

**FRUITA CITY COUNCIL
VIRTUAL MEETING
MAY 5, 2020
5:00 P.M.**

Public Link to Meeting

When: May 5, 2020 7:00 PM Mountain Time (US and Canada)

Topic: City Council Meeting – 5/5/2020

The link to join the meeting electronically will be posted on 5/5/20 prior to the meeting at www.fruita.org/covid19 under City Council meetings. You may also contact the City of Fruita at (970) 858-3663 for information to connect to the meeting.

1. INVOCATION AND PLEDGE OF ALLEGIANCE

Mayor Kincaid gave the Invocation and the Pledge of Allegiance was recited.

2. CALL TO ORDER AND ROLL CALL

Mayor Joel Kincaid called the Regular Meeting of the Fruita City Council to order at 7:00 p.m. The meeting was held with virtual access provided through Zoom.

Present via teleconference:

Mayor Joel Kincaid
City Councilor Ken Kreie
City Councilor Karen Leonhart
City Councilor Heather O'Brien
City Councilor Kyle Harvey
City Councilor Matthew Breman
Mayor Pro Tem Lori Buck

Absent:

None

Also present via teleconference:

City Manager Mike Bennett
City Clerk/Finance Director Margaret Sell
Deputy City Clerk Deb Woods
Management Analyst Shannon Vassen
Members of the public

3. AGENDA – ADOPT/AMEND

Mayor Kincaid asked if there were any changes to the agenda. Deputy City Clerk Deb Woods noted that the Proclamation for Judy White was inserted into the packet; however, it didn't alter the agenda because as it was already listed there. She added that re-uploaded the packet to the City's website and re-sent it to all Council packet subscribers earlier in the day.

- **COUNCILOR BUCK MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR HARVEY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

4. PROCLAMATIONS AND PRESENTATIONS

- A. PROCLAMATION – PROCLAIMING THE WEEK OF MAY 10 – 16, 2020 AS “POLICE WEEK” IN THE CITY OF FRUITA TO BE ACCEPTED BY FRUITA POLICE CHIEF DAVE KROUSE, MESA COUNTY SHERIFF MATT LEWIS AND GRAND JUNCTION CHIEF OF POLICE DOUG SHOEMAKER**

Councilor Harvey read the Proclamation. Chief Krouse thanked the City Council for the annual recognition of “Police Week” and the entire Grand Valley community for its support. Sheriff Lewis echoed his thanks to the City of Fruita and expressed appreciation for the partnership between all area law enforcement agencies.

- B. PROCLAMATION – PROCLAIMING THE WEEK OF MAY 4 – 8, 2020 AS “TEACHER APPRECIATION WEEK” IN THE CITY OF FRUITA TO BE ACCEPTED BY MESA COUNTY SCHOOL DISTRICT 51 EXECUTIVE DIRECTOR ANGELA CHRISTENSEN AND DISTRICT 51 EXECUTIVE BOARD MEMBERS DR. DIANA SIRKO AND DR. BRIAN HILL**

Councilor O’Brien read the Proclamation. On behalf of School District 51 Foundation, Angela Christensen thanked the City of Fruita and noted that this is the fourth year that all Mesa County municipalities have issued the Proclamation, which she said is sincerely appreciated by the District’s teachers. In addition, she thanked the community for its support of the 2017 mill and bond measure. With the funds from that, the District was able to provide students with over 8,000 Chromebooks to use at home so they can stay connected with their classrooms. Dr. Brian Hill also extended his thanks and said the District is very proud of all their teachers for all they do.

- C. PRESENTATION – RECOGNIZING RIM ROCK ELEMENTARY WITH A CERTIFICATE OF APPRECIATION FROM THE FRUITA CITY COUNCIL TO BE ACCEPTED BY PRINCIPAL SHARON KALLUS AND ASSISTANT PRINCIPAL ZACHARY MOORE**

Councilor Leonhart read the Certificate of Appreciation. Principal Kallus acknowledged Rim Rock’s students and their families for their hard work and thanked the Council and the Fruita community.

- D. PROCLAMATION – PROCLAMATION FOR JUDY’S RESTAURANT FROM THE CITY OF FRUITA AND THE FRUITA AREA CHAMBER OF COMMERCE**

Councilor Kreie read the Proclamation. Judy thanked everyone in Fruita for their loyal support over the years. The Fruita Chamber’s Kayla Brown expressed sincere appreciation for everything that Judy has done for Fruita and wished her the best in her retirement.

E. PROCLAIMING FRIDAY, APRIL 24, 2020 AS ARBOR DAY IN THE CITY OF FRUITA

Councilor Buck read the Proclamation. Parks and Recreation Director Ture Nycum thanked Councilor Buck and noted that due to having to respond to the COVID-19 pandemic, the Proclamation got on a Council agenda a little bit late; it should have been read at an April meeting instead.

Mr. Nycum added that his department had intended to celebrate Arbor Day in a way that was a little more meaningful but that they do intend to celebrate later in 2020. He also said that the Fruita Rotary is donating a tree to be planted at Monument Ridge Elementary School.

F. PROCLAMATION – PROCLAIMING 4 – 9, 2020 AS “ECONOMIC DEVELOPMENT WEEK” IN THE CITY OF FRUITA

Councilor Breman read the Proclamation. City Manager Mike Bennett said that the original Proclamation would be given to Diane Schwanke, President/CEO of the Grand Junction Chamber of Commerce, who is collecting them throughout the valley and sending them on to the Economic Development Council. Executive Director of the Fruita Area Chamber of Commerce Kayla Brown thanked the City of Fruita for its continued partnership and efforts in economic development.

5. PUBLIC PARTICIPATION

Management Analyst Shannon Vassen gave attendees who had joined the meeting virtually instructions on how to submit public comments to the meeting. He confirmed that there were no comments from the public.

6. CONSENT AGENDA

- A. MINUTES - A REQUEST TO APPROVE THE MINUTES OF THE APRIL 21, 2020 CITY COUNCIL MEETING**
- B. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A RETAIL LIQUOR STORE LICENSE FOR SOENG, LLC DBA JACKALOPE LIQUORS LOCATED AT 404 JURASSIC AVE., UNIT B**
- C. BOARDS AND COMMISSIONS APPOINTMENT – A REQUEST TO APPROVE THE APPOINTMENT OF DAVE KARISNY TO THE LIVABILITY COMMISSION FOR A THREE-YEAR TERM TO EXPIRE IN MAY OF 2023**

Mayor Kincaid opened the public hearing on the Consent Agenda. After Mr. Vassen verified that there were no public comments on the Consent Agenda, Mayor Kincaid closed the public hearing and referred to the Council.

- **COUNCILOR KREIE MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR HARVEY SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.**

7. ADMINISTRATIVE AGENDA

A. COVID-19 RESPONSE UPDATE – MIKE BENNETT, CITY MANAGER

Mr. Bennett outlined the updates to the COVID-19 timeline that were included in the Council packet. Those updates since the last Council meeting are as follows:

1. The Business Incubator Center, Inc. (BIC) is administering a small business loan fund that was approved by the City Council. The application form became available online on April 29th but no applications have been received as of yet. The BIC has received many callers asking questions and had a total of 77 page visits to the downloadable application.
2. The City of Fruita continues to coordinate with the Unified Response Team in Mesa County which consists of:
 - a) All Hospital Administrators
 - b) Public Health Department
 - c) Mesa County Sheriff's Office
 - d) All area law enforcement agencies
 - e) All City Managers and Administrators
 - f) Superintendent of the School District
3. The City continues to coordinate with its Economic Development Partners including:
 - a) Public Lands agencies
 - b) State agencies
 - c) Federal Government
4. School District #51 made the decision to not have any graduation driving parades but are trying to be creative and stay within the restrictions while looking at multiple options.
5. City staff have been receiving many questions from the public about the Governor's Safer-at-Home Order related to bars, breweries, distilleries, wineries, tap rooms and restaurants. Mr. Bennett said that in the State of Colorado and in Mesa County, all those establishments (with the exception of restaurants) are to remain closed for the time being (except for takeout and delivery). The County Health Department will be putting out clarifications because staff has been receiving questions about being able to order only alcohol at a restaurant (that is able to seat people at 30% capacity with a number of precautions). The answer is that people can order alcohol *with food*, but they cannot have alcohol alone. This applies to restaurants who have a primarily food-based business. Other clarifications to the Mesa County Health Order are related to whether outdoor seating has its own 30% capacity (it does) and what the mask requirements for fitness gyms are (must be worn at all times).

Mr. Bennett reviewed the City of Fruita's Coronavirus (COVID-19) Reopening Plan with particular attention to staff's specific recommendations to Phase 1, the end date of which will be based on how the medical data trends over the next two-week periods.

Mr. Bennett said he would be meeting with area City Managers, the County Administrator and the Public Health Department the following week to plan and coordinate the re-openings of city halls and the county administration building. The group will also be in contact with the Mesa County Department of Motor Vehicles to coordinate with them on reopening their office in the Fruita Civic Center. Mr. Bennett reviewed all specific recommendations to Phase 1 and noted that there will be another update in two weeks regarding the status and progress the City has made on cutting costs and preparing for any possible reductions in revenues.

One of the recommendations is the reopening of the Fruita Community Center on Monday, May 4th with May 11th as a backup date. The current Mesa County Public Health Order does allow for fitness gyms to reopen with several precautions.

Parks and Recreation Director Ture Nycum reviewed the many aspects of the plan to reopen the FCC. He pointed out that the policies that the City of Fruita is rolling out are very similar to what a lot of other communities will be doing as they reopen their recreation centers. He also pointed out that the FCC is one of two recreation centers in the state opening first because Mesa County and Eagle County were both granted variances by the Governor's Office.

There will be one point of entrance on the north side of the building that will have an attendant on the outside who will be checking for reservations for pieces of equipment in zones within the facility. The attendant will also be asking individuals if they have any symptoms of illness such as coughing, shortness of breath, fever, etc.

Reservations are made in 45-minute increments but are reserved on the hour. This will allow patrons to come inside the facility, get set up and go to their zone/piece of equipment.

Once a patron's workout has been completed, they will be asked to leave the FCC through the doors on the west entrance, which will remain locked so that people may exit but cannot enter.

Mr. Nycum explained that it will only be the fitness areas that will be open at the FCC. He reviewed details about equipment locations, spacing between pieces of equipment, age requirements (no one under 14 years of age may use the fitness equipment), cleaning procedures, mask-wearing requirements (patrons must wear one at all times), how and when reservations can be made, location of stretching and cool-down areas and the continuous monitoring of the plan for effectiveness and use. Mr. Nycum's presentation of the reopening plan also included layouts of various sections of the FCC as well as diagrams showing exactly how patrons will go through the facility step-by-step and physical changes (such as the addition of plexiglass barriers) that have been made to help in protecting the public's safety.

Mr. Nycum added that aquatics, locker rooms and family change areas, Senior Center, front play area, vending machines and childcare rooms will all remain closed at the FCC. All couches, benches and chairs throughout the facility have been removed and are being stored in the Senior Center to minimize the ability for people to congregate.

The Parks and Recreation Department is also not taking any activity registrations, facility reservations or pass registrations at this point.

Mr. Nycum also mentioned some other areas that they are currently working on:

- Youth Activity Areas – Brittany is busy working with the Fruita Youth Action Council and is still accepting applications for the 2020-2021 year.
- Brittany is spending the majority of her time working on Dynamites Summer Day Camp, which is still being offered at Shelledy Elementary and she is planning for 30 slots.
- The Day Camp has significantly changed with many new regulations that Brittany is working through to ensure compliance.
- Tyler is working on future plans for future programs, but currently is looking deeply into a new virtual sports program.
- Tyler is also partially deployed in the Parks Department to help with field conditioning and general maintenance of the City's parks.
- Jackie is working with Brittany in Youth Activities to create a volunteer program where they are pairing up people in the community who need help with things such as yard work or household chores with people who can help. Right now, they have about four to six pairings and are working to get more.
- Jackie is also delivering Meals on Wheels and checking on seniors when available.
- Aquatics has made preparations to reopen with the spacing of swimmers in the lap lanes, Lazy River and general pool area. They are not allowed to open yet, so they are also working on items such as the pool re-plaster project, which has been moved up from late August to the end of June/first of July.
- Aquatics is looking for a new play feature for the shallow area at the same time the pool is being re-plastered.
- Aquatics is also helping with FCC maintenance projects in general and prepping the facility to reopen.

This concluded Mr. Nycum's presentation.

Councilor O'Brien asked what the FCC's plan was if a patron of the facility were to contract COVID-19. Mr. Nycum responded that staff would work closely with the Mesa County Public Health Department to see if it would require closing the facility or not. Mr. Bennett added that with the reservation software, it would help staff identify when and who was at the FCC.

Councilor Kreie asked for confirmation that guests at the FCC must wear a mask the whole time they are there. Mr. Bennett stated that unfortunately, staff received word earlier in the day that masks are required for fitness facilities.

Councilor Kreie pointed out that a lot of businesses are struggling with people who want to come inside and not wear a mask. He asked if City staff is ready to ensure compliance by having a plan if someone decides they don't want to comply.

Mr. Nycum said that only experienced, full-time adult staff will be checking people in. They will be going over the compliance information with them and in addition, there will also be staff

scheduled to work upstairs on the fitness floor as well as downstairs. Mr. Bennett added that staff will handle it just like in normal times when someone will not adhere to any other facility rule. He also pointed out that the City is not at the point of being able to bring back the furloughed part-timers (the high school kids) until the facility is fully operational and the City has the revenues to pay them.

B. QUASI-JUDICIAL HEARINGS AND ETHICS TRAINING – PAUL WISOR, CITY ATTORNEY

City Attorney Paul Wisor explained the difference between the three different capacities in which Council members may act:

- Legislative
- Administrative
- Quasi-judicial

State law provides that quasi-judicial decisions are made on the following applications:

- Re-zonings
- Subdivisions
- Development Plans
- Variances
- Liquor Licenses
- Special Assessments

Mr. Wisor also reviewed:

- Ex parte contacts
- Conflicts of interest under state law
- Conflicts of interest under the Fruita Municipal Code
- Appearance of impropriety

Mr. Wisor emphasized that anytime there is a quasi-judicial matter in front of the Council, Council members are asked to refrain from talking about the issue with people in the public. He said if someone does try to engage them in a conversation about a quasi-judicial matter, Council members should stop them and tell them that they just can't talk about it, but encourage them to come to the hearing where the entire Council will be more than happy to hear what they have to say (with all members at the same time).

Mr. Wisor instructed Council members to contact him and copy in City Manager Mike Bennett should there be a situation where a Council member was unable to stop a conversation with someone in the public or where a Council member has already had conversations with the public about a particular development/application months before the Council member realizes it is going to be an issue before the City. He and Mr. Bennett will then figure out whether or not the Council member needs to disclose a conversation or general knowledge of the issue. After that, Mr. Wisor

and Mr. Bennett will help to decide whether or not the Council member needs to recuse themselves if there was no way that the Council member could be unbiased for that particular issue.

Mr. Wisor pointed out that if an applicant finds out that a Council member was predisposed to vote a certain way, they can appeal the Council's decision to a District Court and put the decision of the City Council in jeopardy.

Mr. Wisor said there are certain instances where a Council member could incur some personal liability for failure to disclose their bias or to not act properly within a quasi-judicial capacity.

Mr. Wisor also warned the Council about asking staff questions about an application directly without the applicant being able to give input. There are some instances where Council members have gone so far as to ask staff to revise an application, recommend denial or make the process more difficult for a developer. This happened recently in Denver and a Council person is now facing personal liability and damages of approximately \$1.5 million.

Mr. Wisor advised that there is also liability attached to conflicts of interest and violating the Code of Ethics. On the criminal side, these are a first- or third-class misdemeanor and there are potentially monetary damages that accrue to elected officials personally and if it's such that there's damage to the City or to another business, those organizations could also sue elected officials personally.

In addition, Mr. Wisor cautioned Council members about developers trying to unveil any new or additional aspects to their application during a public hearing on that application.

Mr. Wisor explained that Fruita is a home-rule municipality, meaning that the City has the ability to create its own laws as long as they are not in conflict with state law. Some municipalities have decided that as long as their Ethics Code is not in conflict with state law, they can pass their own Ethics laws that will supersede the state's. Fruita's Code does not currently say that, but Mr. Wisor said it is something that the City of Fruita could think about doing.

Mr. Wisor reminded the Council to keep in mind the Colorado Open Records Act (CORA), which applies to every written communication Councilors may have. He told them to treat every communication as if it were going to be made public. He also explained that there is an Open Meetings Law that requires that the Council members cannot get together as a group and start making decisions without public notice. If more than three Council members get together, that is an open meeting. He discouraged the Councilors from discussing any city business while gathered together in a social setting.

Mr. Wisor told the City Council members to feel free to email or call him anytime with any questions or concerns, even if it is necessary to do that during a public hearing. He said that as the City Attorney, anything he discusses with Council members would fall under attorney/client privilege, so what is discussed would remain with him.

Mr. Bennett reminded the Council that the step of adding "do not reply all" at the beginning of email messages has been helpful in complying with the Open Meetings law of the state. He also pointed out that this not only applies to City Council, but to all the City's Boards and Commissions, although the consequences may not be as serious. Finally, Mr. Bennett stated that if a Council

member has a personal device that contains City business, it can still be subject to the Open Records Act where all records and communications on that device could be made public at any time.

Mr. Wisor encouraged all Council members to give out their City contact information when corresponding with the public.

8. CITY MANAGER'S REPORT

Mr. Bennett reminded all of the Land Use Code Update virtual meeting on Thursday, May 7th from 4:00 to 6:00 p.m. to be attended by representatives of the Planning Commission, development community, consultants and others who are on the Steering Committee. The meeting has already been noticed to the community.

9. COUNCIL REPORTS AND ACTIONS

A. PLANNING ADDITIONAL CITY COUNCIL TRAINING, TEAM BUILDING AND GOAL SETTING SCHEDULE

City Manager Mike Bennett stated that after every municipal election every two years, the Fruita City Council traditionally does training, team building and reviewing and/or establishing new City goals.

Mr. Bennett reviewed the trainings that have provided to the Council members since just prior to the City of Fruita's 2020 Election. In the past, staff and Council have spent a lot of time in workshop meetings doing a lot of those things.

Mr. Bennett noted that the City's liability insurance carrier, CIRSA, requires that each Council member view the video titled, *"In the Scope of Your Authority: Preventing Public Officials' Liability"* and then send an email to him or Margaret Sell before the end of May 2020 confirming that they have watched it.

Mr. Bennett noted that the City Attorney's presentation earlier also serves as training for the Council. For team building, Mayor Kincaid had sent an email to all Council members concerning a plan to move forward with doing a Myers-Briggs personality-type test through a local consultant who has sent the assessment in an email to the Councilors. Mr. Bennett asked the Council members to complete the assessment by Monday, May 11th in order to be ready to have a discussion about it at the May workshop session. The consultant will be available the evening of Tuesday, May 26 as well as the fourth Tuesday in June for this agenda item and Mr. Bennett said it will likely not be as effective virtually. He pointed out that the Council has the ability to meet in person *now* as a local government; the City has just been taking precautions instead. He said it was up to the Council whether they feel comfortable about meeting in person (while practicing six-foot social distancing) on either May 26th or June 23rd.

Mr. Bennett added that each Council member will also receive an individual phone call from the consultant to discuss individual results in a 17-page report.

Mr. Bennett pointed out that in his coversheet in the packet, he had posed the following questions to the Mayor and Council members:

1. What other areas of interest do you have for training or discussion in the future that staff should schedule?
2. What are your feelings about scheduling the next workshop to have a group discussion on the Myers-Briggs personality type test results?

The Mayor and Council reached consensus that they would like to meet in person on May 26th as opposed to virtually.

Councilors Buck and Leonhart stated that they did not receive the email from the Myers-Briggs consultant, so Mr. Bennett said he would follow up and have her resend them.

Mayor Kincaid said he thought that there were some Council members who were interested in doing a tour of either the Wastewater Treatment Facility or the City Shops building. Mr. Bennett asked that the Council members who were interested in touring any of the City facilities to let him know.

Mr. Bennett gave a brief history of the process of goal setting by the City Council. He stated that as staff went through a year-long process with the community in 2019, there was unprecedented participation to establish the Comprehensive Plan and the City Council goals were reiterated in that plan, giving staff the sense that the City was going in the right direction. The goals were incorporated into the Comprehensive Plan, which was adopted by the City Council in February of 2020.

In addition to those, the Comprehensive Plan addressed the community's values to make sure the City is doing everything it can to sustain and not lose those values. A community vision was also constructed and the document itself breaks down into very specific areas to address the planned themes of: 1) Efficient development, 2) Community first, tourism second, 3) Thriving downtown, 4) Connectivity and 5) Strategic economic development.

It is Council's role to set that long-term vision and to direct the City Manager from an operational standpoint of where the City wants to go and what it wants to become. Mr. Bennett said it was his job to work with City staff to bring recommendations to the City Council on how to get there and how to make sure each Council member is kept updated.

Mr. Bennett said he still thinks the City Council may want to identify some very specific ideas, although he cautioned them on not straying too far from what the community has already bought into and established in the Comprehensive Plan. He continued that typically, he and staff come back to the Council to share all of the action items, a lot of which are established during the budget process each year.

Right now, the main goals that staff is working on are:

- Update the Land Use Code

- Update the Parks, Health, Recreation, Open Space and Trails Master Plan
- Do a Circulation Plan (for which the City just received grant funding)
- Update Engineering standards that go along with the Land Use Code Update
- Responding to and helping the community get through the COVID-19 pandemic currently being faced

Mr. Bennett said he just wanted to hear what the City Council would like to do moving forward.

Mayor Kincaid said he would like the Council to see a refresher on the list of current and future projects that are categorized by the most recently set of adopted goals including Quality of Place, Economic Health, Core Services and Lifestyle.

The Council came to a consensus that they want to discuss ideas for new goals and/or adjustments to existing goals at the workshop meeting of June 23, 2020.

B. COUNCIL REPORTS AND ACTIONS

COUNCILOR LORI BUCK

Lori reported that the first meeting attended by the new board members of the Grand Valley Regional Transportation Committee (GVRTC) was held the previous week and they discussed their CARES Act award of \$5.4 million and how the board will need to meet more often to figure out what to do with the money. The GVRTC will go into an Executive Session on May 6, 2020 to do some contract negotiations with Transdev and address some issues that could potentially tie into those CARES funds.

COUNCILOR MATTHEW BREMAN

Matthew had nothing to report.

COUNCILOR KAREN LEONHART

Karen reported that last week she had her first Museums of Western Colorado (MWC) board meeting and they discussed their Strategic Plan, in which many people are involved. There will be some survey questions from the board that Karen will be bringing to the rest of the Council to get their input. She added that she would forward the meeting minutes to the other Council members once she receives them.

COUNCILOR HEATHER O'BRIEN

Heather had nothing to report yet because all her meetings were coming up the following week.

COUNCILOR KYLE HARVEY

Kyle reported that all of his meetings have been postponed until June, so he had nothing to report yet.

COUNCILOR KEN KREIE

Ken reported that the Downtown Advisory Board would be meeting the following week. He mentioned that he had been out walking around town and thought that it would be a good idea to include an article in the next issue of the City Link newsletter about the many overgrown sidewalks and how it is property owners' responsibility to keep trees and shrubs trimmed away from the sidewalk.

MAYOR JOEL KINCAID

Joel reported that there would be a Chamber of Commerce Board meeting the following week where they will be discussing this year's plans for Farmers' Market, which are deemed essential by the Governor. The board will meet in person utilizing the practice of six-foot distancing. They will also be talking about Fruita Fall Festival and having a backup plan for it.

10. ADJOURN

With no further business before the Council, the meeting was adjourned at 9:03 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita