

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

**December 13, 2010**

The City Council of the City of Grand Junction convened into regular session on the 13<sup>th</sup> day of December, 2010 at 7:02 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Bruce Hill, Tom Kenyon, Gregg Palmer, Bill Pitts, Sam Susuras, and President of the Council 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 in the Pledge of Allegiance followed by an invocation by Vaughn Park, Heritage Church.

**Proclamations**

Proclaiming December 15, 2010 as "Bill of Rights Day" in the City of Grand Junction

Proclaiming December 18, 2010 as "International Day of the Migrant" in the City of Grand Junction

**Appointments**

Council President Coons thanked those who step up to serve on volunteer boards.

Councilmember Susuras moved to re-appoint Michael Menard and appoint David Bailey and Chris Endreson for four year terms expiring December 2014 to the Historic Preservation Board. Councilmember Hill seconded the motion. Motion carried by roll call vote.

Councilmember Hill moved to re-appoint John Gormley to the Public Finance Corporation for a three year term expiring January 2014. Councilmember Kenyon seconded the motion. Motion carried by roll call vote.

**Council Comments**

There were none.

**Citizen Comments**

There were none.

**CONSENT CALENDAR**

Councilmember Kenyon read the Consent Calendar and then moved to approve the Consent Calendar Items #1 through #7. Councilmember Beckstein seconded the motion. Motion carried by roll call vote.

**1. Minutes of Previous Meeting**

*Action: Approve the Minutes of the November 29, 2010 Regular Meeting*

**2. Conduct of the Regular Municipal Election on April 5, 2011**

The City has adopted the Municipal Election Code. In order to conduct the election by mail ballot, the Council must authorize it pursuant to 1-7.5-104 C.R.S. and the City Clerk must submit a Written Plan outlining the details and responsibilities to the Secretary of State. It is recommended that the City again contract with Mesa County to conduct this election by mail ballot. They have the equipment on site and are able to prepare, mail out, and process the ballots more efficiently than the City.

Resolution No. 49-10—A Resolution Authorizing a Mail Ballot Election in the City of Grand Junction Regular Municipal Election on April 5, 2011, Authorizing the City Clerk to Sign the Intergovernmental Agreement with Mesa County Clerk and Recorder and Approving the Written Plan for the Conduct of a Mail Ballot Election

*Action: Adopt Resolution No. 49-10*

**3. Property Tax Mill Levies for the Year 2010**

The resolutions set the mill levies of the City of Grand Junction (City), Ridges Metropolitan District, and the Downtown Development Authority (DDA). The City and DDA mill levies are for operations; the Ridges levy is for debt service only.

Resolution No. 50-10—A Resolution Levying Taxes for the Year 2010 in the City of Grand Junction, Colorado

Resolution No. 51-10—A Resolution Levying Taxes for the Year 2010 in the Downtown Development Authority

Resolution No. 52-10—A Resolution Levying Taxes for the Year 2010 in the Ridges Metropolitan District

*Action: Adopt Resolution Nos. 50-10, 51-10, and 52-10*

4. **Rates and Fees for the Year 2011**

Proposed 2011 rate/fee increases for Lincoln Park and Tiara Rado Golf Courses, Cemetery, Lincoln Park Barn, Persigo plant investment fee, Two Rivers Convention Center, Police Services and Parking as presented and discussed during City Council budget workshops.

Resolution No. 53-10—A Resolution Adopting Fees and Charges for Tiara Rado and Lincoln Park Golf Courses, Cemetery, Lincoln Park Barn, Plant Investment Fees for the Persigo Wastewater Treatment Plant, Two Rivers Convention Center, Police Services and Parking Violations

*Action: Adopt Resolution No. 53-10*

5. **School Land Dedication Fee for 2011-2012**

A resolution is proposed continuing the School Land Dedication (SLD) fee at a level of \$460.00 per lot based upon an average per acre cost of \$40,000 (established in 2004), a student generation fee factor of 0.023 (established in 1996), and an estimated average of 2 lots per acre. This fee does not represent an increase or a decrease; it has been at this level since 2004.

Resolution No. 54-10—A Resolution Establishing the 2011-2012 School Land Dedication Fee

*Action: Adopt Resolution No. 54-10*

6. **Reallocation of 700 MHz "D Block" to Public Safety**

The City Council Legislative Committee met on December 8 to discuss the upcoming Colorado legislative session. Councilmember Kenyon, who chairs the Colorado Municipal League policy committee, introduced to the City Council Committee various matters that the CML policy committee had recently considered. One of those was the national issue involving the allocation of Block D of the 700 MHz radio spectrum. Following discussion the Committee directed the City Attorney to prepare a resolution and forward the same to City Council.

Resolution No. 55-10—A Resolution Concerning the Allocation of the 700 MHz "D Block" of the Radio Spectrum for a Nationwide Public Safety Radio and Broadband Network

*Action: Adopt Resolution No. 55-10*

7. **Setting a Hearing Amending the Grand Junction Municipal Code Exempting Coins and Precious Metal Bullion from Sales Tax**

It is proposed to amend the City's tax code to include an exemption from sales tax for the sale of coins and precious metal bullion.

Proposed Ordinance Amending Section 3.12.070 of Title 3 of the Grand Junction Municipal Code Concerning the Exemption from Sales Tax of Coins and Precious Metal Bullion

*Action: Introduction of a Proposed Ordinance and Set a Hearing for January 3, 2011*

**ITEMS NEEDING INDIVIDUAL CONSIDERATION**

**Appeal of the Planning Commission's Decision Regarding the Schooley-Weaver Partnership Conditional Use Permit for a Gravel Extraction Facility** [File #CUP-2010-008]

An appeal has been filed regarding the Planning Commission's decision on September 14, 2010 to approve a Conditional Use Permit for a Gravel Extraction Facility, located at 104 29 ¾ Road.

The Conditional Use Permit was considered under the provision of the 2000 Zoning and Development Code; therefore, the appeal was filed in accordance with Section 2.18.E of the 2000 Zoning and Development Code, which specifies that the City Council is the appellate body of the Planning Commission.

According to Section 2.18.E.4.h, no new evidence or testimony may be presented, except City Staff may be asked to interpret materials contained in the record.

Council President Coons asked City Attorney John Shaver to explain the process before them.

City Attorney Shaver explained that this is an appeal on the approval of the Planning Commission for the gravel extraction facility. It is an appeal on the record and no new testimony will be introduced. The charge of the City Council as the appellant board is to review the consideration of the Planning Commission to determine that the decision was not arbitrary or capricious and to determine the merit of the appeal.

Brian Rusche, Senior Planner, then presented this item. The appeal was filed under the previous Zoning and Development Code. The Planning Commission did approve

the Conditional Use Permit to allow the facility with one condition that a bus turnaround be provided by the applicant at the terminus of 29 ¾ Road.

Councilmember Kenyon inquired about the safety of the roadway with dump trucks using the road when there are no sidewalks; where will pedestrians go when there is traffic on the road? Mr. Rusche agreed there are currently no sidewalks but stated the road width is sufficient and the surface can handle the truck traffic.

Councilmember Kenyon again inquired where the pedestrians will go when there is truck traffic on the roadway. He felt it is an inappropriate impact to the neighborhood.

Councilmember Palmer asked if there is other access to the extraction facility. Mr. Rusche said three access points have been discussed. He indicated the location of the three. The one alternate access that used to access the landfill has been closed by Mesa County. The other alternate access is 30 Road and there is not sufficient right-of-way for access and the slope of the road would be 11% if it were to be constructed.

Councilmember Palmer asked why this was reviewed by both the City and County. Mr. Rusche said the subject property is within the City limits but the road is under both City and County jurisdiction. The County is also an adjoining neighbor as they own the landfill.

Councilmember Palmer asked if the County had asked that the facility not be approved. Mr. Rusche noted there are review comments and findings from Mesa County. He then read the County's comments: the County stated the road is not annexed into the City and there is no maintenance agreement with the applicant; also that the use is not compatible with the neighborhood. In another letter dated May 11, 2010, the County expressed concerns relative to the use of 29 ¾ Road.

Councilmember Susuras said he shares the same concerns raised by Councilmember Kenyon. He asked the location of the bus stops. Mr. Rusche advised there are two bus stops and they are not marked.

Councilmember Susuras asked about the adequacy of water for the project. Mr. Rusche said the only requirement for water is to keep the dust down and maintain the landscaping. The applicant proposes to truck that water in.

Councilmember Susuras asked how many trucks will be passing on that road in a given day. Mr. Rusche responded 300 trips (150 round trips) was the number used in the traffic study.

Councilmember Beckstein said the School District opposes the project due to safety of the children. The shoulder is less than standard and the road width is substandard.

She asked how calling it safe can be substantiated. Mr. Rusche said the applicant proposes the bus stops be relocated off of 29 <sup>3</sup>/<sub>4</sub> Road. The School District requires any such request come from the neighborhood. Mr. Rusche noted this used to be the road to the landfill and had heavy truck traffic in the past. Since that is no longer the access to the landfill, this new use does not raise the level of impact. The road has sufficient width and sufficient road base.

Councilmember Beckstein asked if there is sufficient width when there is a pedestrian or cyclist on the road. Mr. Rusche deferred to the City Attorney.

City Attorney Shaver advised that Mr. Rusche's opinion could be considered new evidence. If Councilmember Beckstein would like to know what was said at Planning Commission, he could restate the question for her. City Attorney Shaver asked Mr. Rusche to state if that question was asked at the Planning Commission and what was the response.

Mr. Rusche stated that in discussions regarding modifications to the road, there were discussions on how to get from the front door out onto 29 <sup>3</sup>/<sub>4</sub> Road and to the proposed new bus stops and what that might entail. Mr. Rusche said there were several items relative to improving safety discussed but no motion was formed to require those changes.

Councilmember Beckstein asked how the developers were going to address the safety concerns. Mr. Rusche replied that the discussion was centered around not having to use 29 <sup>3</sup>/<sub>4</sub> Road for the bus stops and to do that would necessitate a turnaround, a request to move the bus stops and then one or two properties would get some physical improvements. Mr. Rusche reviewed the various motions raised. The motions posed by Planning Commissioner Benoit died due to lack of a second motion.

Councilmember Pitts asked why the matter was remanded back to Planning Commission the first time. Council President Coons advised that the matter came to the City Council in the form of a denial based on safety concerns. The City Council remanded it back to Planning Commission as they felt the record regarding safety issues had not been fully developed.

Councilmember Kenyon added that the matter came to them as a denial with safety concerns but the City Council wanted to know more specifics.

Councilmember Kenyon moved to rescind the decision of the Planning Commission as he does not feel they adequately considered the road width or the safety of pedestrians. Councilmember Susuras seconded.

Gary Parrott in the audience rose to raise a point of order. He stated it is improper for the Council to take action based on the fact that the action is based on minutes that have not been approved. City Attorney Shaver said the action to approve the minutes will not change the decision; it is reflected properly in the record and adoption of the minutes is a formality.

City Attorney Shaver explained the three options to the City Council. A reversal or rescission ends the matter. A remand will continue the jurisdiction over the matter and send it back to the Planning Commission.

Councilmember Kenyon amended his motion to remand the matter back to the Planning Commission as they did not adequately consider the roadway width and safety concerns. The motion died for lack of a second.

Councilmember Kenyon moved to reverse the Planning Commission's decision regarding the appeal of Schooley-Weaver Partnership's Conditional Use Permit based on that they inadequately addressed the safety issues in regards to pedestrians on this roadway. Councilmember Susuras seconded the motion.

Councilmember Palmer asked for clarification on the reversal, if the applicant can reapply. City Attorney Shaver said they can reapply but it will be a new application.

Councilmember Hill clarified that the reversal does deny the application for the facility. Voting to deny the application was not really the question before the City Council. The matter before the City Council was to determine how the Planning Commission did their job. The first time the record was less than adequate. This time the record was adequate so he is supportive of their decision even though he may not agree with it.

Councilmember Susuras does not believe they made the right decision based on the evidence before them. He feels the truck traffic will be a danger to the community.

Councilmember Pitts said he has not heard anything indicating that the safety issues were addressed.

Councilmember Palmer agreed. He expected the Planning Commissioners to discuss the safety issues in more detail.

Councilmember Kenyon said much of his decision is based on letters in the record from the School District and the County. The road is not adequate. He did not feel the Planning Commission considered that evidence sufficiently.

Councilmember Beckstein agreed noting it is a very narrow road. She believes that not enough things were put into place to make it a safer environment. She will support Councilmember Kenyon's motion.

Council President Coons noted that these appeals are difficult and it is important that the Council not interject their own opinions. When remanded back the first time, the reason was to fully develop the case for the decision. They did a better job this time for the first decision, not for their second decision. It surprised her that they came to that decision so she will support the motion.

Roll was called on the motion to reverse the decision of the Planning Commission. The motion passed with Councilmember Hill voting NO.

### **Update on Referendum Petition for Ordinance No. 4437, An Ordinance Prohibiting the Operation of Medical Marijuana Businesses**

This item serves to update the City Council on the status of the referendum petition circulated in November requesting the repeal of Ordinance No. 4437. Ordinance No. 4437 was adopted by the City Council on October 4, 2010. The Ordinance prohibits the operation of medical marijuana businesses in the City limits and amends the Grand Junction Municipal Code with the addition of a new section prohibiting certain uses relating to marijuana.

John Shaver, City Attorney, introduced this item. He explained the process for protesting the adoption of an ordinance, the status of the protest process, and the options for the next steps to be considered after the protest period ends on December 14<sup>th</sup>.

Stephanie Tuin, City Clerk, then reviewed the referendum petition results: 278 petition sections submitted containing 5,446 names; two petitions were rejected; the names on the remaining petitions sections were checked against the voter registration list provided by the County. By Charter, 1,860 signatures were required for a sufficient petition and 2,073 of the signatures were verified making the petition sufficient. (Examination Certificate attached). The protest period runs forty days after that determination and such period ends on December 14<sup>th</sup>. If the City Council decides to place the matter on a ballot, the City's regular municipal election does fall within the 150 days required for setting an election.

Councilmember Palmer expressed his appreciation for the work of the City Clerk's Office in completing their inspection within the required time frame.

There were no other questions. The matter will be taken up by the City Council at the December 15, 2010 meeting.



**Public Hearing – Consideration of a Proposed Ordinance to Extend the Medical Marijuana Moratorium (Ordinance No. 4392) and Declare an Emergency**

This ordinance proposes to extend the moratorium on commercial medical marijuana centers and facilities imposed by Ordinance No. 4392. Ordinance No. 4392 was duly considered and adopted by the City Council on November 16, 2009 and became effective December 18, 2009. Ordinance No. 4392 instituted a 12 month moratorium on new commercial medical marijuana centers and facilities in the City of Grand Junction.

The City Manager and the City Attorney recommend that the moratorium be extended until April 5, 2011.

The public hearing was opened at 8:17 p.m.

John Shaver, City Attorney, presented this item. He explained why this is coming before Council as an emergency. If approved as an emergency, the ordinance will become effective immediately. He noted that the ordinance proposes the moratorium extend to the date of the election, April 5, 2011. However, the State has a moratorium until July 1, 2011 so no licenses could be issued. The ordinance could be extended to that date if that is Council's preference.

Councilmember Kenyon asked if the ordinance has to be adopted as written or if it can be changed. City Attorney Shaver said the substance of the ordinance should remain due to the notice.

Cristen Groves, 699 Tranquil Trail, thanked the City Council for the opportunity to address the Council. The Mesa County Constitution Advocates (MCCA) is staying ahead of the regulations and they wanted to speak to the moratorium. They are in support of extending the moratorium until July 1, 2011. The new regulations have willowed the number of centers down to 13 in the County. The moratorium will allow the existing shops to be well regulated. The patients will be able to get consistent care.

There were no other public comments.

The public hearing was closed at 8:25 p.m.

**Ordinance No. 4446—An Ordinance to Extend the Moratorium on Commercial Medical Marijuana Centers and Facilities Imposed by Ordinance No. 4392 and Declaring an Emergency**

Councilmember Hill moved to approve Ordinance No. 4446, amending the date of the moratorium until July 1, 2011, declaring an emergency exists making the Ordinance

effective immediately and ordered this Ordinance published. Councilmember Kenyon seconded the motion.

Councilmember Hill noted that the change to July 1, 2011 for the moratorium is consistent with the HB-1084 and stays consistent with the State.

Councilmember Susuras agreed with Councilmember Hill and will support the motion. Motion carried by roll call vote.

**Non-Scheduled Citizens & Visitors**

There were none.

**Other Business**

There was none.

**Adjournment**

The meeting adjourned at 8:26 p.m.

Stephanie Tuin, MMC  
City Clerk

## EXAMINATION CERTIFICATE

Re: Referendum petitions filed on November 4, 2010 regarding 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 adopted by the City Council on October 4, 2010.

I, Stephanie Tuin, City Clerk for the City of Grand Junction, Colorado, have, with the assistance of the City Clerk staff, examined the foregoing petitions of which there were 278 sections and make the following findings:

1. That the petitions were timely filed.
2. That there was 1 petition section (#111) on which the circulator failed to include either the County or the State of the circulators residence. Although a defect under the strict reading of 31-11-106(e)(I)(A), C.R.S., the omission of county or state on the circulator's affidavit is deemed insubstantial. Because the City Charter is silent regarding the content of the affidavit, I requested an opinion from the City Attorney. In reading *Fabec v Beck*, 922 P.2d 330 (Colo. 1996), the City Attorney advised me that it is his opinion that the omission is insubstantial and that the petition need not be disqualified solely on this omission. Inclusion of the circulator's city and zip code, does allow the reviewer enough information to determine the circulator meets the requirements of the statute. I adopt the City Attorney's advice and recommendation and am not disqualifying the petition due to the defect in the circulator's affidavit.
3. One petition section (#112) was rejected as the circulator did not include the date he or she signed the affidavit. There were 25 signatures on that petition.
4. One petition section (#282) was rejected as the affidavit was signed prior to the petition being signed. There were 5 signatures on that petition.
5. There are 2,073 signatures on the petition sections that are accepted.
6. 1,860 signatures are required for presenting the petition to the City Council for reconsideration or placing a referendum on a municipal election ballot.

In witness whereof, I affixed my hand and official seal of the City of Grand Junction this 15th day of November 2010.



*Stephanie Tuin*

Stephanie Tuin, City Clerk  
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