

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

JULY 2, 2003

The City Council of the City of Grand Junction convened into regular session on the 2nd day of July 2003, at 7:33 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 Palmer led in the pledge of allegiance. The audience remained standing for the invocation by Pastor Jim Hale, Spirit of Life Christian Fellowship.

APPOINTMENTS

APPOINTMENTS TO THE WALKER FIELD PUBLIC AIRPORT AUTHORITY

Councilmember Palmer moved to appoint Frank Roger Little to the Walker Field Public Airport Authority for a three year term. Councilmember Kirtland seconded. Motion carried.

**APPOINTMENTS TO THE PARKS AND RECREATION ADVISORY BOARD AND
APPOINT A CITY COUNCIL REPRESENTATIVE TO THE PARKS AND RECREATION
ADVISORY BOARD**

Councilmember Butler moved to reappoint Bernie Goss to a three-year term, appoint Reford Theobald to a three year term and appoint Tom Fisher to fill an unexpired term until June, 2005 on the Parks and Recreation Advisory Board and to appoint Cindy Enos-Martinez as the City Council representative on the Parks and Recreation Advisory Board as ex-officio. Councilmember Hill seconded. Motion carried.

APPOINTMENTS TO THE DOWNTOWN DEVELOPMENT AUTHORITY

Councilmember Kirtland moved to reappoint Doug Simons to a four-year term, appoint Karen Vogel to a four year term and Scott Howard to fill an unexpired term until June, 2005 on the Downtown Development Authority. Councilmember Enos-Martinez seconded. Motion carried.

RATIFICATION OF APPOINTMENT TO RIVERVIEW TECHNOLOGY CORPORATION

Councilmember Hill moved to ratify the appointment of Dennis King to the Riverview Technology Corporation Board of Directors for a three year term. Councilmember Kirtland seconded. Motion carried.

Council President Spehar explained the appointment process for volunteer boards to the audience.

SCHEDULED CITIZEN COMMENTS

Lena Elliot, former Parks and Recreation Advisory Board member, addressed the Council on her service on the board. She reflected on the accomplishments of the board. She distributed a list of projects for the Council's review and the Council thanked Ms. Elliot for her service on the board.

CONSENT CALENDAR

It was moved by Councilmember Palmer, seconded by Councilmember Enos-Martinez and carried to approve Consent Items #1 through 6.

1. **Minutes of Previous Meetings**

Action: Approve the Summary of the June 16, 2003 Workshop and the Minutes of the June 16, 2003 Regular Meeting

2. **Create Sanitary Sewer Improvement District No. SS-45-03**

A majority of property owners in an area on both sides of 26 ½ Road bounded by Dahlia Drive on the north, and F ½ Road on the south have signed a petition requesting an improvement district to provide sanitary sewer service to their neighborhood. The proposed resolution is the required first step in the formal process of creating the proposed improvement district.

Resolution No. 59-03 – A Resolution Declaring the Intention of the City Council of the City of Grand Junction, Colorado, to Create within said City Sanitary Sewer Improvement District No. SS-45-03, Authorizing the City Utility Engineer to Prepare Details and Specifications for the Same, and Giving Notice of a Hearing

Action: Adopt Resolution No. 59-03

3. **Hazard Elimination Grant for the 24 ½ Road and G Road Intersection Project**

Approve a contract with CDOT for a Federal Hazard Elimination Grant of \$771,241 for the intersection and drainage improvements at 24½ & G Road.

Resolution No. 60-03 – A Resolution Authorizing a Contract with the Colorado Department of Transportation for Hazard Elimination Grant Funding for Intersection Improvements at 24 ½ & G Road

Action: Adopt Resolution No. 60-03

4. **Setting a Hearing - Vacating of Right-of-Way and Multipurpose Easements, Rimrock Marketplace 3 Subdivision** [File # PFP-2003-076]

The petitioners are requesting the vacation of portions of the Ligrani Lane right-of-way and portions of the multi-purpose easements located on either side of the right-of-way. The purpose of the vacations is to allow for the reconfiguration of Ligrani Lane to create a cul-de-sac to provide road frontage to the Woolard lot that is located north of the Rimrock Marketplace project, adjacent to Highway 6 & 50. New right-of-way and multi-purpose easements will be dedicated on the recorded plat. As a matter of convenience, the proposed ordinance addresses both the right-of-way vacation and the multi-purpose easement vacations.

Proposed Ordinance Vacating a Portion of Ligrani Lane and Portions of Adjacent Multi-purpose Easements Located between Rimrock Avenue and State Highway 6 & 50

Action: Introduction of Proposed Ordinance and Set a Hearing for July 16, 2003

5. **Setting a Hearing - Zoning the Sonrise Acres Annexations No. 1, 2, 3, & 4 Located at 3068 F Road** [File #ANX-2003-090]

Introduction of the Zoning ordinance to zone the Sonrise Acres Annexation RSF-4, located at 3068 F Road; Residential Single Family, not to exceed 4 dwelling units per acre.

Proposed Ordinance Zoning the Sonrise Acres Annexations to RSF-4, Located at 3068 F Road

Action: Introduction of Proposed Ordinance and Set a Hearing for July 16, 2003

6. **Setting a Hearing - Zoning the UnawEEP Heights Annexation Located at 2857 UnawEEP Avenue** [File # ANX-2003-022]

Introduction of the Zoning ordinance to zone the Unawep Heights Annexation, RSF-4 (Residential Single Family, not to exceed 4 dwelling units per acre), located at 2857 Unawep Avenue.

Proposed Ordinance Zoning the Unawep Heights Annexation to RSF-4, Located at 2857 Unawep Avenue

Action: Introduction of Proposed Ordinance and Set a Hearing for July 16, 2003

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

Contract for Combined Sewer Elimination Project Phase I, Basin 8

This project is the third of six contracts associated with the Combined Sewer Elimination Project and the Waterline Replacement Project. This contract will construct 18,800 feet of storm sewer, a storm water quality facility, storm water pump station, and 900 feet of 6" water line. On June 17, 2003, Mendez, Inc. of Grand Junction submitted a low, qualified, bid of \$4,430,101.65 to complete the work.

Mark Relph, Public Works and Utilities Director, reviewed this item. He noted the magnitude of the project, the number of bids received and advised that Mendez Inc. was the low bid.

Councilmember Kirtland moved to authorize the City Manager to Execute a Construction Contract for the Combined Sewer Elimination Project Phase I – Basin 8 with Mendez Inc., in the Amount of \$4,430,101.65. Councilmember Hill seconded the motion. Motion carried.

Distribution of Forfeited Property

This resolution is brought to the Council by Chief Morrison and the Mesa County Forfeiture Board. This is actually a resolution to reaffirm Resolution No. 49-92 which approved a Committee on the disposition of forfeited property pursuant to C.R.S. 16-13-702. The Committee on Disposition of Forfeited Property has determined the appropriate distribution for forfeited property since that time. The City Council receives annual reports on the distributions.

Mary Beth Buescher, Deputy District Attorney for Mesa County, explained what a forfeiture of property is and why it is a good idea to adopt a new resolution.

Councilmember Butler asked if there is ever a case where a property owner is forced to forfeit property when they were unaware of the crime being committed. Ms. Buescher

said no, there is very strong law on behalf of innocent owners in the State Statutes. She gave a few examples and showed a table that listed the funds and the percentages that were forfeited versus returned to the rightful owner. She deferred to Chief Morrison on how the distributions are spent.

Chief Morrison told the Council what police items were purchased in the last year with the forfeited property money that was distributed to the Grand Junction Police Department.

Ms. Buescher noted that the amounts will go down significantly since half the funds must now go to substance abuse treatment. Councilmember Palmer questioned the need for the resolution when the State Law requires one half of the monies to go to Social Services for substance abuse treatment. City Attorney Wilson confirmed that and the State law does supercede any local desire but thought it best to confirm that through this resolution.

Resolution No. 61-03 – A Resolution Affirming Resolution No. 49-92 Relating to the Distribution of Forfeited Property

Councilmember Kirtland moved to adopt Resolution No. 61-03. Councilmember Enos-Martinez seconded the motion. Motion carried unanimously by roll call vote.

Public Hearing - O'Connor Annexation and Zoning Located at 511 31 Road [File #ANX-2003-068]

Resolution for Acceptance of the Petition to Annex and Consideration of Final Passage of the Annexation Ordinance for the O'Connor Annexation located at 511 31 Road. The Annexation consists of 1.3121 acres on one parcel of land. The petitioner is seeking annexation in conjunction with a future subdivision request, pursuant to the 1998 Persigo Agreement with Mesa County.

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.

The public hearing was opened at 8:00 p.m.

Ronnie Edwards, Associate Planner, reviewed this item combining the annexation and zoning hearings.

Councilmember Palmer addressed a matter related to the development of the property, specifically the road improvements. Ms. Edwards advised that improvements would be addressed when and if the property is actually developed. The matter at hand is annexation and zoning only.

Jim White, land surveyor, representing the petitioner said the petitioner is willing to work with the Planning Department to comply with any required improvements on 31 Road.

Michael Melgares, residing northwest of the proposed subdivision, does not object to the requested annexation and zoning but is concerned about the road improvements and the need for them to be addressed. He feels a paved road is necessary because he is concerned about the children at the Pear Park Baptist Church School playing around all the dust that will be created from the unpaved road.

The public hearing was closed at 8:06 p.m.

a. Accepting Petition

Resolution No. 62-03 - A Resolution Accepting Petitions for Annexation, Making Certain Findings, Determining that Property Known as O'Connor Annexation, Located at 511 31 Road and Including a Portion of 31 Road and E Road Right-of-Way, is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3535 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, O'Connor Annexation, Approximately 1.3121 Acres Located at 511 31 Road and Including a Portion of E Road and 31 Road Rights-Of-Way

c. Zoning Ordinance

Ordinance No. 3536 – An 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

Councilmember Enos-Martinez moved to adopt Resolution No. 62-03 and Ordinances No. 3535 and No. 3536 on Second Reading. Councilmember Kirtland seconded the motion. Motion carried by a unanimous roll call vote.

Public Hearing – Rezoning 653 Young Street to RSF-2 [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 at its June 10, 2003 meeting.

Public hearing was opened at 8:09 p.m.

Ronnie Edwards, Associate Planner, reviewed this item. She explained the staff recommendation for denial is because staff found that the requested rezone is not consistent with the adjacent property development and review criteria in section 2.6a had not all been met, specifically items 1,2,4,6 and 7 have not been satisfied.

Councilmember Hill asked for her to go through each criteria that had not been met.

Karl Clemons, property owner, agreed that the zoning was not in error at the time with RSF-1, but things have changed. As far as compatibility, he feels it is compatible on the west side. He noted the unique shape of the lot and feels there is a buildable envelope on the property. It is not practical to develop the area in conjunction with the existing lot because getting access would require going back onto Young Street and F ½ to get to the property.

Councilmember Palmer asked about the easement. Mr. Clemons said the biggest handicap is a Grand Valley Irrigation ditch that goes almost to the middle of the property. There is a big enough envelope to build an 1800 square foot ranch style house without moving the easement, but it is also possible to move the easement.

Councilmember Kirtland asked if he will have to fence off the property from the canal. Mr. Clemons said that it could be a possibility if required.

Councilmember Hill asked if the proposed area is the only buildable area. Mr. Clemons said yes because there is already a house on the other side of the property. They are just trying to solve an unattractive nuisance.

Councilmember Palmer asked about surrounding zoning. Mr. Clemons described the surrounding zoning.

Councilmember Kirtland asked about ground water problems. Mr. Clemons said that 17,000 square feet is the minimum lot size and that will include the canal. It will be a small lot.

Councilmember Palmer asked what the curb and gutter requirements are, and if it is possible to meet the RSF-2 requirements. Mr. Clemons said the easement will count for part of the 17,000 square foot lot size; they just can't build on the easement.

Public hearing was closed at 8:24 p.m.

Councilmember Palmer stated that he visited the site and it is unsightly and he believes a house would be more desirable on that location.

Councilmember Kirtland said he looked at it also and it is a fairly big piece of property. He feels it will be a challenge to build on the property but the adjoining new development would merit the property to be developed in the same character.

Councilmember Hill felt the property being developed would be a better fit but it is a small envelope to build on.

Councilmember Spehar stated that the property appears to be an unfinished part of the adjacent subdivision, but it would take some ingenuity to develop the property right.

Ordinance No. 3537 – An Ordinance Zoning a Parcel of Land Located at 653 Young Street to RSF-2 (Residential Single Family, with a Density Not to Exceed Two Units per Acre)

Councilmember Palmer moved to adopt Ordinance No. 3537. Councilmember Kirtland seconded the motion. Motion carried by a vote of 6 to 1 with Councilmember Butler voting NO.

Public Hearing - Rold Annexation and Zoning Located at 524 30 Road [File #ANX-2003-080]

Resolution for Acceptance of Petition to Annex and Consideration of Final Passage of the annexation ordinance. The .7998 acre Rold Annexation consists of one parcel of land. The requested zoning for the property is C-1 (Light Commercial). The physical address for the property is 524 30 Road.

Consideration of Final Passage of the Zoning Ordinance for the Rold Annexation located at 524 30 Road. The .7998-acre Rold consists of one parcel of land. The Planning Commission reviewed the requested zoning on June 10, 2003 and recommended approval.

The public hearing was opened at 8:28 p.m.

Senta Costello, Associate Planner, reviewed this item. Dan Whalen, Director of Housing Resources, purchased the building two months ago and has moved their offices there after 25 years downtown. He would like to be a part of the City of Grand Junction.

There were no public comments.

The public hearing was closed at 8:31 p.m.

Councilmember Enos-Martinez disclosed for the record that she was one of the prior owners of the property.

a. Accepting Petition

Resolution No. 63-03 - A Resolution Accepting a Petition to the City Council for the Annexation of Lands to the City of Grand Junction, Colorado, Making Certain Findings and Determining that Property known as the Rold Annexation, Located at 524 30 Road is Eligible for Annexation

b. Annexation Ordinance

Ordinance No. 3538 – An Ordinance Annexing Territory to the City of Grand Junction, Colorado, Rold Annexation, Approximately 0.7998 Acres Located at 524 30 Road

c. Zoning Ordinance

Ordinance No. 3539 – An Ordinance Zoning the Rold Annexation to C-1 (Light Commercial) Located at 524 30 Road

Councilmember Kirtland moved to adopt Resolution No. 63-03, Ordinances No. 3538 and No. 3539. Councilmember Hill seconded the motion. Motion carried by a unanimous roll call vote.

The Council President called a recess at 8:33 p.m.

The meeting was back in session at 8:40 p.m.

Smoking in Public Places - Council Consideration Continued from June 16, 2003 Council Meeting

A proposal to prohibit smoking in public places is to be considered.

Council President Spehar explained where Council is in the process of this item and that Council has decided not to take any more public testimony. He then deferred to the City Attorney for further explanation.

City Attorney Dan Wilson echoed what the Mayor stated and that two weeks ago Proposed Ordinance Alternative 1C was on the internet site and the newest version

labeled Proposed Ordinance Alternative 1E has highlighted the changes from Alternative 1C.

He then reviewed each of the highlighted areas. Enclosed areas and physically separated areas were first explained, with Mr. Wilson noting that there will be a three year time frame for establishments to comply.

The next significant change is the distinction between restaurants and bars. If 55 percent or more of an annual business is food, by definition, it is a restaurant, irrespective of their liquor license. If liquor is more than 45 percent of an annual business, the person has the election to treat it as a bar.

A restaurant with an attached bar can physically separate the bar and allow smoking.

Outdoor areas, if not covered by a roof or extension of the roof, can have smoking.

Bowling alleys and bingo halls have special exceptions in the old version of the proposed ordinance. Now the new version requires physical separation in bingo halls. Attached bars in bowling alleys are treated the same as restaurants.

A new section adds a new concept. An establishment can elect to be treated as a bar if serving less than 55 percent food. These places may elect to be smoking. A reminder will be sent out annually in the fall for the establishment to elect to be a bar. Council-member Palmer asked how establishments will be notified and Mr. Wilson answered that the City Clerk already sends out annual renewals for occupational tax licenses in the late fall and will include another notice for the election on bar or restaurant.

A significant factor is if there is a complaint, the owner must make an affirmative defense and prove that they are under the 55 percent food service. Without that provision the owner would not be required to provide the information since financial information is confidential.

Lastly, if the election is made and the business changes so that food becomes a larger percentage, it is the duty of the owner to notify the Clerk. The new version also confirms that sales tax and financial information is confidential and the general public is not entitled to that information.

He summarized that smoking in public places is not allowed with the following exceptions: an owner can elect to have smoking in freestanding bars, bingo halls and bowling alleys with attached bars can have smoking if an area is enclosed. Regarding workplace rules, the owner is not required to spend money to provide a smoke-free workplace. The rule also includes that the employee cannot force non-smoking in workplaces where smoking is allowed by the ordinance.

Councilmember Kirtland asked Mr. Wilson to address the amortization period. Mr. Wilson stated that the current proposed ordinance draft states that the amortization period for compliance allows until January 1, 2006, which is roughly 2 ½ years.

Councilmember Enos-Martinez emphasized the importance for the audience to understand that if the ordinance is passed, changes will not be expected to happen right away. Mr. Wilson suggested that ongoing education will be critical because of the time frame for the compliance period. Councilmember Spehar agreed with ongoing education but felt that the provision should not be in the ordinance. Mr. Wilson agreed.

Councilmember Palmer asked about motel and hotel regulations. Mr. Wilson said there is no mention of motels or hotels in the ordinance.

Councilmember Hill questioned section 3.a.6. where workplaces do not include offices to be non-smoking. Mr. Wilson stated that public does not access offices. Councilmember Hill asked about signage. Mr. Wilson thought signage would be required for all areas, both smoking and not smoking in public settings. Councilmember Hill asked for clarification if smoking was allowed only in a bar in a bowling alley. Mr. Wilson said that is correct. Councilmember Hill asked about the three workplace alternatives that were listed on the proposed ordinance. Mr. Wilson clarified that the workplace alternative labeled 1E is the wording for this proposed draft. The other two were from previous drafts of the proposed ordinance.

Councilmember Palmer asked that if this proposed ordinance is adopted, can amendments be made to it. Mr. Wilson replied that it could always be changed but would require introduction, ten day publication and final passage. If it were to go to the ballot, changes would have to go to the voters.

Ordinance No. 3540 – An Ordinance Prohibiting Smoking in Workplaces and Public Places in the City of Grand Junction

Councilmember Kirtland moved to adopt Ordinance No. 3540, Alternative 1E and not to include any other alternatives or include additions on page 10 of the Ordinance. Councilmember Palmer seconded.

Council President Spehar asked for discussion or proposed amendments. Councilmember Hill felt that more consistency was needed between free standing bars and bars attached to a restaurant. He felt that the Ordinance should read the same as for bingo halls or bowling alleys.

Councilmember Enos-Martinez asked for more clarification on bowling alleys. Would smoking be allowed around the lanes? Councilmember Palmer stated that he

understands that as long as an area is physically separated, smoking could be allowed in that area, whether it is behind the lanes or wherever.

Council President Spehar cautioned making provisions for specific establishments as it could create an enforcement issue.

Councilmember Kirtland stated that food is an important part of preventing over imbibing and these businesses do have to consider their insurance costs. He does support the amortization period. It will allow the opportunity for people to figure out how to apply this to their business. It is important to put something in place this community can live with.

Council President Spehar stated there is an expectation that soon there will be a statewide ban on smoking in public places, therefore he is resistant to tweaking the restaurant section of the Ordinance. A county-wide ban would not apply to municipalities, so discussion is important.

Councilmember Enos-Martinez reiterated that this Ordinance would only cover those establishments that are within the city limits.

Councilmember Hill commended the City of Grand Junction for being ahead of its time with the earlier ordinance and appreciates going to non-smoking places and being provided with clean air. Many restaurants are going to non-smoking without the requirement. He agrees with Council President Spehar that there is a movement toward a statewide ban. He feels that this issue should be revisited sooner than every 17 years.

Councilmember Hill moved to amend the motion to adopt Ordinance No. 3540, section 3.a.7.(a) to delete the wording "attached bar" and replace it with the word "area". Councilmember Palmer seconded the motion. The motion failed with a 4 to 2 vote with Councilmembers Kirtland, Butler, Enos-Martinez and Council President Spehar voting NO.

Councilmember Butler moved to amend the motion to adopt Ordinance No. 3540 to prohibit smoking in outdoor seating areas of restaurants. The motion died for lack of a second.

Councilmember Hill moved to amend the motion to adopt Ordinance No. 3540 to add indoor smoking is not prohibited in physically separated areas not limited to bars in bowling alleys and bingo halls, section 6.a.(viii), and delete the next subsection and make other areas or ordinance consistent. Councilmember Palmer seconded the motion. The motion failed with a 3 to 3 vote with Councilmember's Butler, Enos-Martinez and Council President Spehar voting NO.

Council President Spehar explained the reason for the 55 percent food, originally proposed at 25 percent, which was too low of a number. Councilmember Kirtland agreed they should be allowed to serve food and he supports the 55/45 number.

Councilmember Butler moved to amend the motion to adopt Ordinance No. 3540 to prohibit smoking in stage productions, section 6. a.(v).The motion died for lack of a second.

Councilmember Butler moved to amend the motion to adopt Ordinance No. 3540 to prohibit smoking in bingo halls and all reference. The motion died for lack of a second.

Council President asked for a round of Council comments.

Councilmember Enos-Martinez applauded students for all their work towards bringing this Ordinance to the Council. If she was voting on just her feelings she would leave it up to the owners to decided whether smoking is allowed or not, but as an elected official, overwhelmed by constituents asking for adoption, it is her duty to listen and she will have to support the ordinance. She feels it's not perfect, but it is time to move forward.

Councilmember Hill stated that this is an interesting issue as a new Councilmember. His personal preference is non smoking. From a business perspective, he also holds to that choice.

Councilmember Kirtland echoed kudos to students. The important thing is to try and figure out the balance for the community, no one wants to see jobs leaving the City. He likes this issue being an Ordinance so that Council can make amendments if needed, and keeping the issue from going to the community through a difficult election process.

Councilmember Palmer agrees with a lot of what he has heard. He said it is incumbent upon Council to make a decision, to save taxpayers the cost of an election, and to have quality of life. He does not think it is a perfect ordinance, but supports it.

Councilmember Butler stated that he was elected to serve the public and think of their welfare. He prefers no smoking in any establishment, but this ordinance is better than no ordinance at all.

Councilmember Spehar applauds Councilmember Enos-Martinez with the point that she made. He believes that they have crafted something that is reflective of the community. They are elected to serve and he feels the process has worked well. He said Council can make some people happy but can't please everyone. He is proud of the community that this has been a very civil discussion.

The motion to adopt Ordinance No. 3540, Alternate 1E and not to include any other alternatives and not include additions on page 10 of the Ordinance was carried 5 to 1 by a roll call vote with Councilmember Hill voting NO.

Councilmember Spehar congratulated the students and apologized for allowing derogatory comments made at the public hearing. He pledged to watch that in the future.

NON-SCHEDULED CITIZENS & VISITORS

None.

OTHER BUSINESS

None

ADJOURNMENT

Councilmember Kirtland moved to adjourn. It was seconded and carried. The meeting adjourned at 10:00 p.m.

Stephanie Tuin, MMC
City Clerk