

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

**JUNE 16, 2003**

The City Council of the City of Grand Junction convened into regular session on the 16<sup>th</sup> day of June 2003, at 7:32 p.m. in the City Auditorium. Those present were Councilmembers Harry Butler, Cindy Enos-Martinez, Bruce Hill, Dennis Kirtland, Gregg Palmer, and President of the Council Jim Spehar. Councilmember Bill McCurry was absent. Also present were City Manager Kelly Arnold, City Attorney Dan Wilson, and City Clerk Stephanie Tuin.

President of the Council Jim Spehar called the meeting to order. Councilmember Butler led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Glen Daly, Extended Arms Four Square Church.

**SCHEDULED CITIZEN COMMENTS**

There were none.

**CONSENT CALENDAR**

Councilmember Hill asked that Item #8 be moved to Items Needing Individual Consideration following Item #16.

It was moved by Councilmember Hill, seconded by Councilmember Enos-Martinez, and carried, to approve Consent Items #1 through 14 with Item #8 being removed from the Consent Calendar for individual consideration. Councilmember Hill abstained from Item #2 due to a conflict of interest.

**1. Minutes of Previous Meetings**

*Action: Approve the Summary of the June 2, 2003 Workshop and the Minutes of the June 4, 2003 Regular Meeting*

**2. Vacation of Utility Easement – Located between 1710 & 1720 Ptarmigan Ridge Circle [File #VE-2003-054]**

The petitioners wish to vacate a 20' wide Utility Easement located between Lots 12 & 13, Block 2, Ptarmigan Ridge North (14.03' on Lot 12 & 5.97' on Lot 13). In order for the petitioners, Gary and Ann Cox, to sell the property (Lot 12, Block 2) and for the new owners to obtain a clear title, the existing utility easement located along the southwesterly property line needs to be vacated as the existing house is situated over this easement. The only utility within the existing easement was a sanitary sewer line. A new utility easement was dedicated by separate instrument and filed at the Mesa County Courthouse to show the new

easement and rerouted sanitary sewer location which is now located to the northeast of the present home.

Resolution No. 51-03 - A Resolution Vacating a 20' Wide Utility Easement Lying within Lots 12 & 13, Block 2, Ptarmigan Ridge North Known as 1710 and 1720 Ptarmigan Ridge Circle

*\*Action:* Adopt Resolution No. 51-03

3. **Vacation of Easement – Cimarron Mesa Filing One Located at SW Corner of Linden Avenue and B ½ Road** [File #VE-2002-205]

The applicant proposes to vacate a 20' water line easement, which was put in place for a 24" City of Grand Junction water line. The water line location is not in the easement. The Planning Commission recommended approval on June 10, 2003, making the Findings of Fact/Conclusion identified in the staff report.

Resolution No. 52-03 – A Resolution Vacating a Water Line Easement in Conjunction with Filing One of Cimarron Mesa Located at the SW Corner of Linden Avenue and B 1/2 Road

*\*Action:* Adopt Resolution No. 52-03

4. **Setting a Hearing – Zoning the O'Connor Annexation, Located at 511 31 Road** [File # ANX-2003-068]

The O'Connor Annexation is comprised of one parcel of land on 1.3121 acres located at 511 31 Road. The petitioner is requesting a zone of Residential Single Family with a density not to exceed four units per acre (RSF-4), which conforms to the Growth Plan Future Land Use Map. Planning Commission recommended approval at its June 10, 2003 meeting.

Proposed Ordinance Zoning the O'Connor Annexation to Residential Single Family with a Density not to Exceed Four Units per Acre (RSF-4) Located at 511 31 Road

*Action:* Adopt Proposed Ordinance on First Reading and Set a Hearing for July 2, 2003

5. **Setting a Hearing – Rezoning 653 Young Street** [File # RZ-2003-070]

Request to rezone 653 Young Street, comprised of 1.252 acres, from RSF-1 (Residential Single Family with a density not to exceed 1 du/ac) to RSF-2 (Residential Single Family with a density not to exceed 2 du/ac). Planning Commission recommended approval of the rezoning at its June 10, 2003 meeting.

Proposed Ordinance Zoning a Parcel of Land Located at 653 Young Street

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 2, 2003*

6. **Setting a Hearing – Zoning Rold Annexation Located at 524 30 Road** [File # ANX-2003-080]

The Rold Annexation consists of one parcel of land on approximately .7998 acres. The requested zoning for the property is C-1 (Light Commercial). The physical address for the property is 524 30 Road. The Planning Commission reviewed the requested zoning on June 10, 2003 and recommended approval.

Proposed Ordinance Zoning the Rold Annexation to C-1 (Light Commercial) Located at 524 30 Road

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for July 2, 2003*

7. **Setting a Hearing – Carville Annexation Located at 2675 Highway 50** [File # ANX-2003-116]

Resolution for Referral of Petition to Annex/First Reading of the Annexation ordinance/exercising land use jurisdiction immediately for the Carville Annexation located at 2675 Hwy 50. The 19.93 acre Carville Annexation is an annexation consisting of one parcel of land.

a. **Referral of Petition, Setting a Hearing and Exercising Land Use Jurisdiction**

Resolution No. 53-03 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, and Exercising Land Use Control, Carville Annexation Located at 2675 Hwy 50

*\*Action: Adopt Resolution No. 53-03*

**b. Setting a Hearing on Proposed Ordinance**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado, Carville Annexation, Approximately 19.93 Acres Located at 2675 Hwy 50

*Action: Adopt Proposed Ordinance on First Reading and Set a Hearing for August 6, 2003*

**8. Setting a Hearing – Westgate Free Will Baptist Church Annexation No. 1 and 2 Located at 2155 Broadway [File # ANX-2003-114]**

*Item was moved to Items Needing Individual Consideration.*

**9. Setting a Hearing – Marchun Annexations No. 1 and No. 2 Located at 2925 F ½ Road [File #ANX-2003-093]**

The 20.4584 acre Marchun Annexation #1 and #2 is a serial annexation located at 2925 F ½ Road. The applicant is requesting annexation into the City and a zone district of RMF-5, Residential Multi-family not to exceed 5 units per acre.

**a. Referral of Petition, Setting a Hearing and Exercising Land Use Jurisdiction**

Resolution No. 55-03 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, and Exercising Land Use Control, Marchun Annexations No. 1 and No. 2 Located at 2925 F ½ Road and Including a Portion of the F ½ Road Right-of-way

*\*Action: Adopt Resolution No. 55-03*

**b. Setting a Hearing on Proposed Ordinance**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Marchun Annexation No. 1, Approximately 15.1496 Acres Located at 2925 F ½ Road

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Marchun Annexation No. 2, Approximately 5.3088 Acres Located at 2925 F ½ Road and Including a Portion of the F ½ Road ROW

*Action: Adopt Proposed Ordinances on First Reading and Set a Hearing for August 6, 2003*

**10. Mesa State College Police Services Contract**

This request is for Council to approve the annual contract with Mesa State College for police services that are provided by the Grand Junction Police Department. The request is essentially a renewal process of the City's annual agreement with Mesa State College.

*Action: Authorize the City Manager to Sign the Contract with Mesa State College for Police Services for 2003-2004.*

**11. Memorandum of Understanding with CDOT for Video Equipment**

Approval and signing of a Memorandum of Understanding between CDOT and the City of Grand Junction for provision of a Panasonic video switcher to the City as part of the State's traveler information system.

*Action: Authorize the Mayor to Sign the Memorandum of Understanding with CDOT*

**12. Asphaltic Road Material (Road Oil or Emulsions)**

The purchase of asphaltic road material, (road oil or emulsions), required for the City chip seal projects for the year 2003. It is estimated that 568 tons of HFMS-2P, 4 tons of AE-P, and 199,374 tons of SS-1 50% dilute road oil or emulsion materials will be required.

*Action: Authorize the Purchase of Asphaltic Road Materials on an As Needed Basis Not to Exceed the Budgeted Amount of \$134,000.00 for the Year 2003 Utilizing the State of Colorado CDOT Contract.*

**13. Work Order/Infrastructure Management System**

The Public Works and Utilities Department is in need of a work order and asset management system. RFPs were recently received and reviewed by the Public Works and Utilities Committee. The Committee's recommendation is to purchase the GBA Master Series, Inc. system for \$313,040.00.

*Action: Authorize the City Manager to Execute a Contract for the Work Order/Infrastructure Management System with GBA Master Series, Inc., in the Amount of \$313,040.00*

**14. Amendment to the Ridges Taxing Areas**

The request is to move the remaining seven parcels from the Ridges Metropolitan District Tax Area #2 to Tax Area #1.

Resolution No. 56-03 - A Resolution Amending the Property Description of the Ridges Metropolitan District Taxing Areas

*\*Action: Adopt Resolution No. 56-03*

**\*\*\* ITEMS NEEDING INDIVIDUAL CONSIDERATION \*\*\***

**Bid Approval - 25 ½ Road Drainage Improvements Phase I**

Bids were received and opened on June 3, 2003. BT Construction, Inc. submitted the low bid in the amount of \$437,500.00. The project will bore two crossings, each 280 feet in length, across I-70B for the installation of twin 60-inch diameter steel drain pipes. These pipes will connect the outlet at West Lake Pond to twin 66 inch diameter concrete drainpipes that cross Rimrock Market Place.

Mark Relph, Public Works & Utilities Director, reviewed the request for award of bid. He explained what the project is about and how it will occur.

Councilmember Kirtland moved to authorize the City Manager to execute a Construction Contract for the 25 ½ Road Drainage Improvements Phase I, to BT Construction in the amount of \$437,500.00 Councilmember Hill seconded the motion. Motion carried.

**Purchase Property for the Redlands Fire Station**

The City has entered into a contract to purchase the property at 2155 Broadway from the Westgate Free Will Baptist Church. The property will be the location of the new Redlands Fire Station (City Fire Station No. 5).

Mark Relph, Public Works & Utilities Director, reviewed this item. He noted that the church would have use of the property for a period of time during construction. He explained that a defect in the title has been discovered and the church will resolve that issue. He said upon approval, the City would make the formal request to the County for their \$300,000 contribution.

Councilmember Hill asked about the comments received at the neighborhood meeting. Mr. Relph deferred his question to the Fire Chief.

Fire Chief Rick Beaty said those comments will be combined with comments to be taken at the next neighborhood meeting this Thursday, June 19<sup>th</sup>.

Councilmember Hill asked about the process and how the comments are handled.

Bob Blanchard, Community Development Director, said during the development review process a hearing notification will be mailed and people will be encouraged to follow the process.

Councilmember Hill asked the Fire Chief if this property is a good location for the new Fire Station. Fire Chief Beaty said it is and that they had looked at other locations. He said the response times were an issue at each of the locations they had looked at, therefore it has been determined that this is the best location. Councilmember Hill asked what affect the fire station location would have on the school zones. Fire Chief Beaty said the majority of service calls will be received from west of the station, but the school zone will come into play one way or the other.

Councilmember Palmer asked about all the other issues, including access. Fire Chief Beaty said one issue is still being discussed.

Council President Spehar noted that this location seems to be in the center of the service area.

Resolution No. 57-03 – A Resolution Authorizing the Purchase of Real Property Located at 2155 Broadway for use as a City Fire Station

Councilmember Enos-Martinez moved to adopt Resolution No. 57-03. Councilmember Kirtland seconded the motion. Motion carried unanimously by roll call vote.

**Setting a Hearing – Westgate Free Will Baptist Church Annexation No. 1 and 2 Located at 2155 Broadway** [File # ANX-2003-114]

Westgate Free Will Church Annexation, a serial annexation comprised of 4.5373 acres, located at 2155 Broadway, has presented a petition for annexation. This is the proposed future site of the Redlands Fire Station #5. The applicants request approval of the Resolution referring the annexation petition, first reading of the Annexation Ordinance, and requesting Land Use Jurisdiction immediately and set a public hearing for August 6, 2003.

**a. Referral of Petition, Setting a Hearing and Exercising Land Use Jurisdiction**

Resolution No. 54-03 – A Resolution Referring a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Setting a Hearing on Such Annexation, and Exercising Land Use Control, Westgate Free Will Baptist Church Annexation Located at 2155 Broadway

**b. Setting a Hearing on Proposed Ordinances**

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Westgate Free Will Baptist Church Annexation No. 1 Approximately 0.79078 Acres Located Within a Portion of Broadway (Highway 340) Right-of-way

Proposed Ordinance Annexing Territory to the City of Grand Junction, Colorado Westgate Free Will Baptist Church Annexation No. 2 Approximately 3.7466 Acres Located at 2155 Broadway

Bob Blanchard, Community Development Director, reviewed this item and explained why it is a serial annexation.

Councilmember Palmer moved to adopt Resolution No. 54-03, and to adopt proposed Ordinances on First Reading, and set a hearing for August 6, 2003. Councilmember Kirtland seconded the motion. Motion carried.

**Public Hearing – CDBG 2003 Action Plan**

City Council will consider final adoption of the 2003 Program Year Action Plan. This annual plan is required by the Department of Housing and Urban Development (HUD) for the use of CDBG funds. The Action Plan includes the CDBG projects for the 2003 Program Year City Council approved for funding on May 21, 2003.

The public hearing was opened at 7:51 p.m.

David Thornton, Principal Planner, reviewed this item and explained the purpose of the public hearing.

There were no public comments.

The public hearing was closed at 7:52 p.m.



Resolution No. 58-03 – A Resolution Adopting the 2003 Program Year Action Plan as a Part of the City of Grand Junction’s 2001 Five-Year Consolidated Plan for the Grand Junction Community Development Block Grant (CDBG) Program

Councilmember Palmer moved to adopt Resolution No. 58-03. Councilmember Enos-Martinez seconded the motion. Motion carried.

### **Public Hearing – Smoking in Public Places**

A proposal to prohibit smoking in public places is to be considered. Public input will be taken.

The public hearing was opened at 7:53 p.m.

The Mayor explained how the public hearing would be conducted.

Dan Wilson, City Attorney, reviewed this item. He explained the history of how this ordinance came before City Council and how Staff has reacted. He then listed all the options available to Council and the time frames related to each option.

Councilmember Hill wanted clarification and asked if the “do nothing alternative” meant that the existing ordinance would stay in effect. Mr. Wilson affirmed that to be the case.

Mr. Wilson explained that an establishment would be considered a restaurant if more than 50 percent of the earnings are derived from serving food. He said the proposal will not require a separate ventilation system because (according to health organizations) there wouldn’t be enough crossover smoke to regulate—nor would doors be required for the separation of the designated areas.

Councilmember Palmer asked for clarification on the amortization clause, and wanted to know if existing restaurants would be affected before January 2009. He felt that was a significant time to come into compliance. Mr. Wilson said shorter time frames could be considered.

Councilmember Enos-Martinez clarified that point for the television audience.

Council President Spehar pointed out that the expansion of the proposed ordinance would only trigger immediate compliance with new construction and those businesses would be required to comply.

Councilmember Hill asked Mr. Wilson to review Section 3, Prohibition of Smoking in Public Places and compare it to the existing ordinance. Mr. Wilson said Section 3(a)(1) through 3(a)(6) are already regulated. He then explained Section 3(a)(3) which reads:

Smoking shall be prohibited in all public places within the City, including, but not limited to busses, taxicabs, and other means of public transit while operating within the City limits, and ticket, boarding, and waiting areas of public transit depots.

Councilmember Hill asked when smoking would be allowed. Mr. Wilson referred to Section 3(a)(7) which is the exception and reads:

- (a) Smoking may be allowed in a portion of a restaurant that is physically separated, or in an attached bar that is physically separated, from enclosed areas of the business in which smoking is prohibited;
- (b) Smoking is allowed in restaurants between the hours of 9:30 p.m. and 2 a.m.;
- (c) Smoking is allowed in outdoor areas of restaurants such as patios and outdoor covered areas that are not enclosed areas.

Councilmember Palmer asked why a physical separation would be required if smoking was only allowed during late night hours. Mr. Wilson said a physical separator would only be required if the non-smokers couldn't access the restrooms, pay and leave the establishment without going through the smoking area. He said smoking would be allowed in outdoor areas. Mr. Wilson continued to go through the list, pointing out that bingo halls would be the exception where non-smokers would have to pass through a smoking area.

Councilmember Palmer noted Section 7 would not allow minors in smoking areas. Mr. Wilson said yes and that overrides all other parts of the ordinance. He said the posting requirement in the Sign Section of the proposed ordinance is nearly identical to that in the existing ordinance.

City Attorney Wilson next addressed the smoke-free workplace and the retaliation sections of the ordinance. He said the definition in the ordinance identifies an employer (workplace) with three or more persons must provide a smoke-free environment if so requested by one person.

Councilmember Hill asked when the current ordinance was adopted. Mr. Wilson said he believed in 1985 or earlier. Next Councilmember Hill asked about the posting of signs. Mr. Wilson replied that a non-smoking facility requires no signs. Councilmember Hill agreed that posting signs allowing smoking was more important.

Council President Spehar informed the audience that Council would now listen to public comments.

Wayne Smith, 2222 South Broadway, President of the Colorado Chapter of the Restaurant Association, said he opposes the adoption of the proposed ordinance since the City already has a non-smoking ordinance on the books. He said any changes to the existing ordinance will give someone an advantage over someone else and a significant number of restaurants are already non-smoking. He said it would cause a decline in tax revenues for the City, and architectural and ventilation changes would be unfair and harmful to most businesses since there is only a small profit margin. He felt the need for a more level playing field and a need for statewide regulation. He said it would be harmful to businesses operating within City limits. He said support for statewide regulation was growing and would probably be adopted by 2009.

Council President Spehar said there is no evidence that the new ordinance is not detrimental. Mr. Smith said he was sure with the way business is expanding, that some would be harmed.

Councilmember Palmer asked Mr. Smith how many restaurants are currently non-smoking establishments. Mr. Smith thought, statewide, about 50 to 60 percent, with Grand Junction probably having the same ratio.

Councilmember Hill asked if the current ordinance made some restaurants smoke-free. Mr. Smith said the current ordinance is fair because citizens and restaurateurs have been living with it for sometime. He said society didn't become smokers overnight, and now there is a trend toward less smoking, but the change would take time.

Case Bricker, Chef at Adams Mark Hotel, representing two family restaurants (Village Inns) read a letter from Michael Scott. He said both restaurants could close or could be in compliance. He said smoking guests compromise other guests. He felt it was not his place to prohibit children in smoking areas since they are probably exposed to smoke in their home. He said he hopes Council will consider his suggestions.

Ken Smalley, 106 Peter Street, Fruita, read a statement proclaiming his belief that people's freedoms are being eroded and that the City is trying to legislate morality. He wanted to emphasize the choice people have when selecting where to eat or work; and that it is wrong for children to infringe on his freedoms.

Timothy Williams, 3070 I-70 Business Loop, a small business owner, said he agrees with Wayne Smith and wanted to make the same points. He said it is a revolutionary thing and eventually society will see less smoking. Mr. Williams said the best way to make it happen is to let the free market drive this issue. He said no matter what happens it is a no-win situation. He said he used to sit on the Board of the American Cancer Society in Denver, and to his knowledge, no statistics are available regarding deaths due to second-hand smoke by people who were exposed for short periods eating in restaurants. He felt smoking was more of a nuisance than a health hazard.

He acknowledged workers are probably more at risk, but they have a choice where to work. He reiterated the belief that the free market will drive this issue and there is no need for government to be more intrusive. He said he lost relatives to cancer but he felt it still should be the owner's option whether to have a smoke-free establishment or not.

Jim Shultz, (only a P.O. Box provided) a private citizen, said it was not as much a health issue as a matter of choice where to eat. He said he dislikes smoke more than anyone, but one teacher and a group of 12-year-olds should not hold city fathers and others hostage. He said people should vote with their wallets instead of taking it to a vote.

Don Pettygrove, 8 Moselle Court, echoed the previous comments. He felt it was a liberty issue and patrons had a choice where to go. He said he felt it was not his place to tell a business owner how to run his business. He gave examples on what could happen if non-smoking was adopted. He said revenues from these places would be down, which would lead to a decline in City revenues and most likely lost jobs. He asked Council to keep the current ordinance but felt the workplace prohibition might need changing. He said he felt minors who are in that environment probably are already around smoking in their homes.

David Soker, 103 Bacon Court, Palisade, thanked Council for the opportunity to speak. He said he's been smoking for 35 years. He said he was encouraged to smoke by the armed services. He said he is also a citizen and this ordinance reminds him of the segregation which was in place in the south. He said employers should take into consideration when hiring that 25 percent of the adult population are smokers. He felt the proposed ordinance was nothing but a power trip and not a health issue. He said he felt Council would do what is reasonable and that decent changes were made in previous drafts. He said only 3,000 people die from second-hand smoke a year.

Councilmember Palmer reminded the audience to keep their comments to three minutes.

Anne Landman, Glade Park resident and American Lung Association representative, displayed a list of states and cities from across the country that have supported and adopted Alternative No. 1. She explained how Alternative No. 1 was developed and that it took more than two decades to do. She asked Council to adopt Alternative No. 1 and asked that each of the students be allowed to speak individually as a group.

Robin Morris, 116 East Alcove Drive, Bookcliff Middle School student, said she supports a level playing field but wanted Grand Junction to be the first to implement the ordinance.

Shelby Erwin, 2910 North Avenue, #45B, Bookcliff Middle School student, said she had a problem with the compromised ordinance. She said the problem with the ordinance

allowing late night smoking in restaurants would be having to watch the clock and customers. She said it would be confusing and it sends a message that smoke is less dangerous at a certain time. It would also imply late night workers are of lesser value. She listed areas where late night smoking was challenged and the establishments lost.

Laura Joy, 593 ½ Sycamore Court, Bookcliff Middle School student, displayed on the overhead a Daily Sentinel article regarding the Montrose no-smoking controversy. She said the headline was deceiving and that restaurant income actually increased. She admonished the newspaper for its misleading headline.

Juan Quintero, 2879 Texas Avenue, Bookcliff Middle School student, said the grandfathering clause would delay compliance of existing establishments until 2009. He said he would be graduating before the law would protect him. He said he wanted to remind Council of its mission and the smoking ordinance would fulfill that mission, but asked to eliminate the grandfathering clause.

Mandy Johnson, 624 Fort Uncompaghre Drive, Bookcliff Middle School student, said the proposed ordinance is a rights issue, a right for everyone to breathe clean air.

Annie Aylsworth, 623 Stonegate Drive, Bookcliff Middle School student, encouraged Council to make a change to the existing ordinance and prohibit smoking in any restaurant, but allow smoking in bars. She said Council should act on the ordinance at the meeting to save taxpayers election costs by not placing the ordinance on the ballot. She compared smoking to poor quality water and loud parties.

Clint Fix, 2924 El Torro Road, Central High School student, said he is representing 600 students, all supporting Ordinance Alternative No. 1. He said grandfathering creates an unfair playing field and second-hand smoke harms others. He said the 3,000 people killed each year is like losing the same amount of people who lost their lives on September 11, 2001.

Terri Metz, 379 Rosevale Road, a restaurant owner in Clifton, said she permits smoking in her restaurant, and has a non-smoking area, but that she opposes the proposed ordinance.

Bob Cron, 310 Dakota Drive, said he cannot tolerate second-hand smoke. He said there are problems with the current ordinance and that an ordinance is needed to make non-smoking areas really non-smoking areas, and not allow late night smoking. He said the odor just lingers. He said his wife is a Sweet Adelines and she sometimes works at a bingo hall to raise funds. When she comes home the smell of smoke is so bad she has to wash her hair and clothes before going to bed.

Tom Kelly, 2917 ½ Sandra Drive, said it is a good idea to make separate smoking and non-smoking areas. He suggested people check out Sapp Brothers Truck Stops and see for themselves that it can work. He said he didn't know what all the hollering is about, whether or not one should smoke. He said he's been smoking for 62 years and he "ain't dead yet".

Councilmember Enos-Martinez asked if and what kind of partitions separates the sections. Mr. Kelly replied that a glass wall separates the sections.

Dave Bouley, 915 Prince Ct, said he has irreversible lung damage from smoking and from second-hand smoke. He said sometimes he has to walk through smoking areas to get to the cashier. He said he can't find a non-smoking establishment offering dancing and/or music, but he can choose where to eat.

Sandra Kaski, 382 Bonny Lane, said she is a bingo player and non-smokers still have to pass through a smoking area to get the cards. She said one cannot play without being exposed to smoke and the food is only available in the smoking area. She felt exempting bingo halls in the ordinance was bad since a lot of people are allergic to smoke.

Penny Pauline Heuscher, 330 Mountain View Court, said she represents the Mesa County Medical Society Alliance who endorses Ordinance Alternative No. 1. She asked Council to adopt the ordinance or put it on the ballot. She said she respects the rights of all, but one should not be forced to breathe carcinogens. She wanted to commend the students for their effort and mentioned that 80 percent of the population doesn't smoke. She said fundraisers at bingo halls subject students to heavy pollution. She felt if there had been a FDA in place before the tobacco industry became so big there would have never been smoking areas.

Council called for a five-minute recess at 9:45 p.m.

The meeting was back in session at 9: 51 p.m.

Ray Ward, 515 Cedar Avenue, a physician, said he also supports Ordinance Alternative No. 1 and distributed a list of health effects identifying which organizations did the study and when. He said many patients in his practice tell him they wish to quit, and those who have suffered damage and are affected from smoking should have protection in public spaces.

Councilmember Enos-Martinez asked Dr. Ward why the Health Department was not regulating the smoking issue. Dr. Ward replied that the Health Department can only enforce the laws that are on the books.

Theresa Patty, 661 Highway 50, #50, said she is a victim of second-hand smoke. She said the cigarette smoke came through her apartment walls from her neighbors. She said she supports a smoke free environment and therefore supports Ordinance Alternative No. 1. She said she also is the art director at Champ Camp, a camp for asthma sufferers and she felt to preserve one's health overrides any freedom to smoke. She then listed a number of poisonous chemicals that are in cigarette smoke.

Michel Parmenko, 1821 North 3<sup>rd</sup> Street, a physician and president of the Local Chapter of the Tobacco Education Council, asked if something is a habit, does that become a right? He said there is a need for a good public health policy, and that all studies show that secondhand smoke is harmful. The only studies that say otherwise are those funded or tied to the tobacco industry.

Perry Moyle, 378 East Valley Circle, said he works for the American Lung Association and felt this process is like a runaway train. He urged Council to react rather than enact and to implement an education process. He said if the ordinance goes to the ballot it would project as if Council was trying to wash its hands of the situation. He is afraid then that the big tobacco companies and their money would come in to oppose the ballot issue.

Janice Ferguson, 3115 North Peace Court, explained that smokers have nicotine metabolite in their blood and non-smokers exposed to second-hand smoke have it in their blood. She said studies showed bartenders' pulmonary functions improved after no smoking was implemented.

Teresa Coons, 930 Ouray Avenue, a doctor at the Saccomanno Research Institute, said she studied this, and in an editorial by OSHA addressing this in its 1984 regulations proposed and released some findings. It said non-smokers are at a greater risk, around second-hand smoke as well as older workers, because of less cardiac reserves. She said the smoke also has a negative effect on a fetus, but pregnant women don't always have a choice where they work.

Councilmember Kirtland asked Dr. Coons where the existing ordinance is failing. Dr. Coons responded in bars, bingo halls, and other places of business that have employees who may not have a choice where they work.

Suzanne Schwartz, 2538 Walnut Avenue, said she is the Program Director for the American Cancer Society and supports Ordinance Alternative No. 1. She suggested Council slow down the process and take the time to educate business owners and the community.

Mike Curtis, 2211 North 17<sup>th</sup> Street, said he is a volunteer with the American Lung Association and does not support upgrades to ventilation systems because they do not

work. He said he agrees that it will be expensive for business owners to come into compliance so they can allow smoking by their customers. An alternative of course would be to make all establishments smoke-free; then there would be no expense.

Kate Pierce, 650 North 15<sup>th</sup> Street, a Family Physician, said the best way for the City of Grand Junction and Council to show the City is a progressive community is to have regulations that protect its citizens' health. She said she supports Ordinance Alternative No. 1, which is like the Ordinance implemented by Portland, Oregon.

Kelli Kossell, 3655 G 7/10<sup>th</sup> Road, Palisade, said he is a volunteer and works with kids. He felt the laws would help people to quit smoking and that he wants a healthy community. He pointed out to Council that the persons against the Proposed Ordinance have left. He said the students and others never supported Proposed Ordinances 2a, 2b, or 2d.

Darren Cook, 961 Chipeta Avenue, Bookcliff Middle School teacher, applauded Council for the process and for teaching kids to take responsibility by trying to make this a better community. He said, at the same time, Council has the opportunity to show kids that smoking is bad. He said he had no doubt the group can collect the required signatures for Ordinance Alternative No. 1 to be placed on the ballot.

Zach Heuscher, 330 Mountain View Court, a college student, said smoking is a thing of the past and people should leave their bad habit at the door.

Karen Milbank, 3754 Compass Drive, #240, said she is a nurse and felt the current ordinance is weak and needs to be more stringent. Councilmember Kirtland asked her to give some examples, and asked if she meant the current Ordinance was too lenient in regards to restaurants. Ms. Milbank replied not only in regards to restaurants and bingo parlors, but also in protecting service workers in bowling alleys.

Rick Applegate, 181 Sunlight Drive, a restaurant and motel owner, said restaurants are a matter of choice, and people don't have to patronize an establishment. He felt it was not up to City Council to delegate rules, rather up to him to make a business decision and live with it. He next referred to Article 3(a)(14) Prohibition of Smoking in Public Places, which says:

Smoking shall be prohibited in all public places within the City, including, but not limited to no less than 75 percent of hotel and motel rooms rented to guests and all lobbies, elevators and other common areas available to and customarily used by the general public.

He said 10 percent of his rooms are designated non-smoking and that they are never rented. He asked how this section of the ordinance could be enforced. He told Council



as a non-smoker and a private business owner he should have the right to make the decision on how many rooms to designate for smoking or non-smoking.

Ted Ottinger, 435 32 Road, #602, Clifton, said a partial ban is not enough. He said service workers in town don't have much choice on jobs. He felt the proposed ordinance is a "watered down" ordinance.

Carole Chowen, 2342 Rattlesnake Court, #B, said she works with tourists mainly from the United Kingdom and when she tells them of California's Clean Air Act, they just love it and wished the same was true for England. She said in Arizona it is hard to find non-smoking facilities; and in Nevada it's almost impossible. She said her experience is that tourists don't like any smoking.

Chas Lehnert, 385 East Valley Circle, said he is in favor of the current ordinance and opposes the proposals. He said he doesn't see where there is a problem since smoking is still legal. He felt government has no business to regulate private businesses and/or legislate morality. He said prohibition failed and to leave the current ordinance as is on the books.

The public comment portion of the public hearing was closed at 10:45 p.m.

Councilmember Palmer said so far groups have asked Council to wait, businesses have opposed the proposed ordinances and he knows Council can't please everybody. He said Councilmembers are not trying to stop smoking, they know it is legal to smoke but there are limits, and Council is trying to determine the fairest and most balanced approach.

Councilmember Enos-Martinez said she is for a more stringent ordinance and a level playing field. She said she doesn't like the amortization allowance for existing businesses, nor the section prohibiting children in designated smoking areas and she felt that part of the ordinance would be unenforceable. She suggested Council deal with restaurants, continue to use, or import to the proposed ordinance the articles regarding bars and workplace provisions. She reiterated she is for a stronger ordinance but still struggling with the decision.

Councilmember Hill said the time exemption still confuses him. City Attorney Dan Wilson explained that in this version of the ordinance, no physical barriers are required during late hours. Councilmember Hill said with the current ordinance the workplace provision has not been exercised, but he feared that provision of the ordinance would increase with a new ordinance. He said the current ordinance has caused some restaurant owners to convert their businesses to non-smoking only. He said there are citizens not aware of the workplace provision. He felt this process has brought out education, and to research reasonable alternatives for those in the communities who

choose to smoke. He felt physical barriers would be better but would also be a financial hardship for the business owners. He said the missing element was to make the proposed ordinance countywide, but leave bingo parlors under the current ordinance. He agreed changes are needed.

Councilmember Palmer asked why motel rooms are included in the ordinance. City Attorney Wilson said it codifies existing practices and attempts to make more public places smoke-free.

Councilmember Hill thought the motel issue was more a smell issue rather than a smoke issue.

Councilmember Enos-Martinez asked who would enforce the hotel room smoking issue. City Attorney Wilson said it would be Code Enforcement and violators would be prosecuted by the City Attorney's office.

Councilmember Kirtland suggested Grand Junction should continue with its forward thinking like its support of a teen smoking ordinance, noting it would be an evolutionary process that would take time. He said Council needs support in making a decision. He said small business owners work hard, and to implement a regulation that would have an impact would be one Council needs to consider the effect this action would have. He felt Council should take a step in the process since small businesses need time to comply.

Councilmember Butler said restaurants are public places and a strategic plan is needed to protect the quality of life. He said everyone knows smoke is harmful and that's why he would vote no on Section 3(a)(7) titled Prohibition of Smoking in Public Places. This Section prohibits smoking in restaurants except that:

- (d) Smoking may be allowed in a portion of a restaurant that is physically separated, or in an attached bar that is physically separated, from enclosed areas of the business in which smoking is prohibited;
- (e) Smoking is allowed in restaurants between the hours of 9:30 p.m. and 2 a.m.;
- (f) Smoking is allowed in outdoor areas of restaurants such as patios and outdoor covered areas that are not enclosed areas.

Council President Spehar said the ordinance is legal, and Council regulates a lot of things and that the City is not treading on new ground by regulating smoking. He said it is a balancing act to balance people's rights and reach a reasonable compromise. He said from a practical standpoint it will take a long time to debate all the little nuances in the various proposals and he is not prepared to address the number of complaints. He suggested not compromising and instead enacting Ordinance Alternative No. 1.

Council President Spehar said Council should take the opportunity to be progressive and not refer the ordinance to the ballot. He agreed the ordinance should be implemented countywide and statewide but Council doesn't have the ability to do that.

Councilmember Palmer asked about the difference between Ordinance Alternative No. 1 and the compromise.

City Attorney Dan Wilson compared the ordinances and said in Ordinance Alternative No. 1 all workplaces are smoke-free; there are no exceptions for restaurants, and there is no smoking in bars (free-standing or attached). He said the same regulations apply to motel rooms; there are no exceptions for bingo halls; and employers are not obligated to spend money to provide a smoke-free workplace. He said any private citizen could enforce the law. He said it would require a lot of public education and to engage the City Manager to conduct the continued education. He said the Ordinance would be effective January 1, 2004, and therefore would not include an amortization clause.

Council President Spehar felt the compromised alternative would cost money, if not now, then in five years, and would create a lot more enforcement issues. He said if Council was to consider Ordinance Alternative No. 1, then to bring it back for discussion and to think about it.

Councilmember Palmer said he couldn't support all elements in Ordinance Alternative No. 1. He said he couldn't support no smoking in bars and motel rooms, or no minors in smoking areas. He said he heard what Council President Spehar said about Ordinance Alternative No. 2 but felt it was too convoluted. He agreed not to place the ordinance on the ballot. He said he couldn't vote on Ordinance Alternative No. 1; Alternative No. 2 is convoluted, but he hates to delay this issue.

Council President Spehar suggested Council look at Ordinance Alternative No. 1, yet give business owners the choice to allow smoking in bars since no minors are allowed in bars anyway.

Councilmember Butler said he would endorse Ordinance Alternative No. 1, exempt bars, but to make bingo halls and restaurants smoke-free. He reiterated that smoke was pollution.

Councilmember Enos-Martinez asked about restaurants and food sales and how liquor licenses would be affected.

City Attorney Wilson said the definition of a restaurant is when 50 percent or more of the income is derived from food sales.

He explained the difference among food percentages for taverns (liquor code), versus zoning code, versus the 50 percent rule.

Councilmember Kirtland said he does not support the sections regarding minors in smoking areas nor the late night smoking hours. He said the rest of the proposed ordinance would take some time to comply with. He was afraid customers would frequent outlying areas. He said time would be needed for people to react. He suggested a shorter than five-year amortization period.

City Attorney Wilson replied he could defend a three-year amortization.

Councilmember Hill said he had a tough time supporting Ordinance Alternative No. 1 and he would like to continue work on the template to see movement with or without the ordinance. He said Ordinance Alternative No. 2b does not affect private parties or private clubs.

Councilmember Kirtland inquired if when new buildings were constructed they include separators. Bob Blanchard, Community Development Director, answered the Department does not review interiors, but he could research it through the Building Department.

Council President Spehar suggested scheduling the next meeting for July 2<sup>nd</sup> and at that time review the modified Ordinance Alternative No. 1. He said he hoped Councilmember McCurry would be present then.

City Attorney Wilson verified the modifications as requested by Council as to: a) exempt freestanding bars; b) remove sections regarding motels; c) minors in smoking areas, and d) no exemptions for bingo halls.

Councilmember Hill asked if Council was proposing to hear more public comments.

City Attorney Wilson replied Council could hear all new testimony or none.

Councilmember Palmer asked if smoking outdoors would be allowed.

City Attorney Wilson said outdoor smoking would be allowed. He then asked Council if the "Retaliation Provision" should be left in the ordinance.

Council President Spehar said to leave that section in the proposed ordinance since it already is in the existing ordinance.

City Attorney Wilson wanted to know if he should delete the "Private Attorney" section in Ordinance Alternative No. 1. Council concurred.

Council President Spehar asked if Council should continue this hearing to July 2<sup>nd</sup>, and if so, should Council then hear more public comments.

Councilmember Palmer suggested continuing the hearing to July 2<sup>nd</sup>, and giving feedback and direction to the City Attorney. He said he is in favor of continuing the discussion but not of hearing any more testimony.

Councilmembers Butler and Kirtland agreed with Councilmember Palmer.

Councilmember Hill said he was not against hearing additional public comments.

Councilmember Kirtland asked, since there are substantive changes, would this be considered a First Reading?

City Attorney Wilson said yes.

Councilmember Enos-Martinez felt Council would receive the same comments as presented this evening, besides there already was plenty of written testimony.

City Manager Arnold noted Staff would have comments regarding enforcement of the ordinance.

Ordinance No. 3535 – An Ordinance Prohibiting Smoking in Workplaces and Public Places in the City of Grand Junction

Councilmember Enos-Martinez moved to continue the discussion until July 2<sup>nd</sup>, 2003. Councilmember Palmer seconded the motion.

After a short discussion, City Attorney Wilson said he would post the new alternative ordinance on the Web by the end of the week. He then listed the items to be included.

Council President Spehar verified the motion as being to continue the discussion of Ordinance No. 3535 – An Ordinance Prohibiting Smoking in Workplaces and Public Places in the City of Grand Junction. Motion carried by a vote of 4 to 2 with Councilmembers Butler and Hill voting NO.

**NON-SCHEDULED CITIZENS & VISITORS**

There were none.

**OTHER BUSINESS**

There was none.

**ADJOURNMENT**

Councilmember Palmer moved to adjourn. Councilmember Enos-Martinez seconded the motion. Motion carried. The meeting adjourned at 11:49 p.m.

Stephanie Tuin, MMC  
City Clerk