

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

February 19, 1997

The City Council of the City of Grand Junction, Colorado, convened into regular session the 19th day of February, 1997, at 7:30 p.m. in the City/County Auditorium at City Hall. Those present were Mike Sutherland, David Graham, R.T. Mantlo, Ron Maupin, Janet Terry, Reford Theobald and President of the Council Linda Afman. Also present were Assistant City Manager David Varley, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Afman called the meeting to order and Councilmember Theobald led in the Pledge of Allegiance. The audience remained standing during the invocation by Rev. Eldon Coffey, Living Hope Evangelical Free Church.

BOY SCOUT TROOP #387 IN ATTENDANCE AT COUNCIL MEETING

APPOINTMENTS TO THE COMMISSION ON ARTS & CULTURE

Upon motion by Councilmember Maupin, seconded by Councilmember Mantlo and carried, Jeanne Killgore and Karen Kiefer were reappointed to three-year terms, LeRoy Donegan was appointed to a three-year term, and Bill Reidy and Priscilla Rupp were appointed to two-year terms on the Commission on Arts & Culture.

PRESCHEDULED CITIZENS & VISITORS

Mr. Jim Fleming submitted a letter (attached) to the City Council encouraging Council to propose a Charter Amendment increasing City Council salaries. He has surveyed groups in the community recently and has determined that the small salary paid City Councilmembers is insufficient for the job that they do. He felt Council should be paid \$500/month. He also recommended a salary for the Mayor of \$750/month. Mr. Fleming requested the question be placed on the April 8, 1997 Municipal Election ballot.

City Attorney Wilson said if Council desires, a ballot question will be drafted for Council's consideration at the next Council meeting.

Councilmember Graham asked if the City Charter provides any impediment to raising salaries and having anyone sitting on the Council benefiting from the decision. City Attorney Wilson said there is other law which addresses this question. He will look

into the matter and have an answer at the next meeting of Council on March 5, 1997.

Upon motion by Councilmember Terry, seconded by Councilmember Theobold and carried, this item will be placed on the March 3, 1997 workshop agenda.

It was noted City Council salaries have not been increased since 1987.

REPORT TO CITY COUNCIL

City Clerk Stephanie Nye reported to Council that petition documents were received in her office on February 18, 1997. Fifty-six (56) petition pages were received containing anywhere from 1 to 21 names on each page. The petition purports to protest the Stassen Annexation Ordinances No. 2976, 2977 and 2978, which were adopted by Council on January 15, 1997. They were published in The Daily Sentinel on January 17, 1997 (report attached).

Councilmember Theobold concluded from the report that the petition was not turned in on time. Only 914 signatures were received when 1200 were required. If 1200 signatures had been received, only 76% appeared to be City residents. Even if they were all city residents, another 50% were duplicates or for some other reason, invalidated. The petition fails five different ways, each on its own merit.

Councilmember Terry asked if Ms. Nye planned to finish scrutinizing the signatures for validity. Ms. Nye said only upon direction of City Council would she further examine the petitions.

Councilmember Sutherland said there is no point in spending anymore time reviewing the petition.

Councilmember Graham entered into the record a letter dated February 19, 1997 signed by the County Commissioners regarding this issue (attached). He asked what the wording of such a question would be on the ballot. City Attorney Wilson said "SHALL THE PROPERTY BE DEANNEXED". The effective date of the annexation has passed and the property is therefore annexed. The Council action to avoid that would be an ordinance to disconnect Stassen No. 1, No. 2 and No. 3.

Councilmember Graham felt the question should be placed on the ballot. Councilmember Theobold disagreed. He said 100% of the

people who own the property and 100% of the people who live on the property have already voted unanimously. He questioned why the County Commissioners think this annexation should be taken to a vote by the entire City, and not the other recently approved annexations. Councilmember Maupin concurred.

Councilmember Terry said she cannot support placing the question on the ballot because the ultimate loser could be Mrs. Stassen if the deannexation was approved. She stands by her earlier vote that Mrs. Stassen has a right to petition for annexation. Future enclaving has been addressed by Mayor Afman. She suggested Council put in writing Councilmember Graham's suggestion that they will not deliberately enclave any properties in the Redlands area.

Councilmember Graham said his original wording was that no annexation or an area enclaved on the Redlands shall be annexed unless it is by a majority petition or vote. The actual creation of an enclave would not be postscripted but bringing in the enclave by anything other than a majority petition or a majority vote would be what Council would be forswearing to do. Reasonable people may disagree on the issue of whether there is a community of interest between the City of Grand Junction and the Stassen parcels, and the pattern of planned urban development in those parcels. On that basis, people within the City would have a basis for deciding themselves whether it would be appropriate to make that part of the Redlands part of the City at this time. What better way to determine a community of interest than to put it to a vote of the people.

Councilmember Mantlo said a group of people are saying they are citizens and Council is not listening to them, so their ideas must be placed on the ballot. By doing so, Council is telling another citizen who wants to be annexed to the City that she cannot be annexed to the City. He felt Mrs. Stassen has more right to ask to be annexed than the people opposing have a right to request deannexation.

Councilmember Sutherland said while the record shows he voted against the Stassen annexation, he has since talked to people and feels a deannexation would be defeated.

Mayor Afman suggested discussing this item at the next City/County breakfast meeting in March, 1997. Council may want to revisit the resolution regarding Redlands Annexation Policy.

Councilmember Terry supported talking with all the Redlands residents to help them better understand the issue.

It was moved by Councilmember Graham and seconded by Councilmember Sutherland that Staff be directed to prepare a ballot question for the deannexation of Stassen No. 1, No. 2 and No. 3 for the April 8, 1997 Municipal Election. Roll was called on the motion with the following result:

AYE: GRAHAM

NO: MAUPIN, SUTHERLAND, TERRY, THEOBOLD, MANTLO, AFMAN.

The motion was defeated.

CONSENT ITEMS

Upon motion by Councilmember Maupin, seconded by Councilmember Mantlo and carried by roll call vote with Councilmember **TERRY** voting **NO** on Item #9, the following Consent Items #1-14 were approved:

1. **Minutes of Previous Meeting**

Action: Approve the minutes of the Regular Meeting February 5, 1997

2. **Designation of Polling Places for Municipal Election on April 8, 1997**

For the April 8, 1997 election it is recommended that the following polling places be designated: Orchard Mesa Middle School, Wingate Elementary, Mesa View Retirement Center, Northeast Christian Church, the Visitor Center and Lincoln Park Elementary.

Resolution No. 15-97 - A Resolution Establishing the Polling Places for the April 8, 1997 Municipal Election

Action: Adopt Resolution No. 15-97

3. **Fume and Exhaust Extraction System at the Municipal Service Center Garage**

The following bids were received from local contractors:

Commercial Design Engineering	\$39,500*
Grand Mesa Mechanical	\$40,504
Haining Refrigeration, Inc.	\$41,400
Lunsford Bros. Mechanical Contractors	\$45,298

* Recommended Award

Action: Award Contract for Labor and Materials to Install a Fume and Exhaust Extraction System at the Municipal Service Center Garage to Commercial Design Engineering in the Amount of \$39,500

4. **One Percent for the Arts Program**

The Grand Junction Commission on Arts & Culture recommends that the City adopt a One Percent for the Arts Program similar to those implemented by the State of Colorado, the cities of Denver, Loveland, Longmont, Steamboat Springs, and others. Such a program would specify that an amount equal to 1% of the total cost of City capital construction projects of \$50,000 or more be allocated for the purchase of artwork to be installed at that site.

Resolution No. 20-97 - A Resolution of the City of Grand Junction Creating an Art in Public Places Program, Authorizing Allocation of Funds for Art in the Construction of Certain City Capital Improvement Projects, Establishing a Method of Calculating Art Appropriations for City Capital Projects, Providing for an Art Selection Process, and Establishing a Public Art Fund

Action: Adopt Resolution No. 20-97

5. **First Street Irrigation Improvements Project**

The following bids were received on February 11, 1997:

M.A. Concrete Constr., Grand Junction	\$ 76,200.00
Mountain Valley Contr., Grand Junction	\$ 78,318.95
Stanley Constr., Grand Junction	\$ 97,754.20
Armendariz Constr., Delta, CO	\$101,969.75
Continental Pipeline, Mesa, CO	\$120,406.19

Engineer's Estimate \$ 68,355.00

Action: Award the Contract for First Street Irrigation Improvements Project to M.A. Concrete Construction, Inc., in the Amount of \$76,200.00

6. **1997 Water Line Replacements**

The following bids were received on February 11, 1997:

Alternate A - Open-Cut Excavation

M.A. Concrete Constr., Grand Junction	\$366,626.10
Mountain Valley Contr., Grand Junction	\$416,334.90
Mendez, Inc., Grand Junction	\$438,537.13

Banner Associates' Estimate	\$446,549.60
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Alternate B - Pipe Bursting

M.A. Concrete Constr., Grand Junction	\$366,799.50
Temple & Petty Constr., Grand Junction	\$469,260.80

Banner Associates' Estimate	\$381,129.10
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Action: Award Contract for 1997 Water Line Replacements to M.A. Concrete Construction, Inc., in the Amount of \$389,334.50 for Alternate B_

7. **Setting a Hearing on Amending Chapter 30, Solid Waste, of the City of Grand Junction Code of Ordinances**

With the change of picking up refuse with automated trucks, there are some changes needed to the current ordinances. These changes are needed so the ordinances are relevant with the operation of the automated vehicles and the automated containers being furnished by the City.

Proposed Ordinance - An Ordinance Amending the City of Grand Junction Code of Ordinances Chapter 30, Solid Waste

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997_

8. **Alley Assessment Policy**

Resolution No. 61-90, passed and adopted by the City Council on September 19, 1990, established assessment rates for Alley Improvement Districts based on land use and zoning. The proposed resolution will amend Resolution No. 61-90 by clarifying the application of assessment rates for single-family residential properties, multi-family residential properties, and non-residential properties.

Resolution No. 16-97 - A Resolution Clarifying the Application of Assessment Rates for Alley Improvement Districts and Amending City Resolution No. 61-90

Action: Adopt Resolution No. 16-97

9. **Setting a Hearing on the Question of the Sale or Trade of Burkey Park Property Owned by the City**

Proposed Ordinance Submitting to the Electorate of the City of Grand Junction the Question of the Sale or Trade of Certain Real Property Owned by the City

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997

10. **Automated Management Data Analysis System for the Fire and Police Departments**

Data management is a manual process for both fire and police departments. Due to volume, the information is basically inaccessible by managers. The system would utilize all of this data for better and more effective decision making. The proposed solution has been included and approved as part of the City's budget.

Action: Award Contract for the Purchase and Installation of An Automated Management Data Analysis System for the Fire and Police Departments to SCC, Inc., of Boulder, Colorado, in the Amount of \$258,276 and Approve the City's Purchase of Computer Hardware to Fully Implement the Management Data Analysis System in the Amount of \$106,820 Totaling \$391,346, and Authorize One P.C. Specialist Position (\$26,250 for 1997) in Information Services Relative to the Project

11. Setting a Hearing on Amendments to Section 5-8, Flood Damage Prevention Regulation, of the Zoning & Development Code

[File #TAC-1996-1.14]

This text amendment modifies certain sections of the City's Flood Damage Prevention Regulations, bringing them in conformance with state and federal law regulating flood damage and flood hazard reduction.

Proposed Ordinance - An Ordinance Amending Section 5-8 of the Zoning & Development Code of the City of Grand Junction Pertaining to Flood Damage Prevention Regulations

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997

12. Setting a Hearing on Zoning Tiara Rado Golf Course Annexation, Located at 2063 South Broadway [#ANX-1997-009]

The Tiara Rado Golf Course property (2063 South Broadway) was recently annexed by the City. Colorado State Statutes require the City to zone newly annexed areas within 90 days of the effective date of the annexation. It is recommended that the Public Zone (PZ) be applied to the Tiara Rado Annexation.

Proposed Ordinance Zoning Tiara Rado Golf Course Annexation
PZ_

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997

13. Setting a Hearing on Zoning East Tiara Rado Golf Course #1 and #2 Annexations, Located at the Northeast Corner of South Broadway and 20 1/2 Road [File #ANX-1997-010]

The City recently annexed on 80.72 acre City owned property located on the northeast corner of South Broadway and 20 1/2 Road (east of the Tiara Rado Golf Course) known as the East Tiara Rado Golf Course Annexations #1 and #2. A City zone district must be applied within 90 days of the effective date of the annexation. It is recommended that the Public Zone (PZ) be applied to the East Tiara Rado Golf Course Annexations #1 and #2.

a. Zoning East Tiara Rado Golf Course Annexation #1

Proposed Ordinance - An Ordinance Zoning East Tiara Rado Golf Course #1 PZ_

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997

b. Zoning East Tiara Rado Golf Course Annexation #2

Proposed Ordinance - An Ordinance Zoning East Tiara Rado Golf Course #2 PZ_

Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for March 5, 1997

Staff presentation: Dave Thornton, Commun. Dev. Dept.

14. Planning Commission By-Laws [File #MSC-1997-019]

Consideration of amendments to the bylaws of the Grand Junction Planning Commission.

Resolution No. 17-97 - A Resolution Amending the Bylaws of the Grand Junction Planning Commission

Action: Adopt Resolution No. 17-97

Staff presentation: Kristen Ashbeck, Commun. Dev. Dept.

* * * END OF CONSENT CALENDAR * * *

* * * ITEMS NEEDING INDIVIDUAL CONSIDERATION * * *

PUBLIC HEARING - HETZEL ANNEXATION, ZONING A PART OF THE PROPOSED FALL VALLEY SUBDIVISION TO PR-3.7 AND REZONING THE FORAKER PARCEL TO PR-3.7 [FILE #ANX-96-58 AND #RZP-96-243] CONTINUED TO APRIL 16, 1997

The Fall Valley Subdivision was proposed at a density of 3.7 units per acre and was denied by City Council on February 5, 1997. City Council continued the annexation and zoning until February 19th. The petitioner/property owner has requested the annexation and zoning be continued until April 16, 1997.

Mayor Afman opened the public hearing on Hetzel Annexation. Upon motion by Councilmember Maupin, seconded by Councilmember Graham and carried by roll call vote, the public hearing was continued to April 16, 1997.

PUBLIC HEARING - WESTWOOD RANCH ANNEXATION, LOCATED AT THE NORTHWEST CORNER OF 25 1/2 ROAD AND F 1/2 ROAD - RESOLUTION NO. 18-97 ACCEPTING PETITION FOR ANNEXATION, MAKING CERTAIN FINDINGS, DETERMINING THAT PROPERTY KNOWN AS WESTWOOD RANCH ANNEXATION IS ELIGIBLE FOR ANNEXATION AND EXERCISING LAND USE CONTROL AND JURISDICTION - PROPOSED ORDINANCE ANNEXING TERRITORY TO THE CITY OF GRAND JUNCTION, COLORADO, WESTWOOD RANCH ANNEXATION, APPROXIMATELY 22 ACRES LOCATED AT THE NORTHWEST CORNER OF 25 1/2 ROAD AND F 1/2 ROAD [FILE #ANX-96-267]

The property owner, Robert G. Wilson, and the developer for Westwood Ranch Subdivision, Castle Homes, are requesting annexation of the 22.55 acre parcel of land located at the northwest corner of F 1/2 Road and 25 1/2 Road.

A hearing was held after proper notice. This item was reviewed by Dave Thornton, Community Development Department. The property owner has signed an annexation petition. There is no annexation agreement. The developer requested development review through the City, and was denied by the Planning Commission at the last meeting. He expects the developer to file a new plan soon. As a profession planner, Mr. Thornton found the petition to be valid and meets all statutory requirements. He submitted a signed statement for the record. He explained the panhandle-shaped area on the plat which curves around the canal.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Maupin, seconded by Councilmember Theobald and carried by roll call vote, Resolution No. 18-97 was adopted and the proposed ordinance annexing was adopted on first reading and ordered published, with a hearing set on March 5, 1997.

PUBLIC HEARING - ZONING THE HYTECH HYDRONICS SYSTEMS, INC. ANNEXATION, 2483 RIVER ROAD - ORDINANCE NO. 2980 - AN ORDINANCE ZONING THE HYTECH HYDRONICS SYSTEMS, INC. ANNEXATION I-1 [FILE #ANX-96-257]

The Hytech Hydronics Systems, Inc. annexation was recently annexed by the City and is located at 2483 River Road. The City must apply a City zone to all annexed properties within 90 days of annexing. It is recommended that a Light Industrial zoning (I-1) be applied to the Hytech Hydronics System, Inc. annexation.

A hearing was held after proper notice. Dave Thornton, Community Development Department, reviewed this item. Both properties to the east and west of this property are currently zoned I-1. The Growth Plan also recommends a commercial/industrial type zone. It was zoned Industrial in the County.

Councilmember Graham asked about setbacks and the presence of the river. Mr. Thornton said the setback would be calculated from the property line. City Attorney Wilson said the developer will have to comply with floodplain regulations. They own the land under the river, but cannot interfere with the water flow.

There were no public comments. The hearing was closed.

Upon motion by Councilmember Mantlo, seconded by Councilmember Terry and carried by roll call vote, Ordinance No. 2980 was adopted on second reading and ordered published.

PUBLIC HEARING - WOOD BURNING REGULATIONS - ORDINANCE NO. 2981
REGULATING WOOD STOVES AND FIREPLACES, PROVIDING EXEMPTIONS,
PENALTIES FOR VIOLATION, AUTHORIZING INCENTIVES AND GRANTS TO
ELIMINATE EXISTING DEVICES, RESTRICTING BURNING ON CERTAIN DAYS -
RESOLUTION NO. 19-97 CREATING A WOOD STOVE INCENTIVE REPLACEMENT
FUND

A hearing was held after proper notice. City Attorney Wilson reviewed the proposed ordinance. On a first offense, a written warning is given. On a second offense, prosecution can occur, with a fine not to exceed \$100, and no jail time shall be imposed. Staff proposes violators be issued one warning per year before prosecution would begin. A Wood Stove Incentive Replacement Fund is also being proposed by resolution, and if adopted by Council, would appropriate \$25,000 into that fund.

City Attorney Wilson clarified that upon the effective date of the ordinance, all new construction in the City with building permits issued after the effective date, for either remodeling or new construction, would allow only "clean" stoves to be installed

with the building permit process. The ordinance defines a "clean" stove as those that have been certified by the State of Colorado under EPA guidelines. Under Section 2.j. fireplaces are exempt from the application of the no new construction rule. However, fireplaces are included under Section 4 for the no burn days. Fireplaces are exempt from the "do on sale" clause. The ordinance says people have a duty to find out when days are declared no burn days. The sale provision says that for those stoves which are not "clean" upon sale of the home, there is the option of either (1) removing the stove entirely, or (2) if a stove is desired, it must be a certified stove. The burden is placed on the seller at or prior to the time of closing.

Councilmember Theobald asked what level of activity triggers the requirement for a permit to remodel. Mayor Afman said any remodel over \$500 requires a permit. If a building permit is not obtained and the property goes to sale, the owner will be required to have an inspection on the new construction.

City Attorney Wilson discussed conversions. The first draft provided for a conversion to upgrade the quality of stoves. He has since been informed the conversions on a new sale basis are no longer lawful. Therefore, that section of the ordinance has been deleted. Councilmember Graham said such a conversion is practically impossible in terms of working. Councilmember Maupin said the homeowner can still apply for the incentive fund. Councilmember Graham said the incentive fund is to be used for those persons who are either indigent, or who are relying on the device as a sole source of heat. The fund will be available whether there is a sale or not.

City Attorney Wilson reviewed the penalty section of the ordinance. Section 11 states the penalty to be a maximum of \$1,000 and one year in jail for a violation, the general penalty in the Municipal Code. A first violation results in a written warning. A second violation within one year of the initial warning would result in prosecution. Upon conviction of the first violation there would be a maximum fine of \$100. Any subsequent conviction could result in a fine of up to \$1,000 per incident and/or 10 days in jail. Mr. Wilson said the \$1,000 fine is consistent with other violations of the City Code. Assistant City Attorney John Shaver reported there has only been jail terms imposed in six municipal cases in more than seven years, and no \$1,000 fines have been imposed during that time. Animal control violations amounting to \$500 fines for repeat vicious dog

offenses is the maximum he recalled. The maximum jail sentence has been three days. The Court would normally suspend a portion of the sentence with the intention of using it as a probationary device to encourage compliance. Mr. Shaver did not know of any jail term which had been served for that length of time. Assistant City Attorney Shaver emphasized that gaining compliance is the main goal of the municipal court.

Councilmember Graham asked for an overview of what takes place when a citation is issued. Mr. Shaver said when a citation is issued, the minimum time allowed before the arraignment on charges is 20 days with a maximum of up to 90 days to allow the person an opportunity to secure counsel or other input. Once the first appearance is made, the defendant is given the opportunity to enter a plea of guilty or not guilty. If they plead guilty the matter will be set over for a sentencing hearing. Extenuating circumstances will be considered. At the sentencing hearing a recommendation is made to the Court. Often a defendant will enter a plea of not guilty and will request a pre-trial conference. The pre-trial conference is a disposition conference held with Mr. Shaver and the defendant's representation. The primary goal is to remedy the existing situation. The majority of the cases are disposed of. When a plea of not guilty is entered, trials are scheduled 30 to 45 days from the date of first appearance. A period of 5 1/2 months could elapse before a defendant gets a trial date. The accused does not have a right to a trial by jury, they are bench trials.

Councilmember Graham questioned the wording in Section 2.d. regarding the definition of City being the City Manager or designee. City Attorney Wilson agreed that Section 2.d. should be deleted.

Public comment was received from the following:

Mr. Chris Muhr, member of the Grand Valley Air Quality Planning Committee, and former chairperson, thanked City Council for its pro-actions in the past and consideration of this proposed ordinance. Studies have taken place to support the GVAQPC's recommendations to Council. During the inversion periods, chemical mass balance studies have shown approximately 20% of the particulate matter in the air is derived from wood smoke. Forty percent (40%) is derived from road dust and geologic dust. Up to 20% of the children in Grand Junction have asthmatic symptoms and are adversely affected by these inversion periods. Inversions

can last up to 25 days. This winter the longest sustained inversion was five days. The Committee is looking for ways to reduce the potential adverse health and visibility impacts. Currently there is no recourse if a neighbor's burning bothers another neighbor. Mr. Muhr said a non-clean stove emits 40 to 50 grams of particulate/hour. A "clean" stove emits 1 to 8 grams of particulate/hour. The non-clean stoves are less efficient and do not burn the material thoroughly.

Dr. Joel Bechtel, pulmonary physician, 1923 Wingate, noted situations with some of his patients related to air pollution. During winter months and inversion periods there are increased hospital admissions, increased office visits, increased consumption of oxygen and medications, and increased death rates. The risk patients are youngsters under the age of six, elderly over the age of 65, and patients that have pre-existing lung disease such as emphysema or bronchitis. Air pollution is a very real problem. The Clean Air Act was enacted in 1970 by the EPA. The initial regulations were on TSP (Total Suspended Particulate). Since then it has been discovered that not only the large particles, but also the tiny particles getting into the lungs cause problems. Dr. Bechtel said the GVAQPC has done its homework, and has offered some solutions. He strongly encouraged Council's adoption of the ordinance.

Mr. Judd Perry, 2954 Beechwood Street, said he has pulmonary problems, and appreciates the ordinance, although he recommended some changes to the proposed ordinance. He referred to paragraph (b) on the first page of the ordinance prohibiting burning on days of high pollution typically due to winter inversion conditions..". He would like to see the "typically due to winter inversion conditions" struck because there are times when we have just plain air stagnations. He did not believe calling a "no burn day" should be limited to an inversion day. On page 2, he questioned paragraph (f) under "High Pollution Day", the County Health Department or other designated person or agency may make such a declaration when monitoring devices indicate violations within the City of air quality standards established by the City, the United States EPA Agency or the State Department of Public Health." City Attorney Wilson said the ordinance is written so that if an objective standard were violated, and the standard either adopted by EPA, the State, or the City, the City could set a standard based on new information. City Attorney Wilson felt the language in the ordinance covered Mr. Perry's concerns. Mr. Perry interpreted Paragraph (e) on page 2 to say he can take his

wood burning stove out of his den and move it around the corner into his shop in the garage, and it will be legal. City Attorney Wilson said when the ordinance is adopted, you cannot burn the stove no matter where it is on "no burn days". But when the property is sold, the stove will have to be removed. This clause is written to deal with the exemptions. Mr. Wilson cited Section 8.(a) allowing for an exemption if you are a person whose sole source of heat for the home is a wood stove. The term "home" does not include garages, workshops or other accessories. Mr. Perry asked if when he dies and his children from another state sell his home, is the realtor exempt. Mr. Wilson said the transfer to his children is exempt from the sale provision. However, when Mr. Perry's children then sell to another party, that transfer is subject to the new ordinance. Mr. Wilson said the Code Enforcement Division and the Police Department will have to enforce the ordinance. Mr. Perry appreciated the ordinance.

Ms. Terry Dixon, 423 Wildwood, was pleased to see the ordinance. She asked if realtors will be responsible for letting newcomers to the valley know this ordinance is in effect. City Attorney Wilson said there will be education required. The City will probably advertise at least for a year or two, and perhaps at the beginning of each burn season as a reminder to residents. Councilmember Graham said it is going to require a considerable public relations effort. Mayor Afman felt realtors and home builders will also help in the education. Councilmember Maupin said most western valleys across the western half of the United States have such ordinances because they have this same problem. Ms. Dixon suggested having printed postcards available at the City's utility counter explaining the procedure so residents could pick them up. Councilmember Sutherland suggested including the information in the packets that are mailed out by the Chamber of Commerce.

Mr. James Foster, 556 Rio Oso Lane, asked for a definition of a fireplace. City Attorney Wilson stated as defined in Webster's Dictionary. Fireplaces are exempt from this ordinance except for the no burn days. City Attorney Wilson said fireplaces in new construction must comply with State Regulation 4. Mr. Foster recommended requiring the media to announce at a specific time when no burn days are in effect.

Mr. Randy Hampton, 1850 David Street, KEKB employee, said his station attempts to broadcast the standards every morning as they are received. Upon the passage of this ordinance, they will make

a more concerted effort. He said there are also information lines to cover such information.

Ms. Sue Kiser, Mesa County Health Department, said there is a hot line that has been in effect since the voluntary program was implemented. The phone number is 248-6990 and it will be listed in the new phone book. She suggested putting the hotline number on the City utility bills. The Health Department notifies the media by FAX every morning between 8:30 and 9:30. Mr. Wilson said the ordinance provides for a four-hour burn down time in Section 4, before prosecutions could occur. Ms. Kiser said Perry Buda, the air quality specialist, has the monitoring station at Stocker Stadium hooked to his office. He goes to the weather station every morning for the current weather maps, and reviews the air quality readings. Based on the information, he then makes a determination regarding no burn days. Mr. Jim Foster asked if the no burn day declaration is made only once a day in the morning? Ms. Kiser said yes. It is good for a 24 hour period. On Fridays, the declaration is made for the entire weekend.

There were no other public comments. The hearing was closed.

Councilmember Sutherland asked about the incentive replacement fund. He wondered if it would be feasible to expand the fund by replenishing it with fines issued for violation of the ordinance. City Attorney Wilson said it could be done, although he did not feel there will be enough fines to sufficiently replenish the fund. He estimated approximately \$1,000/year in fines.

Councilmember Graham felt Council agrees that the prohibition of the installation of non-conforming wood burning devices makes sense. Similarly, requiring some means to remove or replace these devices upon a transfer of title makes sense. He had a problem with enforcement as it will be very difficult to enforce. He was concerned in administering the ordinance in such a way to not cause undue hardship. He felt Council should consider whether they want any violation as currently written to result in the possible penalties that have been indicated. He suggested replacing Section 11 with a mechanism to allow private individuals who are most directly harmed by this type of pollution to instead seek damages for violations. It would preserve for the Council the full range of sanctions to insure compliance.

Councilmember Graham suggested the following changes:

(a) Declare it is a nuisance to burn against the ordinance which would allow private individuals as well as the City to sue for whatever remedies are available by law. That could include an injunction (the Court orders someone to stop doing something). It could also include, where applicable, an award of damages (where people have been hurt in relation to their health). A private individual who is aggrieved or injured by someone burning in non-conformance with this ordinance, would be able to go into a court of law and prove a *prima facie* case (the basic elements necessary to win) simply by presenting the written evidence of a violation.

(b) Reserves to the City of Grand Junction the full range of action for whatever remedies are otherwise available. Such additional remedies, such as penalties, would most likely come in the form of a future ordinance.

(c) He wished to make sure it did not give private individuals the opportunity to sue the City to enforce its own Code. The policies regarding Code Enforcement would be still vested with the City Manager subject to the direction of the City Council.

Councilmember Graham said the two versions could be combined, although he preferred his version replace the current Section 11.

Councilmember Terry preferred to see the City enforce the ordinance with the use of penalties.

City Attorney Wilson said the current version allows for anonymous reports. Neighbors are many times reluctant to get into an adverse position with a neighbor.

Councilmember Maupin did not feel it should be the responsibility of a citizen to enforce the ordinance. He felt it is the City's responsibility.

Councilmember Theobald did not want to encourage civil litigation and eventual lawsuits.

Councilmember Graham said the ordinance is saying the operation of a non-conforming device on a no burn day is a "nuisance". The nuisance *per se* doctrine would still apply. Private citizens could sue under a nuisance *per se* theory anyway. He felt his

Section 11 simply makes it easier for them to potentially recover damages. It comes down to "Would you rather live in a society that is like a police state where there are informers, or a society where you have litigious plaintiffs."

Councilmember Sutherland would not like to encourage lawsuits. He would like to see all of Section 11 as proposed.

City Attorney Wilson suggested Section 11 (a) as drafted by Councilmember Graham with (b) deleted, the existing (c) becomes (b) and Mr. Wilson's draft of Section 11 becomes paragraph (c).

Councilmember Theobold was inclined to reverse the order and put the existing language as (a) which implies that to be the first option.

Councilmember Terry suggested it be spelled out that an individual who has a grievance has an option to do one or the other. She asked that Councilmember Graham's paragraph (a) be reworded for clarification. Councilmember Graham said these words have definite meanings when a judge is considering the doctrine of *per se* or *prima facie*.

Mayor Afman asked where the \$25,000 incentive fund will come from. City Attorney Wilson said it will come from the Council's contingency fund.

Councilmember Graham said whether Council excludes listing agents or realtors from liability, if the discussion is regarding a fixture (most wood burning stoves are fixtures), and it is considered to be either defective or illegal, then the question arises, "Is that a sufficient defect in the real property itself?" City Attorney Wilson said that is a true statement, but the realtors will not be responsible on the basis of this ordinance. Section 12 attempts to cover this. If a woodstove is defective and should be disclosed or removed, there will be lawsuits stating causes of action against realtors. Section 12 says this ordinance will not be used to do that.

Councilmember Terry reported she had received a call from a local appraiser, Gary Lucero, who wished to make his opposition to the ordinance known regarding the change-out requirement.

Upon motion by Councilmember Theobold, seconded by Councilmember Maupin and carried by roll call vote with Councilmember **GRAHAM**

voting **NO**, Ordinance No. 2981 was adopted with the following amendments:

1. Section 1(b) - Delete "typically due to winter inversion conditions" and ending the sentence with the word "pollution."
2. Section 2 - Delete sub-section (d) and redesignating all subsequent sections.
3. Section 11 - Designating the existing language as (a), adding the draft language from Councilmember Graham's Section (a) as Section (b), also adding Councilmember Graham's Section (a) as Section (c).
4. Section 12 - Adding the word "closer" in both appropriate places where it mentions realtor, inspector or appraiser.

Council thanked Staff for their effort on drafting this ordinance, the Grand Valley Air Quality Control Committee for their continual persistence on this issue, and the people who are in the business of selling for their input on this issue.

Upon motion by Councilmember Theobold, seconded by Councilmember Maupin and carried, Resolution No. 19-97 was adopted.

NON-SCHEDULED CITIZENS & VISITORS

Ms. Terry Dixon, 423 Wildwood, addressed the Stassen Annexation petition which had been filed with the City Clerk. She requested Council extend an invitation to the city residents who worked on the petition to clear up some questions. There is some confusion as to whether they were petitioning a specific property or procedures. She took exception to Councilmember Maupin's comment regarding Jim Baughman's participation and felt it was unfair. She felt a review of the tapes of the County Commissioners meeting would explain why Mr. Baughman was involved. She felt Mr. Mantlo's comment about Ms. Stassen petitioning for annexation was true. Ms. Dixon understood it had to do with the irregularity and extension of City boundaries in one direction, and not the gradual growth outward of City boundaries. It was not meant to single out Leatha Jean Stassen. Ms. Dixon encouraged Council to talk to residents and Mesa County to address annexation processes.

OTHER BUSINESS

Councilmember Maupin asked if Staff has been directed to do a study of the costs paid for the Rural Fire Protection District compared to what is paid for in-City fire protection. Fire Chief Rick Beaty said he is working on the study. An RFP has been drafted, and he is waiting on feedback from the City Manager.

ADJOURNMENT

Upon motion by Councilmember Maupin, seconded by Councilmember Sutherland and carried, the meeting was adjourned into executive session at 9:50 p.m. to discuss pending litigation.

Stephanie Nye, CMC/AAE
City Clerk

James F. Fleming
3530 Beechwood
Grand Junction, Colorado 81506

Grand Junction City Council
City Hall
Grand Junction, CO
(hand delivered)

Dear Members of Council,

As a citizen of the City of Grand Junction, I would like to request that an amendment to the City Charter be placed on the ballot at the next municipal election scheduled for April 8th as authorized under Section 151. The amendment would relate specifically to Section 38 and would ask voters to raise the salary of City Council members to \$500 per month and the salary of the Mayor to \$750 per month.

It is very apparent to me that the number of hours needed to do an adequate job of serving on the City Council has increased significantly over the past few years. It is only fair that the compensation also be increased.

I look forward to your action on this request.

Sincerely,

James F. Fleming

ATTACHMENT 2

Memo to: Mayor Afman and Members of the City Council
Mark Achen, City Manager

From: Stephanie Nye, City Clerk

Date: December 5, 2011

Subject: Petitions Received February 18, 1997

On February 18, 1997, 56 petition pages containing 1 to 21 names on each page was submitted to the City Clerk. The petition purports to protest the Stassen Annexation Ordinances Nos. 2976, 2977 and 2978.

The Stassen annexation ordinances were adopted by the City Council on January 15, 1997 and subsequently published in the Daily Sentinel on January 17, 1997.

Several questions on these petition documents have been raised.

Issue 1

When must a petition to refer the Stassen annexation ordinances be filed?

As it turns out, this question is now moot.

The Charter provides 30 days after publication to file a petition to refer an adopted ordinance (a "protest") to the ballot. See, section 136.

Where the Charter doesn't provide direction, the City has elected to follow the state's Municipal Election Code. See, section 14-1 of the City Code. Since publication of the Stassen annexation ordinances occurred on January 17, 1997, application of the Municipal Election Code rule, *supra*, would mean that the petitions were due on or before Saturday, February 15, 1997.

The Municipal Election Code directs that "[i]n computing time for any act to be done before any municipal election, the first day shall be included, and the last, or election, day shall be excluded." §31-10-103, C.R.S.

That section also describes that when a nominating petition is involved, if the deadline falls on a weekend or a holiday, the date for filing is the prior business day.

A different provision of the Municipal Election Code states a contrary rule: "...if the time for an act falls on Sunday or a legal holiday, such act shall be done upon the day following such Sunday or legal holiday." Note that the statute specifically doesn't include "Saturday."

Fortunately, one need not resolve the conflicting rules at present.

Issue 2

Must circulators also be City electors?

The Charter provides a clear, albeit strict, answer in section 28: "One of the signers of each such paper [in this case, the petition] shall make an affidavit thereto that the statements therein contained are true, and that each signature appended to the paper is the genuine signature of the person whose name it purports to be."

Section 28 is the recall section of the Charter but is made applicable by section 136 [the protest of adopted ordinances] by the last paragraph: "The procedure in respect of such referendum petition shall be the same as provide in Sections 28 and 29..., with such modifications as the nature of the case requires, except that no blank forms shall be furnished or preliminary affidavit made."

Thus, each petition must be circulated by a city elector, who must also sign the petition being circulated. The petition pages where this occur totals 6 - Nos. 4, 32, 36, 37, 40, and 50.

Issue 3

When is a petition a petition?

Stated another way, if the requisite number of signatures is not submitted to the City Clerk, must she treat the submission as a valid Charter petition?

The Charter provision controlling a proposed ordinance reads, in pertinent part: "If the petition accompanying the proposed ordinance be signed by [the correct number of] registered electors ... the clerk shall thereupon ascertain and certify its number of qualified signers..." Thus, if the requisite number of signers is not present, the Clerk does not begin her work.

The Charter provides that the mode of protesting ordinances is a petition signed by registered electors equal to ten percent of those votes cast in the last vote for Governor. The last gubernatorial election had 12,009 city votes cast. That means a petition would need to include no less than 1200 signatures.

The petition submitted to the City Clerk contained approximately 914 unverified signatures.

The related question is whether there is a process, similar to that which applies to a recall petition, to amend, *i.e.*, to add additional signers if the initial submission was insufficient. The Charter has no provisions for amending direct legislation petitions, as it does for recall petitions.

It is my opinion that no such process applies to petitions concerning direct legislation.

Regarding the form of the petition, the statement on the petition says those signing are protesting these ordinances but does not say they are asking for the council to reconsider the ordinances or refer the ordinances to the ballot. The question is what the intent of the protesters are since it is only stating that they are protesting.

Otherwise, the form of the petition itself seems to conform to requirements and attached to each is the circulator's affidavit required. Each circulator is a registered voter of the City.

I began examining signatures and was able to complete 10 pages of 56. Of those 10 examined, 76% of the signers were registered voters of the City. Additionally, 50% of the signatures would be deemed valid. (The 25% difference is due to invalid date, duplication, or incomplete address). Extrapolating these results to all pages of the petition, it would be reasonable to say that there may be around 695 registered voters on the pages submitted, with 457 valid signatures. Any more precise numbers would require complete examination of each page.

In conclusion, the petition documents were not filed timely nor were there sufficient signatures to constitute a legal protest.

ATTACHMENT 3

Mesa County, Colorado

BOARD OF COUNTY COMMISSIONERS

District 1 - James (Jim) R. Baughman (970) **244-1605**

District 2 - Kathryn H. Hall (970) **244-1604**

District 3 - Doralyn B. Genova (970) **244-1606**

P.O. Box 20,000 - 750 Main Street - Grand Junction, Colorado 81502-5010 FAX (970) 244-1639

February 19, 1997

Honorable Mayor Linda Afman
Honorable Members of City Council
City of Grand Junction,

Grand Junction, CO 81501

Dear City Council Members:

Concerned Redlands residents attending County Commissioners Public Hearing on Tuesday, February 18, once again expressed their profound concerns about the petitioned Stassen annexation application.

The Mesa County Commissioners were asked to file an official request for reconsideration with the Grand Junction City Council. We have declined at this time.

Redlands representatives stated that they have submitted to the City their petitions asking that the annexation be referred to a vote of the people.

Mesa County's Board of Commissioners, at the request of our mutual citizens, formally requests, regardless of the number of petition signatures, that the Grand Junction City Council take this question to the people through a vote in your upcoming City Council election.

/s/
Genova, Chairman
Board of Commissioners

/s/
Kathryn H. Hall
Commissioner

/s/
James R. Baughman
Commissioner

cc: Bob Jasper, County Administrator

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