

**FRUITA CITY COUNCIL
VIRTUAL MEETING
JULY 7, 2020
5:00 P.M.**

1. INVOCATION AND PLEDGE OF ALLEGIANCE

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

2. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the Regular Meeting of the Fruita City Council to order at 7:01 p.m. The meeting was held with virtual access provided through Zoom.

Present via teleconference:

Mayor Joel Kincaid
City Councilor Ken Kreie
City Councilor Kyle Harvey
City Councilor Matthew Breman
City Councilor Karen Leonhart

Excused Absent:

Mayor Pro Tem Lori Buck
City Councilor Heather O'Brien

Also present via teleconference:

City Manager Mike Bennett
City Clerk/Finance Director Margaret Sell
Management Analyst Shannon Vassen
Mesa County Public Health Director Jeff Kuhr
Planning & Development Director Dan Caris
City Attorney Paul Wisor
Members of the public

3. AGENDA – ADOPT/AMEND

Mayor Kincaid asked if there had been any additions or changes to the agenda. City Manager Mike Bennett noted that the packet was revised and posted to the City's website the previous day (July 6, 2020) to include the addition of a presentation from Jeff Kuhr, Director of Mesa County Public Health.

- **COUNCILOR BREMAN MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH FOUR YES VOTES.**

4. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION – AN UPDATE ON COVID-19 FROM MESA COUNTY PUBLIC HEALTH DIRECTOR JEFF KUHR

Mr. Kuhr presented an update on Mesa County’s numbers for the COVID-19 pandemic and the “Protect Our Neighbors” phase of reopening.

Mr. Kuhr provided many figures on testing and the qualifications that Mesa County must satisfy in order to be granted a variance at the highest level, which is when the county would be allowed to open nearly everything to 50% capacity or 500 people, whichever is lower (currently the cap is at 175 people). If the county maintains its percentages for a four-week period, the capacity can increase by 5% every four weeks. The facts and figures he presented can be found at <https://health.mesacounty.us/>.

Mr. Kuhr also gave an overview of the current concerns of the Public Health Department including:

- Attracting people into Mesa County
- Bars in the county
- Live music
- Large gatherings (such as graduation parties and the Fourth of July)
- Non-compliance with social distancing rules
- Mask use/rules

Attorneys, the Grand Junction Chamber, Daily Sentinel and various businesses are currently working with Public Health on a mask campaign to try to move the focus from a public health order perspective to one of best practices and avoiding liability suits.

Mr. Kuhr said that the Health Department’s message has always been about the following five things:

- Six feet of social distance
- Washing hands and surfaces often
- Wearing masks in public
- Staying home when sick
- If a person has symptoms, they need to get tested in order to contain the spread

Mr. Kuhr took questions from the City Council.

There was discussion concerning the possibility of a requirement of wearing face masks. Mr. Kuhr promoted a position of balance right now because a requirement of masks would create more divide in the community; it would make people angry, defiant and could be alienating. Instead, Mr. Kuhr

suggested advocating for the above five items instead of singling out the issue of wearing a mask. He did suppose that if there were to be a requirement, it would be better to come from the Public Health Department than it would from a municipality.

In regards to opening schools in the fall, Mr. Kuhr stated that neither the Public Health Department nor the School District have been authorized to make any sort of local decision on that, but that he certainly hopes to be able to open schools up. He added that he believes it can be accomplished by minimizing risk in the schools. He announced that there is soon going to be a drill related to scenarios with sick kids and how to manage those effectively.

Mr. Kuhr stated that the goals of Mesa County Public Health are to keep Mesa County open, stay safe and act responsibly with the end goal of either having a vaccine or a medicine to lessen the symptoms of those who are sick.

5. PUBLIC PARTICIPATION

Mayor Kincaid gave attendees who had joined the meeting virtually instructions on how to submit public comments. Shannon Vassen confirmed that there were no requests from the public to speak.

6. CONSENT AGENDA

A. MINUTES:

- 1) A REQUEST TO APPROVE THE MINUTES OF THE JUNE 2, 2020 REGULAR CITY COUNCIL MEETING**
- 2) A REQUEST TO APPROVE THE MINUTES OF THE JUNE 16, 2020 REGULAR CITY COUNCIL MEETING**

B. LIQUOR LICENSE AND TASTINGS PERMIT RENEWALS – A REQUEST TO APPROVE THE RENEWAL OF A RETAIL LIQUOR STORE LICENSE, WAREHOUSE STORAGE PERMIT AND TASTINGS PERMIT FOR IN THE MIDDLE LIQUORS LOCATED AT 303 US HIGHWAY 6 & 50

C. LIQUOR LICENSE AND SIDEWALK RESTAURANT PERMIT RENEWALS – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL & RESTAURANT LIQUOR LICENSE AND SIDEWALK RESTAURANT PERMIT RENEWAL FOR ROME INC., DBA FIESTA GUADALAJARA FRUITA LOCATED AT 103 US HIGHWAY 6 & 50

D. LIQUOR LICENSE RENEWAL – A REQUEST TO APPROVE THE RENEWAL OF A HOTEL & RESTAURANT LIQUOR LICENSE FOR STRAYHORN GRILL LOCATED AT 456 KOKOPELLI BLVD., UNIT J

Mayor Kincaid opened the public hearing on the Consent Agenda. After Mr. Vassen confirmed that he did not see any members of the public asking to comment, Mayor Kincaid closed the public

hearing and invited the Council to ask questions, comment, remove Consent items for further discussion or make a motion to approve.

- **COUNCILOR LEONHART MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR BREMAN SECONDED THE MOTION. THE MOTION PASSED WITH FOUR YES VOTES.**

7. PUBLIC HEARINGS

A. LEGISLATIVE HEARINGS

- 1) **RESOLUTION 2020-27 – SUPPLEMENTAL APPROPRIATION TO THE 2020 BUDGET TO APPROPRIATE ADDITIONAL FUNDS FOR THE 16 ROAD RAIL CROSSING IMPROVEMENTS PROJECT AND ARTS AND CULTURE BOARD EXPENSES – FINANCE DIRECTOR/CITY CLERK MARGARET SELL**

Finance Director Margaret Sell presented Resolution 2020-27, a budget amendment that appropriates \$200,000 for the 16 Road Rail Crossing Improvements Project that is being funded in part through a grant of \$50,000 from the Mesa County Federal Mineral Lease District (MCFMLD) and \$121,700 of Development Impact Fees (including interest earned) that the City has collected.

In addition, the annual Art Stroll Gala event raised about \$17,000 earlier this year and the City is appropriating some of those funds to pay for expenses associated with the event and an “Art for Kids” project that the Fruita Arts and Culture Board sponsored.

Mr. Bennett added that the City was very fortunate to receive the MCFMLD grant because there were a number of applications including a very large request from the City of Grand Junction. Fruita’s project rated the highest in applicability and so the City received the full request of \$50,000 while the City of Grand Junction was able to receive the remainder at a reduced amount.

Mr. Bennett noted that the businesses in the Fruita Business Park brought the project to the City’s attention. He also explained that once the funding is secured, it requires working with the Railroad, who actually completes the project in a two-year window. He said it will be a great amenity to the entry of the business park.

- **COUNCILOR BREMAN MOVED TO ADOPT RESOLUTION 2020-27 – AMENDING THE 2020 BUDGET TO APPROPRIATE ADDITIONAL FUNDS IN THE CAPITAL PROJECTS FUND FOR THE 16 ROAD RAIL CROSSING IMPROVEMENTS PROJECT AND IN THE GENERAL FUND FOR THE ARTS AND CULTURE BOARD EXPENSES. COUNCILOR LEONHART SECONDED THE MOTION. THE MOTION PASSED WITH FOUR YES VOTES.**

8. ADMINISTRATIVE AGENDA

A. UPDATE ON POSSIBLE MUNICIPAL CODE AMENDMENTS TO ADDRESS PUBLIC NUISANCE ISSUES – PLANNING & DEVELOPMENT DIRECTOR DAN CARIS

Planning & Development Director Dan Caris presented an update on potential Municipal Code amendments that would specifically address weed abatement issues and formalize the process for staff to be able to assess fines for non-criminal offenses instead of having to go to court with each violation in order to rectify a weed/brush problem.

Mr. Caris said staff was looking not for immediate formal action by the Council but rather for direction to be able to proceed with presenting the First Reading of an Ordinance to amend the Code at the first Council meeting in August (tentative).

Mr. Caris described the burdensome summons and complaint process with the court that involves extensive staff time and legal fees under the current provisions of the Fruita Municipal Code. This process can take two months before a weed issue gets settled. The expense that the City incurs is then billed to the property owner and sometimes filing a lien on the property is necessary.

Mr. Caris said that staff is instead proposing to institute a \$100 fine/ticket for a first weed violation, \$200 for the second violation and \$250 for the third violation with seven-day intervals between the issuance of a ticket and a court date. A property owner would have the opportunity to rectify the issue prior to the court date and if they do, staff would then issue a letter to the court asking that the case be dismissed.

Mr. Caris stressed that it was not staff's intention to go directly with a punitive approach; staff really tries to work with people. He commended Code Enforcement Officer David Oliver, who is ex-law enforcement and has done an amazing job of being accommodating to property owners while still achieving a high level of voluntary compliance. Dave also works with the District Court to utilize folks that have community service to do.

Mr. Caris pointed out that the proposed process would be much quicker than the process that is in place currently.

City Attorney Paul Wisor advised that this approach is very common with many other municipalities across Colorado and that it does provide for more efficiency both in terms of staff time and legal fees.

Mr. Bennett pointed out that the City already uses the proposed process in other public nuisance abatement issues besides weeds and brush such as abandoned cars or visible trash and debris on property in Fruita.

Mr. Caris reminded the Council that weeds are the number one complaint that City staff receives from the public.

Councilor Leonhart asked if there was a common or particular reason that some people are non-compliant (such as a lack of resources).

Mr. Caris stated that in the City of Fruita's Budget, there is an "Environmental Clean Up" line item of \$2,000 to \$2,500 for hardship cases and that staff is usually able to stay within that budget every year. These funds are only used to rectify situations for property owners who are elderly or have medical issues and can also be used for projects like the neighborhood clean-up effort that was completed at the Red Cliffs Mobile Home Park a few months ago.

Mr. Bennett added that the proposed process is only for those property owners who ignore the notices from the City, will not accept any assistance from staff and just won't move forward at all to comply. In these cases, staff doesn't get anywhere using the current process under the Code. When the proposed method of issuing fines is used for other nuisance violations, the City starts to see compliance occur. Mr. Bennett said that the hope is that staff never has to collect a fine or go to court because the ultimate goal is compliance.

Councilor Kreie asked if there was a standard or a definition of "brush" in the Municipal Code and how it is quantified. Mr. Caris said he would prefer that the Code Compliance Officer show the Council some pictures of brush that would be in violation of the Code rather than trying to explain it verbally. Mr. Wisor pointed out that Fruita Municipal Code Section 8.04.010 does contain definitions of "brush, rubbish and weeds" that have been in the Code since 1965 and was most recently updated in 2007.

Mr. Caris said he wanted to impress upon the Council that people have different versions of landscaping such as what is deciduous and what is not and he thinks that a visual presentation to the Council would be more helpful than reviewing the different types of plant origins and what the City deems as acceptable or overgrown.

Councilor Kreie asked if overgrowth onto sidewalks and sight triangles are part of the public nuisance section in the Code. Mr. Caris responded that there are different rights and provisions that the City has to abate weeds that are impeding onto roadways and creating an unsafe situation and that this most often happens with absentee homeowners and/or with overgrowth that happens once the irrigation season begins.

Councilor Kreie supposed staff was using state weed lists and he could think of a couple of instances where he knows people who are growing tamarisk trees in their yard that are well-maintained but is also a terrible weed for this area. He asked if staff would require that the tamarisk trees get removed if the City were to get a complaint.

Mr. Caris said he didn't think that would be the approach that staff would use because more often than not, pruning would be the preferred method of resolving the issue. He added that a lot of that is kind of "in the eye of the beholder" and so he thought that showing some of the examples with photos would help the Council understand what staff is talking about when it comes to public nuisance weeds.

Mr. Wisor responded to Councilor Kreie and said that someone could point to the current Municipal Code and point out that (under the public health definition), "if a weed is injurious, it needs to be removed," so the City certainly could make someone remove their tamarisk if they wanted to, but staff would be more likely to take a less harsh approach first.

Mr. Caris added that some of those things happen on joint property lines that are not actually visible from the public right-of-way and those are civil issues between property owners and are not issues that the City would take up. He cautioned everyone to be careful on how to adjudicate those because he didn't want the City to become the "arm" of an HOA or be in the middle of a property dispute.

Mr. Caris said that a lot of time when noxious weeds are involved, staff asks the division of Mesa County that handles that to provide the City of Fruita with a written interpretation of what they see and then staff can stand behind the Ordinances put into place.

Councilor Kreie asked Mr. Caris if he thought staff would stand a pretty good chance at getting the weed and brush problems corrected. Mr. Caris said he thinks the tiered fines of \$100, \$200 and \$250 set forth a clear path to get the issue rectified even if staff does have to get the court involved and/or file a lien on the property.

Mr. Caris reiterated that the current process takes anywhere from two to three months and that the proposed process would really expedite things.

Councilor Kreie said he would like clarification on the process, but that adding "teeth" to the current regulations in the Code would be a good thing.

The Council reached consensus that they would like staff to proceed with putting the First Reading of an Ordinance on the agenda for the second meeting in July (July 21st).

Mr. Wisor noted that the Mayor neglected to open the public hearing on the previous agenda item:

RESOLUTION 2020-27 - SUPPLEMENTAL APPROPRIATION TO THE 2020 BUDGET TO APPROPRIATE ADDITIONAL FUNDS FOR THE 16 ROAD RAIL CROSSING IMPROVEMENTS PROJECT AND ARTS AND CULTURE BOARD EXPENSES

Mayor Kincaid opened the public hearing on Resolution 2020-27. There were no comments from the three (3) members of the public in attendance through Zoom. Mr. Wisor added that he had the attendee list up during that particular agenda item and no one raised their hand to speak during the presentation, so he believes that there were no members of the public who wished to comment on the issue. Mayor Kincaid closed the public hearing on Resolution 2020-27.

9. CITY MANAGER'S REPORT

City Manager Mike Bennett presented the following updates:

- Earlier that morning, Finance Director Margaret Sell was able to submit Fruita's opt-in application for the CARES Act funding and that all municipalities in the county were able to approve the MOU. Staff received a copy of the completed MOU with all the signatures and that was the last step that must be done.

- On the July workshop agenda, staff will be bringing a draft of Boards and Commissions policies that will go to Council for formal action at the first meeting in August that will clarify the following:
 - Boards and Commissions members cannot serve on a Board/Commission if they have a relative on City Council or that is a City staff member,
 - Members cannot serve more than two (2) consecutive terms,
 - Members cannot have relatives on the same Board/Commission and
 - Members can only serve on one Board/Commission at a time.

- There is a Special City Council workshop meeting scheduled for Monday, July 13th from 7:00 to 9:00 pm at the Fruita Community Center Gymnasium where the Council will listen to representatives from Black Citizens and Friends of Mesa County, Right and Wrong Grand Junction (RAW) and a coach from Colorado Mesa University, all of whom will participate in dialogue with Council. There will be chairs set up at least six feet apart in a circular fashion with chairs also spaced out for audience members.
- The Downtown Advisory Board canceled their meeting for the following day because too many members are unable to attend.
- There is a Special City Council joint workshop meeting with the Parks and Recreation Advisory Board on July 23rd and the agenda will be sent out likely at the beginning of next week. The purpose of the meeting is to receive the results of the survey that was sent to the public related to the Parks, Health, Recreation, Open Space and Trails (PHROST) Master Plan.
- Earlier in the day, Mike and Joel gave Senator Gardner a tour of the Fruita Community Center (FCC) along with Management Analyst Shannon Vassen and Recreation Superintendent Tom Casal. The Senator was in town making many visits to places that have received Land Water Conservation Fund (LWCF) grant money. The two LWCF projects in Fruita include the original Fruita City park (at the location of the FCC) and the outdoor swimming pool. The requirement for perpetual outdoor recreation at the location of the FCC was transferred to the Lila Wills property at Little Salt Wash Park. Senator Gardner met with many other groups in relation to a bill he is co-sponsoring that will be going through the House after passing the Senate to permanently fund the LWCF, which has run out of funding.
- There will be large military-type tents outside of a few Lower Valley Hospital/Family Health West facilities in town for the purpose of COVID-19 testing of FHW residents and employees. The Fruita Police Department was also invited to get tested if they wish.
- Chamber Business After Hours will be held on Thursday, July 9th from 5:30 to 7:00 at Dinosaur Journey. RSVPs are required because there is limited capacity due to COVID-19.
- Staff will have a full financial report at the next regular City Council meeting on July 21st. Sales tax numbers have come in right around 15% above last year for the month of May, but there are many other revenue sources that are down.

Mayor Kincaid stated that Councilor Heather O'Brien had requested that the Council have a discussion about the invocation and moment of silence that are held prior to Council meetings. Mayor Kincaid requested that this discussion be added to the July workshop agenda.

10. COUNCIL REPORTS AND ACTIONS

COUNCILOR KEN KREIE

Ken reiterated that the Downtown Advisory Board meeting had been postponed until August so he would have more to report then.

COUNCILOR KYLE HARVEY

Kyle reported that he attended the first Task Force meeting on Tuesday, June 30th. This Task Force is being put together to address racism as well as other social injustices throughout the Grand Valley. Grand Junction City Councilwoman Anna Stout was there, as were representatives for all the municipalities, Mesa County, CMU and other organizations throughout the community. Kyle said the big topics included brainstorming what the mission and vision for the group would be, and from that, two subcommittees were formed to both draft the mission and vision statements and By-laws for the group. The Task Force will continue to meet on the second and fourth Thursdays of every month at 6:00 p.m. The next meeting will be held at the Lincoln Park barn on July 23rd and Kyle said he planned on attending that. The hope is that the locations of the meetings will be rotating throughout the community, including in Fruita if possible. Kyle added that it seems to be a promising and worthwhile effort made up of a lot of great people and that it is great to see some action steps already coming from it.

COUNCILOR MATTHEW BREMAN

Matthew stated that there hasn't been a Grand Junction Economic Partnership (GJEP) meeting since his last report to the Council. The July meeting was canceled because so many people are traveling; however, GJP did conduct a survey of different businesses with a broad spectrum of "size of business industry," in terms of the impact of COVID-19 on their business. GJEP will compile the data, create a report and a forecast and Matthew said he would share it with the Council members after receiving it.

COUNCILOR KAREN LEONHART

Karen reported that the Livability Commission had met and that Shannon had done a great job of updating everything because the board has not met for quite a while. The meeting employed a combination of virtual participants as well as some members who had shown up in person at the Fruita Civic Center. The board talked about the following ideas for the CARES Act funding:

- Shade options
- Ventilation upgrades at the FCC
- Bathroom on the second story of the FCC

Karen also reported that the Museum of Western Colorado Board of Directors would not be meeting for a couple weeks, but that the Fruita Police Commission would be meeting on Wednesday, July 15th.

MAYOR JOEL KINCAID

Joel reported that the Tourism Advisory Board met recently and talked about the 3rd Phase of reopening Colorado and what the Colorado Tourism Advisory Council is recommending such as in-state travel only.

Joel also reported that CMU ran their first race on their new track. They had an “Invite Mile,” and the women broke the Colorado record for the mile.

Joel noted that staff had earlier in the day emailed the Council a list of the City’s vacancies on Boards and Commissions. He asked the Council members to look at it and help recruit applicants when they could. Joel also reminded staff that they should still have the Planning Commission applicants from a couple of months ago that could be included in the list of potential candidates for the two vacancies on the Planning Commission.

Joel reported that the Fruita Area Chamber of Commerce Board of Directors would be meeting the following morning.

City Attorney Paul Wisor gave the Council instructions on how to convene into Executive Session by clicking on another Zoom link that had been emailed to them for their own secure connection. He noted that there is no formal requirement for the Council to adjourn out of the open meeting, so when the Executive Session was over, that would be the end of the meeting. Paul added that he would be asking everyone to confirm that the purposes of the Executive Session were met and that no other items were discussed outside of those purposes, which will be part of the official record and will conclude the meeting.

- **COUNCILOR BREMAN MOVED TO CONVENE IN EXECUTIVE SESSION FOR THE PURPOSE OF DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS, DEVELOPING STRATEGY FOR NEGOTIATIONS, AND INSTRUCTING NEGOTIATORS UNDER C.R.S. SECTION 24-6-402(4)(E) AND RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY PURSUANT TO C.R.S. SECTION 24-6-402(4)(B), EACH RELATED TO THE MATTER OF JACKSON VS. FRUITA. COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH FOUR YES VOTES.**

The Council convened into Executive Session at 8:50 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita