

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING
September 8, 1999**

The City Council of the City of Grand Junction, Colorado, convened into special session on September 8, 1999, at 12:04 noon in Conference Room A at City Hall, 515 28 Road, to receive a report from the City Clerk regarding the Charter Amendment Petitions. Those present were Cindy Enos-Martinez, Earl Payne, Jack Scott, Jim Spehar, Janet Terry, Reford Theobald, and President of the Council Gene Kinsey. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

City Clerk Stephanie Nye reported she had received no additional amended petition sections and was not contacted by any of the petition representatives. She had nothing more to report.

Mayor Kinsey said if Council takes no action, there would be no valid question on the November ballot. After conferring with the City Attorney, Council realizes it has the option of making a referral on its own to place an issue on the ballot. He felt Council should discuss that possibility.

Councilmember Spehar agreed. He asked for an estimated cost of the special election and timing if the deficiencies were cured within the additional time. City Attorney Wilson said the City Clerk and Stephanie Rubenstein, Staff Attorney, worked on the timing today. A special election could be scheduled any Tuesday from December 7, 1999 to the first couple of days in February, 2000. It could be either a traditional election or mail-in ballot. City Clerk Stephanie Nye said 55 days leeway would be needed in order to get a plan to the Secretary of State for a mail ballot. A polling place election would require a 30-day period. She said the County will be in the middle of a computer conversion in December and January and would decline to run the City's mail ballot at that time, although they would conduct the tallying for the election. The City would need to contract with a company that does this for other cities to prepare the ballot packages and mail them out. She expected that would be more expensive than the previous mail ballot which used the County and their non-profit status for mailing and their on-site equipment. The charge for the last mail-in ballot was \$12,000. Her estimate for contracting is \$1.00 per voter, about \$25,000.

Councilmember Theobald asked for the deadline for the petitions to be turned in. Ms. Nye said Thursday, September 16, 1999.

Councilmember Spehar asked if the cost is substantially different for a traditional election with judges and polling places. Ms. Nye said it is less expensive than a mail ballot. The overall cost is less, although the cost per voter is very close,

depending on the turnout. The turnout at the last mail ballot was 46% with 12% or 13% at the previous election. Councilmember Spehar calculated \$8,000 to \$10,000 for a traditional election.

Councilmember Scott felt it was only fair that the majority of the electors vote. A mail-in ballot would result in a higher turnout even though it is more costly.

Councilmember Terry said this is a petition process. As Council, it has the right to make that determination as to whether it gets on the ballot.

Councilmember Theobald agreed to having a election with the greatest turnout. If Council places it on the ballot, he wondered if the citizenry would interpret it as an endorsement. If it's going to be on the ballot one way or another, he felt it made sense for it to be on the November 2nd ballot.

Councilmember Terry believed there is enough interest on the part of the petition carriers to still get the signatures in. She can't see them stopping now, whether they finish it now or start up another initiative. She wanted to hear from as many voters as possible on the issue, and felt the only way to do that is to get them on the November ballot. She also felt Council needs to be very clear regarding why it is placing the question on the ballot.

Councilmember Payne asked what other questions are scheduled on the November ballot. Ms. Nye said the School Board's labor question and Palisade and Plateau Valley have questions on the ballot. It will cost the City approximately \$12,000 to \$15,000 to be on the November 2nd ballot.

Councilmember Payne suggested putting the question on the ballot subject to getting the required number of signatures. If they don't get the signatures, then make the decision to strike it from the ballot. Councilmember Enos-Martinez said the County will not participate in that, and the County Clerk did not recommend such action. Councilmember Payne asked if it was possible. City Attorney Wilson said the deadline for the proponents was today, September 8, 1999. They can't make that deadline, so we're not talking about the proponents. Therefore, the only option would be if the Council chooses to refer an ordinance. Council will make that decision today. There is no subsequent condition.

Councilmember Payne said if the petitioners do not provide the required number of valid signatures, the entire ballot issue becomes void. It cannot be rejuvenated. It must be started all over again. City Attorney Wilson concurred.

Councilmember Scott was concerned that the petitioners did not contact the City Clerk and say they didn't get the signatures, but would like Council to place them on the ballot anyway.

Councilmember Theobold said if Council places their proposal on the ballot, and sometime before September 16 they turn in a petition to also place it on the ballot, does that mean two elections must be conducted. City Attorney Wilson said no if it passes the first time. If it fails the first time, it is possible. Council has a valid question the second go round except there is a provision under State Law that said if it's turned down once, you must wait twelve months for a re-petition. There is no guidance given under the Law. The Statute says if they petitioned and the City had a special election in January, and the ballot issue failed, they must wait twelve months before another regular or special election can be conducted to vote on the same question.

Councilmember Theobold said part of the reason for placing it on the November ballot is Council would rather have the vote in November. But if the petition still exists to have it voted upon twice, nothing has been accomplished. The petitioners have already said they prefer a special election.

Councilmember Scott asked if Council wants to place the question on the ballot, can the petitioners say they don't want it on the ballot. City Attorney Wilson said no, under the City Charter Council has an independent right to refer matters.

Councilmember Theobold clarified that the petitioners have until September 16, 1999 to turn in the 528 signatures. If enough signatures are turned in and a second protest is filed, and they end up with less than the required 528 signatures, it's off the ballot and there is no cure period. They must start over. City Attorney Wilson said there are no more cure periods but they can go to District Court and challenge the City's process of validating the signatures. But the submittal cure process is over with.

Councilmember Terry felt the responsible action would be for Council to refer the question to the November election. The principle of the matter is the fact that the majority of the people should have a right to vote on this issue, whether Council supports it or not. Mayor Kinsey said the majority of the people have the right to vote in either election. Whether they exercise the opportunity to vote is out of Council's control. As far as referring the question by Council action, Mayor Kinsey said the sufficient number of signatures is not guaranteed, and an election may be conducted for no reason, or the signatures may be protested and the petition may fail at that point. In terms of principle, the language of the petition contains items that are unconstitutional in that they direct the expenditure of funds by an outside individual who is neither a resident nor an elected official of the City of Grand Junction. He did not feel comfortable in referring a measure that he felt violates the laws of the State of Colorado.

Councilmember Theobold agreed with Mayor Kinsey about the danger of having something on the ballot that is as poorly written and radical as this proposal. His perspective was it's better to have the question on the November 2nd ballot than to have it at a low turnout special election. That was based on two assumptions: (1)

Council is going to see a petition validated and on the ballot. The certainty of that is looking a little less certain, although he thought it is still probable; (2) Council can place it on the November 2nd ballot and still have a second special election. He felt it makes no sense for Council to refer it and give everyone two opportunities to vote on it.

Councilmember Scott said if he belonged to either the Police or Firefighters Association, he would want to be on the ballot in a legal way. He felt they've learned a lot, and they may come back later and will probably conduct the circulation of the petition correctly. Councilmember Terry felt it is still Council's job and ability and authority to refer such a petition. She didn't think Council is acting out of its purview at all. Councilmember Scott said again he will say they have not done it right. He reminded Council he was the only Councilmember that voted with the petitioners the first time. Councilmember Terry said that was before this ever came to be. That was not collective bargaining, it was on wage and benefits.

City Attorney Wilson explained there are four documents for Council's consideration. Ballot Question No. 1 is simply placing the Charter Amendment text on the ballot. Proposal No. 2 is an 8 mill levy proposal that could be placed on the ballot at the same time to help fund collective bargaining, if required. The ballot title on Ballot Question No. 1 was written by City Attorney Dan Wilson. Mayor Gene Kinsey asked who would write the ballot title if the petition had been approved. City Attorney Wilson said it's still going to be the City Council making the decision to describe it. At the State level, there is a defined process with multiple perspectives brought together at the title setting board, so the final title is less controversial. He said Council has a heightened responsibility to accurately describe the petition. The other documents are an ordinance if Council were to refer the question to the ballot, and a resolution that sets forth the text. If Council also wanted to use an alternative text amendment, the version based on the National Labor Relations Act (NLRA/Minnesota) is also provided as one of the documents.

City Attorney Wilson said if the petitioners complete their petitions, Council will see something substantially similar to this when it's approved. If Council were to refer the petition with a first reading of the ordinance, there would be a vote. If it was approved, the second reading of the ordinance would take place. If it failed, it would not go to second reading.

Councilmember Terry said if they complete their petitions and there is a special election, would it be substantially different than the previously described process. City Attorney Wilson said no, it would be substantially the same. Council would accept it with a first reading for publication so the public has early warning before the special election. The election would then take place. If the question passed, Council would come back at the next meeting and do a second reading of the ordinance to finalize the process.

Councilmember Spehar said if Council did not refer it for November, but waited and the petitioners turned in petitions, and there was a special election scheduled, would Council still have the opportunity to refer an alternative or additional question. City Attorney Wilson said Council could do the financial alternative as a second ballot issue and the "Minnesota" version as an additional question.

Councilmember Spehar said there is a sequence of decisions to be made:

1. Refer their petition to the November 2nd ballot;
2. If yes, does Council want to refer an alternative or additional questions;
3. If no, Council still has those opportunities in a special election to refer.

Councilmember Spehar's initial inclination was to refer and allow the people to vote and get this part of the issue behind Council. He was convinced there will be an election on this issue at some point. If there's something unlawful or unconstitutional about the question, and it passes, Council has other avenues to challenge constitutionality. He felt he needed to think more about creating two opportunities instead of one.

It was moved by Councilmember Terry and seconded by Councilmember Spehar that Resolution No. 109-99 be adopted referring the question to the November 2nd election.

Administrative Services Director Ron Lappi said if Council votes to place the question on the ballot and the petition is turned in by the 16th of September, can Council then take this off the ballot after the 16th. City Attorney Wilson said no, by 4:30 today Council will have passed over a line where the County Clerk will begin her process.

Councilmember Enos-Martinez said initially she wanted to refer, but she wasn't sure she wanted to place additional costs on the taxpayers with the possibility of a second election.

Councilmember Terry said it made no sense to her that the Police and Fire, given the opportunity to have an election on their issue, would still force the issue to another election. It depends upon their premise. Are they wanting to go against what the voters said the first time and try to convince the voters otherwise? There are a lot of challenges they will have to overcome in order to have the ability to be successful in a second election.

Mayor Kinsey said if he were in their position, he would say to the City and everyone else, "The City pre-empted my timing. I had a timing schedule that I was in charge of because I'm doing the petition. You didn't give me any chance to campaign. You didn't give me any chance to develop votes. You arbitrarily jerked my timing out from under me and put it on the ballot in November. I didn't plan on

that, so I want a second chance. I want to do it on my timing and I want to convince my people.”

Councilmember Theobold said if they want to win an election, a special election would be the most viable for them.

Councilmember Payne said he was not sure they will not put it on a second special election. They may not, although they have that alternative. He noted a terrible tragedy took place over the weekend which took all their efforts in being able to collect the required valid signatures. If they had in good faith brought in some signatures, even if a few short, he was ready to go ahead and put this on the ballot. The petitioners are doing nothing in presenting any type of petition by yesterday morning which indicates they're not really wanting to work with Council.

Councilmember Payne's position is to let them go ahead between now and September 16th and get their signatures, and have a special election. Councilmember Enos-Martinez asked for a recommendation from Councilmember Payne on how a special election would be handled. Councilmember Payne said a mail ballot only, no polls.

Councilmember Spehar agreed with Councilmember Terry. It's unlikely they're going to take this to a vote twice, although there is a chance they could. He felt this is Council's opportunity to be pro-active about the question. The Charter says let the people vote on such matters.

Councilmember Terry said in spite of the fact that Council tried to make a good faith effort to follow the letter and spirit of the law, there is some perception that Council has been an obstacle. Council has not been, but by doing this it would overcome that particular concern and mindset.

Councilmember Payne said there was a proper way to do this and it was not done correctly. He would like to have seen it on the November 2nd ballot.

Councilmember Theobold said what swung him around the other direction was the potential for another election. It was a crucial bit of information for him. Other Councilmembers agreed with Councilmember Theobold.

Roll was called on the motion with the following result:

AYE: ENOS-MARTINEZ, SPEHAR, TERRY

NO: PAYNE, SCOTT, THEOBOLD, KINSEY.

The motion failed.

Councilmember Theobold said if the petitioners turn in signatures on the 16th, Council will have a much larger window to proceed. City Attorney Wilson said once the petitioners turn in signatures and they are validated, 30 to 120 days will form the window. It can't be before November 2nd and must be no sooner than any Tuesday in December or January up through the beginning of February. The other end is that it cannot be conducted within 32 days of the presidential primary election which is March 10, 2000. Council must choose a date.

Councilmember Spehar wanted Council to be thinking about the concerns expressed by both the police and firefighters. There were a lot of economical issues voiced by the police officers. The firefighters talked about response time and personnel. He wanted to get back to the real issues once Council gets past this. All members of Council agreed.

Councilmember Terry felt the budget is a prime opportunity for discussion since they are budgetary issues and would open the door for budgetary discussions.

Councilmember Theobold felt Council needs some input on where new fire stations are to be built, service outside the City's boundaries, etc.

Councilmember Scott said salaries are not the primary issue.

ADJOURNMENT

Mayor Kinsey adjourned the special meeting at 12:45 p.m.

Stephanie Nye, CMC/AAE
City Clerk