculated deferred to the course of our friendly and productive negotiations. Therefore, I again would request that it be voted down.

The record should reflect that, and everyone should understand that, if the Council adopts the ordinance in the form that it presently exists, and attempts to enforce these provisions that we've discussed against the Ute Water District, Ute Water District intends to resist that enforcement in whatever lawful manner it can, including even taking the matter to court, if necessary. I'll be happy to answer any questions that anyone might have.

City Attorney Wilson: Mr. Mayor, Mr. Prakken and I have discussed the matter before. I certainly have no questions. I think I understand what he is saying.

Mayor McCurry: Mr. Prakken, we appreciate your comments.

Mr. Prakken: Thank you very much for your time.

Councilman Shepherd: Mr. Prakken, I do have a question. You said in your testimony that we all know Ute is to provide water in the overlap area. That's essentially the thrust of the issue, is it not, between Ute and the City? As we annex further into the County, we get into those areas where there is overlap in service, is that right?

Mr. Prakken: Well, as I'm sure you're already aware, Mr. Shepherd,

there's of course a big doughnut shaped area now within the City that also is within the Ute Water Conservancy District. And there is a dispute about who has the right to serve new customers in that area or in any new area that the City might annex. To me the language of the contract is very clear. In the first paragraph it says that the Ute Water District will furnish the water. Now there's obviously room for argument about what that contract means and what's on the petitions mean, I fully agree with that, but it seems to me that the history has been that Ute has, for the most part, furnished the water in that area, and served new customers to that contract. We submit that that's appropriate and proper under the contract. And I understand that City's taking a somewhat different view of that matter now, and that is indeed the argument.

City Attorney Wilson: It would probably be fair to say I'm not sure that it's the City, but certainly the City Attorney, that will take that position at least in his discussions with you.

Mr. Prakken. Right.

Mayor McCurry: Thank you very much. Anyone else that would like to come forward and speak for or against this item.

Jim Ellsberry: Gentlemen, my name is Jim Ellsberry. I'm with the Board of Directors of the Orchard Mesa Sanitation District. I guess we are very well aware that we have no lines within the City limits of Grand Junction. But it's quite apparent that under the grand plan some of our lines are going to be within the boundaries of the City, and needless to say, we feel that this ordinance is of concern to us for future reference, not particularly today, but we would like to let you know, that when the time comes that our lines are within your boundaries, I'd like to express some of our concerns when that time does come. In reading the ordinance, your 9th WHEREAS clause states that the City should be a sole owner of all sewer lines and sole provider of sewer lines to all property within the City limits. If a part of the Orchard Mesa Sanitation District is annexed, does the City immediately own the sewer lines, and would it provide service to the customers immediately. This would, in fact, impact our rate structure to the rest of our constituents. On that same 9th WHEREAS, if you did not take over ownership, do you still take over servicing of the lines? If you took over ownership, does Orchard Mesa Sanitation District still remain responsible for the relocation of sewer lines without compensation, as in Article 31-61? How about if you do not take over ownership from the same 31-61?

Article 31-67 in the next paragraph, you state that we have to require the posting of a performance or warranty guarantee. We have no statutory authority to do this. Article 31-71 - what type of control do we have over the amount of insurance required by the City?

Articles 31-86 and 31-87 - Does this give the City the power to

control the line development and location within the District before an annexation? Also after annexation? Article 31-89 - Is this a perpetual thing in the cost adjustment liabilities? Is there a time limit for this clause or is this something that we are going to bear as a district until we go belly-up, or whatever, I assume?

Gentlemen, these are just some of the questions that came to us when we first read this, and as I say, we have no lines within the City limits right now, and I assume we have no direct problems with this right now, but I'm sure that when the district is in the City limits, these are questions that we would like to bring up at that time.

City Attorney Wilson: Mr. Mayor, if the Council would give me permission, I don't know that we need to do it tonight, but I would be happy to sit down and talk about where the district is located, and talk about the application and how the ordinance will work in the field, because I think almost all your concerns . . . will be addressed when we're done, as I understand your system and the City's system. So any time we could sit down and discuss it . . . you're exempt from the bonding requirement as a governmental entity, and there are clauses like that throughout, and I think your comfort level will rise a little bit when we talk about it.

Councilman Theobald: Trust him, he's an attorney.

Councilman Shepherd: Could I ask . . . is this . . . are we on final passage of this ordinance?

Mayor McCurry: Yes. Would somebody else like to come forward?

Lynn Thompson: Good evening. My name is Lynn Thompson. I'm with the Central Grand Valley Sanitation District, and I guess I am here before you just to let you know that our district, our Board has also had some of the same concerns as Orchard Mesa Sanitation District has voiced to you, and some of the same as Ute Water. Whether or not these concerns will be addressed, whether we will feel better after meeting and finding out a little bit more about it, I'm not sure. Regarding future annexations, as a Board member, I have concerns of how this will affect our uses, and possibly even . . . we have some concerns that we want to let you know that we are a little nervous about this.

Councilman Theobald: Would it be possible to schedule the same, well not the same meeting, but a similar meeting with Mr. Thompson?

City Attorney Wilson: Sure. Absolutely.

City Attorney Wilson: We can do it soon, in fact, Friday. If these gentlemen will call me in the morning we will try to schedule something for Friday if that's convenient.

Mr. Thompson: Thank you.

Mayor McCurry: Thank you. Anyone else? The hearing is closed.

City Attorney Wilson: Mr. Mayor, as I indicated earlier, Mr. Prakken and I have talked in some detail about my reading of the contract and his reading of the contract, and without going into the detail, I think it's safe to say that we disagree on what the impact of the contract is, and I would, for the same reasons that he didn't want to waive anything he didn't specifically address, make the same kind of comment that a number of his statements I disagree with the legal impact. I will say that this ordinance, in my view, does not, it is not intended to, and we attempted to avoid any breach of contract possession, or creating an undue burden on Ute. That was not absolutely mandated by the public health, welfare and safety, and those are primarily the issues of giving notice to the City Engineering office of what work is to be done, so that these kinds of issues can be worked out. I think it's true that today that happens informally. I mean it happens on a daily basis, and there's a good working relationship with the staffs. This simply, in my view, puts in ordinance form what that practice has been. But the attempt is not to go to war with Ute as Mr. Prakken and I have discussed in the recent past. I think most of the policy bodies are going to be talking some more, and certainly the intent of this was not to stop those discussions, but to do some things that we thought we needed on the books to protect the citizens. I do not believe it to be in violation of State Statute or the Colorado Constitution. I recommend that the Council adopt it with that one amendment in the title.

Councilman Theobald: I have just one question, and I think you've kind of worked around it. My understanding is in the ordinance it specifically exempts Ute because we have a contract with Ute.

City Attorney Wilson: It specifically acknowledges we have a contract with Ute. It waives the guarantee, it waives the fee. But though we recognize that we didn't want that physical burden on them, but they simply pass through.

Councilman Shepherd: This issue is speaking to a problem that we've got in terms of our understanding of an issue and Ute Water Conservancy District's understanding of an issue, is that right?

City Attorney Wilson: Well, I would broaden it and say that this ordinance was not written to Ute Water to deal with that situation. Obviously, it affects them, but it was written in a broader sense to deal with anyone who was doing work in the public rights-of-way, with City Engineering wanting to know in advance of that work, what was being done so that we could deal with the authorization and those kinds of things. That was the essential thrust. The WHEREASES do state the City policy that the City believes that it should be the sole provider within the City limits. It makes that statement in the WHEREASES. I believe that

to be a correct statement of the City's position. It's in the WHEREASes because it is a statement of intent. It is not an operating . . . part of the substance, part of the ordinance.

Councilman Theobald: I don't suppose that would come as a surprise to Ute.

There were no other comments. Upon motion by Councilman Theobald, seconded by Councilman Nelson and carried by roll call vote, the Ordinance was passed and adopted as amended, numbered 2497, and ordered published.

RESOLUTION NO. 78-90 SETTING MILL LEVY (8.967 MILLS)

The following Resolution was presented and read: (See next page.)

Upon motion by Councilman Mantlo, seconded by Councilman Bennett and carried by roll call vote, the Resolution was passed and adopted as read.

RESOLUTION NO. 79-90 SETTING DDA MILL LEVY (5.0 MILLS)

The following Resolution was presented and read: (See next page.)

Upon motion by Councilman Nelson, seconded by Councilman Payne and carried by roll call vote, the Resolution was passed and adopted as read.

RESOLUTION NO. 80-90 REVOKING THE REVOCABLE PERMIT FOR NORTH MAIN STREET ALLEY BETWEEN 4TH AND 5TH STREETS - TABLE TO NOVEMBER 21, 1990

RESOLUTION 78-90

LEVYING TAXES FOR THE YEAR 1990 IN THE CITY OF GRAND JUNCTION, COLORADO

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

That there shall be and hereby is levied upon all taxable property within the limits of the City of Grand Junction, Colorado, for the year 1990 according to the assessed valuation of said property, a tax of eight and ninety six point seven hundredths (8.967) mills on the dollar (\$1.00) upon the total assessment of taxable property within the City of Grand Junction, Colorado, for the purpose of paying the expenses of the municipal government of said City and certain indebtedness of the City, for the fiscal year ending December 31, 1991.

ADOPTED AND APPROVED THIS 7th day of November, 1990.

APPROVED:

William E. McCurry

President of the Council

ATTEST:

Neva B. Lockhart, CMC

City Clerk

TAX LEVY CERTIFICATION
TO COUNTY COMMISSIONERS AND ASSESSOR

STATE OF COLORADO)	
COUNTY OF MESA)	SS
CITY OF GRAND JUNCTION)	

To the Commissioners of Mesa County, Colorado:

This is to certify that the tax levy to be assessed by you upon all property within the limits of the City of Grand Junction for the year 1990, as determined and fixed by the City Council by Resolution duly passed on the 7th day of November, 1990, is eight and ninety six point seven hundredths (8.967) mills, the revenue yield of said levy to be used for the purpose of paying the expenses of the municipal government and interest upon the principal of outstanding bonds, and you are authorized and directed to extend said levy upon your tax list.

IN WITNESS WHEREOF, I have hereunto set my hand; and affixed the seal of the City of Grand Junction, Colorado, this 7th day of November, 1990.

Neva B. Lockhart, CMC

City Clerk

CITY OF GRAND JUNCTION 1990 BUDGET

IMPLEMENTING DOCUMENTS

RESOLUTION NO. 79-90

LEVYING TAXES FOR THE YEAR 1990 IN THE CITY OF GRAND JUNCTION,

COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

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

That there shall be and hereby is levied upon all taxable property within the Grand Junction, Colorado, Downtown Development Authority limits, for the year 1990 according to the assessed valuation of said property, a tax of 5 (Five) mills on the dollar (\$1.00) upon the total assessment of taxable property within the Grand Junction, Colorado, Downtown Development Authority, for the purpose of paying the expenses of said Authority for the fiscal year ending December 31, 1991.

ADOPTED and APPROVED this 7th day of November, 1990.

Approved:

William E. McCurry

President of the Council

Attest:

Neva B. Lockhart, CMC

City Clerk

CITY OF GRAND JUNCTION 1991 BUDGET

IMPLEMENTING DOCUMENTS

TAX LEVY CERTIFICATION

TO COUNTY COMMISSIONERS AND ASSESSOR

STATE OF COLORADO)
COUNTY OF MESA)
CITY OF GRAND JUNCTION)

To the Commissioners of Mesa County, Colorado:

This is to certify that the tax levy to be assessed by you upon all property within Grand Junction, Colorado, Downtown Development Authority limits for the year 1990, as determined and fixed by the City Council by Resolution duly passed on the 7th day of November,

1990, is 5 (Five) mills, the revenue yield of said levy to be used for the purpose of paying the expenses of the Grand Junction, Colorado, Downtown Development Authority and interest upon the principal of outstanding bonds, and you are authorized and directed to extend said levy upon your tax list.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Grand Junction, Colorado, this 8th day of November, 1990.

Neva B. Lockhart, CMC

City Clerk

c: County Assessor

RESOLUTION NO. 81-90 - TWO-YEAR LEASE OF CITY-OWNED PROPERTY AT 236 MAIN STREET TO JIM SHEEKS DBA THE KLUB DOKTOR

The following Resolution was presented and read: (See next page.)

Upon motion by Councilman Mantlo, seconded by Councilman Payne and carried by roll call vote, the Resolution was passed and adopted as read.

DDA/COUNCIL JOINT DINNER MEETING

City Manager Mark Achen announced a dinner meeting will be held with the Board of Directors of the Downtown Development Authority on Monday, November 26, 1990, subject to DDA's approval of said date.

LOUIS O'RIORDAN DISCUSSES ALLEGATIONS OF LOCAL POLICE BRUTALITY

Mr. Louis O'Riordan, 2035 Gunnison Avenue, commented on recent allegations against the Grand Junction Police Department regarding excessive brutal treatment of citizens on the part of various officers employed by the City. He warned that a possible lawsuit against the City on behalf of some citizens could be forthcoming. He strongly urged a thorough investigation be performed within the Police Department regarding these allegations.

ADJOURNMENT

The President adjourned the meeting.

Neva B. Lockhart

Neva B. Lockhart, CMC
City Clerk

RESOLUTION NO. 81-90

AUTHORIZING A LEASE OF THE CITY PROPERTY AT 236 MAIN STREET TO JIM

SHEEKS, DOING BUSINESS AS THE KLUB DOKTOR

WHEREAS, the City of Grand Junction is owner of the real property described as Lot 24 of Block 101, City of Grand Junction, also known as 236 Main Street, which is presently leased through November 14, 1990 to Harley Maddock, doing business as The Klub Doktor; and

WHEREAS, Jim Sheeks has purchased The Klub Doktor business from Harley Maddock and has requested a lease for the purpose of continuing the operation of said business at the 236 Main Street Property.

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

That the City Manager be authorized, on behalf of the City and as the act of the City, to execute the attached Lease Agreement with Jim Sheeks, doing business as The Klub Doktor, for the lease of said property for a term of two years, commencing on November 1, 1990 and terminating on October 31, 1992, and for a rental fee of \$250.00 per month, subject to the several other terms and conditions of the attached Lease Agreement.

PASSED and ADOPTED this 7th day of November, 1990.

William E. McCurry

President of City Council

Attest:

Neva B. Lockhart, CMC

City Clerk

LEASE AGREEMENT

THIS LEASE AGREEMENT is entered into as of the 1st day of November, 1990 between The City of Grand Junction, a municipal corporation, hereinafter referred to as "City", and Jim Sheeks, doing business as The Klub Doktor, hereinafter referred to as "Lessee", whose address for the purpose of this Lease is 236 Main Street, Grand Junction, Colorado 81501.

RECITALS

A. City is the owner of the following described real property and improvements situate in the City of Grand Junction, Mesa County, Colorado:

Lot 24 of Block 101, City of Grand Junction, also known as 236 Main Street and hereinafter referred to as the "Property".

B. The Property is presently leased to Harley Maddock ("Maddock"), doing business as The Klub Doktor ("Business"), which lease is due to expire on November 14, 1990.

C. Lessee has purchased the Business from Maddock and is desirous of securing a lease for the purpose of continuing the operation of the Business on the Property.

D. City has agreed to lease the Property to Lessee under the terms and conditions of this Lease.

NOW, THEREFORE, In consideration of the payment of rent and the performance of the promises set forth below, City does hereby lease to Lessee the above described Property.

1. The term of this Lease shall commence on November 1, 1990 and expire on October 31, 1992.

2. Lessee agrees to pay City as rental for the Property the amount of \$250.00 per month, in advance, due and payable without demand by City on or before the 1st day of each month during the term of this Lease. In the event payment of the rent is not received on or before the 10th day of each month, Lessee agrees to pay a late charge of \$50.00, which shall be added to the amount of the rent due.

3. (a) Lessee agrees to timely pay any and all taxes which might be levied against the Property and attributable to the occupancy of the Property by Lessee during the term of this Lease; and to promptly pay for all utilities charges including, but not limited to, natural gas, electricity, water, sewer and trash removal imposed with respect to the Property. (b) If Lessee fails to timely pay any and all amounts required pursuant to this Lease, the City may pay such amounts and in such event, the amount(s) paid by the City plus interest thereon at a rate of 15% per annum shall be added to the amount(s) of the rent due and payable by Lessee.

4. Lessee agrees to:

a. Maintain and keep the building and all improvements and fixtures upon the Property, including but not limited to sewer connections, roofing, plumbing, heating and ventilation systems, wiring and glass, in good repair, all at Lessee's expense, and at the expiration of this Lease, surrender the Property and improvements thereon to City in as good a condition as when Lessee entered the Property, reasonable use and wear excepted.

b. Keep the Property free from all litter, dirt, debris and obstructions.

c. Waive and forego any claim, cause of action or demand Lessee may have against the City, its officers, agents and employees for injury to or destruction of any property of Lessee that may be

lost, injured, destroyed or devalued as a result of the act, or failure to act, of Lessee or any third person; and to indemnify the City, its officers, agents and employees and to hold the City, its officers, agents and employees harmless from any and all claims, damages, actions, costs and expenses of every kind in any manner arising out of, or resulting from Lessee's use of the Property.

d. Use said Property for no purpose prohibited by the applicable laws of the United States or the State of Colorado, the County of Mesa or the City of Grand Junction; to comply with all police, fire and sanitary regulations imposed by any municipal, state or federal authority either now in force or hereinafter enacted, and to use the premises for no improper or questionable purposes whatsoever.

e. At his expense and during the term of this Lease, purchase and maintain in effect suitable comprehensive general liability insurance which will protect Lessee and the City, its officers, employees and agents from liability in the event of loss of life, personal injury, or property damage suffered by any person or persons on, about or using the Property. Such insurance shall not be cancellable without thirty (30) days prior written notice to the Risk Manager of the City and shall be written for at least a minimum of Five Hundred Thousand Dollars (\$500,000.00), combined single limit. The certificate of insurance must be deposited with the Risk Manager of the City and must designate the City of Grand Junction, its officers, employees and agents as additional insureds.

f. Comply with all Workmen's Compensation laws and provide proof of Workmen's Compensation insurance to the City's Risk Manager. Said Workmen's Compensation insurance shall cover obligations imposed by applicable laws for any employee engaged in the performance of work on the Property.

5. Lessee has inspected the Property and accepts the Property and any improvements thereon in their present condition. Lessee agrees that the condition of the improvements and the Property is sufficient for the purposes of the Lessee. The City makes no warranties nor promises that the improvements nor the Property are sufficient for the purposes of Lessee.

If the premises are damaged due to fire or other casualty, or if the improvements or fixtures deteriorate to the extent where they are no longer functional for the purposes of Lessee, the City shall have no obligation to repair the improvements nor to otherwise make the premises usable or occupiable; damages shall be at Lessee's risk. If the City determines not to perform repairs or to otherwise make the premises usable or occupiable, Lessee may terminate this Lease by giving Lessee's notice to the City that this Lease is terminated.

6. Lessee acknowledges that the City does not control whether or

not hazardous materials and/or uranium mill tailings exist on the Property or improvements. Lessee acknowledges that, in the event such materials or tailings must be removed, Lessee shall cooperate fully with any and all such removal efforts and that Lessee waives and releases the City and its officers, agents and employees from any claims for loss of business, lost profits or lost opportunities. City agrees to keep Lessee informed concerning any plans to remove such materials and tailings but the City reserves the right, as owner, to approve the plan(s) for remediation or removal. If Lessee elects, Lessee may terminate this Lease if the plan(s) approved by the City are unacceptable. In such event, Lessee shall be thereafter released from his obligation to pay rent which accrues thereafter.

7. During the term of this Lease, Lessee shall have the exclusive right-of-way for ingress and egress to and from the Property, provided that the City, its officers, employees and agents shall have the right to be on the Property during emergencies and may inspect the Property at anytime.

8. Upon termination of this Lease, whether as above provided, or whether terminated any other way, Lessee agrees to surrender and deliver up the premises and all keys peaceably to the City immediately upon termination.

9. Except as otherwise provided for (automatic and immediate termination), if Lessee is in default in the performance of any term or condition of this Lease, the City may, at its option, terminate this Lease upon 30 days written notice. If Lessee fails within any such 30 day period to remedy each and every default specified in the City's notice, this Lease shall terminate. If Lessee remedies such default, Lessee shall not thereafter have the right of 30 days (to remedy) with respect to the same default, but rather, the Lessee's rights shall, with respect to a subsequent similar default, terminate upon the giving of notice by the City. All notices sent pursuant to this Lease Agreement shall be delivered by United States certified mail, return receipt requested, and shall be considered served upon Lessee of the date of mailing indicated on the postal receipt. All notices shall be sent to Lessee at 236 Main Street, Grand Junction, Colorado 81501. All notices to the City shall be addressed to: Property Agent, 250 North 5th Street, Grand Junction, Colorado 81501.

This Lease shall automatically terminate in the event Lessee or The Klub Doktor business: becomes insolvent; is subject to a bankruptcy filing whether or not voluntary or involuntary; is subject to an assignment for the benefit of creditors or if a receiver is appointed; if Lessee should become disabled or suffer death; if Lessee fails in any manner to comply with any of the terms, covenants, or conditions of this Lease to be kept and performed by Lessee; or should Lessee, by any act of negligence or carelessness, or through any act of commission or omission permit, or suffer to be permitted, damage to the Property of the demised premises in any substantial manner. In such event, the City may

immediately retake possession.

If this Lease is terminated by the City, except termination due to expiration of the lease term, Lessee shall have reasonable access to the Property for a reasonable time, not to exceed 30 days, to remove Lessee's personal property. If Lessee fails to remove his personal property within the time prescribed, the City shall not be responsible for the care and safekeeping thereof and may remove the same and store the same in a reasonable manner, the cost, expense and risk of which shall be borne by Lessee. Lessee hereby agrees that items not timely removed may be sold by the City to cover expenses with net proceeds after expenses paid to Lessee. The City may also set off amounts owed under this Lease against proceeds of said sale.

10. Lessee shall not sublet, assign or transfer any of his interests in this Lease, or enter into any contract or agreement affecting Lessee's interest in this Lease, without obtaining the prior written approval of the City. Further, Lessee shall make no structural changes to the improvements without the prior written consent of the City, which consent shall not be unreasonably withheld.

11. Should Lessee fail, for whatever reason, to vacate the premises at the end or when this lease is terminated, Lessee agrees to pay to the City, in addition to all other sums due hereunder, daily rental in the amount of \$25.00 per day for each and every day thereafter. The parties agree that it would be difficult to establish the actual damages to the City in such event and that said \$25.00 is an appropriate liquidated damages amount.

12. It is expressly agreed that this Lease is one of lease and not of partnership and the City shall not be or become responsible for any debts contracted by Lessee. Lessee shall save, indemnify and hold the City, its officers, employees and agents harmless against all liability or loss, and against all claims or actions based upon or arising from any claim, lien, damage or injury, (including death), to persons or property caused by Lessee or sustained in connection with the performance of this Lease or by conditions created thereby, or based upon any violation of statute, ordinance code or regulation, and the defense of any such claims or actions, including attorney's fees.

Lessee shall also pay and indemnify the City, its officers, employees and agents against all liability and loss in connection with, and shall assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to employees engaged in performance of this Lease.

13. In the event City uses its City Attorney or engages an attorney to enforce the City's rights hereunder, including but not

limited to suit or any collection efforts, Lessee agrees to pay for the value or cost of such attorney, plus costs including the costs of any experts. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado. Venue shall be in Mesa County.

14. The provisions of this Lease shall not inure to the benefit of the heirs, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, each party to this Lease Agreement has caused it to be executed on the date indicated below.

THE CITY OF GRAND JUNCTION, COLORADO

BY: Mark K. Achen 11/8/90

City Manager Date

ATTEST:

Neva B. Lockhart, CMC 11-8-90

City Clerk Date

LESSEE:

Jim Sheeks
dba The Klub Doktor