

**GRAND JUNCTION CITY COUNCIL  
WORKSHOP AGENDA**

**MONDAY, AUGUST 15, 2005 5:00 P.M.  
TWO RIVERS CONVENTION CENTER, 159 MAIN STREET**

**\*\*\*NOTE START TIME AND LOCATION\*\*\*  
WILL NOT BE BROADCAST**

**5:00 CAPITAL IMPROVEMENT PLAN REVIEW**

CITY COUNCIL HAS BEEN PROVIDED ALL MATERIALS FOR THIS  
MEETING IN A SEPARATE DISTRIBUTION

**WRITTEN MATERIALS**

**FUTURE WORKSHOP AGENDAS**

**[Attach W-1](#)**

**SMOKING ORDINANCE AMENDMENTS REPORT**

**[Attach W-2](#)**

Attach W-1  
Future Workshop Agenda

# FUTURE CITY COUNCIL WORKSHOP AGENDAS

August 12, 2005

## AUGUST

↪ **AUGUST 15, MONDAY 11:30 AM at Riverside Parkway Office**  
11:30 RIVERSIDE PARKWAY UPDATE

↪ **AUGUST 15, MONDAY 5:00PM at TWO RIVERS CONVENTION CENTER**

5:00 BEGIN CAPITAL IMPROVEMENT PLAN REVIEW  
6:00 DINNER  
6:45 CONTINUE CIP REVIEW AND CONFIRM BUDGET CALENDAR

↪ **AUGUST 29, 2005 2:00 – 4:00PM at TWO RIVERS CONVENTION CENTER**

2:00PM – MEETING WITH IDI

## SEPTEMBER

\* ~~SEPTEMBER 5, MONDAY 11:30 AM & 7 PM~~ Canceled for Labor Day Holiday

↪ **SEPTEMBER 19, MONDAY 11:30 AM: TWO RIVERS CONVENTION CENTER**

11:30 OPEN  
➤ **1:30 KANNAH CREEK WATER SHED TOUR**  
4:30-5 DINNER

## OCTOBER

↪ **OCTOBER 3, MONDAY 11:30 AM IN ADMINISTRATION CONFERENCE ROOM**

11:30 CUSTOMER SERVICE (ADMINISTRATIVE SERVICES DEPT.)

↪ **OCTOBER 3, MONDAY 7:00PM**

7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS  
7:25 CITY MANAGER'S REPORT  
7:30 AVALON THEATER REPORT BY DR. JERRY MOORMAN  
8:00 BOTANICAL GARDENS (TO BE CONFIRMED)  
8:10 STRATEGIC PLAN UPDATE

↪ **OCTOBER 17, MONDAY 11:30 AM**

11:30 OPEN

➤ **OCTOBER 17, MONDAY 7:00PM**

- 7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS
- 7:25 CITY MANAGER'S REPORT
- 7:30 APPOINTMENTS TO BOARDS & COMMISSIONS
- 7:45 COMMUNICATIONS UPDATE

➤ **OCTOBER 31? MONDAY 11:30 AM**

11:30 OPEN

➤ **OCTOBER 31, MONDAY 7:00PM**

- 7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS
- 7:25 CITY MANAGER'S REPORT
- 7:30 STRATEGIC PLAN UPDATE

**NOVEMBER**

➤ **NOVEMBER 5, SATURDAY 9:00AM – 4:00PM at TWO RIVERS CONVENTION CENTER**

9:00 BUDGET REVIEW

**NOVEMBER 14, MONDAY 11:30 AM**

11:30 OPEN

➤ **NOVEMBER 14, MONDAY 7:00PM**

- 7:00 COUNCIL REPORTS, REVIEW WEDNESDAY AGENDA AND FUTURE WORKSHOP AGENDAS
- 7:25 CITY MANAGER'S REPORT
- 7:30 APPOINTMENTS TO BOARDS & COMMISSIONS

↗ **BIN LIST** ↖

**2005/6 Department Presentations to City Council**

**September** Tour City's watershed in the Kannah Creek area (19

September)

**October** Customer Service (Administrative Services Department:

October 3?)

**November** Tour of the Police Department Crime Lab

**December** Fire Department

**January** Two Rivers Convention Center and the Avalon Theater

**Attach W-2  
Smoking Ordinance Amendments  
CITY OF GRAND JUNCTION**

CITY COUNCIL AGENDA						
<b>Subject</b>		Smoking Ordinance Amendments As Codified				
<b>Meeting Date</b>		August 15, 2005				
<b>Date Prepared</b>		December 19, 2011			<b>File #</b>	
<b>Author</b>		Jamie B. Kreiling		<b>Assistant City Attorney</b>		
<b>Presenter Name</b>		Written report				
<b>Report results back to Council</b>		<input type="checkbox"/>	<b>No</b>	<input type="checkbox"/>	<b>Yes</b>	<b>When</b>
<b>Citizen Presentation</b>		<input type="checkbox"/>	<b>Yes</b>	<input checked="" type="checkbox"/>	<b>No</b>	<b>Name</b>
<input checked="" type="checkbox"/>	<b>Workshop</b>	<input type="checkbox"/>	<b>Formal Agenda</b>		<input type="checkbox"/>	<b>Consent</b>
		<input type="checkbox"/>			<input type="checkbox"/>	<b>Individual Consideration</b>

**Summary:** Ordinance No. 3540 regulating smoking in public places was adopted on July 2, 2003 and went into effect on January 1, 2004. Since that date, questions have arisen regarding the terms and the intent of the ordinance. Amendments to the ordinance as the ordinance was codified is proposed to clarify its intent, its meaning, and its enforcement.

**Budget:** Nominal costs for printed material.

**Action Requested/Recommendation:** Authorizing the amended ordinance to be placed on a City Council agenda.

**Attachments:** The proposed changes to the ordinance. Changes that have occurred since the last presentation are highlighted in yellow. Direction is requested specifically for the bowling alley and bingo halls. Explanation of deletions are boxed in the margin.

**Background Information:** Since the smoking ordinance went into effect on January 1, 2004, there have been numerous questions raised. It has been determined that parts of the ordinance are contradictory. Although the specific terms control the general terms, the ordinance may be rewritten for clearer understanding for all.

The definition and treatment of an *attached bar* has changed based on the direction given previously by City Council; an additional definition was added defining a *bar* to provide better understanding between an attached bar and a freestanding bar.

Bowling alleys are allowed to have smoking in an attached bar. The original ordinance implied that this could occur in more than one attached bar. [See Section 16-127(3)]

and Section 16-127(6)(a)(vii).] Staff's understanding was that it was to include only one attached bar<sup>i</sup>.

The proposed changes do not require that the smoking area in the bowling alley be in an attached bar, as originally required under the ordinance. With the proposed changes to the definition of the attached bar and with the existing definition of a restaurant, and the fact that a bingo hall does not require the physically separated area to be an attached bar, the amendments will not require the smoking in the bowling alley to actually be within an attached bar.

As bingo halls do not require an attached bar, the amendments have treated the bowling alley like the bingo hall. In return, as proposed, the bowling alley may have more than one physically separated area, a change was made to allow bingo halls to also have more than one area. If only one area for smoking is preferred in the bowling alley and that the smoking be allowed in the bar area, the amendments may be modified to allow smoking in an attached bar or a freestanding bar as those are defined.

The legal department recommends the adoption of the amendments shown.

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<sup>i</sup> A request has been made from Freeway Bowl to allow more than one smoking area. The bar area of the bowling alley is located on the west end of the building. The manager claims it is too far for those bowlers on the east end of the building to go for a smoke especially during leagues as it holds up the play of games. A second room meeting the physically separated requirements could be placed on the east end of the building. The manager disagrees with staff's interpretation of the ordinance and wants to be allowed to have two areas within its facility that otherwise comply with the Code.

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## ARTICLE VI. AIR POLLUTION

### Sec. 16-127. Smoking in workplaces and public places.

(1) **Definitions.** The following words and phrases, whenever used in this Section 16-127 shall have the following meanings:

*Attached Bar* means a bar area of a restaurant.

*Bar* means an area which is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the serving of food is only incidental to the consumption of such beverages. Although a restaurant may contain a bar, the term “bar” shall not include any restaurant dining area.

*Bingo Hall* means any enclosed area used for the management, operation or conduct of a game of bingo by any organization holding a license to manage, operate or conduct games of bingo pursuant to Colorado law and in which food service for consumption on the premises is incidental to the games of bingo.

*Bowler's settee* means the area immediately behind the bowling lane in which score is kept and seating is provided for bowlers waiting their turn to bowl.

*Bowling Alley* means a business open to the public which offers the use of bowling lanes, typically equipped with operable automatic pin setting apparatus and in which food service for consumption on the premises is incidental to bowling and related activities.

*Bowling center concourse* means that area separated from the bowling lane, bowlers' settee and visitors' settee by at least one step or a physical barrier.

*Bowling lane* means and includes a bowler's approach, the foul line and the lanes.

*Business* means any sole proprietorship, partnership, joint venture, corporation or other entity formed for profit-making or non-profit purposes, including retail establishments where goods or services are sold, as well as professional corporations and limited liability companies. *Business* includes entities where legal, accounting, financial, planning, medical, dental, engineering, architectural or other services are delivered.

*Enclosed Area* means all space between a floor and ceiling within a structure or building which is closed in on all sides by solid walls, doors or windows which extend from the floor to the ceiling.

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*Freestanding Bar* means an establishment licensed for on-premise consumption of alcohol in an enclosed area that is physically separated from restaurants and other public places in which smoking is prohibited. Taverns, nightclubs, cocktail lounges and cabarets are typical examples of Freestanding Bars.

*Licensee* means any person licensed by, or subject to regulation pursuant to, the Colorado Liquor Code, including proprietors and businesses within the definition in § 12-47-401, C.R.S.

*Person* means a natural person or any entity or business recognized by law or formed to do business of any sort.

*Physically Separated* means separated from smoke-free public places by continuous solid floor-to-ceiling walls, doors or windows which are interrupted only by entrances or exits to smoking areas. Such entrances, exits, and windows shall be fitted with self-closing or automatic closing devices.

*Private Club* means any establishment which restricts admission to members of the club and their guests. See *Public Place*.

*Private Function* means any activity which is restricted to invited guests in a nonpublic setting and to which the general public is not invited.

*Public Place* means any area to which the public is invited or in which the public is permitted, including but not limited to, banks, educational facilities, schools, health facilities, Laundromats, public transportation facilities including bus stations and stops, taxis, shelters, airports, train stations, reception areas, restaurants, retail food production and marketing/grocery establishments, retail service establishments, retail stores, theaters and waiting rooms. A private club is considered a *public place* when functions are held at the club which are open to the general public and are not restricted to the members of the club. A private residence is not a *public place* except during times when it is being used as a child care, adult care or health care facility, and for thirty (30) minutes before such uses.

*Restaurant* means a business with fifty-five percent (55%) or more of its gross annual sales coming from the sale of food or meals prepared on site, typically for consumption on site. Examples of restaurants are coffee shops, cafeterias, sandwich stands, private or public school or other cafeterias, and other eating establishments which give or offer food for sale to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities. Also see Section. 16-127(8).

*Retail Tobacco Store* means a business utilized primarily for the sale of tobacco and accessories and in which the sale of other products is incidental.

*Service Line* means any indoor or outdoor line at which one or more ( $\geq 1$ ) persons are waiting for or receiving service of any kind, whether or not such service involves the exchange of money.

*Smoke-free* means that air in an enclosed area is free from smoke caused by smoking.

*Smoke* or *Smoking* means the carrying or possession of a lighted cigarette, lighted cigar or lighted pipe of any kind, and includes lighting of a pipe, cigar, cigarette, tobacco, weed or other combustible plant.

*Sports Arena* means sports pavilions, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, and other similar places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

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*Structure* is defined in the International Building Code, including the International Residential Code, (“IBC”) as adopted by the City from time-to-time. The term *structure* includes the term *building*, also defined by the IBC.

*Tobacco* is defined in § 25-14-103.5(2)(c), C.R.S.

*Visitors’ settee* means seating provided immediately behind the bowlers’ settee.

*Workplace* means an enclosed area in which three or more (≥3) persons work at gainful employment.

## (2) Application to City property.

All enclosed areas and motor vehicles that are owned or leased by the City shall be subject to the provisions of this Section 16-127 as though such areas and vehicles were public places.

## (3) Prohibition of Smoking in Public Places.

a. Except as provided herein smoking shall be prohibited in all public places within the City, including, but not limited to, the following:

1. Elevators.
2. Restrooms, lobbies, reception areas, hallways and any other common-use areas.
3. Buses, taxicabs, other means of public transit while operating within the City limits, and ticket, boarding and waiting areas of public transit systems including stops, bus benches, shelters and depots.
4. Service lines.
5. Retail stores.
6. All areas available to and customarily used by the public in all businesses and non-profit entities patronized by the public, including, but not limited to, professional and other offices, banks, and Laundromats.
7. Restaurants except that smoking is allowed: (a) in an attached bar that is physically separated from areas of the business in which smoking is prohibited; and (b) in outdoor seating areas of restaurants that are not enclosed and are not under a roof (or a projection of a roof) as defined by the IBC as a *roof assembly*, such as patios.
8. Public areas of aquariums, galleries, libraries, museums and similar facilities.
9. Any structure primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance except as covered in Section 16-127(6)(a)(iv).
10. Whether enclosed or outdoors: sports arenas, convention halls and bowling alleys; except that smoking is allowed in portions of a bowling alley in the bowling center concourse that are



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physically separated from areas in which smoking is prohibited, such as a bowler's settee or visitors' settee.

11. During such time as a public meeting is in progress: every room, chamber, place of meeting or public assembly; including school buildings, under the control of any board, council, commission, committee, and including joint committees and agencies of the City and political subdivisions of the State.
  12. Waiting rooms, hallways, wards and semiprivate rooms of health facilities, including hospitals, clinics, therapists' offices and facilities, physical therapy facilities, doctors' offices, dentists' offices and the offices and facilities of other health care providers.
  13. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities.
  14. Bingo halls except that smoking is permitted in portions of a bingo hall that are physically separated from areas in which smoking is prohibited, such as a restaurant.
  15. Polling places.
- b. Notwithstanding any other provision of this Section 16-127, any person or business who controls any business or facility may declare that entire establishment, facility or grounds as smoke-free.

#### **(4) Smoke-free Workplace.**

Except in the areas in which smoking is allowed by this Section 16-127, in workplaces in which smokers and nonsmokers work in the same enclosed areas, offices or rooms, the employer shall provide a smoke-free workplace to accommodate an employee who requests a smoke-free workplace.

#### **(5) Smoke-free Exits and Entrances.**

Smoking shall not occur in or so close to exterior exits or entrances that the free flow of pedestrian traffic may be affected or so close that the operation of the doors, exits or entrances is affected or diminished.

#### **(6) Where indoor smoking is not prohibited.**

- a. Notwithstanding any other provision of this Section 16-127 to the contrary, the following areas shall be exempt from the prohibition contained in Section 16-127(3):
- (i) Private residences; except when used as a child care, adult day care or health care facility and during the thirty (30) minutes in advance of such use(s).
  - (ii) Retail tobacco stores.
  - (iii) Only while being used for private functions: restaurants, bars, hotel and motel conference or meeting rooms and public and private assembly rooms.

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(iv) When smoking is part of a stage production and then only by the actors as a part of the role in the facility which is primarily used for exhibiting any motion picture, stage, drama, lecture, musical recital or other similar performance.

(v) A freestanding bar that may lawfully allow smoking pursuant to Section 16-127(8), and an attached bar that is physically separated from nonsmoking areas.

(vi) In a bingo hall, those portions of an enclosed area that are physically separated from the nonsmoking areas of the bingo hall.

(vii) In portions of a bowling alley in the bowling center concourse that are physically separated from areas in which smoking is prohibited, such as the bowler's settee or visitors' settee.

b. Notwithstanding any other provision of this Section 16-127, any owner, operator, manager or other person who controls any establishment described in this Section 16-127(6) may declare that entire establishment, facility, or grounds as smoke-free.

#### **(7) Signs.**

a. Each owner, operator, manager and other person having control of an enclosed area or public place subject to the provisions hereof shall be jointly and severally responsible to clearly and conspicuously post:

(i) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it) in every public entrance or other areas where smoking is prohibited by this Section 16-127.

(ii) In public places where smoking is allowed pursuant to this Section 16-127, a sign with the words "Smoking is Allowed Inside" at each public entrance to, or in a position clearly visible on entering, the enclosed area in which smoking is permitted.

b. All signs referred to in this Section 16-127(7) shall be a minimum size of twenty (20) square inches and must be placed at a height of between four to six feet (4' – 6') above the floor.

#### **(8) Freestanding Bar Annual Certification/Affirmative Defense.**

a. It shall be an affirmative defense to enforcement of the nonsmoking provisions of this Section 16-127 if a freestanding bar establishes the following:

(i) The annual gross sales from the sale and service of food and meals is less than fifty-five percent (55%) of the total annual sales of the freestanding bar for the previous twelve (12) months; the prior twelve (12) months shall be measured as of the date a complaint is received by the City or an investigation begun; and

(ii) The certification required below has been made.

b. During each December with respect to the following calendar year, the owner or other person in charge of the freestanding bar who desires to be treated as a freestanding bar lawfully allowing smoking therein for such calendar year shall deliver to the City Clerk his or her certification given under

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oath, on a form available from the City Clerk, that the percentage of food and meal sales relative to total annual sales is less than fifty-five percent (55%).

c. The signage and other requirements of this Section 16-127 shall continue to apply to a freestanding bar filing the certificate.

d. In any investigation or prosecution by the City whether upon complaint from any person or otherwise, each owner and other person in charge of the freestanding bar who has allowed smoking in an enclosed area pursuant to this Section 16-127(8) shall have the burden to establish to the City that such business complied with all requirements of this Section 16-127.

e. At the request of the owner or other person in charge, the City shall treat financial and sales information required to establish the affirmative defense under this Section 16-127(8) as confidential, except as required pursuant to the Colorado Open Records Act, Title 24, Article 72 of the Colorado Revised Statutes and as amended, as required by federal law, as ordered by a court of competent jurisdiction, or as the City deems necessary to investigate a complaint, prosecute an alleged violation or evaluate the assertion of the affirmative defense created by this Section 16-127(8).

f. Each owner and other person in charge of a freestanding bar for which a certificate has been filed pursuant to (a)(ii), above shall notify the City Clerk in writing at any time that such owner and/or other person in charge reasonably believes that such freestanding bar is no longer satisfying all of the elements in (a)(i), above.

g. An attached bar need not certify.

**(9) No Retaliation.**

No person or employer shall discharge, refuse to hire or retaliate in any manner against any employee, applicant for employment, or customer because such employee, applicant, or customer exercises any right to, or complains about the lack of, a smoke-free environment afforded by this Section 16-127.

**(10) Violations and Penalties.**

a. It shall be unlawful for any person or business that owns, manages, operates or otherwise controls the use of any premises, enclosed area, public place, or place of employment subject to regulation under this Section 16-127 to fail to comply with any of its provisions.

b. It shall be unlawful for any person to smoke in any area where smoking is prohibited by the provisions of this Section 16-127.

c. Each violation of any provision of Section 16-127 shall be deemed to be a separate violation. Each day shall be treated as a separate violation for continuing violations of Section 16-127(4), (7), and (9)

**(11) Other Applicable Laws.**

This Section 16-127 shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

**(12) Severability.**

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If any provision, clause, sentence or paragraph of this article or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

(13) **Amortization.**

Any restaurant, bowling alley, bingo hall or other business in which smoking was lawful on May 1, 2003 shall be entitled to allow such lawful use as it existed on May 1, 2003, as long as the square footage of the designated smoking area is not increased and no additional seats or tables are added to the designated smoking area, until January 1, 2006, notwithstanding the provisions of Section 16-127(3) hereof.

(14) **Effective Date.**

This Section 16-127 shall be effective on January 1, 2004.