

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

**October 4, 2010**

The City Council of the City of Grand Junction convened into regular session on the 4<sup>th</sup> day of October 2010 at 7:05 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Bruce Hill, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras, and Council President Teresa Coons. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Coons called the meeting to order. Councilmember Hill led the Pledge of Allegiance followed by an Invocation by Pastor Randy David, Pear Park Baptist Church.

**Proclamations**

Proclaiming October 3 – 9, 2010 as "Fire Prevention Week" in the City of Grand Junction

Proclaiming October 2010 as "National Arts and Humanities Month" in the City of Grand Junction

**Recognitions**

Starburst Award for Excellence presented to City of Grand Junction Parks and Recreation Department by Matt Robbins with Colorado Lottery for the Re-development of Rocket Park

Council President Coons invited Matt Robbins to address the Council. Mr. Robbins explained the use of lottery funds in the State and specifically in Mesa County and the City of Grand Junction. He complimented the work at Rocket Park and the play structure which is built for children of all abilities. He said this park improvement is a great example of the use of lottery funds. He thanked Parks and Recreation Director Rob Schoeber for the work of his department locally and throughout the State. Mr. Robbins presented the Starburst Award to Parks and Recreation Director Schoeber and thanked the City Council.

Council President Coons then read a Certificate of Appreciation to the Colorado Lottery and presented it to Mr. Robbins.

Recipient of Yard of the Month for October – rescheduled for October 18, 2010

**Appointments**

Councilmember Beckstein moved to appoint Robert Christian Mueller and C.B. McDaniel for five year terms expiring October 2015 to the Grand Junction Housing Authority. Councilmember Kenyon seconded the motion. Motion carried.

**Council Comments**

There were none.

**Citizen Comments**

There were none.

**CONSENT CALENDAR**

Councilmember Palmer read the Consent Calendar and then moved to approve that the Consent Calendar Items #1 through #10 be adopted. Councilmember Susuras seconded the motion. Motion carried by roll call vote.

**1. Minutes of Previous Meetings**

*Action: Approve the Minutes of the September 13, 2010 Regular Meeting*

**2. Setting a Hearing on Zoning the Cris-Mar Enclave Annexation, Located North and East of 29 Road and F Road [File #ANX-2010-110]**

A request to zone the 108.62 acre Cris-Mar Enclave Annexation, located north and east of 29 Road and F Road, which consists of 265 parcels, less 21.94 acres of public right-of-way, to an R-5 (Residential 5 du/ac) zone district.

Proposed Ordinance Zoning the Cris-Mar Enclave Annexation to R-5 (Residential 5 DU/AC), Located North and East of 29 Road and F Road

*Action: Introduction of a Proposed Ordinance and Set a Hearing for October 18, 2010*

**3. Setting a Hearing on the McConnell South 12<sup>th</sup> Street Right-of-Way Vacation, Located Adjacent to 1101 Winters Avenue [File #VR-2010-093]**

A request to vacate an unused portion of South 12<sup>th</sup> Street right-of-way adjacent to 1101 Winters Avenue. This vacation relieves the City of maintenance of this

unused portion of right-of-way and allows the applicant to install security fencing that will meet the Code requirements.

Proposed Ordinance Vacating Right-of-Way for South 12<sup>th</sup> Street, Located at 1101 Winters Avenue

*Action: Introduction of a Proposed Ordinance and Set a Hearing for October 18, 2010*

4. **Setting a Hearing on the Buescher Right-of-Way Vacation, Located Adjacent to 749 Golfmore Drive** [File #VR-2010-105]

Applicant Louis Buescher is requesting to vacate a portion of unimproved G 1/2 Road right-of-way located adjacent to 749 Golfmore Drive in anticipation of a proposed single-family residence building addition.

Proposed Ordinance Vacating a Portion of G ½ Road for the Buescher Right-of-Way Vacation Located Adjacent to 749 Golfmore Drive

*Action: Introduction of a Proposed Ordinance and Set a Hearing for October 18, 2010*

5. **Setting a Hearing Accepting and Approving Alley Improvement District ST-10**

Improvements to the following alley has been completed as petitioned by a majority of the property owners to be assessed:

- East/West Alley from 11th to 12th, between Belford Avenue and North Avenue

Resolution No. 40-10—A Resolution Approving and Accepting the Improvements Connected with Alley Improvement District No. ST-10

Proposed Ordinance Approving the Assessable Cost of the Improvements Made In and for Alley Improvement District No. ST-10 in the City of Grand Junction, Colorado, Pursuant to Ordinance No. 178, Adopted and Approved the 11<sup>th</sup> Day of June, 1910, as Amended; Approving the Apportionment of Said Cost to Each Lot or Tract of Land or Other Real Estate in Said Districts; Assessing the Share of Said Cost Against Each Lot or Tract of Land or Other Real Estate in Said Districts; Approving the Apportionment of Said Cost and Prescribing the Manner for the Collection and Payment of Said Assessment

*Action: Adopt Resolution No. 40-10 and Set a Public Hearing for November 15, 2010*

6. **Transfer of Control of the City of Grand Junction, Colorado Cable Television Franchise**

Bresnan Communications LLC (Franchisee) owns, operates, and maintains a cable television system in the City pursuant to a grant of a franchise (Franchise) made April 5, 2005. The Franchisee is the current lawful and duly authorized holder of the Franchise.

As such an application has been filed with the Federal Communications Commission (FCC) seeking consent to assignment or transfer of control of the cable television franchise.

The Franchisee and BBHI Holdings, LLC have requested that the City consent, as the franchise authority and as required by the Franchise and the FCC, to the assignment or transfer of control of the Franchise to BBHI Holdings, LLC.

City legal and finance staff have reviewed the application and recommend that the City Council approve the assignment or transfer of control of the cable television franchise.

Resolution No. 41-10—A Resolution Approving the Change of Control of the Franchisee (Bresnan Communications) of the City of Grand Junction, Colorado Cable Television Franchise Agreement

*Action: Adopt Resolution No. 41-10*

7. **Contract Award for Hawthorne Park Restroom Shelter**

This approval request is for the award of a construction contract to Emery Welsh Construction for the replacement of the restroom shelter at Hawthorne Park due to age, condition, accessibility, and safety concerns.

*Action: Authorize the City Purchasing Division to Enter into a Contract, in the Amount of \$137,777.93 with Emery Welsh Construction, Inc. for the Completion of the Restroom Shelter at Hawthorne Park*

8. **US 6 West/SH 139 Access Control Plan**

The City of Grand Junction has been working with CDOT, Mesa County, and the City of Fruita for the past year on an access control plan for US 6 from Loma to Redlands Parkway. The Plan also covers SH 139 in Loma. The completed plan has been through extensive public review with adjacent property owners and businesses and is ready for presentation to the Council to enter into an IGA jointly with CDOT, Mesa County, and the City of Fruita.

*Action: Authorize the City Manager to Sign an Intergovernmental Agreement for US 6 West/SH 139 Access Control Plan between the City of Grand Junction, Mesa County, City of Fruita, and the State of Colorado Department of Transportation*

9. **Memorandum of Agreement between the City of Grand Junction and the Colorado Plateau Mountain Bike Trail Association Inc. (COPMOBA)**

A Memorandum of Agreement to establish and define the relationship between the City of Grand Junction and COPMOBA regarding the construction of the Lunch Loop Skills Area Developmental Bike Park on City property.

*Action: Authorize the City Manager and Parks and Recreation Director to Sign the Memorandum of Agreement*

10. **Sale of Property – Lot Two of the Parkway Viaduct Subdivision Located Near 2507 Highway 6 and 50**

The City has entered into contract with Carville's Auto Mart Inc. for the sale of the real property located near 2507 Highway 6 and 50. The property was purchased by the City in 2005 for the construction of the Riverside Parkway. The property that is being sold is the remnant from that which was used for the Parkway construction.

Resolution No. 42-10—A Resolution Authorizing the Sale by the City of Grand Junction, Colorado, of Certain Real Property; Ratifying Actions Heretofore taken in Connection Therewith

*Action: Adopt Resolution No. 42-10*

**ITEMS NEEDING INDIVIDUAL CONSIDERATION****Public Hearing – Prohibition of Medical Marijuana Commercial Activity**

In the prior staff report references were made to City Council having considered this matter on August 30, 2010. The correct date is September 1, 2010. This report has been revised to reflect the correct date.

Attached to this report is a revised ordinance. The revisions to the ordinance are highlighted. Specifically those revisions are found on page 1, where the incorrect date of August 30<sup>th</sup> is amended to September 1, 2010 and on page 3. The first revision on page 3 is the inclusion of a citation to the Federal and State law regulating controlled substances. The second revision provides for an alternative spelling of marijuana.

On September 1, 2010 the City Council considered prohibition of the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana infused products manufacturing operations in the City. Following consideration, the City Council requested the City Attorney to write an ordinance prohibiting the same. The ordinance is presented here for consideration.

Council President Coons reminded the audience that the ordinance being proposed only affects the commercial/retail delivery of medical marijuana and in no way affects the caregiver and patient relationship as protected by the State Constitution. She then set forth some rules of conduct for the meeting.

The public hearing was opened at 7:31 p.m.

Cristin Groves, 699 Tranquil Trail, representing the shop owners and patients as a group, had a Powerpoint presentation to address the solution the City Council is proposing. She had another proposal to solve the problem. The group is called the Mesa County Constitution Advocates and is a 504 unincorporated non-profit with a core mission of educating Mesa County voters, civic leaders, and residents on the full issues surrounding medical marijuana.

There were concerns with safety and welfare in the community. She addressed some of the Council's previous concerns that felons and young people were running the shops but House Bill (HB) 1284 no longer allows either of those to occur. There was a concern about the regulations of caregivers and she had a photo of an example of a non regulated caregiver. Ms. Groves then outlined some of the State regulations, addressing the growing issues for caregivers, growing many plants does take a lot of space. She estimated there are 2,000 patients in Mesa County, if one patient gets six plants, doing the math it would take about 36,000 square feet to meet the grow needs.

Ms. Groves said a lot of people do get relief from medical marijuana.

Regarding the concern of the cost to the taxpayers, Ms. Groves listed the stores that have complied with HB 1284 that have already paid over \$200,000 to the State for licensing and enforcement. There is already a lot of enforcement coming from the State.

She agreed with Council's opinion that there should be a requirement for professional ability for centers to work with the patients. Also regulating who is buying through a central database.

She spoke to the use of Marinol and the cost. She agreed it would be great if marijuana was prescribed like other drugs but that could take many years. Barring that, regulated marijuana dispensaries is the next best option for patients who get relief from medical marijuana (MMJ). HB 1284 actually provides tougher restrictions than pharmacies.

The Constitutional Amendment 20 did not address the creation of sales outlets but neither does the constitutional right to bear arms provide language allowing gun shops.

The reason for the number of strains of MMJ is that different components help different conditions.

Councilmember Palmer objected that some of the quotes being used by the speaker in her Powerpoint are being taken out of context.

Ms. Groves apologized and continued. Regarding the regulations of the marijuana infused products she agreed that regulations need to be in place; centers would fall under those regulations but caregivers would not have to comply.

She agreed with inappropriate ads that were brought up as examples. She felt that City Council could put more regulations in place to address the concerns.

She asked that Council consider a regulatory ordinance and, if not, to extend the moratorium and the amortization period. If centers are banned, it will take awhile for the patients to find enough caregivers. She asked that it be extended to July 1, 2011. Many shops have leases (each shop has two leases, one for retail and one for growing). The centers have other contracts with phone companies, internet companies, security companies, etc. There will also be over 100 jobs lost.

Ms. Groves had an extensive list of additional regulations that she suggested for adoption in Grand Junction. The purpose of the presentation is to ensure the City

Council that Mesa County Constitution Advocates are listening to concerns and to make sure the industry is regulated safely. That concluded the presentation for the group.

Dr. Craig Jones, 735 Bookcliff, a doctor in the community, said in his experience patients have a better healing process when able to use MMJ so he supported the availability.

Shannon Gass, 542 29 Road, Director CCHPAA (Cannabis Consumer Health and Patient Advocacy Association), which supports medical cannabis. The organization works with health agencies and Spectrum Laboratories and is pursuing how real medical cannabis can be established. There are too many that are unaware of the benefits through non-smokable cannabis. He is in the advocacy business for those who want marijuana for medical reasons. He watched with concern when all the pot shops started popping up. He questioned who is making an effort to ensure medical cannabis production and distribution is conducted in a safe, appropriate, and orderly manner to protect the welfare of the community.

Kenneth Wheeler, P.O. Box 3695, said he has listened to and agrees with the other speakers and would like to comment on the word commercial. America is a commercial entity and to prohibit commercial activity is un-American. He believes it is protected under the United Nations Bill of Rights. If the centers are closed, then people will go to the black market to get their medicine. All medical marijuana is grown in Colorado. Black market marijuana comes from Mexico.

Sherrel Carlson, 3066 D Road, said she is a marijuana infused product provider. Since the last meeting, they have checked into food handling cards for Marijuana Infused Products (MIPs) and the Health Department is not prepared to regulate these activities so the infused product providers have taken it upon themselves to comply with regulations already in place for other such products. She is not opposed to regulations. Naturals, where she works, is compiling a naturalistic team to consist of a naturalistic doctor, a dietician, and an herbalist on the team. If the centers are prohibited there will be no outlet for the tinctures as State Law requires they be dispensed through centers.

James Fritz, 53146 KE ½ Road, from Molina, said he is running as a congressional candidate and was opposed to the caregiver model and the lack of regulations. He owns a dispensary and to grow the marijuana plant takes knowledge. He thinks marijuana should be legalized. Getting it regulated through the Food and Drug Administration (FDA) will raise the cost.

Mark Bonella, P.O. Box 4545, 860 4<sup>th</sup> Avenue, which is his business address, said he supports the ordinance; he is a father and does not want it to be easier to get marijuana. He doesn't want children to have easier access. He doesn't believe the



voters voted for this. It was compassion for the terminally ill who needed relief that allowed the bill to be passed. It is not for recreational use. He does not believe there are 2,000 terminally ill patients in Mesa County. He disagreed that it is about patients, it is about the money. He asked who will pay for the regulation and enforcement? As a taxpayer he doesn't want it. There is not enough need for medical marijuana.

Council President Coons called a recess at 8:22 p.m. The meeting reconvened at 8:31 p.m.

James Thomas, 552 Gunnison Avenue, thanked the first speaker (Cristin Groves) for being thorough and articulate; she said everything he wanted to say.

Dorothy Hahn, 3156 Lakeside Drive, agrees with Mr. Bonella and wanted to add that this will cost the people of Grand Junction a lot in many ways, and not just monetarily.

Jim Cihlar, 141 N. 3<sup>rd</sup> Street, said this is a new topic and education is needed. His concern is that wiping out the dispensaries will wipe out transparency. With dispensaries, they can be tracked, regulated, etc. The ordinance will eliminate the ability to learn, regulate, and monitor in order to have a better handle on this issue. The industry can be regulated and enforcement can occur but that can't happen without dispensaries.

Cathie Jorgensen, 954 24 Road, was supportive of the ordinance and said she thinks the caregivers can provide to those who need it. There will always be illegal drugs. There are dangers with marijuana and she provided information previously at the August 18, 2010 Forum. The ordinance is a step in the right direction.

Glen Younger, 2176 H Road, 1142 Main Street (office), stated that those that have invested and have assets in the community want the City Council to make the right decision. They do not want pot shops in the community. He has had experience with hundreds of defendants. He has sympathy for medical use, but does not have sympathy for anybody who wants easier access. It is not good for the community. Those that need it can go somewhere else to get it. He asked to think of the families and the young people and get them away from drugs.

Council President Coons closed the public hearing at 8:43 p.m. and then asked City Attorney John Shaver to make his presentation.

John Shaver, City Attorney, said according to the Charter, any ordinance must come forward in two readings with a public hearing. The ordinance relies very heavily on Colorado Law, specifically HB 1284, (CRS 12-43.3-101 is the codification number). Based on previous direction, City Attorney John Shaver drafted the ordinance. Primary

caregivers may still serve in the capacity of providing medical marijuana to up to five patients who have a medical marijuana card. Nothing in the Constitution prohibits the caregivers from providing a marijuana infused product. The ordinance provides that no center, no grow operation, or medical marijuana infused products manufacturer can operate in the City of Grand Junction if the ordinance is adopted. The date for the businesses to cease operation in the ordinance is January 1, 2011. Grow locations must also comply with any zoning regulations.

Councilmember Palmer asked about a refund of State application fees and other contractual relationships such as phone and lease contracts. City Attorney Shaver responded that the amortization period can be lengthened to address the contract situation but the City Council has no authority over the State refunding any fees.

Councilmember Beckstein asked for some clarification of a caregiver and how that led to the creation of the dispensaries.

City Attorney Shaver said that prior to HB 1284, there were no definitions and the development of dispensaries came from the interpretation of the Constitutional Amendment. The new State law allows for a regulatory process, either more regulation or doing nothing, and letting the State regulation suffice.

Councilmember Susuras said that there was a statement made that centers are regulated "just like" pharmacies. He asked the City Attorney if he agrees. City Attorney Shaver said he would not say "just like," but certainly there are some correlations and similarities.

Council President Coons asked if caregiver/grow operations have to comply with zoning regulations and would zoning regulations prohibit location within certain distances from school and churches? City Attorney Shaver said the purpose of the zoning regulation is to address any nuisances such as light and noise. Council President Coons asked about proximity to schools and churches. City Attorney Shaver said the City does not address that because of the protection of the Constitution. How far would such regulations go? Will they restrict just growing or also use and possession? Council President Coons asked if there is a requirement that, in a caregiver relationship, do they have to provide names of their patients. City Attorney Shaver responded only for law enforcement, that is, to confirm the possession of a card. As far as the number and names of the five patients, there is no legal basis to regulate that.

Councilmember Hill said City Attorney Shaver's response indicates this ordinance goes as far as possible as allowed under the Constitution. City Attorney Shaver agreed noting there is a difference between a Constitutional right and Constitutionally protected activity. This is a protected activity so there are things one has to do to exercise that

right. Councilmember Hill said a database is not allowed to track who and the amount purchased; the database is only allowed for law enforcement purposes.

City Attorney Shaver answered yes, tracking those sales would be difficult, plus there may be Constitutional issues even when using the information for enforcement.

Council President Coons said she thought there was to be new legislation to create a medical marijuana database. City Attorney Shaver said he has heard that, but it will be a difficult bill to pass due to the Constitutional issues.

Councilmember Beckstein said through a pharmacist, there is a national regulation prohibiting over sales of cold medicine and narcotics, so couldn't a monitoring system be set up to control the amount of MMJ purchased like cold medicine and narcotics? City Attorney Shaver said there might be Constitutional issues however there is a limit on the amount that can be in possession.

Councilmember Pitts said he appreciated the Powerpoint presentation and the presentation by the CCHPAA. However, there is no proven evidence of medical benefit, and the drug used by children in the school districts has increased. He is amazed at the number of patients in the community. Being in business is a risk regardless of what it is. Regarding the policing of the centers, he does not think those issues can be enforced. It is still an illegal drug. He is no longer opposed to the January deadline. He supports the ordinance as written.

Councilmember Susuras appreciated those who spoke. Councilmember Susuras read the following for his statement:

*“When Amendment 20 was adopted to the Colorado State Constitution in 2000, the marijuana proponents understandably saw a business opportunity. They took a calculated risk in this business decision. I say that because Amendment 20 does not specifically authorize retail marijuana centers. Assuming these business people read Amendment 20, they had to know that it gave power to the Colorado State Legislature to further define and clarify the scope and application of the rights guaranteed in the Amendment, and this is just what the Colorado State Legislature accomplished with House Bill 1284 and Senate Bill 10-109. And I’m sure that the legislation in the future will take additional action on this issue. The State legislature placed the responsibility directly with the local county and municipal elected officials. The State legislature gave our City Council the authority to opt out, regulate or place the issue of marijuana centers on the local ballot. But the State legislature did protect the carded patients constitutional rights to have and use marijuana for their debilitating medical condition, personally or through a licensed caregiver, knowing that Amendment 20 to this Colorado State Constitution allows a card issued patient with a debilitating medical condition to have in their possession a specific amount of growing and useable*

*marijuana to relieve the symptoms of their debilitating disease. I recognize my duty to the State Constitution that the cardholder has that right to have in their possession six marijuana plants and two ounces of useable marijuana product or, if they choose, may use the services of a licensed caregiver to grow the six marijuana plants on their behalf and provide the carded patient with marijuana products as they are needed for their debilitating medical condition. To me it's a stretch of the imagination to think that Amendment 20 authorizes the existence of retail marijuana retail centers. City Attorney John Shaver has prepared, at our request, City Ordinance 4437 which states that the City of Grand Junction chooses to opt out in the case of the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana infused product manufacturing. I believe the ordinance to be well written and I support it as it stands."*

Councilmember Hill said it has come down to what the law says. The Constitution does not protect this retail activity, it speaks to caregivers and patients and the relationship between the doctor and patient. The medical aspect for the use of marijuana for someone who has a debilitating illness, probably supported the concept. This relationship still exists. The Amendment is silent on the retail activity and he supports the ordinance.

Councilmember Palmer agreed with Councilmembers Hill and Susuras. With these hard issues he looks at the law; nowhere does he see the intention of retail centers in the Amendment. He does not want to deny legitimate users who need it, but they can possess it, they can grow it, and they can obtain a caregiver. He supported a time out, but he doesn't see other Councilmembers supporting that. He thinks the law needs to catch up. He is sensitive to those who want to use medical marijuana and this ordinance will not change that. He will support the ordinance.

Councilmember Kenyon said he appreciated the Mesa County Advocates presentation, much of their presentation brings home the point of the ordinance. They cannot control the caregivers, never have been, and never will be able to. The quality cannot be tested nor does the City have the regulatory authority to test the quality. Hopefully, the legislature will be able to solve some of these questions. He lauded how the Mesa County Advocates group articulated how and the willingness to solve some of those issues. He will support the ordinance, but knows there is still a lot of work to be done.

Councilmember Beckstein agreed with the others, but the crux is what is best for the community and the safety of the community and not just the criminal aspect. To react in fear is not responsible. Her concerns are still not being handled by the State, such as the health aspect, although some say they will self regulate, not all will. The State has to catch up and she has a grave concern about abuses and putting the youth at risk. She supports the ordinance.

Council President Coons said she could argue that the Amendment did not prohibit dispensaries. There are certainly issues with the use of marijuana. Certainly there are issues with kids abusing and using both illegal and legal substances, and as a society, that issue needs to be dealt with. Personally, she does not believe banning dispensaries will solve those problems. Prohibition has not solved abuse in the past. She is concerned with how dispensaries have developed. The dispensary model is moving more toward a pharmacy model but that will take a long time. She believes legislation for the tracking of use and purchase will be introduced and it can happen. She appreciates the suggestions for regulation but they will take some time. Several Councilmembers said this is a changing field, her problem with instituting a ban is putting existing business out of business, and should minds be changed putting those back up and running would be difficult. Council President Coons would rather work hard to develop regulations, and she will therefore vote no.

Ordinance No. 4437—An Ordinance Prohibiting the Operation of Medical Marijuana Businesses and Amending the Grand Junction Municipal Code by the Addition of a New Section Prohibiting Certain Uses Relating to Marijuana

Councilmember Susuras moved to approve Ordinance No. 4437 and ordered it published. Councilmember Pitts seconded the motion. Motion carried by roll call vote with Council President Coons voting NO.

### **Non-Scheduled Citizens and Visitors**

There were none.

### **Other Business**

There was none.

### **Adjournment**

The meeting adjourned at 9:30 p.m.

Stephanie Tuin, MMC  
City Clerk