

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

December 3, 2014

The City Council of the City of Grand Junction convened into regular session on the 3rd day of December, 2014 at 7:05 p.m. in the City Auditorium. Those present were Councilmembers Bennett Boeschstein, Martin Chazen, Jim Doody, Duncan McArthur, Barbara Traylor Smith, and Council President Phyllis Norris. Absent was Councilmember Sam Susuras. Also present were City Manager Rich Englehart, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Norris called the meeting to order. The audience stood for the Pledge of Allegiance led by Councilmember Traylor Smith followed by an invocation from David Eisner, Congregation Ohr Shalom Jewish Community.

Presentation

Jacque Chappell-Reid and Miffie Blozvich, representing the Legends of the Grand Valley Committee, and Committee member Sam Baseler were present. Ms. Chappell-Reid briefly described the book about the Enstrom Family to be presented. The book titled "Chet" by authors Ann Enstrom Scott and Ken Johnson has been signed by Mr. Johnson. Ms. Blozvich and Mr. Baseler gave two copies of the book to each Councilmember. Ms. Chappell-Reid and Ms. Blozvich thanked Council for their support of the Legends of the Grand Valley Sculpture Project.

Citizens Comments

Bruce Lohmiller, 445 Chipeta Avenue, #25, and a guest were present. Mr. Lohmiller thanked his church for publishing an article that asked for donations for the night patrol. He listed the following topics: a discussion about a tape, poisonings at School District 51, and sex education classes. Mr. Lohmiller introduced John, no last name given. John asked for contributions of blankets, food, etc. for the night patrol; donations are accepted at the Collective near the library.

Vara Kusal, 675 34 Road, and Darshann Ruckman, no address provided, members of the Horizon Drive Association Business Improvement District, thanked City Council for placing the "Spare Change Doesn't Make Change" signs on the I-70/Horizon Drive exit ramps. Ms. Kusal said there had been a regular group of panhandlers at those

locations with "out of gas" signs; since the signs have been up this organized band of panhandlers has not been back. She then mentioned the desire for a hiking and biking trail between Horizon Drive and the golf course. This idea has been brought up before; they would like to pursue it and are willing to work with the City to find the best location. Ms. Ruckman, General Manager of the Clarion, said their customers would stay an extra day if they had something to do and some would return for vacations. A walking trail would be a nice addition.

Council Comments

Councilmember Traylor Smith went to the National League of Cities (NLC) Conference that was held in Austin, TX in November. The conference offered many workshops and a wealth of information. Topics that stood out were government transparency and efficiency, how to best use government funds, economic development, and homelessness. Councilmember Traylor Smith appreciated the opportunity to network and find out what solutions other cities have used. Grand Junction is considered a mid-size city.

Councilmember Doody attended the BioCNG (Compressed Natural Gas) Project groundbreaking that was held at the Persigo Waste Water Treatment Plant on December 2nd. He mentioned he has been on Council since 2005 and recognized those who were instrumental in the original CORE (Conserving Our Resources Efficiently) group: Kathy Portner (Community Services Manager), Dan Tonello (Wastewater Services Manager), Darren Starr (Street Systems Manager), Terry Franklin (former Water Services Manager), and many others. He congratulated the City on this project and for continuing to be a CNG leader; he is looking forward to the project completion.

Councilmember Boeschstein attended the Mesa County Partners' (MCP) Annual Thanks for Giving Dinner at Colorado Mesa University on November 20th. MCP is a wonderful organization; they do a lot of work in the community to maintain and improve parks and open spaces. Also on November 20th he attended the Grand Valley Coalition for the Homeless meeting at the newly-remodeled homeless shelter on North Avenue. There are a lot of facilities in the Grand Valley for the homeless. On December 1st Councilmember Boeschstein met with State Legislators and on December 2nd he attended the Grand Junction Incubator meeting; they will be scheduling a Holiday Open House soon. Councilmember Boeschstein also congratulated Staff on the BioCNG Project; this project will put Grand Junction on the map.

Council President Norris recommended Ms. Kusal and Ms. Ruckman contact the Urban Trails Committee regarding the hiking and biking trail they would like built along Horizon Drive.

CONSENT CALENDAR

Councilmember Doody read Consent Calendar items #1 through #7 and then moved to adopt the Consent Calendar. Councilmember Boeschstein seconded the motion. Corrections were put forward by City Attorney John Shaver who also noted the additional Item #8. Councilmember Doody made the amendments in his motion to include Item #8 and Councilmember Boeschstein accepted the amendments and seconded the amended motion. Motion carried by roll call vote.

1. **Minutes of the Previous Meeting**

Action: Approve the Minutes of the November 19, 2014 Regular Meeting

2. **Setting a Hearing on the 2014 Second Supplemental Appropriation Ordinance and the 2015 Budget Appropriation Ordinance**

This request is to appropriate certain sums of money to defray the necessary expenses and liabilities of the accounting funds of the City of Grand Junction based on the 2014 amended and 2015 proposed budgets.

Proposed Ordinance Making Supplemental Appropriations to the 2014 Budget of the City of Grand Junction

Proposed Ordinance Appropriating Certain Sums of Money to Defray the Necessary Expenses and Liabilities of the City of Grand Junction, Colorado and the Downtown Development Authority for the Year Beginning January 1, 2015 and Ending December 31, 2015

Action: Introduction of Proposed Ordinances and Set a Public Hearing for December 17, 2014

3. **Property Tax Resolutions for Levy Year 2014**

The resolutions set the mill levies of the City of Grand Junction (City) and the Downtown Development Authority (DDA). The City and DDA mill levies are for operations.

Resolution No. 42-14 — A Resolution Levying Taxes for the Year 2014 in the City of Grand Junction, Colorado

Resolution No. 43-14 — A Resolution Levying Taxes for the Year 2014 in the Downtown Development Authority

Action: Adopt Resolution Nos. 42-14 and 43-14

4. **Setting a Hearing on the Patterson Place Rezone, Located at 2562/2566/2570 Patterson Road** [File #RZN-2014-262]

A request to rezone properties totaling 3.523 acres from a City R-8 (Residential 8 du/ac) to MXG-3 (Mixed Use General) and MXS-3 (Mixed Use Shopfront) zone districts.

Proposed Ordinance Rezoning Patterson Place from R-8 (Residential 8 du/ac) to MXG-3 (Mixed Use General) and MXS-3 (Mixed Use Shopfront), Located at 2562/2566/2570 Patterson Road

Action: Introduction of Proposed Zoning Ordinance and Set a Public Hearing for December 17, 2014

5. **Setting a Hearing on the Extension of the Downtown Grand Junction Business Improvement District (DGJBID)**

Consideration of the extension of the DGJBID for 20 years effective on the date of adoption of an ordinance amending Ordinance No. 3815.

Proposed Ordinance Amending Ordinance No. 3815 to Extend the Downtown Grand Junction Business Improvement District for 20 years

Action: Introduction of Proposed Ordinance and Set a Public Hearing for December 17, 2014

6. **Power Transfer Switch for Generator Backup at Persigo Wastewater Treatment Plant (WWTP)**

Backup power to the head works and raw sewage pump station is currently provided by two generators. In the event of a power outage the generators are manually switched to power these facilities. This purchase will allow automatic switching and transfer of backup power.

Action: Authorize the Purchasing Division to Enter into a Contract with C.A.M. Electric, Inc. to Provide and Install Power Auto Transfer Switches for Backup Generators at Persigo WWTP, in the Amount of \$69,160

7. **Revocable Permit for RRB Holdings, Inc. to Display Vehicles within the F ½ Road Right-of-Way, Adjacent to 651 Market Street** [File #RVP-2014-378]

RRB Holdings, Inc. is requesting a Revocable Permit to display vehicles within a portion of the F ½ Road right-of-way, in connection with its proposed use of the adjacent property at 651 Market Street as a car dealership.

Resolution No. 44-14 — A Resolution Concerning the Issuance of a Revocable Permit to RRB Holdings, Inc. Adjacent to Property Located at 651 Market Street

Action: Adopt Resolution No. 44-14

8. **2016 Persigo Sewer System Policy Development and Budget**

In order for the City Council and the Mesa County Board of Commissioners to most efficiently and effectively consider and decide policy matters regarding the Persigo Waste Water Treatment Facility and adopt a joint annual operating budget, the proposed resolution states the expectations for 2015 meetings/2016 budget development.

Resolution No. 45-14 — A Joint Resolution Concerning 2016 Persigo Sewer System Policy Development and Budget

Action: Adopt Resolution No. 45-14

ITEMS FOR INDIVIDUAL CONSIDERATION

Public Hearing Amending the Zoning and Development Code (Title 21, Grand Junction Municipal Code) to add Section 21.04.030 Regarding Short-Term Rentals

The proposed ordinance amends the Zoning and Development Code, Title 21, of the Grand Junction Municipal Code (GJMC), to add a section regarding Short-Term Rentals, to establish development standards and procedures for Short-Term Rentals, and to amend the table in Section 21.04.010 (Use Table) to add a row for the principal use of "Short-Term Rentals".

The public hearing was opened at 7:27 p.m.

Senta Costello, Senior Planner, introduced this item and noted that the Visitor and Convention Bureau (VCB) Manager Barb Bowman was present to address questions. She described the request and the reason behind the request. Short-term rentals are allowed in a number of other communities and Staff researched many of these. They asked what type of issues arose with this type of use. Some of the concerns were parking impacts on a neighborhood, added trash, noise, and the need for a local contact person to address issues. Some similar standards were incorporated into this proposed ordinance to address some of these issues. The proposal calls for an annual permit and an administrative review so that any issues can be addressed to maintain the quality of the neighborhoods at the time and at the renewal.

Councilmember Boeschstein asked how these issues would be enforced and if additional enforcement staff will be needed to verify owners are meeting the requirements. Ms. Costello said the administrative review will be complaint driven; the

City will have the ability to revoke permits if the owners are not in compliance. Councilmember Boeschstein asked if lodging tax would be collected, how often, and by whom. Ms. Costello said the property owner would collect taxes for each rental. Councilmember Boeschstein asked what the penalty will be for not collecting the tax. Ms. Costello said that would be grounds for revoking the permit.

Councilmember Traylor Smith asked when the lodging tax would be due. Ms. Bowman said it would follow the same collection schedule as hotels, bed and breakfasts (B & B), and recreational vehicle campgrounds. Councilmember Traylor Smith asked if they had considered collecting this less often since this business would not pay as much in taxes. City Manager Englehart commented it is a good suggestion and it could be looked at.

Councilmember Doody asked if this request was proposed because Staff had seen an increase in this type of rental. Ms. Bowman said this is a new trend and Staff anticipates it will increase. The goal is to keep travelers safe and allow them to live like a local; this request will put Grand Junction ahead of other communities in terms of regulating this type of rental. Ms. Bowman said this was a huge topic at the annual conference she attended in July; there is a large number of short-term rentals advertised on-line.

Council President Norris asked what types of inspections are required for hotels and B & B's. Ms. Costello said they are inspected only if there is a specific complaint.

Councilmember Chazen asked if anything other than the lodging tax will be collected. Ms. Costello said sales, lodging, and possibly state taxes will need to be collected. Councilmember Chazen asked if the sales tax is based on the rental price. Ms. Costello answered yes. Councilmember Chazen then asked if the sales and lodging tax could be filed on the same form. Ms. Costello was not sure, but she thinks they are on the same form. Councilmember Chazen asked if there will be a fee for the permit and if so, how much will it be. Ms. Costello said there will be a fee; the amount has not been finalized. Fee updates will be reviewed in the near future and this permit fee will be included in that discussion. Councilmember Chazen asked what other communities charge for permits. Ms. Costello said fees ranged from zero up to \$450. This request proposes a fee only for the initial permit, not the renewal. Councilmember Chazen asked what the penalty would be to operate without a permit. City Attorney Shaver said presently there is none; the purpose of these discussions is to ascertain the Council's expectations in order to establish policy and to determine the appropriate level of regulation. Staff is currently feeling their way through this process. For example, B & B's are required to adhere to specific regulations based on the business's activities. The difficulty lies in learning the different expectations and activities for this type of rental. Therefore Staff is not proposing anything at this time, but rather looking for policy direction from Council.

Councilmember Chazen asked if people currently operating a short-term rental are violating City Code. City Attorney Shaver said there are no clear answers. The City Code does have a family provision relative to the number of people who can occupy a home which makes it difficult to determine the category of a home that someone uses for economic benefit. Short-term rentals do not neatly fit into the category of a lodging property because renting is not the sole use of the property.

Councilmember McArthur asked if the purpose of this request is to collect lodging tax. Ms. Costello said there is a dual purpose of tax collection and bringing this type of rental up to the same standards as other short-term rentals in the community. Councilmember McArthur noted the definition of “short-term” in this request is less than 30 days. He presented a scenario of an owner avoiding taxes by writing rental contracts for 31 days. Ms. Costello said her research did not show that to be an issue.

City Attorney Shaver said the 30 day limit was drawn from the City’s current lodging tax ordinance and applies to all lodging properties. Anything over that limit is considered an extended stay and is occupancy, not lodging. Councilmember McArthur asked if stays over 30 days are subject to the lodging tax. City Attorney Shaver said they are not.

Councilmember Doody asked if this permit would require additional licensing or insurance. City Attorney Shaver said this is a concern of his; there is no required protection for owners against the potential risks. This is why Staff is asking Council for direction on the level of regulation for this type of permit, knowing there will not be a lot of enforcement. The policy direction Staff is recommending is to move slowly, see what comes up, and deal with issues as they arise.

Councilmember Traylor Smith asked if training sessions would be offered to review all of the different aspects involved. City Attorney Shaver said the VCB has held meetings and looked closely at the variety of issues regarding this. He noted short-term rentals are an emerging trend with many variations which makes things more complicated.

Ms. Bowman said meetings have been held with Vacation Home Rentals; they helped draft some of these regulations. Each time a new property comes through, the VCB offers guest relations services: information on what the VCB offers and how they can help the business. Additionally, contact is made annually with each lodging group.

Councilmember Traylor Smith said she knows people who have thought about offering short-term rentals. She feels it would be helpful to offer classes that go over the operating details of this type of business within the City limits. She noted this ordinance would apply only to those within the City limits; has Staff had any discussion with the County?

Ms. Bowman said the VCB has an “Expand the Tent” program which allows lodging properties within Mesa County to participate in the VCB’s marketing programs for a cost

of 3% of their gross; this will also be available to these rentals. Ms. Bowman clarified this would not extend to Airbnb's, only full residences.

Councilmember Chazen asked how many short-term rentals are in the community. Ms. Bowman said at last count there are over 30 full residence rentals. She has not tracked Airbnb's although they too are a growing trend in the industry.

Councilmember Traylor Smith asked for clarification on what an Airbnb is. Ms. Bowman said an Airbnb is a rental of a room within a residence.

Councilmember Chazen asked if people are buying houses specifically for this purpose or are they renting their own house. Ms. Bowman said it is a combination of both.

Councilmember Chazen then asked if any of these property owners have voluntarily contacted the VCB. Ms. Bowman said they have; they see the advantage of participating in the VCB's strong marketing program.

City Attorney Shaver mentioned that Staff discussed having an occupancy threshold, but decided it would be too cumbersome to have owners report the amount of time they were not living at the property.

Councilmember Boeschstein asked if Staff had received input from local hotels, motels, or B & B's. Ms. Bowman said they have and they are in favor of the regulations. Since this aspect of the industry is in direct competition with their businesses, they feel these regulations will help keep them on the same level.

Council President Norris asked for public comment.

LeeAnn Unfred, 638 Horizon Drive, Owner of Castle Creek B & B and member of the Colorado West B & B Association, reiterated what Ms. Bowman stated, the B & B's would like industry parity. Ms. Unfred said it took three years to acquire the needed permit for her B & B and she feels the short-term rental properties should be held to the same requirements and standards for property occupation and guest safety, and be assessed the same taxes. Ms. Unfred asked how the County will be informed these businesses are present in order to adjust their property tax rate.

City Attorney Shaver said this information will be made available to the County Assessor's Office and the Assessor will make those determinations.

Ms. Unfred said some requirements with which she had to comply were paving her parking lot, having a Fire Department inspection, and obtaining feedback from the neighborhood; will these properties have the same requirements? She feels they should.

Julie Commons, 3694 F Road, Owner of Dreamcatcher B & B and treasurer for the Colorado West B & B Association, said other concerns are guest safety, the high cost of

required insurance, and the condition to have an owner on site. She added Airbnb's do not pay any local lodging taxes and therefore do not contribute to the local infrastructure.

John, no last name given, no address provided, said anybody not paying their fair share of taxes is not doing enough for the cause. He then stated the previous comment simply reeks of white privilege.

Scott Miller, no address provided, said his son bought a couple of units in the St. Regis Hotel; one for himself and the other to rent out on a short-term basis. Mr. Miller said the discussion did not make it clear whether a small unit in a developed building would qualify as a short-term rental property. Any requirements put in place should be for all properties so people aren't confused.

Amy Lentz, no address provided, said she and her husband own and operate two vacation rentals in town and charge \$16 more per room for their Airbnb rentals in order to pay the taxes.

There were no other public comments.

The public hearing was closed at 8:02 p.m.

Councilmember Chazen asked if there are Internal Revenue Service (IRS) regulations on residences becoming businesses. City Attorney Shaver said he did not look at IRS regulations; the problem is how short-term rentals will interface with the Zoning Code. Most of these properties are presumed residential and are in residential zones, so the question is what to do when the activities do not match the zoning. Staff has been looking at this from a land use perspective, not a tax perspective. Councilmember Chazen then asked if there are any timeshare properties in the City and how are those treated. Ms. Bowman said the City does not have any; Powderhorn has some through RCI.

Councilmember Chazen asked if there is an occupancy limit for short-term rentals. City Attorney Shaver said there are occupancy limits; two persons per bedroom plus an additional two persons. Councilmember Chazen asked if City Attorney Shaver knew the County Assessor's threshold for determining whether a property is residential or commercial. City Attorney Shaver believes it is based on the period of owner occupancy.

Councilmember Boeschstein noted the City has a provision for rooming and boarding houses in the Zoning Code and asked if this request falls under this provision. Ms. Costello said there are similarities, but the primary difference is rooming and boarding houses allow occupancy longer than 30 days. City Attorney Shaver stated rooming and boarding houses do not have self-contained facilities such as a kitchen and/or bathroom in the area rented to the occupant.

Council President Norris mentioned if the amount of taxes are not known, there is no way to know if this ordinance will create parity with the other lodging properties. City Attorney Shaver said it will not establish the same standards, but in terms of the lodging and other taxes within the City's control, it is a step in the right direction. In response to a previous question, he said there would not be a neighborhood notice process because it would be a residential occupancy in a developed residential neighborhood. There are still gray areas to be addressed.

Councilmember Doody asked where they are looking to get more guidance. City Attorney Shaver answered that from Staff's perspective this is the first step and it won't be perfect because things are still evolving. This proposal is to see if Council would like to take this step, see how it goes, and then refine it through time.

Councilmember Chazen said he is wrestling with this; he doesn't disagree with the concept, but feels it is not fleshed out enough. He would like to see some of the issues being discussed now resolved, for example will the properties be zoned residential or commercial, and what will the consequences be for noncompliance. At this time, he will not support this.

Councilmember Traylor Smith referenced her trip to the NLC Conference and regretted not being able to attend the workshop, "The Sharing Economy (Airbnb, Uber, Lyft, etc.): Challenges and Opportunities in the Regulatory Environment". The workshop focused on economic benefits, current approaches cities are taking, and regulatory challenges these industries may introduce. Councilmember Traylor Smith agreed with Councilmember Chazen; she would like to see the details of this request flushed out more before a decision is made. She suggested getting information from the NLC regarding the different ways communities have addressed this issue. She feels more information and definitions are needed before moving an ordinance forward.

Council President Norris also agreed more information is needed before moving forward. She believes in free enterprise and good competition, but a level playing field is needed. She feels this may be more of a real estate issue and the City should get more information on how other communities around the world are handling this. She will not support this ordinance at this time.

Councilmember Doody is concerned about the lack of liability and safety. A lot of things can happen and it is bothersome there are no answers to these questions.

Councilmember Chazen suggested more work be done and bring it back in a work session for discussion. He would also like information regarding the IRS regulations on residences becoming businesses.

Councilmember Boeschstein said he stayed in a vacation rental in Washington state; they are wonderful when inspected and adequate protection exists. Since there are a lot

of unanswered questions, he is not ready to approve. He would like to see inspection procedures and tighter regulations included.

Councilmember McArthur understood the opinions of the other Councilmembers. He also understood what City Attorney Shaver said, but he believes the City won't know if the ordinance will work if it is not tried and there would be an option to amend it. If this is too much of a burden, people will find a way not to do it, so caution needs to be exercised. There are some benefits like marketing and he would like to see this process move more in the direction of education. He feels until the ordinance is tried, the City will not know how the market will respond.

Councilmember Chazen agreed and said he did not want to snuff out a market opportunity, but still felt more research is needed.

Councilmember Traylor Smith commented since this is a new and developing industry the City does need to be mindful of putting regulations in place. There have been enough questions expressed to show the need to consider more information. She will try to get a transcript from the NLC workshop to find out what information was offered and how other communities have dealt with this. Perhaps questions were raised that City Council has not thought of yet.

Councilmember McArthur said he will contact some people in the property management business, but the City should be sensitive to existing businesses since there is no parity. Right now, there is no way of knowing if existing businesses are losing customers.

Councilmember Chazen asked how to proceed and if there was a motion on the table.

Council President Norris asked if the Councilmembers are not in agreement, can the ordinance be sent back.

City Attorney Shaver said the City is in the position of having a public hearing at this time. If Council would like to significantly change this ordinance, it should be voted down; if only slight amendments are being requested, the hearing can be extended and Staff can amend the language, but the Planning Commission would not be able to review the changes. The cleanest option is to have a motion and vote on it. City Attorney Shaver asked Council to identify which constituency (those occupying, the neighbors, or those in related industries) they would like Staff to research more.

Ordinance No. 4647 — An Ordinance Amending the Zoning and Development Code, Grand Junction Municipal Code adding Section 21.04.030, Short-Term Rentals

Councilmember Doody moved to adopt Ordinance No. 4647 on final passage and ordered it published in pamphlet form. Councilmember McArthur seconded the motion. Motion failed with Councilmembers Chazen, Doody, Traylor Smith, Boeschenstein, and Council President Norris voting NO. Each provided the following direction to Staff:

Councilmember Chazen said all areas need to be researched as it is a balance of the three constituencies. Councilmember Doody agreed and added public safety and liability as areas of concern. Councilmember McArthur would like to implement this and flesh out issues as they arise as well as get input from those in the real estate industry. Councilmember Traylor Smith agreed with Councilmembers Chazen and Doody but also wanted to clarify with the County Assessor on what ways there can be parity. Councilmember Boeschstein said he is in favor of this with the right conditions in place like protecting the public by having safety standards in place, regulatory parity with related industries, and liability issues addressed. Council President Norris agreed with the other Councilmembers but again questioned if this is an issue to be regulated or if it is a real estate rental issue.

Public Hearing- Amending the Zoning and Development Code (Title 21, Grand Junction Municipal Code), Section 21.06.080 Regarding Outdoor Lighting

Request to amend the Zoning and Development Code regarding outdoor lighting, specifically lighting under fueling station canopies, Section 21.06.080(c)(7).

The public hearing was opened at 8:27 p.m.

Lori V. Bowers, Senior Planner, presented this item. She described the request. She reviewed the history of bringing this request forward. It started with a request from City Market for a variance for lighting that was denied. She has reviewed lighting ordinances in over 23 communities. She described the maximum foot-candles recommended by the Illuminating Engineering Society (IES). She detailed some of the other research she did with the Dark Sky Society and with a lighting engineer. By increasing the City's Code to a 30 foot-candle maximum it will bring all existing stations into conformance. Adding a light loss of one foot-candle will account for the difference between lab results and real life illumination. The Planning Commission recommends approval; the important things are downcasting and reducing glare.

Councilmember Traylor Smith asked how much it will cost for existing businesses to come into conformance. Ms. Bowers said most are already in that range. City Attorney Shaver said some businesses have less illumination; there is no requirement for those businesses to increase illumination.

Councilmember McArthur asked for clarification on what the recommended 1.0 foot-candle loss factor is. Ms. Bowers said it is a dimming factor that comes with the aging of a bulb.

Councilmember McArthur then asked if the local astronomy club is for or against this amendment. Ms. Bowers said they are in favor of it; they are just concerned about glare and want the lights downcast to protect the night sky.

Councilmember Boeschstein asked if the City has a requirement for downcasting. Ms. Bowers answered that is in the Code already.

Councilmember Chazen asked for the definition of a foot-candle. Ms. Bowers said a foot-candle equals 10.76 lumens and is the brightness of a candle from the distance of one foot. Councilmember Chazen asked if the astronomy club addressed specific wave lengths of light that would be disruptive to night viewing. Ms. Bowers said they did not. Councilmember Chazen noted the current requirement is half of this recommendation and encouraged Staff to review other codes to see if more updates should be made.

City Attorney Shaver clarified a foot-candle is based on a one foot radius and a lumen s based on one foot square and although there is variation, it is the amount of light it takes to cover these dimensions. Light intensity is the casting of the light.

Councilmember McArthur read these definitions from the internet.

Council President Norris wanted clarification that this has nothing to do with City Market; this is a Zoning Code change. Ms. Bowers said this Zoning Code change resulted from a request by the Planning Commission to review the City's lighting standards. She added some communities have extensive lighting ordinances and some have none; the City's are simple with an emphasis on downcasting.

There were no public comments.

The public hearing was closed at 8:40 p.m.

Ordinance No. 4648 — An Ordinance Amending the Grand Junction Municipal Code, Section 21.06.080 (c)(7) Concerning Outdoor Lighting

Councilmember Chazen moved to adopt Ordinance No. 4648 on final passage and ordered it published in pamphlet form. Councilmember Traylor Smith seconded the motion. Motion carried by roll call vote.

Professional Architect and Landscape Architect Services for Las Colonias Amphitheater Area

Parks and Recreation is seeking approval to complete final design and construction documents for the Las Colonias Park Amphitheater. The services will include architectural and landscape architectural services to prepare schematic design services for the complete amphitheater project in addition to construction documents for the first phase of construction that would include the stage, lawn seating, essential support services, utilities, and parking.

Rob Schoeber, Parks and Recreation Director, introduced this item and explained the request. Two significant parts of this project design are the amphitheater and the landscaping; each has its own dimension and importance, so two different requests for proposal (RFP) were sent out. There were six respondents for the amphitheater and three for the landscaping. Staff recommends Method Studios for the amphitheater design in the amount of \$102,503, and Design Workshop for the landscaping design in the amount of \$81,955. Some of the funding will be from a Department of Local Affairs (DOLA) grant that was secured earlier this year in the amount of \$180,000, plus a donation of \$10,000 from the local Lions Club and \$15,000 from the Parks Open Space account.

Councilmember McArthur said Council recently learned of a critical habitat designation along the Colorado River for the Western Yellow Billed Cuckoo; he asked whether this facility will be in or outside of this designated area. Mr. Schoeber said the facility will be within the area being considered for the habitat. Nationally, half a million acres across ten western states have been identified as potential critical habitat. The U.S. Fish and Wildlife (F&W) Service comment period has been extended until January 15th; it is hoped a decision will be rendered in 2015. Staff feels the best approach is to request sections, to include Las Colonias Park, be excluded from this designation.

Councilmember McArthur asked, since the designation is still up in the air, isn't this a risky investment. Mr. Schoeber said it could be, but this request is only for the design. Before funds are made available for construction, Staff should have a better idea of the direction this designation may take. Also, it is important to have plans in place and be shovel ready because it is unknown when funding may become available.

Councilmember McArthur asked if Staff has had any discussions with F&W. Mr. Schoeber said they have talked to the local office, but have not spoken to anyone at the Federal level. The local F&W office will continue to be involved with the planning for Las Colonias Park along with those at the Federal level when possible. Councilmember McArthur said he would like a better feel for being able to build the amphitheater before funds are allocated for the design.

Councilmember Boeschstein said he understood Councilmember McArthur's concerns. He congratulated Mr. Schoeber and Staff for bringing this forward and obtaining all of the grants. He mentioned the Colorado Division of Natural Resources does not think it is justifiable to create a huge critical range for this bird; only one Western Yellow Billed Cuckoo has been found in the Grand Valley within the last twenty years. This property was a uranium mill tailings pile for many years, not a wildlife habitat. In the Las Colonias Master Plan there is a large area that will be created for natural habitat; the City should move ahead with this project as it will be great for the City as a whole and the south downtown area in particular.

Councilmember Chazen noted the bulk of funding is from DOLA. He then asked if the Western Yellow Billed Cuckoo concern had been raised at the time this request was submitted to DOLA. If not, has the City contacted DOLA to see if they have any concerns or new information that would impact the grant?

Mr. Schoeber does not believe this concern was known at the time the application was submitted. However, it would be worth a call to DOLA; Ms. Portner may have a better feel for this since she applied for the grant.

Councilmember Traylor Smith asked what will become of the project if the area is designated as a critical habitat after the project has been started, and does DOLA have any provisions in the terms of the grant if the project cannot be completed.

Council President Norris asked if the DOLA grant can be used for anything other than the amphitheater. Mr. Schoeber said the grant is specifically for the amphitheater.

City Manager Englehart clarified the grant was awarded before the concern of the Cuckoo bird habitat was raised. Staff feels the best approach is to move forward with the project for a couple of reasons. Since Staff and Council don't feel the designation should take place and if the City has plans in place, it should help the City's cause to proceed. Also, once the design has been approved the City is able to start seeking future grant dollars for the building phase. Therefore the City would not gain much by putting this project on hold and DOLA may allow an extension until this issue is resolved.

Councilmember McArthur asked how long the design period will take. Mr. Schoeber estimated it will take about three to four months. Councilmember McArthur noted the F&W comment period ends on January 15th. He suggested consulting with F&W biologists regarding the possible designation and find out what the impact to Las Colonias will be and what the City will need to do to get the amphitheater approved. Councilmember McArthur previously asked F&W Biologist John Toolen what the benefit would be of establishing this habitat. He noted the current habitat was created by the community through the Riverfront Commission and this legislation may actually de-incentivize the process; the habitat will be better off if the legislation does not move forward. Mr. Toolen answered because it is the law. The City needs to ask how to operate within the guidelines that will probably be imposed and bring it back to the next meeting.

Councilmember Chazen said he likes the project and would like to proceed, but Council has a fiduciary responsibility to the taxpayers, the Lions Club, and DOLA. A few answers are needed before this can proceed. He asked about the \$27,332 from the expenditure side; he asked if this is for work done internally or for outside contracts. Mr. Schoeber said this remaining balance has been set aside for smaller projects that may need to be done, within the larger contract, like soil testing.

Councilmember Doody said he feels it is safe to move forward with the design; everything is in place and this is for the City's park. In spring/summer of 2015 the design will be ready. Councilmember Doody feels if this does not move forward, it could be a local campaign issue.

Councilmember Traylor Smith expressed concern about using the current funding, but then not being able to build the park. City Attorney Shaver said the grant is not conditioned on the build; the grant is for the planning stage. He also mentioned there are opportunities for habitat banking which are habitat conservation plans that move the habitat to another area. The likelihood of completely stopping this designation is remote.

Councilmember Chazen asked if the City already has the grant and donation funds. Mr. Schoeber said the City will be reimbursed upon submission of invoices. Councilmember Chazen then asked when the project contracts were to be let. Mr. Schoeber said as soon as possible. Councilmember Chazen asked if there is any wording in the contract that would allow the City to stop the project midstream and not pay the full amount.

City Attorney Shaver said that language is not in the current contract, but it could be added to the terms. Jay Valentine, Internal Services Manager, said the RFP language does include those terms but it also states the price is only good for 30 days and if there is a delay the contractor has the option to withdraw completely or change the price. If this case is the case, the City could renegotiate with the architect or send out another RFP.

Council President Norris asked when the 30 day timeline would begin. Mr. Valentine said the 30 day timeline begins when the RFP's are opened.

Councilmember Boeschstein said some Councilmembers met with Biologist John Toolen and the Mesa County Commissioners to discuss Las Colonias. He remembers Mr. Toolen saying this designation would not impede Las Colonias Park, but the City may need to apply for a Section 7 waiver; he never said this will scuttle Las Colonias. He feels the City should move ahead.

Councilmember McArthur stated he doesn't understand the reluctance to ask Mr. Toolen directly how this may impact the project. He doesn't feel it is responsible to commit money without knowing the answer.

Councilmember Boeschstein said the question was asked and Mr. Toolen said it would not harm the Park.

Councilmember Chazen asked if Staff contacted Mr. Toolen for a definitive answer. Mr. Schoeber said Staff has been working with the local F&W office all along; they have been guiding Staff on water quality issues and are on board.

Councilmember McArthur asked if the F&W office is addressing issues in reference to fish or the Cuckoo, because the impact on a bird is different than a fish. Mr. Schoeber said he can't answer that specific question.

Councilmember Boeschstein said he distinctly remembers Mr. Toolen saying this would not upset Las Colonias. This area is not the natural habitat for the Cuckoo and one of the great things about the Riverfront Project is that it has brought back habitat for species like the Bald Eagle which was endangered and is now nesting there.

Councilmember McArthur agreed with Councilmember Boeschstein, but commented the area is under Federal jurisdiction and they can establish a critical habitat there.

Councilmember Traylor Smith asked if this could be passed with a request for contact to be made with Mr. Toolen regarding the specifics of the project.

City Manager Englehart said he understands Council's concerns, but explained that there can't be any specifics until the City has design plans. He is not sure how Mr. Toolen will react regarding the overall designs since they have not been made yet. Also, he doesn't believe the criteria for the habitat has been established.

Councilmember Traylor Smith stated the local F&W office is not in charge of this; they will provide information to the federal level and that is from where the designation and guidelines will come. She then asked if the Federal government had worked with the City on habitat banking in the past.

City Attorney Shaver said they have worked with the City on habitat banking for the endangered fish.

Councilmember Chazen said before spending the money it would be wise to talk to Mr. Toolen.

Council President Norris mentioned Councilmember Traylor Smith's point that it's not the local office that decides these policies; it is Washington. She agreed with Councilmember McArthur to give it a couple of weeks to get more information.

Councilmember Traylor Smith asked what the 30 day window is. Mr. Valentine said he wasn't sure and would contact the architect; they are usually amenable to holding the price.

Councilmember Boeschstein mentioned there is an advantage to moving forward with this contract because the work will be done under today's dollars.

Councilmember Doody moved to authorize the Purchasing Division to enter into a contract with Method Studios for Architect Services in the amount of \$102,503; and Design Workshop for Landscape Architect Services in the amount of \$81,955 for the Proposed Amphitheater Project at Las Colonias Park. Councilmember Boeschstein seconded the motion. Councilmember Traylor Smith offered an amendment to the motion for Mr. Schoeber to contact Mr. Toolen but the motion maker declined. Motion failed with Councilmembers McArthur, Chazen and Council President Norris voting NO.

Councilmember Traylor Smith moved to authorize the Purchasing Division to enter into a contract with Method Studios for Architect Services in the amount of \$102,503; and Design Workshop for Landscape Architect Services in the amount of \$81,955 for the Proposed Amphitheater Project at Las Colonias Park with the condition that Parks and Recreation Director Schoeber visit with the local Fish and Wildlife Staff to determine if there are significant impediments to this project. Councilmember Doody seconded the motion. Councilmember Chazen inquired who will make the determination as to whether the impediments rose to the level of having to return to City Council. Councilmember Traylor Smith indicated Mr. Schoeber and Mr. Valentine would make that determination. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

John, no last name given, no address provided, said he was amazed Council spent 15 minutes to decide if an item should be postponed. He noted the Federal government makes decisions that “rip in your face” yet Council still holds its hand out for dollars. He thanked Council and quoted Thomas Jefferson who said, “I prefer dangerous freedom over peaceful slavery” and said he was probably an idiot. He looks forward to seeing Council in two weeks.

Other Business

Councilmember McArthur said he attended a F&W presentation that morning on the Cuckoo and Sage Grouse. He will request the F&W representative who made the presentations to the Associated Members for Growth and Development to save the two presentations and send them to Council.

Adjournment

The meeting was adjourned at 9:19 p.m.

Stephanie Tuin, MMC
City Clerk