

**FRUITA CITY COUNCIL  
REGULAR MEETING  
JUNE 15, 2010  
7:00 P.M.**

**1. THE INVOCATION WAS GIVEN AND THE PLEDGE OF ALLEGIANCE WAS RECITED.**

**2. CALL TO ORDER AND ROLL CALL**

The regular meeting of the Fruita City Council was called to order at 7:00 p.m. by Mayor Henry. Council members present were Bruce Bonar, Mel Mulder, Lori Buck, Stacey Mascarenas, Terry Moss, and Bob Fuller.

**3. AGENDA – ADOPT/AMEND**

City Manager Clint Kinney noted that the May 2010 Financial reports should have been removed from the Consent Agenda as they were not ready and weren't included in the Council packets. They will be included in the next Council meeting.

Mayor Henry added an item to the Proclamations and Presentations section of the agenda: Palisade Planning Commissioner Joseph Browne was present to give the Council a brief proposal.

- **COUNCILOR BUCK MOVED TO ADOPT THE AGENDA AS AMENDED. COUNCILOR BONAR SECONDED THE MOTION. THERE WERE 6 YES VOTES.**

**4. PUBLIC PARTICIPATION**

There were no comments from the public.

**5. PROCLAMATIONS AND PRESENTATIONS**

**A. FRUITA POLICE DEPARTMENT SIGN – THE FRUITA POLICE DEPARTMENT RECOGNIZES BOY SCOUT NATHAN JOHNSON FOR HIS WORK ON THE SIGN IN FRONT OF THE FRUITA POLICE DEPARTMENT BUILDING**

Lieutenant Judy Macy thanked the Council for taking the time to recognize Nathan Johnson for recently completing an Eagle Scout project, which was completely renovating the sign in front of the Fruita Police Department Building. Nathan and his parents, along with Troop 323, spent many hours working on the sign. Nathan was like a project manager; his responsibility was to design the sign, estimate the cost, and obtain the materials at a reduced rate, although he also did a lot of the physical work as well. Lt.

Macy showed pictures of the old and new signs; complimenting Nathan and his crew for an excellent job. Mayor Henry and the Council thanked Nathan and the others for their efforts, saying that the new sign is a great asset to Fruita.

**B. FAMILY HEALTH WEST – A PRESENTATION FROM ANGIE SALAZAR OF FAMILY HEALTH WEST REGARDING FAMILY HEALTH WEST’S SERVICES**

Angie Salazar reminded the Council that Family Health West, being nonprofit, relies on donations and grants to be able to maintain operations. They have expanded to a 6-facility operation consisting of 2 assisted-living facilities (1 private), the Kokopelli clinics (which offer physical therapy, occupational therapy, speech therapy and an imaging center), a nursing home that specializes in Alzheimer’s, and the new hospital, which has 16 private rooms, 2 surgical suites, physical therapy, and an Emergency Department. Ms. Salazar stated that the Urgent Care Clinic that used to be in the Kokopelli District has been moved to the Emergency Department at the hospital. This will save families time and money when an Emergency Room visit is not necessary.

Ms. Salazar stated that because Family Health West does not have a huge budget as far as marketing goes, she was requesting that the Council and City staff help get the word out that their organization has everything people in Fruita and the lower Valley need for all members of the family, young and old.

Family Health West’s program has a campaign called “Fifty Families,” whereby they are recruiting 50 families to commit at least \$1,000 per year, and in return, the families will receive various benefits from the hospital. On October 15, 2010, the campaign will host the first annual “Dirt Dance” with the band Stray Grass playing music.

Mayor Henry noted that there are negotiations currently developing regarding the possibility of the hospital using the new pool facilities at the Community Center for some patient therapies.

Ms. Salazar stated that during the next couple of months, the hospital is inviting people to come in and get a cup of coffee and they will have free cookies.

**C. PALISADE PLANNING COMMISSIONER JOSEPH BROWNE PRESENTS PROPOSAL TO THE CITY OF FRUITA (ADDED TO THE AGENDA BY MAYOR HENRY)**

Palisade Planning Commissioner Joseph Browne stated that he came to the meeting on a challenge from his City Manager. Palisade is building a new gymnasium that will be dedicated at the end of June 2010. Commissioner Browne proposed that a league or interest be generated in a version of the English bowl game called “lawn bowls” in Palisade and Fruita. He was speaking of an indoor version of this social activity called “carpet bowls,” and stated that the Palisade City Manager will pay for 3 temporary lanes in their new gymnasium if an interest or league could be formed. Commissioner Browne

suggested that the City of Fruita's City Manager, Clint Kinney, call Palisade's City Manager, Tim Sarmo, to a challenge him in a game of carpet bowls. He asked if this also might be something that could be a part of Fruita's new Community Center, because it is highly sociable, inexpensive, and a great activity for indoors year round. Mr. Kinney responded that he could beat "Sarmo" in any game he wants. (jokingly)

Commissioner Browne also commended the Fruita City Council on their proactive action on the medical marijuana issue and wished them luck in grappling with it in the future.

**6. CONSENT AGENDA**

**A. MINUTES:**

- 1. A REQUEST FOR APPROVAL OF THE MINUTES FROM THE MAY 18, 2010 CITY COUNCIL MEETING**
- 2. A REQUEST FOR APPROVAL OF THE MINUTES FROM THE JUNE 1, 2010 CITY COUNCIL MEETING**

**B. ORDINANCE 2010-11 – FIRST READING – INTRODUCTION OF AN ORDINANCE AMENDING TITLE 17 OF THE FRUITA MUNICIPAL CODE REGARDING NEW FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) STANDARD FLOOD REGULATIONS FOR PUBLICATION OF PUBLIC HEARING TO BE HELD ON JULY 6, 2010**

**C. CITY MANAGER EVALUATION FORM – A REQUEST FOR APPROVAL OF THE CITY MANAGER EVALUATION FORM SO THAT IT MAY BE PUBLISHED AND A REVIEW SCHEDULED FOR JULY 20, 2010**

**D. FRUITA COMMUNITY CENTER – A REQUEST TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH FRUITA SOLAR, LLC C/O HYBRID ENERGY GROUP FOR A PHOTOVOLTAIC SYSTEM AT THE FRUITA COMMUNITY CENTER**

Mayor Henry asked if there was anyone in the audience who would like any item on the consent agenda removed for further discussion. Hearing no comments, he referred to the City Council.

Councilor Mascarenas asked about Fruita Solar, LLC, which is a subsidiary of a Denver-based company. City Manager Clint Kinney explained that Sunsense is a local contractor and Fruita Solar, LLC is part of Hybrid Energy Group (HEG), which is the finance company that is actually fronting the costs. The City put out a Request for Proposal (RFP) to get solar rates and it was a bid project for the Community Center.

Councilor Moss asked what the return investment on the solar would be. Mr. Kinney responded that there is limited return on the investment and that it would actually be an additional cost of about \$3,000 per year to buy solar power versus electricity from Xcel Energy. Staff feels it is worth \$3,000 per year just for the other benefits. If the City buys the entire solar setup in year 7, the City could see a benefit of \$107,000, but that is a decision to be made at that time.

- **COUNCILOR MOSS MOVED TO APPROVE THE CONSENT AGENDA AS AMENDED. COUNCILOR BUCK SECONDED THE MOTION. THERE WERE 6 YES VOTES.**

## **7. PUBLIC HEARINGS**

There were no Public Hearing items on the agenda.

## **8. ADMINISTRATIVE AGENDA**

### **A. COVENANT ENFORCEMENT – A REQUEST FROM CITIZENS OF HOLLOW CREEK SUBDIVISION TO CONSIDER ADOPTING A NEW ORDINANCE REGARDING COVENANT ENFORCEMENT (“CITY MANAGER” TAB)**

Fruita citizens Tom Kelly, Bradley Reist, and Janet Brazfield requested an opportunity to present a concept for a new ordinance that would require approval from the City Council and homeowners associations before a change to adopted covenants could be made.

Currently, the City of Fruita does not have any enforcement authority for HOA covenants. As opposed to public land use controls such as the Land Use Code, covenants are considered private land use controls to be enforced by private HOAs. When a new subdivision is approved by the City Council and covenants are required to maintain certain infrastructure, such as an irrigation system or pocket park, the City will review the developer’s proposed covenants to make sure they conform to state statutes such as the Colorado Common Interest Ownership Act (CCIOA) and other local laws. Once the covenants are shown to meet state and local requirements and are duly recorded, the City no longer has legal involvement with covenant enforcement.

Mr. Tom Kelly, 514 Birchwood Street in the Hollow Creek Subdivision, stated that he was present to propose an ordinance. He recounted a brief history of his situation, which started with Terry Ruckman, who was the owner and developer of Hollow Creek Subdivision. Mr. Kelly stated that Mr. Ruckman sold the 34 remaining lots that remain in the subdivision to Housing Resources of Western Colorado, a private, nonprofit corporation. During the negotiations for the purchase of the property, Housing Resources and Mr. Ruckman jointly changed the existing covenants of Hollow Creek Subdivision. The size of the lots at a 1,600 square foot minimum to was reduced to 1,160 square feet. Landscaping requirements were reduced, and air conditioning/HVAC units were allowed on roofs instead of being on the ground as originally required.

Mr. Kelly stated that the current homes in the Hollow Creek Subdivision are valued between \$300,000 and \$400,000, but the proposed homes built by Housing Resources are valued at \$155,000 to \$160,000. He said that if the project is allowed to go forward, it is going to hit the existing residents in Hollow Creek and the surrounding subdivisions pretty hard in property value loss.

Mr. Kelly cited several sections of the Fruita Land Use Code that he feels could help the situation, such as 17.01.030 (G), which relates to “protecting both urban and non-urban development and conserving the value of the property.”

Residents of Hollow Creek in conjunction with neighboring subdivisions jointly wrote a proposal for an ordinance that they believe will protect future Fruita homeowners as well as the City. The proposal is similar to the language found in the Colorado Common Interest Ownership Act (CCIOA), Section 38-33.3-217(4) (a), and would read as follows:

**After approval of the Covenants for a subdivision by the City of Fruita, no amendment may change the Construction and Design Guidelines for homes within any subdivision except by a vote or agreement of sixty-seven percent of the votes allotted to owners who have homes physically constructed, and by a vote of approval from the Fruita City Council.**

Mr. Kelly also presented the Council with a copy of Ordinance 2000-13 from the Town of Gypsum, Colorado along with a copy of the memorandum from their attorney regarding said ordinance. This ordinance outlines a process of a building an architectural design requirement to prevent subdivisions from being changed such as has occurred in Hollow Creek. Mr. Kelly stated that he is in the process of circulating a petition of support for the proposed ordinance.

Mr. Kelly requested that the Council examine the issue and materials presented. He said that he, Ms. Brazfield and Mr. Reist would be happy to sit on a subcommittee if the Council so desired.

Mayor Henry asked Mr. Kelly if he was asking for the Council or the City to do something about the current situation with Housing Resources. Mr. Kelly responded that he was asking for help for both the current situation and any future situations that may occur. He said he understood that ordinances cannot be effective retroactively, but still felt that language in the Land Use Code could be of benefit in the current situation.

Ms. Janet Brazfield, 538 Birchwood Street, stated that no one should ever experience what residents of Hollow Creek are experiencing. She said that protection should be available to all Fruita citizens so they will not feel violated, as do the residents of Hollow Creek. She asked that the Council please seriously consider the proposed ordinance.

Councilor Mascarenas asked Ms. Brazfield how they learned that Housing Resources had purchased the property and Ms. Brazfield stated that her neighbor just happened to see it

on the County Assessor's website. She said there was no "for sale" sign on the property, but that further research showed that Terry Ruckman changed the covenants improperly on January 15, 2010 and then sold the lots on January 20, 2010 to Housing Resources. Ms. Brazfield stated that neither she nor any other residents of her subdivision or surrounding subdivisions were ever given any notice whatsoever. Mr. Kelly confirmed that they didn't even receive the addendum reflecting the amended covenants.

Councilor Mascarenas asked how many lots are in the subdivision. Ms. Brazfield answered that there are a total of 40 lots and 6 of them have homes built on them. They range in size from 1,913 square feet to just under 2,600 square feet.

Ms. Brazfield stated that she and her neighbors have spoken with Mr. Whalen and told him that he had a moral and ethical obligation to purchase lots in subdivisions that have the same size homes and quality of the existing homes.

Mr. Bradley Reist, 1297 Santa Fe Circle, is a resident of another subdivision, Santa Fe Ranch. Mr. Reist commented that he, too, is concerned about property values in his subdivision. He asked those in the audience to stand to show how many were supporting his side of the issue and all the people in the audience stood.

Rayana Bichler, 1201 Santa Fe Circle, asked what the point of a (Council) meeting to discuss and approve subdivisions is if the developer is going to retain complete control of the final product. She said it would look awkward to put low income homes next to big, beautiful houses. She spoke of citizen safety, housing values, and promoting the vision for Fruita. Ms. Bichler said she believes it is the City's job to manage growth appropriately by keeping neighborhoods compatible. She mentioned that there were several more people who couldn't attend the meeting that support her views and feel very strongly about it.

Karen Bapst, 445 Amethyst, stated that she will be directly impacted by Housing Resource's development because her back fence is directly behind the lots. She said she heard that a couple didn't buy the foreclosed upon house next to her because the potential buyers heard that low income housing was being built behind them. Mrs. Bapst called it a tragic situation.

Cynda Byers, 427 Juniper St., (Evening Breeze Subdivision), stated that directly behind her are 2 low-income homes that are currently being lived in by the original owners. She invited any Council member to come to her house and see what she looks into everyday; the backyards are trashed and full of weeds. Ms. Byers commented that it is very sad that she has to look at that from her backyard day after day. She purchased her home about 10 years ago and her realtor never told her that there were low-income homes in the Evening Breeze Subdivision. She estimated that 30% of the homes in her subdivision are low-income homes.

Gretchen Henderson, 1206 Santa Fe Circle, stated that she thinks residents want to attract people to the Fruita area and that people invest in the town in good faith. She asked who

would want to purchase homes in a subdivision when the buyers aren't protected. Ms. Henderson feels that the City can potentially put some controls on the situation so that when people choose to live in Fruita, they feel safe in doing so.

Mr. Kelly asked Mayor Henry when he and the Council would begin to look at the issue.

Mayor Henry stated that it could be discussed at a Council workshop session. He said that the City Attorney would be taking a look at it.

Mayor Henry asked Mr. Kelly if he had spoken with Mr. Whalen. Mr. Kelly stated that there was a meeting with Mr. Whalen at his house and there were over 50 people who attended. Mr. Kelly made the comment that Mr. Whalen is a political person who likes to "move through blockades".

Councilor Bonar asked City Attorney Ed Sands if he was familiar with the section of the CCIOA that the residents were referring to.

Mr. Sands stated that he was; he said that with every subdivision that's under CCIOA, the developer submits the draft declaration to the City, the City reviews it for legal sufficiency, but then after they are recorded, the City really doesn't have anything to do with them with the exception of irrigation. The City requires all the covenants to provide for irrigation systems and water rights transfers.

Councilor Bonar noted that the passage from CCIOA requires 67% of the votes of the association, including 67% of the votes allocated to units not owned by a declarant. He asked if that would suggest that the action taken in changing the covenants was not proper.

Mr. Sands said he is relying on what Hollow Creek residents have told him and he does not think the covenants were amended correctly in compliance with CCIOA, but they could have been. He said the problem is that the Declaration in CCIOA allows declarations to be amended by a vote; but there should be a meeting. The residents should have received a notice, but Mr. Sands presumed the residents would have been outvoted anyway. Mr. Sands said the declarant was the developer and sold the lots to Housing Resources, who voted its lots to amend the declaration.

Councilor Bonar pointed out that the vacant lots are no longer owned by the declarant; they are owned by someone else and so that gets around the provision. He asked what the residents' recourse would be and Mr. Sands responded that the residents have a right individually or as a group to go to District Court with a civil suit.

Councilor Bonar asked if the language in the proposed ordinance was permissible under CCIOA. Mr. Sands responded that it wouldn't be prohibited by CCIOA and it certainly is permissible for the City of Fruita to adopt the proposed ordinance, but essentially all it does is get the City into the business of regulating design and design guidelines. The City already does that to some extent with commercial buildings, but has never gotten

into single-family detached residential design regulations. Mr. Sands said that some cities do this such as Gypsum, Telluride, and Aspen, but that it might put a burden on Fruita's Community Development Department and would also mean more of the Council's time. Alternatively, the City can appoint citizen design review boards, but it would still require some form of approval mechanism by the City to make sure that every home building permit is meeting the original guidelines.

Councilor Bonar hypothesized that if the City were to adopt language in the approval of a subdivision development that says the covenant is a binding document and can only be changed by a vote of 67% of the owners of existing homes (leaving out anything about approval by the City Council), that would give the residents in the subdivision control of the covenants without requiring the City to have a review or design approval process. He asked if this would be a plausible approach.

Mr. Sands responded that it could be done that way; however, the City would need to be very specific because a declaration of covenants can easily be 40 pages long and contain all sorts of minutiae, some of which *does* need to be amended from time to time such as when HOA fees are due.

Councilor Bonar commented that he doesn't think the City wants to be a part of judging the wisdom of amending covenants for a subdivision, but he was looking for a mechanism to provide the protection in the future that the residents are asking for.

Mr. Sands said that that kind of requirement would have to be part of the City's zoning power and land use power, which would conflict with CCIOA. He added that the City has a right to do that.

Mr. Sands noted that generally, the developer controls an HOA until 2/3 of the homes are sold in the subdivision. At some point, the property buyers need to have the power, and it is a matter of trying to strike that balance, which is what CCIOA attempted to do.

Mayor Henry asked if the City could require a higher percentage (than 67%) of votes to amend coverage. Mr. Sands said that would conflict with CCIOA, which says the percentage can be no higher than 67%, but he thought maybe if the City did it and limited it to certain restricted areas such as home size, design guidelines, something that touches on the City's zoning/land use power, it could be done. He said otherwise, it could be a touchy legal question. The statute is supposed to be uniform throughout the state.

Mayor Henry asked if there was any legal way that the City or any municipality could come back in and address the issue that the residents of Hollow Creek are concerned about right now. Mr. Sands stated that that was the bad news; the Council could adopt an ordinance for future subdivisions that come through the land use process, but trying to make it retroactive would risk violating Vested Rights. He said this was because there was nothing in the original development approval and nothing in the Land Use Code when the developer came through the Land Use process that talked about these kinds of restrictions. The Vested Rights statute says the developers get to play by the rules of the

game that are in place when they first submit their applications with the Community Development Department. Mr. Sands said those rules cannot be changed to make it more expensive for the developer at any point during the Vested Rights period. Mr. Sands said that trying to put those restrictions on now would be risky in terms of a legal challenge.

He reminded the Council that the residents have their own private civil remedies if CCIOA was violated regarding the way the meeting was called and notices not going out to the property owners.

Councilor Mulder stated that the homeowners need to be aware that the City of Fruita is reluctant to get involved in enforcement of covenants through an HOA. He said that he thought the Council should take the issue to the workshop session, however, and have a discussion before a recommendation could be made.

Councilor Buck agreed that a workshop session would be the appropriate place to discuss it further.

Mr. Sands stated that the Council has a lot of discretion about what to do for future subdivisions, but that it gets very problematic legally when talking about making something retroactive to help the residents of Hollow Creek.

Councilor Mascarenas agreed that she would like to discuss the matter at the workshop meeting. She said she felt sympathy for the residents of Hollow Creek and the surrounding subdivisions because people should feel safe when they invest in a home in Fruita. She asked Ms. Brazfield if anyone had retained an attorney. Ms. Brazfield said she had spoken with an attorney, but the attorney didn't feel there were solid grounds because CCIOA has a lot of "holes" in it. She said everyone thought they were in control of their HOA because of language that states "regardless of the period of debt or control provided in the declaration, a period of declarant control terminates no later than the earlier of 2 years after any right to add new units was last exercised." She added that the plat was filed in October of 2007 and the 2 year period ended in October 2009. The covenants were changed pursuant to 2.17.1 (a), however; CCIOA plainly states under 3 (e) that (a) does not apply to a declarant of a phased community.

Councilor Mascarenas stated that she has no problem with communicating her concern to Mr. Dan Whalen.

Councilor Moss encouraged the Hollow Creek residents to pursue the matter legally because they were not notified of the amendments to the covenants. He agreed it should be taken to a workshop meeting of the Council.

Councilor Fuller asked what the results of the meeting with Mr. Whalen were. Ms. Brazfield responded that Mr. Whalen did state that he would try to build as many of the larger homes as possible, but she said the problem is that the residents have heard numerous things from him and nothing is set in stone. She said her groups' contention is that they purchased homes in good faith based on the covenants to protect the property

values. Ms. Brazfield said her group doesn't care if Housing Resources builds there, but that they should be restricted to the original covenant rule of building homes at a minimum of 1,600 square feet. She said according to Housing Resources, 1,600 square feet is the largest size home they can build.

Mr. Reist said that he wanted to point out that in his case, he will be looking right across the street at at least 3 of the new homes, so it will definitely affect his property values. He asked the Council to open all the doors and investigate as many possibilities as they can.

The Council reached a consensus that they would discuss the issue at the July 29, 2010 workshop meeting at 6:00 p.m. Mayor Henry asked the residents to provide further information they may gather to the Council prior to July 29<sup>th</sup>.

Claudia Kelly, 514 Birchwood St., stated that Mr. Whalen plans on starting to build the new homes in November. Ms. Brazfield noted that that date had changed numerous times.

Mayor Henry thanked the residents for their thoughtful presentation and added that while the Council recognizes the basis of their concerns, what they were requesting was a major departure from the normal municipality involvement in a private property rights matters. He noted that there are over 75 subdivisions in Fruita and this is the first occurrence (in Fruita) of an issue such as the one facing Hollow Creek and the surrounding subdivisions.

*Mayor Henry called for a break at 8:35 p.m. The meeting was reconvened at 8:47 p.m.*

**B. MARIJUANA STATE STATUTE – DISCUSSION REGARDING THE  
NEW COLORADO MEDICAL MARIJUANA REGULATORY  
LEGISLATION**

City Manager Clint Kinney stated that the only pressing question before the Council was whether or not they wanted to put a question on the November ballot to ban dispensaries. This decision would have to be made by July 23, 2010 in order to get the ballot content to Mesa County and would cost the City approximately \$23,900.

City Attorney Ed Sands walked the Council through his summary of the provisions of the new state legislation regarding regulating medical marijuana. The Council will need to address a number of policy issues over the next 12 months. Mr. Sands said that a very important premise of the whole bill is that Amendment 20 gave a constitutional right to primary caregivers to care for patients. The new law makes clear that dispensaries (now to be called "centers") are not primary caregivers. This is a bit different than the ordinance that the Fruita City Council passed.

The state has passed a very comprehensive code that is in many ways patterned after the Colorado Liquor Code. The state will be setting up a whole separate regulatory agency to enforce the new code, just as there is the Liquor Enforcement Division of the Colorado

Department of Revenue. The idea is that it not be taxpayer supported; some taxpayer dollars were lent to get the regulatory authority off the ground, but they will be setting fees and those dollars will go into a trust fund until a cap is reached. At that point, the fees may come down somewhat once the state has a better handle on what it's really going to cost to regulate the industry and have enforcement officers in the field.

Mr. Sands further reviewed the provisions of the new legislation for the Council. His memorandum stated (in conclusion), the City Council needs to first determine whether it desires to continue to allow medical marijuana centers and related operations to exist within the City of Fruita. Or, the City Council could choose to let the voters decide. If the City Council determines that it does desire to continue to allow for medical marijuana centers, the City's ordinances will need to be updated to conform in both substance and terminology with the new state law. Finally, the City Council will need to determine how it desires to regulate primary caregivers, if at all. The Council could possibly regulate the location of primary caregivers through the City's Land Use Code, and may apply the municipal sales tax on medical marijuana to primary caregivers.

Mr. Sands noted that as of September 1, 2010, some of the existing medical marijuana centers may have to go out of business because they won't be able to meet the requirements of the new state law.

There is one person who has filed an application for a license for a center in Fruita, and the owner may qualify under the existing licensing structure, but the he/she has not been a Colorado resident for 2 years even as of July 1, 2011. This means the business could be licensed for one year, but will lose the license when the new state law kicks in. (A person must be a resident of Colorado for at least two (2) years prior to the date of the application for a license under the new law.)

The Fruita Community Development Department is anticipating that there will be a second applicant before the July 1, 2010 state-wide moratorium goes into effect. The law says that any municipality can ban any of 3 medical marijuana license classifications: Centers, Medical Marijuana-Infused Products, and Optional Premises Cultivation Operation. There cannot be a Cultivation Operation in Mesa County that provides the products to a Center in City limits because the same licensing entity has to approve the license for both of them together.

Under the new law and after July 1, 2011, public hearings will be optional. The City Council can provide for them in a regulatory ordinance if they want, but it is not mandatory. The City will have to come up with a licensing authority, which could be either the City Council, the City Manager, the Municipal Judge, or an independent citizen commission appointed by the City Council.

Mr. Kinney explained that the two applications for medical marijuana centers in Fruita will go through the Conditional Use Permit process.

Mr. Sands explained that effective July, 2011, the new law sets up a two-tiered procedure much like liquor licenses. The City will go through its approval process and then the application will go to the Colorado Department of Revenue regulatory agency and the center will get a license from both the City and the state.

The Council can, at any point, ban by ordinance any one or more of the three classifications of licenses. In addition, the license classifications can be prohibited by a vote of the people, or there is the Power of Initiative and Referendum, which means that voters circulate a petition, get enough signatures and put it on the ballot in that manner. Either way, the City would have to pay for the cost of the election if the question goes on the ballot. The petition shall be signed by the registered voter of the city, no fewer than fifteen percent of the total vote cast in the last regular municipal election.

Medical marijuana licenses will be good for 2 years and the state law is very liberal when it comes to what cities determine the application fee to be, plus municipalities can charge a license fee if the license fee is granted. The state fees are going to be rather expensive.

Mr. Sands stated that there are a number of regulations; some more stringent than what the City of Fruita currently allows. Mr. Sands reviewed some of these for the Council.

Councilor Bonar asked Mr. Sands that if the Council refuses a proposed license based on a certain condition, and that condition changes, would the Council still have to deny any further applicants at that location for 2 years? Mr. Sands responded that that was a good question; if you take the literal wording of the law, the prohibition would still stand, but a lot of the new law is going to be tested through the courts and the courts will look at situations like that.

The state will have specific security requirements (like the City of Fruita does) but it will be done through regulation, not through the statute. Any transfers of ownership or changes of location will be handled like liquor licenses.

Mr. Sands said that the state is really trying to keep track of where all the marijuana is coming from and where it's going. They are trying not to support the black market.

Mayor Henry asked how many primary caregivers a medical marijuana center could supply. Mr. Sands answered that they could have an unlimited number of primary caregivers and any number of patients. He explained that a primary caregiver is the person who has a significant responsibility for managing the well-being of a patient. The state has said that the Health Department has got to define what that means. Both patients and primary caregivers will have to register with the state. He reiterated that the new law states that dispensaries (centers) are no longer primary caregivers. The state is attempting to state that a primary caregiver can only have 5 patients at one time. Primary caregivers can grow medical marijuana or buy it from a center.

Councilor Bonar asked for confirmation that municipalities cannot ban or regulate primary caregivers. Mr. Sands responded that he didn't know; clearly the state law didn't

authorize cities to do that. He said he was mainly looking at (not licensing) but whether the City has the zoning power in tact whereby the City can say that primary caregivers can only operate out of certain zones in the city. He added that he didn't also know whether the municipal sales tax and medical marijuana excise tax would apply to caregivers. Mr. Sands pointed out that caregivers are not supposed to sell at a profit; they can only sell to the patient based on their cost. Similarly, if they are growing it, they cannot make a profit.

Councilor Fuller asked who makes that determination. Mr. Sands responded that the law is silent on that and he thinks it will be very difficult to enforce.

Councilor Moss asked if medical marijuana can be grown only inside or if the plants are allowed to grow outside. Mr. Sands answered that there is nothing in the constitution or state law to prohibit medical marijuana from being grown outside. City Manager Clint Kinney added that the city's laws state that the marijuana cannot be visible to the public.

Mr. Sands remarked that the medical marijuana industry is not overly happy with the new state law; they have indicated that the laws are over-reaching. He reiterated that eventually, the courts will have to resolve a lot of issues.

Ultimately, the City of Fruita will have to decide whether to take the risk of having to go to court if the City is sued by the Medical Marijuana Association or whether to wait until things "shake out" to find out the answers to some questions that remain unclear.

Mayor Henry asked Mr. Sands when he expects the regulations to be out. He responded that the regulations would likely be out in spring of next year.

Councilor Bonar asked for confirmation that if a license is not in effect by September 1, 2010, there is a moratorium for one year until July 1, 2011 and that if someone were to apply right now with the City of Fruita, there would not be enough time to complete the Conditional Use Permit process (that is in place now) by September 1, 2010. Mr. Kinney confirmed that was true and that the City would have the one application that it is the process now and possibly one more, but more likely, just the one. Mr. Sands commented that the September 1, 2010 deadline is somewhat illogical and he wouldn't be surprised if the state ended up bending on that a little bit for applications that have begun the process.

Councilor Bonar made the point that there is not a great sense of urgency as far as future applications because the de facto moratorium will go into place fairly soon.

Councilor Bonar referred to the city's current Ordinance, Section 3, X-1 (c), saying that the Ordinance requires that dispensary facilities must "meet the needs of the neighborhood and desires of the inhabitants and will not cause undue concentration of medical marijuana dispensaries in a specific neighborhood as determined by the City Council." He asked for confirmation that the City Council would decide whether a facility meets those requirements or not. Mr. Sands confirmed that to be true. Councilor Bonar asked if those reasons for denial would stand the challenge in court that the

reasons are arbitrary and capricious. Mr. Sands confirmed that they would. He added that the Colorado Municipal League (CML) is taking the position that any municipality can even limit the number of marijuana centers within City limits.

Councilor Bonar pointed out that then that the City Council has all the authority it needs to *not* license a center based on good cause. Mr. Sands remarked that CML did a tremendous job lobbying to preserve local control despite the state legislation.

Councilor Bonar noted that the Land Use Code would need to be revised to correct some use of terminology such as dispensary versus centers, but the Ordinance changing the Land Use Code would not have to be effective until July 1, 2011 when the state law goes into effect. Mr. Sands confirmed that to be correct and added that the City would need to come up with a 2-year license process.

Mr. Kinney reiterated that the only urgent matter before the Council was whether or not they wanted to put the issue of banning marijuana centers on the November ballot.

Councilor Fuller said that according to Attorney Sands' memorandum, the primary caregiver is the only one that is protected by the Colorado Constitution. Mr. Sands confirmed that that is the very fundamental premise of the law. Councilor Fuller asked if that is to be adjudicated and Mr. Sands answered that the medical marijuana industry has said that they want to adjudicate that. Councilor Fuller asked if the City were to put the matter to a vote, could the City still be sued for wrongfully denying a license. Mr. Sands stated that that was correct; the Colorado Supreme Court has overturned voter decisions in the past.

Councilor Moss said it was his opinion that the cost of election right now is too much and the City really doesn't have the money for it. The Council came to a consensus that it would not be appropriate to spend the \$24,000 it would cost to put a question on the ballot asking voters if they want to ban medical marijuana in the City of Fruita.

Mayor Henry commented that City staff and the City Council do not yet know what the new state regulations (effective July 1, 2011) are going to look like and there are going to be numerous lawsuits filed, as well as additional initiatives and possibly amendments. He added that the legislature is also going back into session next January and it is highly probably that the existing law will be modified again. Mayor Henry noted that the Council can ban marijuana centers at any time and that he felt that 65-70% of the people in Fruita would likely support that. He suggested that the Council not do anything right now but just wait to see where all the chips fall in the future.

City Manager Clint Kinney stated that staff would draft up the changes that need to be made in the city's current ordinance.

**9. COUNCIL REPORTS AND ACTIONS****A. CITYCOUNCIL GOALS - REVIEW OF THE DRAFT GOALS DEVELOPED FROM THE MAY 25, 2010 CITY COUNCIL WORKSHOP MEETING**

City Manager Clint Kinney referred the Council to the draft of the summary of the goals and prioritization of critical issues that were discussed at the May 21 and May 25 goal setting sessions. In addition to the summary of goals, Kathy Novak had submitted her summary of issues discussed on May 21<sup>st</sup>. Mr. Kinney requested that the Council look at what was provided in their Council packets and provide any feedback they may have. He said it was his goal that the Council would adopt the final document at the next regular Council meeting.

The Council will meet with City Department Directors to discuss the goals at the June 22<sup>nd</sup> Council workshop meeting and further work out details.

Mr. Kinney stated that he believes it would be very beneficial for the Department Directors and Council members to discuss prioritization of the city's critical infrastructure projects.

Mayor Henry stated that the draft the City Manager had presented was very close to the notes he took at the goal setting sessions. No Council members requested any changes to the draft of the goals.

Mayor Henry asked when the Council would make the decision to either make significant improvements to the existing Fruita Police building versus buying another building. Mr. Kinney stated that staff had studied that last year and has the facts lined up; the estimated costs have been determined. He said it was a matter of scheduling the discussion at one or more workshop sessions.

**COUNCILOR FULLER**

Councilor Fuller attended the Lower Valley Fire Protection District meeting the previous Thursday. The Chief is moving forward with the application for a DOLA grant to expand their existing facility. The Chief feels fairly confident about that and has also been able to put in an application for \$50,000 - \$60,000 for engineering services. The Fire Department is planning on expanding their area of responsibility further up into Rifle; they currently contract with Rifle and Garfield County to do search and rescue and fire protection there. The Fire Department is looking to incorporate those areas into their mill levy district, which requires a cost-benefit analysis. Mayor Henry asked how the new board was working out and Councilor Fuller responded that they seem to be working well together and the levels of contentiousness are down considerably.

**COUNCILOR MOSS**

Councilor Moss reported that he had 24 people stop him and say that the business list in the City Link was amazing because they didn't realize there were so many businesses in Fruita. The people he spoke to asked how their friends in Mack and Loma could receive the City Link. Mr. Kinney stated that the City Link is mailed to include the 201 boundary.

Councilor Moss made note that people are already using their Fruita Treasure Club cards to receive discounts.

Councilor Moss toured the Wastewater Treatment Facility and he thought it was really great. He encouraged the rest of the Council to tour it as well.

He gave the other Council members the Fifty Families application from Family Health West and asked them to participate if possible or encourage others to do so.

The Parks and Recreation Advisory Board met on June 3<sup>rd</sup> and discussed the Kings View Open Space and the Disc Golf Association is really wanted to move ahead, although they would like to see it more organized and not so archaic. The Parks and Rec Board came to the conclusion that they don't want names all over the park; but rather, one board at the entrance that lists all the donors.

Regarding the naming of Triangle Park, the Board hasn't received the materials yet and needs 30 more signatures. Renaming the tennis court by the High School has been tabled for now until further notice. The Board got a list of the nominations for the Yard of the Month and will be selecting the winner by July 1<sup>st</sup>.

At the Community Center, the solar system and Rec Track are already in place. Mark Fitzgerald will replace Rob Cook as the Activities Director and 3 more people will be hired by September 1<sup>st</sup> plus one more by November 2<sup>st</sup>. The Board is looking at new fall sports like horseshoes and lawn bowling.

Councilor Moss handed out the landscaping concept design for the main plaza area at Little Salt Wash Park. He asked that if anyone had any ideas for other programs they want to see in Fruita that they contact Parks and Recreation Director Ture Nycum. Councilor Mascarenas said that she felt it was important that the Parks and Recreation Department meet with tournament organizers in the fall.

**COUNCILOR MASCARENAS**

Councilor Mascarenas will be attending the Grand Junction Chamber of Commerce meeting the following week to represent Fruita. She attended the Fruita Area Chamber meeting and the Grand Valley Young Professionals will be having a duck race August 5<sup>th</sup> at the End Zone. The Chamber's drop and gain tally of members is pretty much a net quarterly.

Councilor Mascarenas stated that the Business Expo was a great success; between 50 and 60 businesses participated.

Councilor Moss asked what is listed for the City of Fruita in the Chamber's Business Directory. Mr. Kinney answered that the city's contact information is listed there.

Councilor Mascarenas stated that she offered to host the joint meeting of the City Council and Fruita Area Chamber of Commerce in order to keep costs down. It will be held on July 30, 2010. Councilor Mascarenas asked that the Council members let the Deputy City Clerk know if they will be able to attend or not.

### **COUNCILOR BUCK**

Councilor Buck stated that she heard that Ride of The Rockies was successful, although she was unable to attend. The riders were happy with the reception they received and Enstrom's gave away all their candy and the water tanks were empty.

Councilor Buck said she attended the Downtown Association meeting and attending were 7 or 8 people from downtown as well as a representative from the Grand Junction Downtown Development Authority. Councilor Buck could only stay for an hour, so she didn't know what the outcome of the meeting was.

Councilor Buck took the applications for the entertainment grants to several Fruita businesses including the End Zone, The Feedlot, Pablo's and Aspen Street Computers.

The Arts and Culture Board met over at the Community Center and they are going ahead with an art piece for the front of the Center. They will be doing a call to artists for that in either June or July. The big tile mosaic (to go on the outside of the building) has been put on the back burner for now because the Arts and Culture Board feels that it was a rush to get it done and there's no reason for that.

### **COUNCILOR MULDER**

Councilor Mulder stated that the Drainage District would be meeting the following week and 5-2-1 meets in August. The Planning Commission wouldn't be meeting again until July, so he had nothing to report.

### **COUNCILOR BONAR**

Councilor Bonar had nothing to report.

### **MAYOR HENRY**

Mayor Henry stated that the city needs an Event Coordinator. The City Manager clarified that the city can help promote the sports tournaments, but someone is needed to go out and contact the restaurants and motels and get the information to the sponsors of

the tournaments. Councilor Mascarenas and City Manager Clint Kinney both expressed that Mary Lou Wilson of the Fruita Area Chamber of Commerce has already embraced that responsibility.

Councilor Mascarenas said that she could schedule meetings with the District AD and the Fruita AD and even some ADs around the state. Mayor Henry said it would probably need to be done pretty quickly.

Mayor Henry mentioned that when he recently visited Lubbock, Texas, they had a National Disc Golf Tournament. He was dumbfounded at how widespread the sport is becoming.

Mayor Henry reported that there is a new Riverfront Trail map out and he brought copies for everyone including staff. Councilor Moss asked Mayor Henry to pick up more for his office.

Mayor Henry reported that during the Ride of The Rockies, several restaurants (including The Feedlot) had prepared for the riders, but this year, the riders brought their own caterers in. This was disappointing because several restaurants had a lot of food left over, but at the same time, they recognize what they need to do and the riders appreciate that the restaurants were trying to help. The Feedlot had even set up a tent and had water and beans and hotdogs; over 50 riders stopped by.

Mayor Henry said that the only other thing he had to report was that as he was coming home earlier that evening, there was a cement truck that had tipped over on the second roundabout on I-70. It was full of sand and water only and not concrete.

## **10. ADJOURN**

With no further business before the Council, the meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Debra Woods  
Deputy CityClerk