#### CITY COUNCIL REGULAR MEETING

Fruita Civic Center Tuesday, February 20, 2024 at 7:00 PM

#### **AGENDA**

The link to join the join the meeting electronically will be posted prior to the meeting at <a href="https://www.fruita.org/citycouncil/page/council-meeting-information">https://www.fruita.org/citycouncil/page/council-meeting-information</a>. You may also contact the City of Fruita at (970) 858-3663 for information to connect to the meeting.

This agenda is for informational purposes only and items may be added or deleted at the discretion of the City Council. An executive session may be requested for any item appearing on the agenda.

- 1. CALL TO ORDER AND ROLL CALL
- 2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE
- 3. AGENDA ADOPT/AMEND
- 4. PROCLAMATIONS AND PRESENTATIONS
  - A. PRESENTATION Downtown Advisory Board Recognition
  - B. PRESENTATION Fruita Localism Committee Recommendation to City Council
  - C. PRESENTATION Presentation on Grand Valley Secondhand Tax Initiative from Grand Junction City Councilor Cody Kennedy
  - D. PROCLAMATION Affirming a Commitment to Countering Antisemitism to be accepted by Lesley Golub, Board President for Congregation Ohr Shalom (and others)

#### 5. PUBLIC PARTICIPATION

This section is set aside for the City Council to LISTEN to comments by the public regarding items that do not otherwise appear on this agenda. Generally, the City Council will not discuss the issue and will not take an official action under this section of the agenda. Please limit comments to a three-minute period.

#### 6. CONSENT AGENDA

These are items where all conditions or requirements have been agreed to or met prior to the time they come before the Council for final action. These items will be approved by a single motion of the Council. Members of the Council may ask that an item be removed from the consent section and fully discussed. All items not removed from the consent section will then be approved. A member of the Council may vote no on specific items without asking that they be removed from the consent section

for full discussion. Any item that is removed from the consent agenda will be placed at the end of the regular agenda.

- A. MINUTES A request to approve the minutes of the November 14, 2024 Joint City Council and Planning Commission Workshop meeting
- B. MINUTES A request to approve the minutes of the November 28, 2023 City Council workshop meeting
- C. MINUTES A request to approve the minutes of the December 5, 2023 Joint City Council and Fruita Housing Authority meeting
- D. MINUTES A request to approve the minutes of the December 19, 2023 Regular City Council meeting
- E. LIQUOR LICENSE RENEWAL A request to approve the renewal of a Hotel and Restaurant Malt, Vinous & Spirituous for TMPTF8 Deux, Inc. dba Rib City Grill located at 455 Kokopelli Blvd.
- F. LIQUOR LICENSE RENEWAL A request to approve the renewal of a Hotel and Restaurant Malt, Vinous & Spirituous for Mike's Famous Chicken located at 233 E. Aspen Ave.
- G. RESOLUTION 2024-05 Approving the lease of the Fruita Museum Property located at 432 E Aspen Avenue to the Fruita Chamber of Commerce
- H. ORDINANCE 2024-09 First Reading An Introduction of an Ordinance Approving a Lease Agreement between City of Fruita and Region 10 for the Use and Management of the Fruita Carrier Neutral Location for public hearing on March 5, 2024
- Ordinance 2024-10 First Reading An Introduction of an Ordinance Amending the Fruita
   Municipal Code and Creating a New Title IX Chapter to Regulate Unmanned Aircraft Systems.
- J. FINANCIAL REPORTS A request to approve the January 2024 Financial Reports

#### 7. PUBLIC HEARINGS

Public hearings are held to obtain input from the public on various items. Public hearings are either Legislative in nature or Quasi-Judicial in nature. Public Input is limited to 3 minutes per person. People speaking should step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made. Each is described as follows:

LEGISLATIVE – Legislative public hearings are held when the City Council is considering an item that establishes legislation such as an ordinance amending or establishing laws of the city. Interactions by members of the public with the City Council or individual members is permissible on items of a legislative nature.

ORDINANCES - After introduction of an Ordinance (First Reading), a public hearing date is set and notice of the hearing is published in the newspaper. Staff presents the ordinance on Second Reading and the hearing is opened to the public for public input. After comments from the public, the Mayor will close the hearing and bring the Ordinance back to the City Council for discussion and potential action. The Council will make a motion to approve the Ordinance or take no action. In the event the ordinance is approved, it will become effective 30 days after adoption.

QUASI-JUDICIAL – Quasi-judicial public hearings are held when the City Council is acting in a judicial or judge like manner and a person with a legitimate interest is entitled to an impartial decision made on the basis of information presented and laws in effect. Quasi-judicial hearings are commonly held for land use hearings and liquor license hearings. Since the City Council is acting in a fair and impartial manner, it is NOT permissible for City Council members to have any ex-parte communication (contact between the applicant, members of the public, or among other members of the City Council) outside of the Public Hearings and meetings on the subject application. The City Council must limit its consideration to matters which are placed into evidence and are part of the public record. Quasi-judicial hearings are held in the following manner:

- 1. Staff presentation Staff will present the comments and reports received from review agencies and offer a recommendation.
- 2. Applicant Presentation The petitioner is asked to present the proposal. Presentations should be brief and to the point and cover all of the main points of the project.
- 3. Public Input (limit of 3 minutes per person) Speakers must step up to the microphone and state their name and address. Speakers should be to the point and try not to repeat the points others have made.
- 4. The public hearing is closed to public comments.
- 5. Questions from the Council. After a Council member is recognized by the Mayor, they may ask questions of the staff, the applicant, or the public.
- 6. Make a motion. A member of the City Council will make a motion on the issue.
- 7. Discussion on the motion. The City Council may discuss the motion.
- 8. Vote. The City Council will then vote on the motion.

#### A. QUASI-JUDICIAL HEARINGS

#### **B. LEGISLATIVE HEARINGS**

- ORDINANCE 2024-04 Second Reading Amending Chapters 2.41 and 2.42 of the Fruita Municipal Code to eliminate voting rights for Council members appointed to the Police and Parks and Recreation Commissions, and excluding them from quorum calculations Finance Director/City Clerk Margaret Sell
- ORDINANCE 2024-05 Second Reading Amending Section 3.18.240 of the Fruita Municipal Code concerning membership requirements for the Tourism Advisory Council Finance Director/City Clerk Margaret Sell

#### 8. ADMINISTRATIVE AGENDA

A. APPEAL – This is an appeal of the Fruita Planning Commission's decision on a request for a Conditional Use Permit for a drive-thru facility for a retail fueling station - *Planning Director Dan Caris* 

#### 9. CITY MANAGER'S REPORT

#### 10. COUNCIL REPORTS AND ACTIONS

A. EXECUTIVE SESSION – Discussion and possible action to consider a motion to convene in Executive Session regarding personnel issues under C.R.S. Section 24-6-402(4)(f) for the City Attorney's annual informal review

#### 11. ADJOURN

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact the City Clerk's Office at 970-858-3663 within 48 hours prior to the meeting in order to request such assistance.



# AGENDA ITEM COVER SHEET

**TO:** Mayor & City Council

**FROM:** Ciara DePinto, Communications & Engagement Manager

**DATE:** February 20, 2024

**AGENDA TEXT:** PRESENTATION – Downtown Advisory Board Recognition

#### **BACKGROUND**

During 2023, the Fruita City Council met with each Board and Commission to receive updates from the Boards, and to discuss the priorities and efforts of each group. At the September Workshop, City Council debriefed the action items from each discussion and determined the next steps for the Downtown Advisory Board. The Downtown Advisory Board was created in 2012 with a goal to bring resources to the downtown area to maintain, enhance, and promote the downtown as the social and cultural center of the City of Fruita. The board addressed issues such as parking, lighting, landscaping, diversity of retail opportunities, pedestrian needs, design standards, zoning, and vehicle circulation.

The Downtown Advisory Board fulfilled its goals and purpose, so the City Council decided to disband the board and explore the transition to a board that focuses more broadly on "localism" to be an extension of the City's communication efforts and further reach residents and increase the number of residents engaging with the community. The City of Fruita would like to recognize and thank all the Downtown Advisory Board members for their time and commitment to the Fruita community.

The goals set by the board were not only met but exceeded, creating a vibrant and thriving downtown that reflects the heart of our community. From supporting local businesses to organizing engaging events, the impact of the Downtown Advisory Board has been felt by everyone who calls Fruita home.

All previous members from the Downtown Advisory Board were invited to tonight's City Council meeting to be recognized by Fruita City Council for the work and dedication each member contributed to the board.



# AGENDA ITEM COVER SHEET

**TO:** Mayor & City Council

**FROM:** Ciara DePinto, Communications & Engagement Manager

**DATE:** February 20, 2024

**AGENDA TEXT:** PRESENTATION - Fruita Localism Committee Recommendation to City Council

#### **BACKGROUND**

During 2023, City Council met with each Board and Commission, receiving updates from Boards, and discussing the priorities and efforts of each. At the September Workshop, City Council debriefed the action items from each discussion and determined the next steps with the Downtown Advisory Board (DAB). The DAB fulfilled its board goals and purpose, so the City Council decided to disband the board and explore the transition to a board that focuses more broadly on "localism" to be an extension of the City's communication efforts and further reach residents and increase the number of residents engaging with the community. The City Council directed staff to establish a committee to review the possible creation of a new City Board, the "Localism" Board. This Board, if created, would replace the DAB. City Council discussed inviting the current members of the DAB and a mixture of past DAB members, past Council members, or others who have strived to increase residential involvement in the community to participate.

From November 2023 to January 2024, the Localism Committee met four times to discuss ideas for creating a potential Localism Board. The committee consisted of nine members, including Councilor Purser, acting as the Council Liaison for the committee.

The committee meetings began with a historical overview of the Downtown Advisory Board and led into discussions on how some residents don't know about what downtown Fruita offers as far as events, local businesses, and other activities. The group focused time on answering questions around community values, engagement, communications, and what localism means. Discussion highlights focused on enhancing communication efforts, understanding residents' motivations, and promoting community values. The committee engaged in dialogue around strategies to bridge the gap between residents and existing city communication channels, emphasizing the importance of organic, two-way communication and providing platforms for community input. The committee shared ideas around trying to meet people where they are and being a listening ear for residents. Discussions also centered around the significance of understanding residents' motivations for choosing Fruita and how this knowledge could inform community engagement efforts, alongside brainstorming ways the potential board could facilitate activities for more residents to "live like locals."

After thoughtful conversations, the committee decided a Localism Board is needed for Fruita and crafted a mission statement for the Localism Board to bring to City Council. After evaluating several drafts and

discussing the importance of a Localism Board, the committee decided to emphasize community representation and engagement.

#### RECOMMENDATION

Overall, the Localism Committee recommends the Fruita City Council create a Localism Board with the following mission statement, "The Fruita Localism Board represents and relays the needs and opinions of our diverse community and shares this feedback within the City to ensure that all locals have a greater opportunity to live and play like a local. Reach out | Receive | Engage."

The board should act as a listening ear for Fruita residents, adding an additional point of contact for residents to engage and stay informed with their local government, ensuring feedback from the community is shared with the correct groups at the City of Fruita. The board should act as an advisory board for City engagement and communications and relay information to residents and the city. Board members should represent Fruita's diverse community and should foster ideas and projects that match the mission of the board.

#### FISCAL IMPACT

Since the Localism Board would work in an advisory capacity, there is no fiscal impact to the City of Fruita other than staff liaison time. There may, however, be recommendations that come from the Localism Board to implement programs, studies, or other activities that do require financial support from the City of Fruita.

#### OPTIONS AVAILABLE TO THE COUNCIL

- 1. Direct staff to move forward in creating a resolution and bylaws for creating a Fruita Localism Board.
- 2. Provide comments and feedback and ask the Localism Committee to revise the recommendation presented to City Council.
- 3. Deny the recommendation of creating a Localism Board.



# **AGENDA ITEM COVER SHEET**

TO: FRUITA CITY COUNCIL AND MAYOR

**FROM:** MIKE BENNETT, CITY MANAGER

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** Presentation – Presentation on Grand Valley Secondhand Tax Initiative from Grand

Junction City Councilor Cody Kennedy.

The purpose of this agenda item is for Grand Junction City Council Member Cody Kennedy to provide a presentation to the Fruita City Council on a Grand Valley Secondhand Tax Initiative that he has been working on. Councilor Kennedy originally reached out to Councilor Miller to share the idea, and at the January workshop, Councilor Miller asked the Fruita City Council if they would be interested in a presentation. All of the City Council agreed and asked that staff set up the presentation for this meeting.

Councilor Kennedy will provide an overview of the Secondhand Tax Initiative, and be available to answer any questions from the City Council.

# AFFIRMING A COMMITMENT TO COUNTERING ANTISEMITISM

WHEREAS, the City Fruita is a diverse city and takes great pride in our diversity and respect for all people. Our local Jewish community contributes to our community in countless ways; and

WHEREAS, the use of antisemitic language, conspiracy theories, holocaust denial, and hatred towards Jewish people has increased exponentially the past decade and has led to increased attacks against the Jewish people. According to the Federal Bureau of Investigation, while Jewish people account for approximately 2.4% of the U.S. population, Jews were the target of 60% of all religiously motivated hate crimes in recent years; and

WHEREAS, an Anti-Defamation League audit found the number of incidents of antisemitism in the United States increased by 36 percent in 2022 and since October 2023 has increased an additional 337 percent; and

WHEREAS, Colorado ranked ninth among states for the number of antisemitic incidents in 2022; and

WHEREAS, antisemitism is counter to the basic American principles of tolerance, pluralism, and democracy and has led to violence and the destruction of lives and communities, and

WHEREAS, nearly one out of every four Jews in the U.S. has been the subject of antisemitism over the past year,

WHEREAS, education and action are essential to prevent the spread of antisemitism, provide strong support to a vulnerable community, and combat toxic hatred that harms not only the Jewish community but all Coloradans; and

**WHEREAS**, it is incumbent upon us all to speak out against anti-Jewish hate, violence against Jews, antisemitism and hate speech of any kind and to stand with our Jewish community members as allies in support and solidarity, strengthening our commitment to greater understanding and dignity for all.

NOW THEREFORE, BE IT RESOLVED THAT THE FRUITA CITY COUNCIL DOES HERBY AFFIRM A COMMITMENT TO COUNTERING ANTISEMITISM In the City of Fruita.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the official Seal of the City of Fruita this 20<sup>th</sup> day of February 2024.

Joel Kincaid, Mayor, City of Fruita

Section 6, Item A.

## FRUITA CITY COUNCIL-PLANNING COMMISSION JOINT WORKSHOP NOVEMBER 14, 2023 6:30 P.M.

#### 1. CALL TO ORDER AND ROLL CALL

The Joint Workshop of the Fruita City Council and Fruita Planning Commission was called to order at 6:35 p.m. by Mayor Joel Kincaid.

City Council members present were Mayor Pro Tem Matthew Breman, and City Councilors Jeannine Purser, James Williams and Amy Miller. Councilor Ken Kreie was excused absent.

Planning Commission members present were Commissioners Mel Mulder, Derek Biddle, Jesse Fabula, Patrick Hummel, Jessica Hearns, Michael Handley and Josh McGuire.

City Staff present were City Manager Mike Bennett, Planning and Development Director Dan Caris, City Planner Henry Hemphill, Public Works Director Kimberly Bullen, Parks and Recreation Director Marc Mancuso, Deputy City Clerk Deb Woods and Communications and Engagement Specialist Ciara DePinto.

#### 2. AGENDA ITEMS

A. JOINT CITY COUNCIL & PLANNING COMMISSION WORKSHOP WITH 2FORKS VENTURES (GAVIN BROOKE & SARAH WOOD) AND BUTLER SNOW (DEE WISOR & DALTON KELLY SERVING AS SPECIAL COUNSEL) (MR. KELLY APPEARED VIRTUALLY)

The purpose of this joint workshop was for the Planning Commission and City Council to discuss the public/private partnership between the City of Fruita and 2Forks Ventures. One of the desired outcomes of the meeting was to create some familiarity of the project for the Fruita Planning Commission.

Planning and Development Director Dan Caris stated the City Council has been working with 2Forks Ventures on "The Beach" development since this summer. The Council completed a tour of the property on October 17, 2023 before the regular Council meeting.

2Forks Ventures is a development and construction company located in the Two Forks Valley owned by Gavin Brooke, who has partnered with Sarah Wood on projects in Fruita.

Mr. Brooke's provided a presentation about 2Forks and The Beach development project which included:

- Examples of other projects that have been completed by 2Forks Ventures.
- Team members who have worked on the due diligence studies
- Aerial photo map of the property illustrating trail connectivity
- Aerial photo of parcels totaling approximately 40 acres that includes some river exposure for recreational and park facing access
- Current zoning of CSR

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- Current and Future Land Use Maps
- Site constraints:
  - ➤ flood plain grading would be first endeavor down to river level
  - ➤ Infrastructure and off-site improvements (electric being the most complete)
  - ➤ Requires domestic water, sewer and telecommunications extensions
  - Fill in ditch to create roadway- significant amount of roadway to be accomplished
  - > Gutter and sidewalk
  - > Sewer lift station will need to be upgraded and possibly moved
  - ➤ Soil types (one of the larger issues to address
- Site Opportunities:
  - ➤ Multi-use park with dedicated river access
  - > I-70 visibility from the west
  - > Large contiguous parcel
  - > Recreation node:
    - ✓ River
    - ✓ Riverfront Trail
    - ✓ Connectivity to City

The application for development of the property will see 2Forks applying as co-applicants with the City of Fruita for a Planned Unit Development (PUD). The applicants and staff will be the same at the public hearing for Preliminary Plan approval. The development is envisioned at roughly 50/50 public and private development.

The final due diligence surveys and studies will likely begin in January. Proposed public amenities have been discussed with City Council but will be finalized by the architect with help of Parks and Recreation Director Marc Mancuso.

The next step in the process is to hash out the terms of the partnership between the City of Fruita and 2Forks Ventures. Transparency will be crucial as each partner uses their own special counsel to negotiate contracts. After that, both parties can move forward with application process.

The City Council and Planning Commission discussed vision for the mixed use of the property which could include some housing (no subdivisions), open space, park space, river access and commercial uses. Future development should align with the guiding principles in the City's Comprehensive Plan and the City's goals.

Mr. Brooke's presentation included a timeline comprised of Phase 1, which will establish the early development and Phase 2, which will implement a market study and Comprehensive Plan to narrow down further development.

Staff explained that at this time, it is important to not go into too much granular detail in order to maximize flexibility and creative ideas.

Discussion was also held about getting community buy-in through outreach, will be essential for success of any and all future development at The Beach.

Attorneys Dee Wisor and Dalton Kelley also provided a presentation about Public Finance Agreements, Public Improvement Fees, Tax Rebate Agreements, Tax Increment Financing, Metro Districts, General Improvement Districts and other tools that may be utilized by public/private partners in partnership agreements.

# 3. ADJOURN

With no further business before the Council, the meeting adjourned at 8:45 p.m.

Respectfully submitted,

Deb Woods Deputy City Clerk

### FRUITA CITY COUNCIL WORKSHOP **NOVEMBER 28, 2023** 6:30 P.M.

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#### CALL TO ORDER AND ROLL CALL

The workshop of the Fruita City Council was called to order at 6:34 p.m. by Mayor Joel Kincaid. City Council members present were Mayor Pro Tem Matthew Breman and Councilors Jeannine Purser, James Williams, Ken Kreie and Amy Miller. Councilor Aaron Hancey was excused absent.

City Staff present were City Manager Mike Bennett, Assistant City Manager Shannon Vassen, Communications and Engagement Specialist Ciara DePinto, Deputy City Clerk Deb Woods, Planning and Development Director Dan Caris, Neighborhood Services Coordinator Matt Carson, City Engineer Sam Atkins, Chief of Police Dave Krouse and Police Lieutenant Nick Peck.

#### **AGENDA ITEMS**

#### 1. DISCUSSION ON THE 2024 BUDGET (6:30 – 7:00 PM)

City Manager Mike Bennett noted that the Council had been provided with a handout containing information on tables and chairs for the Council Chambers from ProSpace furniture. Existing tables can still be used for outside and other purposes. There are three options for chairs included in the handout and one is highlighted. Chairs for other than the dais feature seats that flip up and can be stacked. Colors go with architectural design. Audience chairs are on the last page and will not have arms. Seats are padded. New furniture will also include 8 to 9 tables.

All Council members approve of the choices presented by City Manager Mike Bennett and directed staff to move forward.

In 2020, there was a big upgrade to audio/visual equipment including television screens, cameras and microphones. \$30,000 was spent at that time. The mixer will have to be upgraded because it is at capacity for the number of inputs. Back television screen can be replaced. If we add microphones, inputs will have to installed.

Councilor Williams offered to take a look at the equipment and said he thinks that a couple of thousand dollars is all that is needed for two more wireless microphones and a different mixing board. Councilor Purser believes it is closer to \$5,000 for a mixing board.

The Council came to a consensus to add \$10,000 in the 2024 Budget for audio/visual equipment including podium mount and up to four wireless microphones in the Council Chambers.

Mr. Vassen has requested updated pricing.

Mr. Vassen explained that staff will draft an Ordinance to implement an additional \$50 for Council pay for four new Council members only because the City Charter will not allow Council to amend its own pay. First Reading of the Ordinance will go to City Council on December 19, 2023 and Second Reading at the second meeting in January. There will be a Consumer Price Index (CPI) increase after

Section 6, Item B. November

that every two years for all Council members. New pay will be \$525 per month for the Mayor, \$400 per month for the Mayor Pro Tem and \$350 per month for City Council members.

Assistant City Manager Shannon Vassen noted that the other purpose of this agenda item was to provide the Council with an opportunity to answer questions on the proposed 2024 Budget.

Mayor Pro Tem Matthew Breman inquired about the property tax Bill that will reduce assessed values on property tax and Mr. Vassen said staff feels they have close projections.

City Manager Mike Bennett noted that the cost for the breach of Reservoir #2 will be included in the final draft of next year's Budget. Staff first needs to be sure the quote from SGM is still valid.

### 2. COUNCIL LIAISON SEATS ON CITY BOARDS AND COMMISSIONS AND OUTSIDE AGENCY BOARDS DISCUSSION (7:00 – 8:00 PM)

City Manager Mike Bennett summarized the chart included in the Council packet. He noted that Council has been discussing the desire to remove Council Liaisons as voting members on the City's Boards and Commissions and having Council Liaison seats not count towards the maximum number of members a board may have.

The Council discussed how the Council Liaison position was completely removed from the Fruita Planning Commission in order to avoid any conflicts of interest and how the same reasoning should apply to the Board of Adjustment.

All Council members were in favor of the changes to the Boards and Commissions except Councilor Williams, who said it feels like if Council members are spending the time on an additional board, they should have a voice. Councilor Kreie pointed out that ultimately, the City Council makes all final decisions after boards make recommendations to the City Council.

There was also some discussion about Quasi-Judicial public hearings and how Council members cannot legally discuss those with the public. Mr. Bennett advised that if a citizen tries to have those type of discussions with a Council member, the Council member should tell the citizen to attend the Council meeting when it will be addressed or refer them to the Council minutes available after the meeting or in the Weekly Information Update.

Councilor Purser wanted to discuss the policy about having relatives of Council members on the City's boards. She said she was interested in which family members are not allowed to serve on Boards and Commissions; for example, whether her adult daughter or son-in-law would be allowed to serve.

Mayor Kincaid said it was a matter of public perception that there is some kind of nepotism. Councilor Purser said she could see the thought process behind that, but still struggles with limiting someone who has a lot of good ideas and who has a love of the community.

Mr. Bennett read the section concerning membership from the Boards and Commissions Policy. There was consensus among the Council members to leave that section as is concerning family members of Council members being prohibited from serving on the City's other Boards and Commissions and not making any changes to the policy at this time.

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## 3. DISCUSSION ON UPDATING ORDINANCE LANGUAGE CREATING A NEW TITLE 9 CHAPTER IN THE FRUITA MUNICIPAL TO REGULATE UNMANNED AIRCRAFT **SYSTEMS (8:00 – 8:45 PM)**

City Manager Mike Bennett noted that at a previous Council meeting during Council Reports and Actions, the Council gave staff direction to narrow down the language in the draft of the Ordinance regulating Unmanned Aircraft Systems (UASs). He stated that staff had made those changes, but wanted to discuss some hypotheticals to ensure that the Council doesn't have incorrect expectations.

Mr. Bennett recalled that this matter came up after a member of the public complained at a previous Council meeting during Public Participation that the person's HOA President was looking into people's backyards using a drone (UAS).

Fruita Police Lieutenant Nick Peck stated that without the Ordinance, the City has no way of enforcing any action on someone who might be violating people's privacy with a drone. He said that the Ordinance would give police officers the opportunity to explain to a potential offender what the rules are and that this education would be implemented first. If the person still refuses to comply, they could be cited with a Class B offense, which can result in a fine of \$2,650 maximum and six months in prison if it is an ongoing problem. Lt. Peck pointed out that this would be an issue that is complaint driven.

There was also discussion concerning the fact that the Police Department must have evidence before someone can be cited such as a witness that would be willing to testify or video evidence.

The Council came to a consensus that the draft Ordinance will give the Police Department a good starting point and if in a few years changes are needed, officers could come back to the City Council to request them. Many Council members said they felt that the language in the draft Ordinance is exactly what the City needs right now, but also acknowledged that the technology is still evolving and therefore, the City would likely need to update the Municipal Code to address those issues in the future.

The Council directed staff to move forward with the First and Second Readings of the Ordinance concerning UASs.

#### OTHER ITEMS (8:45 PM)

- Mike announced that staff is working on an update of Council handbook including reformatting and information about City email addresses and iPads. He said he will soon email the Council the link to the handbook and requested that they review it and provide feedback. Mike added that staff wants to get the link published on the website in early December for people who might be thinking about running for City Council.
- Concerning the Council's request for recognition of all Downtown Advisory Board (DAB) members past and present, Mike asked the Council what their expectations were. He said staff could invite the DAB members to a Council meeting during the 1<sup>st</sup> quarter of next year. There are approximately 30 to 40 people that would be recognized. Mike discussed with the Council a couple of ideas for commemorative gifts for the DAB members that could be presented to them at the Council meeting and there could be a presentation of the highlights of the board. Jeannine thought cupcakes and I-Heart-Fruita buttons would be nice.

- Matthew reported that his Housing Authority email stopped working and that all he gets are errors. Mike said staff would look into it.
- Amy said that the downtown Christmas lighting event was awesome and fun.
- Joel asked how many Council members would be attending the City Christmas party and all Council members raised their hands.

With no further business before the Council, the meeting adjourned at 7:55 p.m.

Respectfully submitted,

Deb Woods Deputy City Clerk

## CITY COUNCIL AND FRUITA HOUSING AUTHORITY REGULAR JOINT MEETING DECEMBER 5, 2023 7:00 P.M.

#### 1. 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 both in person and with virtual access provided through Zoom.

**Present:** Mayor Joel Kincaid

Mayor Pro Tem Matthew Breman City Councilor Jeannine Purser City Councilor James Williams City Councilor Ken Kreie (virtual) City Councilor Amy Miller

**Excused Absent:** City Councilor Aaron Hancey

Deputy City Clerk Deb Woods

**City staff present:** City Manager Mike Bennett

Assistant City Manager Shannon Vassen

Communications and Engagement Specialist Ciara DePinto

Planning and Development Director Dan Caris

Public Works Director Kimberly Bullen

**Also present:** City of Fruita Public Works Employees

Nicholas Westfall, President of Base Camp Provisions, LLC (virtually)

Members of the public (in-person and virtually)

#### 2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mayor Kincaid called for a moment of silence for all faiths and beliefs to have the opportunity for a silent prayer. He then led in the Pledge of Allegiance.

#### 3. AGENDA – ADOPT/AMEND

• COUNCILOR PURSER MOVED TO APPROVE THE AGENDA AS PRESENTED. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

#### 4. PROCLAMATIONS AND PRESENTATIONS

A. PRESENTATION – RECOGNITION OF PUBLIC WORKS EMPLOYEES COMPLETING THE 2023 PUBLIC WORKS SUPERVISOR TRAINING PROGRAM

Public Works Director Kimberly Bullen stated that several members of the Public Works team were present in the audience to be recognized for completing the credentialed 2023 Supervisor Training Program, which is associated with the American Public Works Association (APWA). She said that this was the first time that the City has offered this program to Public Works employees.

Bullen noted that there are a number of Public Works employees who have had long careers with the department and have recently retired, so the department's succession planning efforts are built around trying to prepare the next generation of Public Works employees to take on those roles as people leave the organization.

Bullen noted that Mike Bramlett, Streets Divisions' Crew Leader, had to leave because he got called out for a locate. Wastewater Reclamation Facility Class A Operator Jeff Brondum was also not present due to another commitment. She acknowledged the Public Works employees who were present in the audience including:

- Jesse McClaskey, Street Maintenance Worker II (who is preparing to take an exam to be promoted to Heavy Equipment Operator)
- Tony Fuoco, Fleet Supervisor
- Matt Haifley, Wastewater Reclamation Facility Class A Operator

Bullen stated that the Supervisor Training Program was offered to all Public Works employees and seven (7) employees signed up for it. Two employees have since left employment with the City. She listed the components of the program, which include:

- Public Works Administration
- Operations
- Finance
- Communications

Staff was given about two hours every week to study and review the material and everyone got together approximately every couple of weeks to discuss the units and go through a practice exam. Bullen stated that it was almost a year-long commitment between January 19<sup>th</sup> and November 29<sup>th</sup> to get through the program and that the employees will have the opportunity to sit for the Credentialed Certification by APWA if they choose.

Mayor Kincaid thanked the employees for their efforts. Councilor Breman said that in looking at their reading material, it looked very challenging.

Mayor Kincaid presented certificates to the Public Works employees and photos were taken of them with the City Council.

#### 5. PUBLIC PARTICIPATION

Craig Lombard, 407 W. Pabor Ave., stated that he was present at the meeting to voice his concerns regarding the potential City Market service station proposed to be placed on the corner of Aspen Avenue and Coulson Street. He said that having a gas station within 500 feet of his home was concerning, but that his main concern was the increased traffic on Aspen, Willow and Coulson. Lombard stated that the entrance, or ingress, off of Aspen Avenue could likely be a potential stacking point for cars onto the thoroughfare and would prevent traffic from moving freely.

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Lombard continued that unlike Coloramo next door, which can compound cars on its property, the half-acre lot cannot do that, and he's worried about it. He added that the egress or exits onto Willow would greatly increase the traffic there, which is a short, one-block street and would cause problems on the quiet, residential street in his neighborhood.

Lombard stated that furthermore, increased traffic at the corner of Aspen Avenue and Coulson is also concerning for emergency vehicles' access to Highway 6 & 50. He said they use Pabor Avenue when they are called to Loma and Mack and so, they will make that turn and with the egress and exiting and entering off of Coulson, he wonders if that might be a problem.

Lombard said that there are four low-income houses that will be destroyed or taken down to make room for the gas station. He said there are also several mature trees on that site that would be lost. Finally, he said, if the gas station was approved, he was wondering why EV charging wasn't a part of the plan in the beginning.

There were no further comments from the public.

#### 6. CONSENT AGENDA

- A. MINUTES A REQUEST TO APPROVE THE MINUTES OF THE OCTOBER 17, 2023 REGULAR CITY COUNCIL MEETING
- B. MEMORANDUM OF UNDERSTANDING A REQUEST TO APPROVE THE DESERT RIVERS COLLABORATIVE MEMORANDUM OF UNDERSTANDING (MOU)

Mayor Kincaid asked if there were any requests from the public to remove any items removed from the Consent agenda for further discussion. There were no such requests.

Mayor Kincaid asked the City Council if they had any items they would like removed from the Consent agenda for further discussion. There were no such requests.

• COUNCILOR BREMAN MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

#### 7. PUBLIC HEARINGS

- A. QUASI-JUDICIAL HEARINGS
  - 1) LIQUOR LICENSE REPORT OF CHANGES A REQUEST TO APPROVE A CORPORATE REPORT OF CHANGES ON A BREW PUB LIQUOR LICENSE FOR BASE CAMP PROVISIONS, LLC DBA BASE CAMP PROVISIONS LOCATED AT 155 N. MULBERRY ST. FINANCE DIRECTOR/CITY CLERK MARGARET SELL

Finance Director/City Clerk Margaret Sell provided staff's presentation. She noted that currently, Laura Fischer owns 100% of the stock of the Corporation and the stock is being transferred to Nicholas Westfall. She said the background checks were completed by staff through the FBI, CBI,

Mesa County Sherrif's Office, Grand Junction Police Department and the Fruita Police Department and there are no records of arrest; all background checks came back clear.

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She said it was staff's recommendation that the Report of Changes be approved by City Council for Base Camp Provisions, LLC's Brew Pub Liquor License located at 155 N. Mulberry Street to transfer 100% of the ownership interest from Laura Fischer to Nicholas Westfall.

Mr. Westfall appeared before the City Council virtually as he was out of town. He said he appreciated everything the Council has done for the community. He continued by saying that there was not a lot of change happening with the liquor license because he was one of the original owners and founders of Base Camp; he was the one who slaved over the remodel, but kind of existed in the background because he has a day job and a commitment to the medical community.

Westfall said that a recent divorce of his business partners' was the reason for the transfer of the owner's interest of the liquor license from Laura Fischer to himself.

Mayor Kincaid opened the public hearing. Hearing no comments, he referred the matter to the City Council.

 COUNCILOR BREMAN MOVED TO APPROVE THE REPORT OF CHANGE FOR BASE CAMP PROVISIONS, LLC DBA BASE CAMP PROVISIONS BREW PUB LIQUOR LICENSE LOCATED AT 155 N. MULBERRY ST. TRANSFERRING 100% MEMBERSHIP INTEREST IN THE CORPORATION FROM LAURA FISCHER TO NICHOLAS WESTFALL. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

#### **B.** LEGISLATIVE HEARINGS

1) ORDINANCE 2023-14 – SECOND READING – SUBMITTING TO THE REGISTERED ELECTORS VOTING IN THE REGULAR MUNICIPAL ELECTION TO BE HELD ON APRIL 2, 2024 A BALLOT QUESTION CONCERNING THE RETENTION OF REVENUE IN EXCESS OF TABOR LIMITS – FINANCE DIRECTOR/CITY CLERK MARGARET SELL

Finance Director/City Clerk Margaret Sell noted that the City Council had previously formed a TABOR Committee to review the proposed TABOR question and how it looks for the April 2, 2024 Municipal Election. She explained that the TABOR Committee came back with the recommendation that the City move forward with what it has done in the past, which is a six-year timeframe on the TABOR restriction limits being lifted. This way, the City can spend those revenues on Capital Projects and the maintenance of them. Sell explained that the Ordinance before the Council essentially sets the ballot question before the voters in April.

Mayor Kincaid opened the public hearing. Hearing no comments from the public, he closed the public hearing and directed the agenda item to the City Council.

• COUNCILOR WILLIAMS MOVED TO ACCEPT THE TABOR COMMITTEE'S RECOMMENDATION AND ADOPT ORDINANCE 2023-14 – SUBMITTING TO THE VOTERS ON THE APRIL 2, 2024 REGULAR MUNICIPAL ELECTION A BALLOT QUESTION PROVIDING FOR THE RETENTION OF REVENUES

GENERATED IN EXCESS OF THE TABOR LIMITATIONS FOR THE PERIOD JANUARY 1, 2025 TO DECEMBER 31, 2030 FOR THE PURPOSE OF IMPLEMENTING THE CITY'S CAPITAL IMPROVEMENT PLAN AND THE MAINTENANCE OF THOSE IMPROVEMENTS. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

The City Council recognized and thanked the Citizen TABOR Committee for the review they performed and their subsequent recommendation to the City Council.

#### 8. ADMINISTRATIVE AGENDA

# A. PRESENTATION – SCOTT GORDON WITH ROADWAY ASSET SERVICES WILL PROVIDE THE CITY COUNCIL WITH AN OVERVIEW OF THE PAVEMENT ASSESSMENT REPORT

Public Works Director Kimberly Bullen recalled that the City entered into an agreement with Roadway Asset Services (RAS) to provide a pavement assessment of Fruita's roadway system, as well as some of the other infrastructure such as curb and gutter, sidewalks, street signs and ADA ramps. She pointed out that the City's streets were the number one priority named by residents in the Community Survey that was conducted several years ago.

Bullen explained that RAS has transitioned the City from using PACER scores to using PCI scores instead. One of the performance measures in the Public Works Department's Annual Budget is to maintain a PACER score of 7.0, or what's now going to be referred to as a PCI score of 70 or higher and a condition rating with less than 10% below a PACER score of 5, or a PCI score of 50.

Bullen noted that Scott Gordon with RAS was in attendance virtually at the Council meeting to present the findings of the assessment itself and talk about some of the things the City is going to do using a Budget Optimization Street Selector System provided by RAS, which will help with some budgetary modeling. He will also address what deferred maintenance would do to the City's road system if treatments are not kept up.

Bullen noted that the City would not have been able to accomplish a pavement assessment without the help of an Administrative Great Outdoors Colorado Organization (GOCO) grant that the City of Fruita received for \$25,000 to help offset some of the costs.

Mr. Scott Gordon introduced himself and shared his screen using Zoom. He is a professional engineer licensed in the state of Colorado who has been doing pavement evaluation/pavement design work for over 30 years. He stated that RAS provides agencies with a comprehensive analysis of pavements that employs the latest technology in GIS and imagery to more efficiently evaluate pavements and actually be more accurate by taking a lot of the subjectivity out of it.

Gordon explained the basics of Pavement Management Theory and preservation technique so that the life of pavement can be prolonged at a cheaper cost rather than letting it deteriorate to a lower condition, which costs a lot more money to repair.

Gordon described some of the equipment that RAS brought to Fruita to evaluate the City's roads such as lasers, photos and GIS coordinates, among other things. He also explained the processes used by RAS to evaluate roads and City assets within the right-of-way, which at the end will result in a full-

scale report that RAS can present to the City. The report includes a map showing that RAS drove all the roads within the City's network and a table that basically looks at how the roads are rated based on the 0 to 100 scale (with 0 being the worst and 100 being the best condition). There are also descriptors (adjectives) explaining the condition of the roads.

Gordon said that RAS measured driving a little over 75 centerline miles of road in Fruita. The resulting report breaks down the mileage into color-coded categories and Fruita currently has over 50% of its roads in "good" or "satisfactory" condition. He stated that Fruita's average PCI is at a 79, which he called a fairly healthy network of roads. RAS also evaluated Mesa County and the City of Grand Junction and their scores were a little bit lower than Fruita's, but Gordon said they are still in pretty good shape.

Mr. Gordon added the following items of note:

- Fruita's percentage of "good" roads is at about 24% (typically RAS wants to see more than 15%).
- Fruita has a lot of roads in the "satisfactory" category, which means that there will likely be a lot preservation opportunities for Fruita.
- The "backlog" category is roads that have to be rebuilt; it's too late for maintenance at that point and RAS likes to see that number less than 10. Fruita is at less than 1% in this category.
- Overall, there is a little bit rougher ride on some of the roads in Fruita than what the condition shows, which can be corrected using maintenance techniques.
- RAS has been working on setting up PCI "trigger levels" of when to apply certain maintenance techniques based on what is seen in the roadway and how it's performing.
- RAS has worked with staff to get unit costs for each of the treatments so that dollar amounts can be applied to specific projects.
- There are also "Improvements Factors" of what RAS expects a road condition to be in after maintenance is applied.

Gordon also explained that RAS has an annual service using software that they developed and is run internally by their trained staff to perform an analysis instead of the City having to buy the licensed software and trying to train City staff on it. Fruita's results from this year would be plugged into RAS' program and using the criteria Gordon had previously showed the Council, RAS will start running scenarios and iterative processes where City staff will be able to look at results and make some tweaks to refine their budget.

Gordon continued that the theory of how to prioritize which street gets maintenance is based on how much it costs. He described how RAS' system determines which roads to treat first to avoid having roads deteriorate into a lower category while spending money the most efficiently.

Gordon stated that once RAS gets into the analysis, they will come back to the City with the results and will run up to ten different scenarios looking at different budget amounts and what the PCI will do over time. He added that more than likely, Fruita will be at one of the mid-level ranges where the City is keeping a steady state (meaning the average PCI will stay in the high 70s) and RAS will be able to help find what budget levels are needed. They will also produce some charts that will look at different dollar amounts, annual budget amounts and what the resulting PCI after a five-year plan would be. The overall network condition can be raised depending on how much money is spent, but RAS will look at what is going to work best for the City of Fruita.

Gordon stated that the RAS recommendation to Public Works is to start producing plans for each year as well as a five-year plan that can be visualized in maps of which roads are going to be treated each year, although it can still be flexible. After year one, RAS takes the results, updates the network, and reruns the analysis to create a new five-year plan and chances are, the second year is going to have a few changes to it. He added that the plan will get tweaked as time goes on based on results of what RAS is finding each year.

Gordon noted that in the next month or so, the next steps would be for RAS to run the scenarios, get with staff to look at results and then come back to the City Council with what they find.

Mayor Kincaid asked for confirmation that utilizing RASs services wouldn't go into effect until the 2025 Budget as far as implementation. Ms. Bullen said that the City didn't have all the data pulled together when the 2024 Budget was being developed. Previously when staff did the PACER Score, staff would go out and visually observe the road and apply some criteria to get points based on the criteria of the PACER system. She said that when staff went back and actually looked at those roads that were presented in the Budget using the PCI Assessment, the scoring of both systems were very much aligned.

Bullen said she didn't think there would be any changes to the 2024 Budget, but staff will continue to evaluate and if there's a road that really stands out that needs to be prioritized above the PACER score, staff will make that change but will stay within the current draft Budget amount.

City Manager Mike Bennett recalled that since the 2021 Community Survey results came out and as revenues have been increasing year over year, staff has been adding more to the roads maintenance and repairs and next year will have one of the largest budgets the City has ever had with streets, although part of that is for the 19 Road project. The rest is for maintenance on the roads that have been or will be identified.

Bennett added that staff is very pleased with the data they've been receiving through RAS and proud that staff's in-house efforts have kept conditions of Fruita's roads above average. He noted that RAS has been able to provide a little bit more specific data as certain projects are tackled year over year and the amount of funds that the City is putting towards those. He reiterated that streets are a priority for the Fruita community.

Bullen added that in 2023, Public Works had a Budget of about \$150,000 for chip seal and patching but next year, staff is expecting to have around \$210,000 pending approval of the 2024 Budget by City Council.

Councilor Miller said RAS' findings speak highly of City staff.

Bullen said she thought RAS would be able to provide very valuable information going forward including being able to plan out over the next five years to determine what the network really needs in terms of treatment.

#### 9. CITY MANAGER'S REPORT

City Manager Mike Bennett provided the following updates to the Council:

- Staff received an official submission for 180-unit apartment complex next to the La Quinta and all the information about the project will be placed online on the City's website.
- Mike thanked Amy for speaking on the City's behalf regarding Fruita's opposition to the changes for the Total Maximum Daily Load (TMDL) of salinity coming from the Bookcliffs and through the valley into the Colorado River. The City of Fruita has teamed up with Mesa County, the City of Grand Junction and the private sector in the development field in funding an opposition. Mike said the hearing was earlier in the day and unfortunately, the increase in the levels of the TMDL was upheld, which was not the outcome everyone was hoping for. There should be additional information going forward.
- Mike said he wanted to know if there was interest among the Council members to reschedule a tour of the Lower Valley Fire Station, who will be getting some dates back to him that he will bring to the next Council meeting. The earliest available date would be January 16<sup>th</sup> prior to the Council meeting. In addition, sometime in the January/February timeframe, staff would love to get the City Council on a riding tour through Fruita to visit some of the construction sites such as the Fruita Mews, West Aspen Avenue project and some of the subdivisions that have already broken ground to get some visuals. Staff will send out some dates for availability to coordinate that.
- Concerning the Reed Park project, staff had the first construction meeting with Ford Construction, who is mobilized and starting to remove some of the old items that will be replaced such as the playground. Councilor Miller had an idea for the Council to get on the old merry-go-round for a quick video and/or photos before it is taken out. At their next meeting, the Arts and Culture Board will be reviewing proposals for turning the merry-go-round into art that will be featured at the new park. The Council decided to meet at Reed Park at 4:00 pm the following day to take photos/video.

#### 10. COUNCIL REPORTS AND ACTIONS

- A. TO ADJOURN AS THE FRUITA CITY COUNCIL AND CONVENE AS THE FRUITA HOUSING AUTHORITY AND TO CONSIDER RECOMMENDING A 2024 BUDGET FOR THE HOUSING AUTHORITY FUND TO THE FRUITA CITY COUNCIL.
  - COUNCILOR MILLER MOVED TO ADJOURN AS THE FRUITA CITY COUNCIL AND CONVENE AS THE FRUITA HOUSING AUTHORITY TO CONSIDER RECOMMENDING A 2024 BUDGET FOR THE HOUSING AUTHORITY FUND TO THE FRUITA CITY COUNCIL. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

Executive Director Designee Shannon Vassen stated that at the November 21, 2023 City Council meeting, it was recommended that the City Council adjourn to a Fruita Housing Authority meeting in order to formally recommend a Budget for the 2024 Fiscal Year. As is detailed out in the Housing Authority bylaws, the Housing Authority can submit a Budget to the City Council for approval each year sometime on the traditional Annual Budget calendar for the City of Fruita.

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Vassen stated that the Housing Authority has not changed since the first time it was presented in September.

Revenues of \$55,100 included developer reimbursements of \$50,000 and a \$5,100 transfer from the Fruita Economic Development Fund. It is estimated that the Housing Authority will receive \$50,000 in reimbursement of legal fees associated with a LITEC project application in Fruita if specific projects move forward. If not, there will be no revenue or expenses related to the project.

Expenses for the Fruita Housing Authority are budgeted to decrease overall, and that is due to a decrease in general legal expenses related to creating the Housing Authority. Overall expenses of \$55,100 included \$55,000 for legal fees and \$100 for any public noticing/publishing.

Commissioner Breman said he thought the original Budget was \$50,000 to be reimbursed. Vassen explained that the additional \$5,000 was just in case of any general legal expenses that may be incurred. He explained that it's much easier to have some in the Budget instead of having to go through a Budget appropriation later. The \$5,000 is coming from the Economic Development Fund of the City of Fruita. The \$50,000 is for any legal fees associated with any land use applications and the Authority will get reimbursed if it goes through the development process.

• COMMISSIONER PURSER MOVED TO APPROVE THE HOUSING AUTHORITY BUDGET AS PRESENTED. COMMISSIONER BREMAN SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

# B. TO ADJOURN AS THE FRUITA HOUSING AUTHORITY AND RECONVENE AS THE FRUITA CITY COUNCIL

• COMMISSIONER BREMAN MOVED TO ADJOURN AS THE FRUITA HOUSING AUTHORITY, RECONVENE AS THE FRUITA CITY COUNCIL AND RETURN TO THE REGULAR MEETING. COMMISSIONER WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

# C. PROCLAMATIONS – ANNUAL REVIEW OF PROCLAMATIONS APPROVED FOR ISSUANCE

Mayor Kincaid noted that Council was doing their annual review of Proclamations for approval of issuance the following year. Finance Director/City Clerk Margaret Sell noted that in the Council packet was a list of Proclamations that have been issued by the City Council in previous years on an ongoing basis. If approved, these will be issued without staff having to come back to the Council for approval at a workshop meeting.

Sell also pointed out that the Council packet also included a draft letter that staff will be sending out to requestors of Proclamations approved by the City Council that reminds them that they will still need to submit a request for their Proclamations to City staff.

Councilor Breman asked how the City can ensure that when the Council issues a Proclamation, there will be someone at the Council meeting to receive it. City Manager Mike Bennett responded that staff will make contact with the people who have previously requested Proclamations to ask that they

submit a request for their Proclamation through the City's website, which will require them to provide the name and title of the person(s) accepting the Proclamation. He pointed out that some of the Proclamations in the list are initiated by the City Council.

Mayor Kincaid recalled a discussion about putting the Martin Luther King, Jr. Day Proclamation on the agenda for the second City Council meeting in January since the first meeting on January 2<sup>nd</sup> had been cancelled. Bennett said that Deputy City Clerk Deb Woods had made contact with the requestor/acceptor of the Martin Luther King, Jr. Day Proclamation and is just waiting for confirmation to put it on the agenda for January 16, 2024. Alternatively, it may be placed on the agenda for December 19, 2023 so that it is issued prior to the actual day rather than a day afterwards.

• COMMISSIONER MILLER MOVED TO APPROVE THE ANNUAL REVIEW OF PROCLAMATIONS APPROVED FOR ISSUANCE. COMMISSIONER PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

#### D. COUNCIL REPORTS AND ACTIONS

#### COUNCILOR KEN KREIE

Ken noted that the Grand Valley Regional Transportation Committee (GVRTC) would be meeting on Monday.

#### COUNCILOR JAMES WILLIAMS

James said he had nothing to report other than he feels like the Police Department cheated in the Ugly Sweater Contest and that Mike should have won that fair and square. He said it was a great party (City of Fruita Christmas party) that was a lot more fun than last year. Amy gave kudos to Strayhorn Grill, whom she said did a phenomenal job with the catering. Joel gave kudos to Council because it was the first year he remembers when everyone on the City Council was there. Mike agreed that it was the first time since he started with the City that the full Council attended the party and called it awesome.

#### **COUNCILOR AMY MILLER**

Amy said she had a busy week. At the Historic Preservation Board meeting, the members reviewed what the board had accomplished over the course of the year, which was impressive, and they had a little celebration for that.

Amy reported that she took a builder up on an opportunity to tour one of the new properties that's being built on Aspen Avenue and also the older property next door, for which there's been some concern in the community. She said the tour was enlightening and she is thankful because it sounds like the builder is going to be very involved in the Fruita community. The builder said he would be reaching out to the rest of the Council as well.

Amy also reported that she testified at the TMDL hearing earlier in the day and she was thankful that her schedule was flexible enough to accommodate it. She said she only spoke for a minute and a half, but she was glad she could because the City definitely needs to make sure Fruita's voices are heard.

#### MAYOR PRO TEM MATTHEW BREMAN

Matthew asked if there will be an opportunity to appeal any Total Maximum Daily Load (TMDL) decision that will be made and if so, what that would look like. City Attorney Mary Elizabeth Geiger advised that the official findings won't be issued until the end of December, so that would be the starting deadline for appealing to District Court. She added that it would actually require filing a lawsuit (not an appeal) challenging their decision and there would be 28 days from that deadline to do so.

Matthew reported that earlier in the day, he had the opportunity to be at Colorado Mesa University (CMU) through the Fruita Chamber for mock interviews with a couple of classes, which was a lot of fun. He added that tomorrow is the Leading Edge graduation, Thursday is the Economic Development (ED) partners holiday event and Saturday is the Christmas Parade of Lights, at which he would be a judge again.

#### **MAYOR JOEL KINCAID**

Joel reported that he got to go to Shelledy Elementary School and Communications & Engagement Specialist Ciara DePinto and two of Fruita's School Resource Officers were also there. He added that HDR is an international company that had 40 Christmas events and Fruita was picked as one of the locations this year. There were over 20 Strider bikes that they donated to the kindergarten class that will be used year after year as part of the school's gym class. Joel said he was told by Shelledy staff that some of their bikes were stolen from the school last year. He added that it was great to be there and see all the kids and the impact on the community.

- E. EXECUTIVE SESSION TO CONVENE IN EXECUTIVE SESSION FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE GRAND VALLEY IRRIGATION COMPANY AND, UNRELATED, THE CITY'S WATER RIGHTS FROM THE COLORADO RIVER AS PENDING IN CASE NO. 23CW3016 DEVELOPMENT
  - COMMISSIONER MILLER MOVED TO CONVENE IN EXECUTIVE SESSION FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY PURSUANT TO C.R.S. SECTION 24-6-402(4)(B) REGARDING THE GRAND VALLEY IRRIGATION COMPANY AND, UNRELATED, THE CITY'S WATER RIGHTS FROM THE COLORADO RIVER AS PENDING IN CASE NO. 23CW3016 DEVELOPMENT. COMMISSIONER PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.

The Fruita City Council took a five-minute break before convening in Executive Session at 8:10 p.m. The Council reconvened the regular meeting at 8:54 p.m.

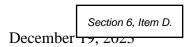
#### 11. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 8:54 p.m.

Respectfully submitted,

Debra Woods Deputy City Clerk City of Fruita





# FRUITA CITY COUNCIL MEETING DECEMBER 19, 2023 7:00 P.M.

#### 1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 7:00 p.m. The meeting was held both in person and with virtual access provided through Zoom.

**Present:** Mayor Joel Kincaid

Mayor Pro Tem Matthew Breman City Councilor Jeannine Purser City Councilor James Williams City Councilor Ken Kreie

City Councilor Amy Miller (virtual)
City Councilor Aaron Hancey

**Excused Absent:** (None)

<u>City staff present</u>: City Manager Mike Bennett

Assistant City Manager Shannon Vassen Finance Director/City Clerk Margaret Sell

Deputy City Clerk Deb Woods

Communications and Engagement Specialist Ciara DePinto

Public Works Director Kimberly Bullen Planning and Development Director Dan Caris

City Attorney Mary Elizabeth Geiger

**Also present:** Members of the public (in-person and virtually)

#### 2. MOMENT OF SILENCE AND PLEDGE OF ALLEGIANCE

Mayor Kincaid called for a moment of silence for all faiths and beliefs to have the opportunity for a silent prayer. He then led in the Pledge of Allegiance.

#### 3. AGENDA – ADOPT/AMEND

Deputy City Clerk Deb Woods added to the agenda as Item 7. Acknowledgment of newly appointed and reappointed Boards and Commissions members after the Consent Agenda and before Public Hearings.

• COUNCILOR BREMAN MOVED TO ADOPT THE AGENDA AS AMENDED. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

#### 4. PROCLAMATIONS AND PRESENTATIONS

A. PROCLAMATION – PROCLAIMING MONDAY, JANUARY 15, 2024 AS MARTIN LUTHER KING, JR. DAY IN THE CITY OF FRUITA TO BE ACCEPTED BY DAVID COMBS (AND POTENTIALLY OTHERS) WITH BLACK CITIZENS AND FRIENDS OF GRAND JUNCTION

The Proclamation was read by Councilor Miller and accepted by Mr. David Combs. Mr. Combs noted that typically, the Martin Luther King, Jr. Day Proclamation occurs in January, but because the January 2<sup>nd</sup> City Council meeting had been cancelled, the Proclamation was instead placed on the December 19<sup>th</sup> Council agenda.

Mr. Combs also stated that he was grateful for the Fruita City Council because there are some municipalities out there that are not necessarily refusing to read the Proclamation, but are not taking the opportunity to read it because either their Council isn't in agreement with the reading of such a Proclamation or the governing body in charge decided to no longer read Proclamations simply because media doesn't attend their meetings and they are not publicized.

Mr. Combs said that Black Citizens and Friends has always been impressed with the governing body of Fruita because they take the time to recognize MLK Day, not simply because it is something to do, but because it is the right thing to do.

Mr. Combs provided information about upcoming Martin Luther King, Jr. Day events in Grand Junction including a movie on Saturday, January 6, 2024 at the Avalon Theater (Black Panther: Wakanda Forever), Saturday Evening Service at the Church of the Nativity in the Redlands, two Children's Read and Dream events at the Central Branch and Clifton Branch of Mesa County Libraries, Express Yourself poster contest at Good Judy's, Community Meal & Award Ceremony at the Clifton Community Hall and an MLK Day Program at Colorado Mesa University (CMU). He invited all to attend but added that only Fruita City Council member would be needed to read the City of Fruita's Proclamation at the MLK Day Program at CMU.

#### 5. PUBLIC PARTICIPATION

There were no comments from the public.

#### 6. CONSENT AGENDA

- A. BOARDS AND COMMISSIONS REAPPOINTMENT A REQUEST TO APPROVE THE REAPPOINTMENT OF SHANNON WADAS TO THE PARKS AND RECREATION ADVISORY BOARD FOR ANOTHER THREE-YEAR TERM TO EXPIRE IN DECEMBER OF 2026
- B. RESOLUTION 2023-40 A REQUEST TO APPROVE A RESOLUTION AMENDING THE 2023 BUDGET AND TRANSFERRING FUNDS FROM THE GENERAL FUND AND FRUITA COMMUNITY CENTER CONTINGENCY ACCOUNTS FOR LEGAL EXPENSES, SUPPLIES AND UTILITIES AND BUILDING MAINTENANCE EXPENSES
- C. DEBTBOOKS MULTI-YEAR AGREEMENT A REQUEST TO APPROVE A THREE-YEAR SUBSCRIPTION BASED INFORMATION TECHNOLOGY ARRANGEMENT (SBITA) AGREEMENT WITH DEBTBOOKS FOR MANAGEMENT OF LEASE AND SBITA AGREEMENTS IN ACCORDANCE

WITH GOVERNMENTAL ACCOUNTING STANDARD BOARD (GASB) STATEMENTS 87 AND 96 AND AUTHORIZE THE CITY MANAGER TO SIGN THE AGREEMENT

- D. FINANCIAL REPORTS A REQUEST TO APPROVE THE NOVEMBER 2023 FINANCIAL REPORTS
- E. ORDINANCE 2024-01 FIRST READING AN INTRODUCTION OF AN ORDINANCE AMENDING SECTION 2.10.040 OF THE FRUITA MUNICIPAL CODE REGARDING COMPENSATION OF THE CITY COUNCIL AND MAYOR FOR PUBLIC HEARING ON JANUARY 16, 2024
- F. ORDINANCE 2024-02 FIRST READING AN INTRODUCTION OF AN ORDINANCE APPROVING A LONG-TERM LEASE WITH CAPITAL BUSINESS SYSTEMS, INC. FOR A COPIER SYSTEM AND RELATED SERVICES AT THE FRUITA POLICE DEPARTMENT FOR PUBLIC HEARING ON JANUARY 16, 2024
- G. ORDINANCE 2024-03 FIRST READING AN INTRODUCTION OF AN ORDINANCE ANNEXING APPROXIMATELY 14.52 ACRES OF PROPERTY LOCATED AT 1873 K ROAD INTO THE CITY OF FRUITA FOR PUBLIC HEARING ON JANUARY 16, 2024 (1873 K ROAD ANNEXATION)

Mayor Kincaid asked if there were any requests from the public to remove any items from the Consent agenda for further discussion. There were no such requests.

Mayor Kincaid asked the City Council if they had any items they would like removed from the Consent agenda for further discussion. There were no such requests.

• COUNCILOR MILLER MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED. COUNCILOR KREIE SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

# 7. ACKNOWLEDGMENT OF NEWLY APPOINTED AND REAPPOINTED BOARDS AND COMMISSIONS MEMBERS

Mayor Kincaid noted that Shannon Wadas was reappointed to the Parks and Recreation Advisory Board on the above Consent Agenda and thanked her for serving. He commented that Fruita's Boards and Commissions are so important to the community and they help the City Council make wise decisions.

#### 8. PUBLIC HEARINGS

#### A. QUASI-JUDICIAL HEARINGS

There were no Quasi-Judicial Hearings on the agenda.

#### **B.** LEGISLATIVE HEARINGS

1) ORDINANCE 2023-17 – SECOND READING – AN ORDINANCE AUTHORIZING THE CONVEYANCE OF WATER RIGHTS AND REAL PROPERTY OF THE CITY REFERRED TO AS ENOCH'S LAKE LOCATED ON PINON MESA – PUBLIC WORKS DIRECTOR KIMBERLY BULLEN AND CITY ATTORNEY MARY ELIZABETH GEIGER

City Attorney Mary Elizabeth Geiger noted that the all the public hearings on the agenda were Legislative hearings; therefore, there would be no applicants.

Publics Works Director Kimberly Bullen provided a recap of the recent history of Enoch's Lake and the City of Fruita up to its current status. She stated that in March of 2023, the City received an appraisal of \$425,000 for the property referred to as "Enoch's Lake." In April, the City received an unsolicited offer by Mr. Tipping, Mr. Powers and Mr. Muhr for the purchase of Enoch's Lake and the water rights in the amount of \$500,000 cash and the release of a non-monetary obligation that the City has had with Mr. Tipping to provide him with water.

Staff prepared the information for Council following the City's Charter, Section 2.11 for the conveyance of property, which sets a public hearing (Ordinance) process.

On June 20<sup>th</sup>, the City approved the First Reading of Ordinance 2023-07 – Setting the public hearing for Second Reading on July 18<sup>th</sup>. At the July 18<sup>th</sup> meeting and Second Reading of Ordinance 2023-07, the City Council decided to continue the public hearing based on some of the comments from the public and questions the Council had raised; primarily concerning road access and questions about how Glade Park Pipeline Water Users Association (GPPWUA) makes decisions in some of their functions.

On August 29<sup>th</sup> at the continuance of the Second Reading of Ordinance 2023-07, the City Council then took a vote to deny the Ordinance and set a meeting for September 19<sup>th</sup> to talk about the sale process because there were so many comments and questions about the City's process and its transparency. The City Council then felt like there needed to be a discussion with the Real Estate Agent about listing the property so that it would be more public-facing in terms of the actual sale of the property.

The property was listed on October 1<sup>st</sup> for sale through the City's realtor on the MLS at the appraised value of \$425,000 and the listing will remain there until November 8<sup>th</sup>, which the due date for any and all proposals to the City. The listing includes the information about the First Right of Refusal for Ute Water and the non-monetary obligation with Mr. Tipping.

On November 13, 2023, the City Council held a Special Meeting to present all offers received. The City received one offer from the same individuals that submitted the original unsolicited offer for the same amount of \$500,000 cash and removal of the non-monetary obligation the City had. The Council directed staff at that point to proceed with submitting the information to Ute Water for consideration of the First Right of Refusal and to publish the First and Second Readings of an Ordinance to come back to the Council pursuant to the City Charter's process.

The First Reading of the Ordinance occurred on November 21<sup>st</sup> and the Second Reading of the Ordinance was published to occur at this meeting of December 19, 2023.

City Manager Mike Bennett added that the City has been updating the status of its "mountain water properties" on the City's website since the beginning of last year. This information includes everything related to Enoch's Lake as well as all the other reservoirs and the Council issued a Resolution on explaining why the City is looking into ways to handle these properties including the fact that the City is not able to use the water in the City and has been seeking local partners over the course of many years who might be willing to receive donation of the properties. Bennett concluded that information on the City's website and in the Weekly Information Update is updated after each public meeting and action that the Council has taken.

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Mayor Kincaid opened the public hearing. Hearing no comments, he closed public participation and brought the matter back to the Council.

Mayor Kincaid asked for confirmation that the City had taken the Enoch's Lake property to Ute Water for the First Right of Refusal. City Attorney Geiger confirmed that staff had submitted the second offer to Ute Water, who came back and said they did not want to exercise their Right of First Refusal and that is why the City is able to move forward with the Ordinance process.

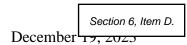
Councilor Breman thanked all the other Council members and staff, including legal, for the help on the matter, which he said was not an easy topic, but one that the City handled right.

Councilor Kreie said he wanted to reiterate that. He stated that when he was first talking about running for Fruita City Council, his co-worker who is a Water Engineer said that the mountain water properties were an issue that the Council needed to figure out. In addition, the first phone call he ever received as a City Councilor was from someone who begged him not to get rid of Enoch's Lake after they read an article published by the Daily Sentinel. Councilor Kreie pointed out that it was something that has been known about for a long time and he sort of felt like it was going to continue to get kicked down the road, so he was proud of everyone for tackling such a difficult situation. He concluded by saying that he thinks the City has done the right thing so far.

Councilor Purser agreed with both of those sentiments and added that all of the participation by the public was well worth it; it helped the Council process everything and move along in the way that they did, so she really appreciated all that feedback.

Attorney Geiger advised that if someone was inclined to make a motion to adopt the Ordinance, they should add the language "including the forgiveness of the remainder of the non-monetary debt to be paid by the City to Ronald Tipping" instead of an approximate dollar amount, as was reflected in the current Ordinance text.

• COUNCILOR KREIE MOVED TO ADOPT ORDINANCE 2023-17 – SECOND READING – AS WRITTEN WITH AN AMENDMENT TO THE THIRD WHEREAS TO DELETE THE PARANTHETICAL "APPROXIMATELY \$145,393.36" AND THE LAST SENTENCE OF SECTION 2 TO READ IN THE LAST PHRASE, "INCLUDING THE FORGIVENESS OF ALL DEBT STILL OWING TO BE PAID BY THE CITY TO RONALD TIPPING. COUNCILOR PURSER SECONDED THE MOTION.



# 2) RESOLUTION 2023-37 – ESTABLISHING THE SCHEDULE FOR FEES AND CHARGES FOR THE 2024 BUDGET YEAR – ASSISTANT CITY MANAGER SHANNON VASSEN

Assistant City Manager Shannon Vassen gave staff's presentation. He explained that the Resolution was part of the final approval of the 2024 Annual Budget and said that after months and months of presentations and discussions of Council and staff concerning the Budget, the actual adoption of it is usually completed in less than five minutes. He thanked staff, the Council and the leadership team for all their hard work on it.

Vassen pointed out that the City's Budget is adopted in four different motions, the first one being adopting the Fee Schedule for 2024. These have been discussed at length over the last couple of meetings, but basically, all the fees and charges before the Council are ones that have been discussed. Mostly, the changes over last year are increases related to utility expenses such as sewer and trash, an increase in Fruita Community Center day passes and a few Land Use Code changes as well for Transportation Impact Fee and the Parks, Open Space and Trails (P.O.S.T.) Fee that the Council actually approved earlier in July but is now being implemented beginning next year. Vassen noted that all changes for the upcoming year were highlighted in the Fees and Charges Schedule.

Mayor Kincaid opened the public hearing. Hearing no comments, he closed public comment and referred the matter to the City Council.

- COUNCILOR PURSER MOVED TO APPROVE RESOLUTION 2023-37 ESTABLISHING THE FEES AND CHARGES FOR THE 2024 BUDGET YEAR. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.
- 3) RESOLUTION 2023-38 A RESOLUTION ADOPTING THE 2024 ANNUAL BUDGET PUBLIC HEARING CONTINUED FROM NOVEMBER 21, 2023 ASSISTANT CITY MANAGER SHANNON VASSEN

Assistant City Manager Shannon Vassen provided staff's presentation. He explains that Resolution 2023-38 formally adopts the 2024 Budget as has been presented to the City Council. He said there have been a few changes to the Budget since staff last presented at the November Workshop meeting and as with any new draft, he likes to consolidate those changes and provided them in a bulleted list for the Council as part of the Council packet.

Vassen stated that there was nothing in the Resolution that staff and the Council haven't already discussed. There were a few minor changes such as adding \$46,000 for one-time purchases related to replacing the Council Room furniture and having funding for audio/visual upgrades in the same room. A part-time intern position has been added for the Communications and Engagement Program and the City has a CMU Senior that's been doing that through the Mesa County Workforce Center for the past couple of months and Vassen said she is doing incredible work, so staff wants to keep her on until May of 2024 and that has been added as well. Vassen also stated that staff increased the City's Intergovernmental Agreement (IGA) expense for the Regional Transportation Planning Office (RTPO) due to an incorrect number being included in the previous draft. \$40,000 must also be carried forward in Marketing and Promotion dollars that was budgeted for 2023, but won't be spent until next year.

Vassen stated that there were no other changes than what can be seen on the list of changes in the Council packet. He noted that he also provided an updated draft of the 2024 Budget, but that won't be the final draft because staff will continue to comb through it to find and fix any grammatical errors and add alternate text for accessibility purposes.

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Mayor Kincaid opened the public hearing on Resolution 2023-38 – adopting the 2024 Annual Budget for the City of Fruita. Hearing no comments, he closed public comment and turned the hearing over to the City Council.

Councilor Hancey thanked staff and the Council for having a good budget process this year and said he thought the City has been successful in developing a very efficient Budget that will be beneficial to the Fruita community.

Councilor Miller also thanked staff for all their hard work.

- COUNCILOR HANCEY MOVED TO APPROVE RESOLUTION 2023-38 ADOPTING THE 2024 ANNUAL BUDGET. COUNCILOR WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.
- 4) RESOLUTION 2023-39 A RESOLUTION APPROPRIATING FUNDS FOR THE 2024 ANNUAL BUDGET ASSISTANT CITY MANAGER SHANNON VASSEN

Assistant City Manager provided staff's presentation. He noted that this Resolution accomplishes the formal appropriation of funds for the 2024 Annual Budget that was just approved. He said he was happy to answer any questions.

Mayor Kincaid opened the public hearing. Hearing no comments from the public, he closed public comment and referred the agenda item to the Council.

Councilor Hancey asked for confirmation that Resolution 2023-39 did not contain any changes to the mill levy itself. Mr. Vassen noted that for the next agenda item, staff was not making any changes to the mill levy.

- COUNCILOR BREMAN MOVED TO APPROVE RESOLUTION 2023-39 APPROPRIATING FUNDS FOR THE 2024 FISCAL YEAR IN ACCORDANCE WITH THE ADOPTED 2024 ANNUAL BUDGET. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.
- 5) RESOLUTION 2023-41 ESTABLISHING THE PROPERTY TAX MILL LEVY FOR THE 2024 BUDGET ASSISTANT CITY MANAGER SHANNON VASSEN

Assistant City Manager Shannon Vassen stated that this Resolution establishes a mill levy of 10.146 mills to be assessed on property throughout Fruita next year for the 2023 property tax year. He said staff has learned that Fruita is one of the later organizations to adopt its Budget; everyone else just kind of moved forward as is with the same mill levy that they've had, which is what staff was

recommending to the City Council; to move forward with the same mill levies. He added that based upon conversations he has had with the Mesa County Assessor, he thinks Fruita is pretty close to the number that will be in there, so he feels pretty good about it. Vassen stated that he was happy to answer any questions the Council may have.

Mayor Kincaid opened the public hearing. Hearing no comments, he closed public participation and brought the agenda item back to the Council.

- COUNCILOR MILLER MOVED TO APPROVE RESOLUTION 2023-41 ESTABLISHING A MILL LEVY ASSESSED ON PROPERTY IN FRUITA FOR THE 2024 BUDGET YEAR AT 10.146 MILLS FOR GENERAL OPERATIONS AND AUTHORIZING THE CITY CLERK TO CERTIFY THE MILL LEVY TO THE MESA COUNTY COMMISSIONERS. COUNCILOR BREMAN SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.
- 6) ORDINANCE 2023-15 2<sup>ND</sup> READING AMENDING CHAPTER 3.18 OF THE FRUITA MUNICIPAL CODE CONCERNING EXCLUSIONS FOR THE SALE OR PURCHASE OF LODGING AND AMENDING THE DEFINITION OF LODGING FINANCE DIRECTOR/CITY CLERK MARGARET SELL

Finance Director/City Clerk Margaret Sell provided some history on when the City of Fruita implemented the Lodgers' Tax in 1996 on the sale of lodging in the City via the adoption of an Ordinance. In 1988 the Ordinance was amended to exclude the collection of lodging tax on sales by the United States Government, State of Colorado or political subdivision of the State in order to facilitate the development of the James M. Robb – Colorado River State Park by Colorado Parks and Wildlife.

Effective July 1, 2023, rules were adopted by the Colorado Department of Revenue clarifying definitions of accommodations and negating the need for this exclusion. Both sales and lodgers' taxes are currently being remitted to the City by Colorado State Parks and Wildlife.

Mrs. Sell added that the definition of lodging in the Fruita Municipal Code needs to be updated to include short-term rentals, auto camps and bed and breakfast establishments. She stated that the removal of the exclusion will provide fair and equitable treatment of establishments providing similar services in the City of Fruita and that staff's recommendation was for approval of Ordinance 2023-15.

Mayor Kincaid opened the public hearing. Hearing no public comment, he closed public participation and referred the matter to the City Council.

 COUNCILOR WILLIAMS MOVED TO ADOPT ORDINANCE 2023-15 – AMENDING CHAPTER 3.18 OF THE FRUITA MUNICIPAL CODE CONCERNING EXCLUSIONS FOR THE SALE OR PURCHASE OF LODGING AND AMENDING THE DEFINITION OF LODGING. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

#### 9. ADMINISTRATIVE AGENDA

There were no Administrative Agenda items on the agenda.

#### 10. CITY MANAGER'S REPORT

City Manager Mike Bennett provided the following updates to the Council:

• Mike expressed his gratitude to each of the Council members for their leadership throughout the budget process and more specifically, for being able to narrow down into a year the long-term, 10-year + strategic plans that the Council shapes and defines into the goals and efforts required to accomplish those. He said this allows staff to have very specific guidance and the ability to execute what is included in the budget from both an Operational and Capital Projects standpoint.

Mike also expressed gratitude to City staff, the Leadership Team and each individual department for working with Assistant City Manager Shannon Vassen on the budget and spending a lot of time with a new process this year that really engaged the organization heavily. He added that he was very proud of the efforts through many presentations, discussions and feedback to get to the point of final Budget adoption.

• Mike reported that at the Fruita Community Center (FCC) the previous evening, City staff responded to a patron's medical emergency. Three of the individuals were high school seniors who are lifeguards at the pool and the fourth person was their young supervisor who provides CPR training and helps get staff certified.

The person having the emergency was without a pulse and staff used the Automated External Defibrillator (AED) and CPR and were able to revive his pulse by the time first responders got there. Mike called it a tremendous effort. Mike said he and Shannon went to the High School and met with the Principal and the three young men that are seniors to sit and talk with them and thank them. Their supervisor and the EMTs said they did everything by the book. Mike said he would invite them to a Council meeting after the holidays and when things have settled to recognize them. He added that the updates staff has received on the patron in the hospital have been positive.

• Staff would like to get the new draft of the City Council Handbook posted to the website so that people considering running for Council will be able to access it. Mike noted that the document can be updated at any time moving forward should the need or want arise. He asked the Council for any feedback they may have before staff uploads it to the website even if there are things that need to be discussed in the future.

Mayor Pro Tem Breman noted that he had printed out the City Council Handbook but hasn't had a chance to read it. Councilor Purser said she needed a little more time to review it, too.

Councilor Hancey asked what the Handbook says about relatives of Council members working for the City because he has a couple of children and one currently wants to work at the FCC. Mike said that was a great question and one that he thinks the Council should discuss in the future to add some clarity. He stated that staff has somewhat defaulted to the City Employee Handbook (which is separate from the Council Handbook), but the

Employee Handbook technically doesn't apply to City Council. Mike noted that the Employee Handbook has a nepotism rule where there is a definition of relatives and relatives cannot supervise one another. Relatives can work at the City of Fruita except for the City Manager because employees indirectly report to him through supervisors and department heads.

Mike said the practice with City Council over the years has been to prohibit full-time employees that are relatives of the City Council because there is still that indirect oversight through the City Manager, but the City historically has not really applied that rule to part-time employees that are relatives of the City Council. He noted that there definitely have been children of Council members in the past that have worked for the Parks and Recreation Department part-time, but there really isn't a place where the rules are clearly defined. Mike thought the Council Handbook would be a good place to put it. He added that staff wasn't prepared to review it at this meeting, but that it could easily be added as a future Council discussion and action agenda item.

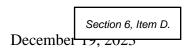
The Council came to a consensus to direct staff to upload the City Council Handbook to the website now and if later changes need to be made, it could be updated then.

Jeannine noted that there is clarity on the topic in the Boards and Commissions Policy for the City's Boards and Commissions members. She asked if it was mentioned in there that family members of Council members cannot serve on City Boards and Commissions. She thought that would also be good information for a person considering running for City Council. Mike noted that in the Council Handbook, there is a link to the Council-approved Boards and Commissions Policy, where it does list the rule that relatives of a Council person cannot serve on the Boards and Commissions.

Mike continued that the Council Handbook does not contain any policy changes; there are updated policies that the Council has approved that are referenced and instead of cramming in the long CML or CIRSA publications, the Handbook just links to those. It was also reorganized to be a little more friendly to go through. Mike pointed out that staff did add in information for Council members such as "What to Expect at Your First Meeting," which might be an area where staff left out some things. Clarity was also added regarding the time commitment required of a Council member. He asked the Council to note any ideas they may have as they go through the Handbook that staff can collect at the second meeting in January.

Joel asked if the Council Handbook mentions anything about the Fruita Housing Authority, which is also a responsibility of Council members. Mike said that was a great point and that staff could easily add that and reference the Resolution that created the Authority and its bylaws.

Matthew asked if there would be a little bit more information about what it means to be a member of the Fruita Housing Authority because he thinks if someone is going to run for Council and if by default, elected Council members are on the Housing Authority, people should understand that is part of the job, too. Mike agreed and said he thinks that it is all spelled out in the Resolution the City Council adopted in creating the Housing Authority which could be added to the handbook.



Joel reiterated Council's direction to go ahead and post the City Council Handbook to the website and changes could be made to it subsequently. He wondered if there should be a discussion at an upcoming workshop meeting about a nepotism policy for Council members. Mike stated it could be added to the January 2024 Council Workshop Meeting.

#### 11. COUNCIL REPORTS AND ACTIONS

#### A. COUNCIL REPORTS AND ACTIONS

# **COUNCILOR KEN KREIE**

Ken reported that the contractor that operates the Grand Valley Transit system (TransDev) notified the Grand Valley Regional Transportation Committee (GVRTC) that they are not opting to renew their contract after 2024. He suspects it is probably so that they can put in for the new contract at a more competitive rate. GVRTC will be working on an RFP during 2024 and however that ends up will impact Fruita's contribution to them. Ken said there will be more information forthcoming.

#### COUNCILOR AMY MILLER

Amy reported that she received a phone call from a citizen regarding the City's position on School District #51's reconfiguration of school buildings. She said she didn't really have the opportunity to clarify with the caller what the Fruita City Council's positions have been, but she was sure the Council would be hearing more about that.

#### COUNCILOR AARON HANCEY

Aaron reported on discussion items at the Museums of Western Colorado (MWC) Board of Directors meeting. The MWC is continuing to have challenges on future decisions with an Executive Director. There were some ideas proposed that he couldn't go into due to the fact they were discussed in Executive Session, but said he was strongly encouraged to make sure Fruita looks out for its own assets.

Aaron addressed staff regarding the camper trailers in the Dinosaur Journey parking lot by saying he has noticed within the last month or so that there is some real camping going on there that is getting encouraged by the campers that are already sitting there. Mike responded that staff assisted the MWC in listing the campers on Govdeals.com to be sold. The MWC would not allow City staff to move them to the back of the building because they said two of them were going to be moved to the Cross Orchards location. Parks and Recreation Director Marc Mancuso continues to follow up and Fruita Police Department officers are having to ask any new campers that show up to move along. James asked what the headline of the listing on Govdeals.com is. Mike said he didn't know off the top of his head, but he could find out and would follow up. Aaron said he thought staff could talk to the MWC Board or the current Assistant Director to give them an ultimatum of some kind. Mike said staff will figure something out with them. Aaron said he would be keeping an eye on Dinosaur Journey and its parking lot to make sure they are being well taken care of. He added that he has encouraged the MWC to reach out to the City to make sure that their commitments for reporting are being met in a timely manner, but they might need some encouragement on that as well.

# MAYOR PRO TEM BREMAN

Matthew reported that there was a Grand Junction Economic Partnership (GJEP) holiday party the previous week at Pat Tucker's house and it was very well attended. The next GJEP meeting will be held tomorrow morning at 7:30 a.m.

Matthew also reported that he attended the Fruita Area Chamber of Commerce's Board meeting and provided an overview of the City's 2024 draft Budget. He said he also went over the City's development projects that were in it, which was very well received. He noted that he had mentioned to Shannon earlier that the Chamber Board did have some questions on the Budget in terms of the demographics section as it relates to business licenses and thanked him for his willingness to get an updated number for the discrepancy to them. Matthew announced that there is going to be a lot more conversation in the future about events and what to do about those moving forward. He added that he thinks there will need to be some joint meetings of the Chamber and the City to iron some things out concerning the events. Matthew reported that he has encouraged the Chamber to really be more of a voice for Fruita's businesses in the community; for example, there have been or are going to be six downtown businesses that are closing in this last quarter of the year. The Chamber will be doing exit interviews to find out why, and Matthew said the Council needs to be very aware of those reasons.

Matthew also reported that he attended a Mesa County Workforce meeting earlier in the day and a lot of it revolved around how the Workforce groups have a lot of great information out there, but nobody knowns about it. The discussion addressed how to make sure that students that are in need of that information can actually get it. He said it was also interesting to hear how kids that show up for mock interviews are unaware of things that older people take for granted such as how to dress, so it is also about how to prepare kids for success in being interviewed.

Matthew noted that he, Winston and Fiona spent some time at the Fruita Bark Park and he noticed an electrical box on the small dog side of the park that has a switch on it with no lock and it was off, but he was very tempted to turn it on just to see what it does. He suggested that staff place a lock on it, but added that he still wants to know what it does.

Matthew said that when coming off the interstate and heading into downtown from the Circle, there is a sign with "EV Charging" on it that points to the right, so it looks like people should be turning right to get to it versus going straight to the Civic Center. He said it was a little confusing and thinks it should probably be an "Up" arrow. Mike said he saw it, too and agreed, so he would look into it.

#### **COUNCILOR JEANNINE PURSER**

Jeannine reported that the Localism Committee met for its second meeting and it went really well. She called Ciara a rockstar for how she ran the meeting and filtered the ideas. She added that Ciara provided a great presentation and has gotten all the information to the Committee members so they will be prepared for their next meeting, which is January 9, 2024. The Committee will likely have that meeting and one additional one after that, although it could end up being two additional meetings depending on how the next two pan out. The Committee will then appear before the Council with their recommendations.

Jeannine also reported that the Arts and Culture Board had their meeting the previous week and they looked at what to do with the merry-go-round. There were some concept proposals offered and the board is moving forward on one or two of those to learn more about them.

Jeannine noted that the Livability Commission meeting had been cancelled and that the Downtown Advisory Board will no longer be having any meetings.

#### COUNCILOR JAMES WILLIAMS

James reported that he and Matthew got to be in the Holiday Lights Parade and he thought that the Chamber did a great job. He added that the feedback he has received from the community is that it was better than another certain municipality's in the Valley, which he wasn't bummed to hear.

James said he also received the phone call about the School District's reconfigurations and that Superintendent Hill did a very good job of describing exactly why certain things were going to be done and other things could not be done. He continued by saying that when it was all broken down, there seemed to be a path forward that looks like it would be the better path, but legally, it doesn't really work with the state. James said it would be nice if the City Council could get a debriefing from Superintendent Hill because he broke it down so well (although it is a very lengthy conversation). He asked staff to see about scheduling that.

Jeannine pointed out that there was a very informative article in the Daily Sentinel that allowed Dr. Hill a lot of time to explain things.

James thanked City staff for the entire year, saying that there is a lot that the City as a whole has gotten done over the course of the past year. He said staff has done a great job and it makes it a lot nicer for the City Council to do what they have to do.

Matthew added that he thinks it's time that the Council have another talk with a certain individual. He said he was at an event downtown and this person came up and hit him in the stomach and announced to everybody that it was okay because "he is on Fruita City Council and they make stupid decisions." Matthew said he didn't think it was appropriate behavior and he has concerns that previous conversations with this person may not have registered. He asked the other Council members what they thought should be done. City Attorney Mary Elizabeth Geiger suggested that if that was a conversation that the Council would like to have, there would be legal advice associated with how to move forward and it would be done in Executive Session. Matthew said he would like to and that he thinks the Council should have a policy and set a precedent about the matter. Joel asked the City Attorney if an Executive Session had to be posted first or if City Council could call an Executive Session at this meeting. Attorney Geiger explained that the Council can always add an Executive Session to any agenda and wording to that effect is specifically written on the Council agenda. Mike suggested that the City Council add another Executive Session to the agenda and make it the first one of the three.

#### MAYOR JOEL KINCAID

Joel reported that he did a video shoot the previous week for a fun event that's coming to Fruita and everyone will find out in January about that.

Joel also reported that he forwarded the email that he and Mike received about the Five Loaves and Two Fishes Food Pantry. He said it is great that they are helping the community but then was a little dismayed when he read that they went from 45 families to 139. Amy and Jeannine noted that it could be a combination of increased awareness of Five Loaves plus the closures of both Canyon West Worship Center and the Agape Food Bank. Joel said he still wanted the public to know that the Five

Loaves Food Pantry went from 45 families to 139, meaning they are feeding 340 people per month in the Fruita community. He said there is getting to be a greater and greater need for those type of services, just like the need for affordable housing. Communications and Engagement Specialist Ciara DePinto confirmed that staff put the link to Five Loaves on the City's website.

Joel said he was driving past Triangle Park in the morning and he saw a tent and somebody camping. He said he also saw that Lieutenant Peck and another officer were there talking to the person. Joel asked Mike if he knew whether homelessness has gone up in Fruita since Grand Junction has made changes with their homeless population. Mike responded that Chief Krouse is scheduled to give the Council an update at the first meeting in February. He added that anecdotally and in internal discussions, staff has not seen a dramatic change since the changes happened in Grand Junction, but staff does continue to share where resources are available for people they come in contact with that need them.

Mike explained that typically, it's not an immediate issuance of trespassing. Officers first determine whether the person/people are on private or public property, the latter of which does not allow camping in the City and then they are given information about available resources. He added that while it's not tied to the changes at Whitman Park in Grand Junction, the City has seen an increase in homelessness over time.

- B. EXECUTIVE SESSION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO C.R.S. SEC. 24-6-402(4)(B) FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY REGARDING A FRUITA CITIZEN'S BEHAVIOR TOWARDS THE FRUITA CITY COUNCIL
  - COUNCILOR KREIE MOVED TO MEET IN EXECUTIVE SESSION FOR THE PURPOSE OF RECEIVING LEGAL ADVICE FROM THE CITY ATTORNEY REGARDING A FRUITA CITIZEN'S BEHAVIOR TOWARDS THE FRUITA CITY COUNCIL. COUNCILOR WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

The Fruita City Council took a five-minute break before convening in Executive Session at 8:16 p.m. The Council reconvened the regular meeting at 8:56 p.m.

- C. EXECUTIVE SESSION TO CONVENE IN EXECUTIVE SESSION PURSUANT TO C.R.S. SEC. 24-6-402(4)(E) FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS AND PURSUANT TO C.R.S. SEC. 24-6-402(4)(A) FOR THE POSSIBLE SALE OR LEASE THEREOF WITH REGARD TO THE REDEVELOPMENT OF 169 N. MULBERRY STREET
  - COUNCILOR MILLER MOVED TO MEET IN EXECUTIVE SESSION PURSUANT TO C.R.S. SEC. 24-6-402(4)(E) FOR DETERMINING POSITIONS RELATIVE TO MATTERS THAT MAY BE SUBJECT TO NEGOTIATIONS; DEVELOPING STRATEGY FOR NEGOTIATIONS; AND INSTRUCTING NEGOTIATORS AND PURSUANT TO C.R.S. SEC. 24-6-402(4)(A)

FOR THE POSSIBLE SALE OR LEASE THEREOF WITH REGARD TO THE REDEVELOPMENT OF 169 N. MULBERRY STREET. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

The Fruita City Council convened in Executive Session at 9:04 p.m. The Council reconvened the regular meeting at 9:38 p.m.

- COUNCILOR KREIE MOVED TO DIRECT STAFF TO SELL/LEASE THE 169 S. MULBERRY STREET PROPERTY. COUNCILOR BREMAN SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.
- D. EXECUTIVE SESSION DISCUSSION AND POSSIBLE ACTION TO CONSIDER A MOTION TO CONVENE IN EXECUTIVE SESSION REGARDING PERSONNEL ISSUES UNDER C.R.S. SECTION 24-6-402(4)(F) REGARDING THE CITY MANAGER'S ANNUAL FORMAL REVIEW WHERE THE CITY MANAGER HAS NOT REQUESTED AN OPEN MEETING
  - COUNCILOR HANCEY MOVED TO MEET IN EXECUTIVE SESSION REGARDING PERSONNEL ISSUES UNDER C.R.S. SECTION 24-6-402(4)(F) REGARDING THE CITY MANAGER'S ANNUAL FORMAL REVIEW WHERE THE CITY MANAGER HAS NOT REQUESTED AN OPEN MEETING. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

The Fruita City Council convened in Executive Session at 9:42 p.m. The Council reconvened the regular meeting at 10:24 p.m.

• COUNCILOR HANCEY MOVED TO GIVE THE CITY MANAGER AN 8% PAY INCREASE PLUS A \$5,000 BONUS TO BE EFFECTIVE JANUARY 1, 2024. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH SIX YES VOTES.

#### 12. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 10:27 p.m.

Respectfully submitted,

Debra Woods Deputy City Clerk City of Fruita



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and

Restaurant - Malt, Vinous & Spirituous for TMPTF8 Deux, Inc. dba Rib City Grill

located at 455 Kokopelli Blvd.

#### **BACKGROUND**

The Hotel/Restaurant Liquor License for Rib City Grill located at 455 Kokopelli Blvd., Unit E is up for renewal. Their current license expires on **March 21, 2024**. The City Clerk's office has not been advised of any issues or concerns related to the liquor license during the past year. The Police Department report indicates that there have not been any violations or incidents reported to them in the last year and there is nothing unusual or of concern that would hinder renewal of the license. There are no current TIPS certificates on file at the City Clerk's Office.

The following information is provided as background on the liquor license renewal process:

Pursuant to State Statutes, the local licensing authority (City Council) may cause a hearing on the application for renewal to be held. No renewal hearing shall be held until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority may refuse to renew any license for good cause, subject to judicial review.

This item is placed on the Consent agenda for the Council to determine if there is any cause for a hearing to be held on the renewal of the liquor license. If there is no cause for a hearing, the City Council should approve the renewal of the existing license. If there is cause for a hearing, the City Council should set a date to hold a quasi-judicial hearing to determine if there are sufficient grounds for suspension or revocation of the liquor license. The City Council may also temporarily suspend any license, without notice, pending any prosecution, investigation or public hearing. No such suspension shall be for a period of more than 15 days.

#### FISCAL IMPACT

None.

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The review and renewal of liquor licenses ensures that licensed establishments are operating by the rules and regulations adopted by the City and State concerning the sale or service of beer and alcoholic beverages.

# OPTIONS AVAILABLE TO THE COUNCIL

- 1. Renewal of the Hotel/Restaurant Liquor License.
- 2. Schedule a hearing date to determine if there is good cause for the license to be suspended or revoked.

#### RECOMMENDATION

It is the recommendation of staff that the Council move to:

• RENEW THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR TMPTF8 DEUX, INC. DBA RIB CITY GRILL LOCATED AT 455 KOKOPELLI BLVD.

DR 8400 (02/22/23)
COLORADO DEPARTMENT OF REVENUE
Liquor Enforcement Division

# Submit to Local Licensing Authority

RIB CITY GRILL PO BOX 909 Grand Junction CO 81502

APPLICANT ID: 222122	
Fees Due	Section 6, Item E
Renewal Fee	625.00
Storage Permit \$100 X	_ \$
Sidewalk Service Area \$75.00	\$
Additional Optional Premise Hotel & Restaurant \$100 X	\$
Related Facility - Campus Liquor Complex \$160.00 per facility	\$
Amount Due/Paid	\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

# **Colorado Beer and Wine License Renewal Application**

Please verify & update	all information below		Return to c	ity or county	y licensing	authority by due date
Licensee Name TMPTF8 DEUX INC			Doing Busines RIB CITY GRI	ss As Name (DE LL	BA)	
Liquor License # 41-97849-0000	License Type Hotel & Restaurant (city)					
Sales Tax License Number 41978490000		Expiration Dat 03/21/2024	e		Due Date 02/05/2024	
Business Address 455 KOKOPELLI BLVD Fruita	a CO 81521					Phone Number 9702557330
Mailing Address PO BOX 909 Grand Junction	CO 81502					orcqwest.com
MCHAELS PLADUN	Date of Birth Home Address 353 W	RIDGES B	ivo, Gy	1AND JO	7.)	Phone Number 970 985 0052
	session of the premises at the dor rented?  Owned			Yes I		6/30/2027
	rage permit, additional optiond corner and include all fee			vice area, or r	elated facility	? If yes, please see the
3a. Are you renewing a tak delivery license privile	keout and/or delivery permit	? (Note: must	hold a qualify	ving license ty	pe and be au	thorized for takeout and/or
3b. If so, which are you re		☐ Takeout	☐ Both Take	eout and Deliv	ery	
4a. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?						
4b. Since the date of filing of the last application, has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?						
5. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.   Yes						
	of the last application, has the institutions) been convicted					

+ LOTHEE

45

#### APPLICANT ID: 222122

Liquor Enforcement Division

7. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. Yes No 8. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. Yes No **Affirmation & Consent** I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge. Type or Print Name of Applicant/Authorized Agent of Business Title Signature Date Report & Approval of City or County Licensing Authority The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C.R.S., and Liquor Rules. Therefore this application is approved. Local Licensing Authority For Date Signature Attest JOEL KINCAID, MAYOR

# LIQUOR LICENSES HELD

	GRAND JUNCTION	FRUITA	RIFLE
	TMPTF8, INC.	TMPTF8 DEUX, INC.	RCG RIFLE, LLC
	DBA RIB CITY GRILL	DBA RIB CITY GRILL	DBA RIB CITY GRILL
FEIN	200245144	201580322	711021778
STATE TAX ID	4154771	4197849	4247481
CITY TAX ID	8029177	3775452	015354
STATE LIQ LIC	41547710000	41978490000	42474810000
ST LIQ LIC EXP	24-Nov	21-Mar	26-Jul
CITY LIQ LIC	4021302	41-97849	09-11

# Tax Check Authorization, Waiver, and Request to Release Information

I, MCHAEL SpRADUN am signing this Tax Check Authorization, Waiver and Request to Release Information (hereinafter "Waiver") on behalf of Thypers Duex INC (the "Applicant/Licensee") to permit the Colorado Department of Revenue and any other state or local taxing authority to release information and documentation that may otherwise be confidential, as provided below. If I am signing this Waiver for someone other than myself, including on behalf of a business entity, I certify that I have the authority to execute this Waiver on behalf of the Applicant/Licensee.						
The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101. et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.						
The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.						
By signing below, Applicant/Licensee requests that the Colorado Department of Revenue and any other state or local taxing authority or agency in the possession of tax documents or information, release information and documentation to the Colorado Liquor Enforcement Division, and is duly authorized employees, to act as the Applicant's/Licensee's duly authorized representative under section 39-21-113(4), C.R.S., solely to allow the state and local licensing authorities, and their duly authorized employees, to investigate compliance with the Liquor Code and Liquor Rules. Applicant/Licensee authorizes the state and local licensing authorities, their duly authorized employees, and their legal representatives, to use the information and documentation obtained using this Waiver in any administrative or judicial action regarding the application or license.						
Name (Individual/Business) TWOTES DUFY OBA RIB (	•	Number/Tax Identification Number				
Address 455 Kokopew BLVD.						
City FRUTA	State Co	Zip 8152				
Home Phone Number	Business/Work Phone Number					
970-255-7330 970-985-0053  Printed name of person signing on behalf of the Applicant/Licensee						
MINITATE SPEADLIN						
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax information)  Date signed  1312024						
Privacy Ac	t Statement					
Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a						

result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).

# CITY OF FRUITA MEMORANDUM

TO:		FRUITA POLICE DEPARTMENT				
FRO	M:	DEBRA WOODS, DEPUTY CITY CLERK				
DAT	ΓE:	FEBRUARY 7, 2024				
RE:		HOTEL/RESTAURANT LIQUOR LICENSE RENEWAL				
Journal of the Control of the Contro		License	e Information			
Lice	nsee:		Rib City Grill			
Loc	ation	•	455 Kokopelli Blvd			
Тур	e of I	License:	Hotel/Restaurant			
Expiration Date of Current License: March 21, 2024						
City Council Hearing Date: February 20, 2024						
DUI	E DA	TE FOR POLICE REPORT:	February 16, 2024			
		Tips cer	tificates on File			
Employee: Expiration					Date:	
(None current)						
		Report of Frui	ta Police Department			
A) Have there been any reported violation(s) of the Liquor or Beer Code in the last year?				er Code in	Yes	No
B) Have there been any incidents reported to the Police Dept in the last year that would pertain to the liquor license and the establishment's control of alcoholic beverages and their patrons?					Yes	No
C)					No	

Fax: 858-0210 e-mail: dwoods@fruita.org

Date: 2-12-24

Please attach documentation to support the above noted violation(s), incidents or

comments.

Signed: Paula Rajewich



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: DEBRA WOODS, DEPUTY CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** LIQUOR LICENSE RENEWAL – A request to approve the renewal of a Hotel and

Restaurant – Malt, Vinous & Spirituous for Mike's Famous Chicken located at 233

E. Aspen Ave.

#### **BACKGROUND**

The Hotel and Restaurant Liquor License for Mike's Famous Chicken located at 233 E. Aspen Ave. is up for renewal. Their current license expires on **February 24, 2024**.

Pursuant to C.R.S. Section 44-3-302(b) (Colorado Liquor Code) concerning liquor license renewals,

Filing with the local licensing authority is deemed filing with the state licensing authority. The state licensing authority shall process all renewal applications that are filed with the local licensing authorities before the expiration date and subsequently approved and shall extend the expiration date until the state license application process is completed.

The City Clerk's office has not been advised of any issues or concerns related to the liquor license during the past year. The Police Department report indicates that there have not been any violations or incidents reported to them in the last year and there is nothing unusual or of concern that would hinder renewal of the license. There are no TIPS certificates on file at the City Clerk's Office.

The following information is provided as background on the liquor license renewal process:

Pursuant to State Statutes, the local licensing authority (City Council) may cause a hearing on the application for renewal to be held. No renewal hearing shall be held until a notice of hearing has been conspicuously posted on the licensed premises for a period of ten days and notice of the hearing has been provided the applicant at least ten days prior to the hearing. The licensing authority may refuse to renew any license for good cause, subject to judicial review.

This item is placed on the Consent agenda for the Council to determine if there is any cause for a hearing to be held on the renewal of the liquor license. If there is no cause for a hearing, the City Council should approve the renewal of the existing license. If there is cause for a hearing, the City Council should set a date to hold a quasi-judicial hearing to determine if there are sufficient grounds for suspension or revocation of the liquor license. The City Council may also temporarily suspend any license, without notice, pending any prosecution, investigation or public hearing. No such suspension shall be for a period of more than 15 days.

#### FISCAL IMPACT

None.

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is charged with protection of the public health, safety and welfare. The review and renewal of liquor licenses ensures that licensed establishments are operating by the rules and regulations adopted by the City and State concerning the sale or service of beer and alcoholic beverages.

# OPTIONS AVAILABLE TO THE COUNCIL

- 1. Renewal of the Hotel/Restaurant Liquor License.
- 2. Schedule a hearing date to determine if there is good cause for the license to be suspended or revoked.

#### RECOMMENDATION

It is the recommendation of staff that the Council move to:

• RENEW THE HOTEL AND RESTAURANT LIQUOR LICENSE FOR MIKE'S FAMOUS CHICKEN LOCATED AT 233 E. ASPEN AVE.

DR 8400 (02/22/23)
COLORADO DEPARTMENT OF REVENUE
Liquot Enforcement Division

Submit to Local Licensing Authority

MIKE'S FAMOUS CHICKEN 233 EAST ASPEN AVENUE Fruita CO 81521

THE AMERICAN INCOMPOSITOR OF THE	int the second	A 400 ( )	28 P312 12
Fees Due	2447)).	Coot	ion 6, Item F.
	Hayye Milyaya	Seci	lon o, nem r.
Renewal Fee	625	.00	
Storage Permit \$100 X	<b>\$</b> ,500		
Sidewalk Service Area \$75.00	\$		
Additional Optional Premise Hotel & Restaurant \$100 X	<b>\$</b>		
Related Facility - Campus Liquor Complex \$160.00 per facility	\$		
Amount Due/Paid	\$	deren.	

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

# Colorado Beer and Wine License Renewal Application

lease verify & update	all information	below			,	authority by	que date
Licensee Name MIKE'S FAMOUS CHICKEN LLC			Doing Busines MIKE'S FAMO	s As Name (DE OUS CHICKEN	BA)		
Liquor License # 03-16068	License Type Hotel & Restaurant (city)			HI			
Sales Tax License Number 94809708	ense Number Expiration Date 02/24/2024				Due Date 01/10/2024		
Business Address 233 EAST ASPEN AVENUE	Fruita CO 81521		need and the second		Andrew State Control of the St	Phone Number 9709858003	
Mailing Address 233 EAST ASPEN AVENUE	Fruita CO 81521		** *** **** **** **** **** **** **** ****	Email		<u></u>	
Operating Manager	Date of Birth Ho	me Address	***************************************		·	Phone Number	
Do you have legal pos Are the premises own				Yes  ad, expiration			
Are you renewing a sto table in upper right ha				vice area, or	elated facility	? If yes, please	see the
3a. Are you renewing a ta delivery license privile	keout and/or deliv	rery permit? (Note: n	rust hold a qualif	ying license ty	pe and be au	ithorized for take	out and/or
3b. If so, which are you re	1.	ellvery 🔲 Takeou	ıt K Both Tak	ceout and Deli	very	en gan haife de arasi	. Van de George
4a. Since the date of filing members (LLC), man found in final order of business?	aging members (	<ul><li>LC), or any other per</li></ul>	erson with a 10%	or greater fir	nancial intere	st in the applica	nt.been
4b. Since the date of filin members (LLC), mar pay any fees or surc	naging members (	LLC), or any other p	erson with a 10%	6 or greater fi	gancial intere	r, directors, sloc st in the applica	kholders nt failed to
5. Since the date of filing organizational structure and attach a listing of directors, managing	ire (addition of do f all liquor busine	letion of officers, dire sses in which these	ectors, managing new lenders, owi	members or ners (other th	general partr ap licensed fi	iers)? If yes, exp	olain in detail
6. Since the date of filling than licensed financi	of the last applic al Institutions) be	ation, has the applic	ant or any of its a	agents, owne	rs, managers oplanation: \[	partners prilen Yes XXINo	ders (other

Section 6, Item F.

APPLICANT ID: 764651

7. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, part than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license denied, suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked explanation. Yes XNo	ense suspended of
S. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financ direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or it licensee? If yes, attach a detailed explanation.   Yes  No	ial institutions) have a nterest in a loan to any
Affirmation & Consent I declare under penalty of perjury in the second degree that this application and all attachments are true, colbest of my knowledge.	
Type of Print Name of Applicant/Authorized Agent of Business	Title
Lame Williams	10001 W/
Signature ( ) ( ) ( ) ( )	Date 2/15/24
Report & Approval of City or County Licensing Authority The foregoing application has been examined and the premises, business conducted and character of the ap we do hereby report that such license, if granted, will comply with the provisions of Title 44, Articles 4 and 3, C Therefore this application is approved.	plicant are salisfactory, and C.R.S., and Liquor Rules.
Local Licensing Authority For	Date
Signature Title TOEL KINCAID, NAYO	Altest

# Tax Check Authorization, Waiver, and Request to Release Information

am signing this Tax Check Au Information (hereinafter "Walver") on behalf of to permit the Colorado Department of Revenue and any other state or loca documentation that may otherwise be confidential, as provided below. If I am myself, including on behalf of a business entity, I certify that I have the auth Applicant/Licensee.	taxing authority to relasigning this Waiver fo	"Applicant/Licensee") ease information and r someone other than				
The Executive Director of the Colorado Department of Revenue is the State Licensing Authority, and oversees the Colorado Liquor Enforcement Division as his or her agents, clerks, and employees. The information and documentation obtained pursuant to this Waiver may be used in connection with the Applicant/Licensee's liquor license application and ongoing licensure by the state and local licensing authorities. The Colorado Liquor Code, section 44-3-101. et seq. ("Liquor Code"), and the Colorado Liquor Rules, 1 CCR 203-2 ("Liquor Rules"), require compliance with certain tax obligations, and set forth the investigative, disciplinary and licensure actions the state and local licensing authorities may take for violations of the Liquor Code and Liquor Rules, including failure to meet tax reporting and payment obligations.						
The Waiver is made pursuant to section 39-21-113(4), C.R.S., and any other law, regulation, resolution or ordinance concerning the confidentiality of tax information, or any document, report or return filed in connection with state or local taxes. This Waiver shall be valid until the expiration or revocation of a license, or until both the state and local licensing authorities take final action to approve or deny any application(s) for the renewal of the license, whichever is later. Applicant/Licensee agrees to execute a new waiver for each subsequent licensing period in connection with the renewal of any license, if requested.						
By signing below, Applicant/Licensee requests that the Colorado Departmentaxing authority or agency in the possession of tax documents or information the Colorado Liquor Enforcement Division, and is duly authorized employer authorized representative under section 39-21-113(4), C.R.S., solely to allow their duly authorized employees, to investigate compliance with the Liquor authorizes the state and local licensing authorities, their duly authorized expenses the information and documentation obtained using this Waiver in any application or license.	on, release information les, to act as the Appl withe state and local lic Code and Liquor Rul mployees, and their le	and documentation to icant's/Licensee's duly censing authorities, and les. Applicant/Licensee egal representatives, to				
Name (Individual/Business)	Social Security Number/I					
Address 10 0	185-360	10121				
City City	State	Zip Co				
Grand Winction Home Phone Number   Business/Work F	100	<u> </u>				
Home Phone Number Business/Work F	none Number					
Printed name of person signing on behalf of the Applicant/Licensee						
Applicant/Licensee's Signature (Signature authorizing the disclosure of confidential tax inform	nation)	Date signed Wic / 1				
Camilled in a Company		412/24				
Privacy Act Statement Providing your Social Security Number is voluntary and no right, benefit or privilege provided by law will be denied as a result of refusal to disclose it. § 7 of Privacy Act, 5 USCS § 552a (note).						

# CITY OF FRUITA MEMORANDUM

TO	:	FRUITA POLICE DEPARTMENT							
FRO	OM:	DEBRA WOODS, DEPUTY	CITY CLERK						
DA	TE:	FEBRUARY 15, 2024							
RE:		TAVERN LIQUOR LICENS	E RENEWAL		and a ship his hought a base on a ship has a ship his house of the same of the				
	ACTION CONTRACTOR AND	Licen	se Information				or work are not have 11, on any		
Lice	ensee:		Mike's Famous	Chicken	ALVANIA AMERICANI (ANTERIOR (M. 1847)		***************************************		
Loc	ation		233 E. Aspen A	ve.					
Тур	e of I	License:	Hotel and Resta	aurant-Malt, Vir	nous & S	Spiritou	ıs		
Exp	oiratio	on Date of Current License:	February 24, 20	)24	American State of the State of				
City	y Cou	ncil Hearing Date:	February 20, 20	)24					
<b>DU</b>	E DA'	TE FOR POLICE REPORT:	February 16, 20	)24					
		Tips c	ertificates on Fil	e					
Employee: Date: Exp									
	Proje			(None Current)					
						\$1000 to \$10			
					11.0				
		irrent)	uita Police Depa	rtment					
	ne Cu	irrent)		natur kunsun da saman menenggan pengangan pengangan pengangan pengangan pengangan pengangan pengangan penganga Pengangan pengangan	in the	Yes	No		
(No	Hav last	Report of Fr	on(s) of the Liqueted to the Police I	or or Beer Code	year	Yes Yes	No		
(No	Hav last Hav that alco	Report of Fr  The there been any reported violating year?  The there been any incidents report would pertain to the liquor licents.	on(s) of the Liqueted to the Police I use and the establis?	or or Beer Code Dept in the last y	year ol of				

Fax: 858-0210 e-mail: dwoods@fruita.org

Date: 02-15-24

comments.

Signed: Paula Rajewich



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** RESOLUTION 2024-05 – Approving the lease of the Fruita Museum Property

located at 432 E Aspen Avenue to the Fruita Chamber of Commerce

#### BACKGROUND

The City of Fruita owns the building known as the "Old Fruita Museum" located at 432 E. Aspen. The building has been leased to the Fruita Chamber of Commerce since March 1, 2003. This lease has several benefits:

- 1) The building is occupied, thus preventing the natural deterioration that occurs with vacant and unoccupied buildings.
- 2) Lease of the building to the Chamber does not compete for tenants with existing property owners in the downtown and commercial business districts within the City.

The Fruita City Charter requires that leases that are for a period of time longer than one year be approved by Ordinance. State Statutes require that leases of less than one year in length be approved by resolution or ordinance.

Significant conditions of the lease agreement include the following:

- 1) The City will lease the property to the Chamber for no charge.
- 2) The City will maintain the grounds and building systems.
- 3) The Chamber is responsible for routine maintenance and upkeep of the interior and exterior of the building (janitorial services, trash removal, etc.).
- 4) The City will provide all utilities with the exception of phone service. The Chamber will be responsible for the phone system and monthly service.
- 5) The City will maintain its' own property and liability insurance on the Museum. The Chamber will maintain property insurance to cover their property within the building.
- 6) The term of the lease is for one year.

#### FISCAL IMPACT

The fiscal impact of this lease agreement includes the potential loss of revenue from lease of the property to another party, utilities and maintenance costs. Costs for maintenance of the grounds and building facilities would likely be incurred regardless of the tenant.

#### Estimates

Lease Revenues (\$1000 x 12 months)	\$12,000
Utilities (Electricity, water and sewer)	3,000
Building Maintenance	<u>2,750</u>
	\$17,750

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

A vital and stable Chamber of Commerce is an integral part of the health of the business community and supports the Economic Health of the community. Providing this facility for use by the Chamber will help to give them a separate identity, ensure their stability, and allow them to focus more of their efforts on achieving their mission.

#### OPTIONS AVAILABLE TO THE COUNCIL

- Approve the resolution and one-year lease agreement as presented
- Approve the resolution and lease agreement with amendments (rent amount, payment of utilities, etc.)
- No action and provide direction to staff on how to proceed with future use of the property. This could include:
  - o Month-to-month tenancy with the Chamber
  - o Termination of the lease with the Chamber
  - o Rental to another agency or individual
  - Leave the property vacant
  - o Enter into a long-term lease (in excess of one year) by Ordinance with the Chamber or another party

#### RECOMMENDATION

It is the recommendation of staff that the Council, by motion:

ADOPT RESOLUTION 2024-05 APPROVING THE ONE YEAR LEASE OF THE PROPERTY LOCATED AT 432 E ASPEN TO THE FRUITA CHAMBER OF COMMERCE AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LEASE AGREEMENT

# RESOLUTION 2024-05 A RESOLUTION APPROVING THE LEASE OF THE OLD FRUITA MUSEUM PROPERTY LOCATED AT 432 E ASPEN TO THE FRUITA AREA CHAMBER OF COMMERCE FOR A PERIOD OF LESS THAN ONE YEAR

**WHEREAS**. the Fruita City Council finds that it is in the best interest of the City of Fruita to lease the Old Fruita Museum located at 432 E. Aspen to the Fruita Area Chamber of Commerce for a period of less than one year, and

**WHEREAS**, the City of Fruita will provide the lease at no charge to the Fruita Chamber of Commerce and will provide electric, gas, water and sewer utilities; and maintenance of the building systems and grounds. The Chamber will provide their own phone services and phone system, and regular upkeep and maintenance of the facility including janitorial services. Additional terms and conditions of the lease are as set forth in the lease agreement attached hereto as Exhibit A, and

**WHEREAS,** C.R.S. 31-15-713 (1) (C) requires that lease agreements of less than one year be approved by resolution of the City Council.

NOW, THEREFORE BE IT RESOLVED BY THE FRUITA CITY COUNCIL TO APPROVE THE LEASE AGREEMENT WITH THE FRUITA AREA CHAMBER OF COMMERCE FOR LEASE OF THE OLD FRUITA MUSEUM LOCATED AT 432 E. ASPEN FOR A PERIOD OF LESS THAN ONE YEAR.

# PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS 20TH DAY OF FEBRUARY, 2024

ATTEST:	CITY OF FRUITA
Margaret Sell, City Clerk	Joel Kincaid, Mayor

# RESOLUTION 2024-05 EXHIBIT A LEASE AGREEMENT

THIS AGREEMENT is made and entered into as of the 20th day of February, 2024 by and between the City of Fruita hereinafter "Landlord" whose address is 325 East Aspen, Fruita, CO 81521, and the Fruita Area Chamber of Commerce "Tenant" whose address is 432 E. Aspen, Fruita, CO 81521.

#### **WITNESSETH**

WHEREAS, Tenant desires to lease and occupy for commercial use as a business office for the Fruita Area Chamber of Commerce, the Fruita Museum located at 432 E. Aspen, Fruita, Colorado, and

WHREAS, Landlord wishes to lease the Premises to Tenant.

#### NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- 1. **TERM.** The term of this Lease Agreement shall be for one year, commencing on the 1st day of March, 2024 and ending on the 28th day of February, 2025.
- 2. **RENTAL**. Tenant covenants and agrees to pay a monthly rental of \$0.
- <u>3. UTILITIES</u>. Tenant shall be solely responsible for the cost of telephone services. Landlord shall be responsible for water, sewer, gas and electricity.
- 4. MAINTENANCE. Tenant shall at all times, and at its sole cost and expense, keep and maintain in a good state of repair, the interior and exterior of the Premises including doors, windows and glass. Should Tenant desire to make any changes to the interior or exterior of the premises, Tenant shall make a written request, which must be approved by Landlord. Tenant, upon expiration and termination of this Lease Agreement, will surrender the Premises to Landlord in as good condition and repair as the same may be at the commencement of the term hereof, loss by fire or casualty and ordinary wear and tear being excepted. Tenant shall maintain the Premises in a neat, clean and healthful condition. Landlord will be responsible for the maintenance of the lawn, including but not limited to, watering and mowing of the grass. Landlord will be responsible for maintaining all building and lawn systems including the irrigation system and hot water heater.
- 5. TAXES. Landlord shall pay all real property taxes and special assessments on the Premises.
- <u>6. INSURANCE.</u> Landlord, at all times during the term of this Lease Agreement, shall maintain in full force and effect, at its sole cost and expense, liability, fire and extended coverage insurance in an amount adequate to replace the improvements furnished by Landlord.

Tenant, at all times during the term of this Lease Agreement, shall maintain in full force and effect, at its sole cost and expense, property insurance in an adequate amount to replace personal contents within the building.

- 7. PERSONAL INJURY OR PROPERTY DAMAGE. Landlord shall not be liable for any personal injury, or other damage or loss caused by an act or omission of the Tenant, to any person or any property including Tenant, and the Tenant shall indemnify and hold harmless the Landlord for any claim against the Landlord based upon any act of the Tenant or Tenant's employees, guests or invitees.
- **8. ASSIGNMENTS OR SUBLETTING.** Tenant may not sublet all or any part of the Premises except with the prior written consent of Landlord.
- 9. OPTION TO RENEW. Tenant is given the option to renew this Lease Agreement for an additional one year period by giving written notice to Landlord not less then sixty (60) days prior to the expiration of the primary term. The terms and conditions and rental amount during the option period shall be as negotiated between the parties immediately following the written notice of exercise by Tenant of election to extend the lease. If the parties are unable to agree during said 60-day period as to the terms and conditions and rental amount for the extended term, then the lease shall automatically terminate at the end of the primary twelve month term.

If, after the expiration of this Lease Agreement and with the permission of Landlord, Tenant remains in possession of the Premises and continues to pay rent without a written agreement as to such possession, then Tenant shall be regarded as a tenant from month-to-month at a monthly rental, payable in advance, equivalent to the last month's rent, and subject to all the terms and provisions of this Lease Agreement.

- 10. MISCELLANEOUS PROVISIONS. Landlord hereby agrees that Tenant shall not be liable to Landlord or to any third parties for any costs or expense arising out of any hazardous material present on or under the Premises prior to the Commencement Date of this lease, or any hazardous material present on or under the Premises after the Commencement Date of this lease unless such presence arises out of or results from the operations, acts, omissions, or use of any hazardous material on the Premises by Tenant, its employees, agents, or contractors, and Landlord shall indemnify, protect, defend and hold harmless Tenants and its partners, directors, officers, employees, shareholders, lenders, agents, contractors, and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with any claim arising therefrom. On occasion, the Tenant will provide special access for historic observation of the building.
- 11. COVENANT OF TITLE AND QUIET ENJOYMENT. Landlord covenants and warrants that it has full right and lawful authority to enter into this Lease Agreement for the term of this Lease Agreement. Landlord warrants that it is lawfully seized of the Premises and so long as the Tenant is not in default herein, Landlord warrants quiet and peaceful enjoyment of the Premises during the term of this Lease Agreement.
- 12. USE. Tenant will not permit the Premises to be used for any purposes prohibited by the laws of the United States, the State of Colorado, the County of Mesa, or the City of Fruita. Tenant shall use the premises as office space for the Fruita Area Chamber of Commerce.
- 13. INSPECTION OF PREMISES. The Landlord shall have the right to inspect the Premises at any reasonable time, after notice is provided to Tenant.

Section 6, Item G.

- 14. BENEFIT. This Lease Agreement shall insure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representative, successors and assigns.
- 15. APPROVAL. This lease is subject to approval by resolution of the Fruita City Council, as provided by C.R.S. 31-15-713 (1)(C). In the event the Council fails to approve the lease, then it shall be considered void and of no force and effect.
- 16. GOVERNMENTAL IMMUNITY. Nothing herein shall constitute a waiver by Landlord of any provision of the Colorado Governmental Immunity Act, C.R.S. Sections 24-10-101 et seq. as exists or may be amended.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands as of the day and year first above written.

City of Fruita	Fruita Area Chamber of Commerce	
Michael Bennett, City Manager	President	
ATTEST:		
City Clerk	_	



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: SHANNON VASSEN, ASSISTANT CITY MANAGER

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** Ordinance 2024-09 – First Reading – An Introduction of an Ordinance Approving a

Lease Agreement between City of Fruita and Region 10 for the Use and

Management of the Fruita Carrier Neutral Location.

#### **BACKGROUND**

The purpose of this Ordinance is for the City Council to consider approving a lease agreement between the City of Fruita and Region 10 (a Council of Governments for Southwest Colorado) for the management of the Fruita Carrier Neutral Location. For the past two years, the City of Fruita has been working on a "Middle-Mile" Broadband project to encourage private development and investment in internet infrastructure throughout Fruita. This is one of many broadband projects throughout Mesa County and Garfield County aimed at creating a regional and multi-state fiber internet loop that will connect most of the communities along I-70 with redundant, high-speed internet. This project is almost complete and involves building a lateral connection from the Fruita City Shops Facility to a fiber vault along I-70, and then constructing a Carrier Neutral Location (hereinafter "CNL") to house the connection. The CNL has been constructed, and the agreement before the City Council is to allow Region 10 to access the facility but also manage it with internet service providers. The CNL allows any private company an access point to fiber internet in Fruita and is open access.

This project has been funded through grant funds from the Colorado Department of Local Affairs Broadband program and American Rescue Plan Funds. The State of Colorado has funded staff from Region 10 (for Western Colorado) and the Northwest Council of Governments (for northern Colorado) to specifically help communities with these broadband projects. If this agreement is approved, staff from Region 10 will manage Fruita's CNL, and will manage the connection, and all subleases with interested providers.

A copy of the proposed lease agreement is included with this first reading as attachment, but here are the notable terms of the agreement:

- The initial term is for a period of twenty years, unless terminated prior to.
- Rent is \$1 per year throughout the term of the agreement.
- Region 10 has the ability to sublease space to Internet Service providers and will manage all subleases.
- City of Fruita is responsible for maintenance and improvement to the facility.
- Region 10 will purchase and hold renters insurance for their equipment in the facility.
- City of Fruita will pay utilities for the facility.

#### FISCAL IMPACT

Although the City of Fruita will only receive a minimal amount in rent each year, there is significant savings in personnel time from having Region 10 manage the CNL and subleases with providers. Further, Region 10 has the expertise and experience with managing these spaces and leases, and this will benefit the City and the internet service providers using the CNL. Other expenses like utilities, maintenance and repair, will be covered by the City of Fruita (whether this lease is executed or not) and will be subject to annual appropriation from the City Council.

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The City of Fruita is dedicated to providing core services that help improve the Quality of Place and Economic Health. Provision of high-seed broadband services can play a critical role in enhancing local government operations and community/economic development uses, and this agreement supports these efforts.

#### RECOMMENDATION

It is the recommendation of staff that the City Council by motion:

MOVE TO PUBLISH A SYNOPSIS OF ORDINANCE 2024-09 APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER NEUTRAL LOCATION FOR A PUBLIC HEARING BEFORE THE CITY COUNCIL TO BE HELD ON MARCH 5, 2024.

#### **ORDINANCE 2024-09**

# AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF FRUITA AND REGION 10 FOR THE USE AND MANAGEMENT OF THE FRUITA CARRIER NEUTRAL LOCATION.

WHEREAS, the City of Fruita, along with many local and regional partners, has been working on a middle-mile broadband project to encourage private development and investment in internet infrastructure in Fruita, and

WHEREAS, this project has involved constructing a lateral connection to fiber internet and building a Carrier Neutral Location to host the connection in Fruita, and

WHEREAS, the construction of the Carrier Neutral Location has been complete, and in order for private businesses to use the space and connection, it is necessary to enter into an agreement for use and management of the space, and

WHEREAS, the City of Fruita has been working with Region 10, the Council of Governments for Southwest Colorado, on this project, and

WHEREAS, staff members from Region 10 are funded through the State of Colorado to specifically aid local communities in broadband projects due to their expertise, and

WHEREAS, Region 10 has the expertise and experience to manage the Carrier Neutral Location, and has the ability to sublease with internet service providers who want to use the space, and

WHEREAS, staff from the City of Fruita and Region 10 have created an agreement (hereinafter "the agreement") for the Carrier Neutral Location, and

WHEREAS, the City Council finds it necessary to enter into an agreement with Region 10 for the use and management of the Carrier Neutral Location,

WHEREAS, the City Council has determined that entering into the Agreement is in the best interest of the City and desires to enter into said agreement.

# NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

<u>Section 1:</u> Approval of Agreement. The City Council hereby approves of the Agreement and, subject to annual appropriation, payment required thereunder, and hereby authorizes the City Manager execute the Agreement and take all other steps necessary to effectuate its implementation.

<u>Section 2.</u> Severability. If any provision of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid

provision or application, and to this end the provisions of this Ordinance are declared to be severable. The City Council hereby declares that it would have passed this Ordinance and each provision thereof, even though any one of the provisions might be declared unconstitutional or invalid. As used in this Section, the term "provision" means and includes any part, division, subdivision, section, subsection, sentence, clause or phrase; the term "application" means and includes an application of an ordinance or any part thereof, whether considered or construed alone or together with another ordinance or ordinances, or part thereof, of the City

<u>Section 3.</u> Effective Date. This Ordinance shall take effect thirty days after the date of final passage in accordance with Section 6.4 of the Fruita Home Rule Charter.

<u>Section 4.</u> Safety Clause. The City Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the City of Fruita, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained.

Section 5. No Existing Violation Affected. Nothing in this Ordinance shall be construed to release, extinguish, alter, modify, or change in whole or in part any penalty, liability or right or affect any audit, suit, or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing which may have been incurred or obtained under any ordinance or provision hereby repealed or amended by this Ordinance. Any such ordinance or provision thereof so amended, repealed, or superseded by this Ordinance shall be treated and held as remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions, for the enforcement of such penalty, liability, or right, and for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered, or made in such actions, suits or proceedings, or prosecutions imposing, inflicting, or declaring such penalty or liability or enforcing such right, and shall be treated and held as remaining in force for the purpose of sustaining any and all proceedings, actions, hearings, and appeals pending before any court or administrative tribunal.

<u>Section 6.</u> Publication. The City Clerk is ordered to publish this Ordinance in accordance with Article 2.13 of the Fruita City Charter.

# PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS 5th DAY OF MARCH, 2024.

CITY OF FRUITA
Mayor Joel Kincaid

# COMMERCIAL LEASE AGREEMENT FOR CARRIER NEUTRAL LOCATION

THIS COMMERCIAL LEASE AGREEMENT ("Lease" or "Agreement") is made and effective this day of March 5, 2024, by and between <u>THE CITY OF FRUITA</u> ("COMMUNITY/Landlord") and REGION 10 LEAP, INC., a 501(c)(3) Colorado nonprofit corporation ("Tenant" or "Lessee").

Landlord is the owner of land and improvements described as follows (the "Premises"): A site measuring 13x19x9 feet located the at 900 Kiefer Avenue, Fruita, Co 81521, and further described on Exhibit A incorporated herein.

Landlord hereby makes available for lease the room or space in the building described above (the "Leased Premises").

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein contained, and other good and valuable consideration, it is agreed:

## 1. <u>TERM</u>

Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning on the date set forth above, and ending on the same month and day, in the year 2024 (which period amounts to an Initial Term of twenty (20) years). Thereafter, this Lease shall renew on a year-to-year basis, under the same conditions set forth herein, unless and until terminated as set forth herein. Either party shall provide the other sixty (60) days written notice of its intent not to renew.

#### 2. RENTAL

- A. Tenant shall pay to Landlord during the Term of this Lease rental payable in installments of \$1.00 per year. Each installment payment shall be due in advance on the 15th day of January of each calendar year during the lease term to Landlord at Fruita City Center, 325 E. Aspen Avenue, Fruita Co 81521 or at such other place designated by written notice from Landlord to Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of \$0.00.
- **B.** The rental for any renewal lease term, if created as permitted under this Lease, shall be as set forth above.

## 3. <u>Use</u>

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device. Tenant shall restrict its use to those reasonably related to computer servers and related appurtenances, and shall not use or permit the use of the Leased Premises for any other purpose, except as set forth herein, without the written consent of Landlord. The Tenant shall carry on and conduct its business from time to time carried on upon the Leased Premises in such manner as to comply with all statutes, bylaws, rules and regulations of any federal, state, municipal or other competent authority and will not do anything on or in the Leased Premises in contravention of any of them. It is Tenant's obligation to determine whether its business is properly operating in the Leased Premises under zoning and other applicable state, federal, county, and city laws.

## 4. SUBLEASE AND ASSIGNMENT

Region 10 shall have the right to sublease part of the Leased Premises for Internet Service Providers (ISP) or similar service providers' use. The COMMUNITY will at all times maintain its rights of access to the Leased Premises and to any COMMUNITY Equipment within the Leased Premises. Region 10 shall at all times provide the COMMUNITY with access and space for COMMUNITY Equipment within the Leased Premises

#### 5. REPAIRS

During the Lease term, major repairs, such as those made to the emergency/backup generator, furnace or HVAC repairs, and repair of structural failures not caused by Tenant, shall be borne by Landlord, if Landlord in its sole discretion is able to allocate funding to make said repairs; otherwise, in the event Landlord elects not to make said repairs, Tenant may terminate this Lease, and Tenant shall receive a refund of any rental payment, prorated for the remainder of the month in which the damage or failure occurred. Tenant shall make, at Tenant's expense, all necessary minor repairs to the Leased Premises. Minor repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, minor electrical repairs, replacement of cracked or broken windows, etc. Landlord does not intend to provide any minor maintenance to the Leased Premises. Under no circumstances shall Landlord be responsible for reimbursement of costs of any repairs made by Tenant.

#### 6. ALTERATIONS AND IMPROVEMENTS

Tenant, at Tenant's expense, shall have the right following Landlord's prior written consent to make such improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at

Tenant's expense. The value of any permanent improvements made to the premises shall inure to Landlord. This Lease shall constitute a bill of sale for any and all said improvements.

#### 7. PROPERTY TAXES

Landlord is a tax-exempt entity. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises.

## 8. Insurance

- A. The Tenant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Tenant pursuant to Paragraph 9 hereof. Such insurance shall be in addition to any other insurance requirements imposed by this Lease or by law. The Tenant shall not be relieved of any liability, claims, demands, or other obligations pursuant to Paragraph 9, by reason of its failure to procure or maintain insurance.
- **B.** Tenant shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to COMMUNITY. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain continuous coverage.
  - (1) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Lease.
  - (2) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual.
- **C.** The policy coverage as required above shall be endorsed to include the COMMUNITY, its officers, agents and employees as additional insured.
- D. The certificate of insurance shall be completed by the Tenant's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the COMMUNITY prior to execution hereof. Failure on the part of the Tenant to procure or maintain policies providing the required coverage, conditions, and minimum limits shall constitute a material breach of contract upon which COMMUNITY may immediately terminate this Lease. COMMUNITY reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
- E. Tenant shall provide renter's insurance at Tenant's expense on the Premises, adequate to cover any damage to the Leased Premises in connection with Tenant's use thereof under the terms of this Lease.

F. Nothing herein shall constitute a waiver by COMMUNITY of any provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.* ("CGIA") as now in effect or may be amended.

## 9. INDEMNIFICATION

The Tenant agrees to indemnify and hold harmless the COMMUNITY, its officers, employees, insurers, and self insurance pool, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other losses of any kind whatsoever, which arise out of or are in any manner connected with this Lease, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of the Tenant, or any officer, employee, representative, or agent of the Tenant, or which arise out of any workers' compensation claim of any employee of the Tenant. The Tenant shall investigate, handle, respond to, and provide defense for and defend against any such liability, claims and demands, and bear all other costs and expenses related thereto, including court costs and attorney fees. The obligation of this Paragraph shall not be construed to extend to any injury, loss, or damage which is caused by the act, omission, or other fault of the COMMUNITY, its officers, or its employees.

# 10. UTILITIES

Landlord shall pay all charges for water, sewer, gas, and electricity. Tenant shall pay all charges for telephone communication utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard sixty (60) ampere electrical facilities and standard office lighting. Tenant may install, at Tenant's expense, additional outlets as needed. Landlord shall provide air conditioning unit capable of maintaining a temperature of no more than 72 degrees Fahrenheit, and in coordination with the Tenant provide electronic access control on the exterior door closest to the leased premises, allowing Tenant to permit authorized access on a full-time basis.

### 11. Access to Roof

If the facility allows, following Landlord's consent, Tenant shall have the right to place on the roof of the Premises, certain radio antenna equipment to be approved by the building official for its safe installation. Tenant shall notify and coordinate with the Landlord when access to the roof is required. Prior to installation Tenant shall ensure that antenna equipment can be installed safely and in compliance with any applicable building codes or permits.

#### **12. ENTRY**

Landlord reserves the right to enter on the Leased Premises at reasonable times and during regular business hours to inspect them, to make additions, alterations, or modifications to any part of the building in which

the Premises are located, and Tenant shall permit Landlord to do so. Landlord may erect scaffolding, fences, and similar structures, post relevant notices, and place moveable equipment in connection with the Leased Premises.

#### 13. DAMAGE AND DESTRUCTION

Subject to other applicable provisions herein, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then either party shall have the right to terminate this Lease in writing, in conformance with the Notice section of this Lease, and Landlord shall return a pro-rated amount of rental money for the period of the month during which the damage occurred when the Leased Premises was unusable for Tenant's purposes. In the event of minor damage to any part of the Leased Premises, and if such damage does not render the Leased Premises unusable for Tenant's purposes, Tenant shall have the option to either terminate this Lease as set forth in this Paragraph, or repair the minor damage at Tenant's expense; under no circumstances shall Landlord be obligated to pay for or reimburse Tenant for any repairs made. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

#### 14. DEFAULT, TERMINATION, AND ABANDONMENT

- A. If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, without correction thereof for fifteen (15) days after written notice, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.
- **B.** Notwithstanding the term as listed in Paragraph 1 above, either party may rightfully terminate this Lease at will upon sixty (60) days written notice. Notice by the terminating party shall be provided in accordance with the Notice provisions below.
- C. If Tenant abandons said Premises prior to the noticed termination of this Lease, the COMMUNITY may, at its option, terminate this Lease and take immediate possession of the Premises without need of further written notice. The COMMUNITY's possession of the Premises does not constitute any waiver of any right it may have for the enforcement of the terms herein.

#### 15. Quiet Possession

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

#### 16. Subordination

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

#### 17. RESERVED

#### **18. NOTICE**

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by hand delivery, or via United States certified mail, return receipt requested, addressed as follows:

*If to Landlord to:* 

COMMUNITY Attn: Mike Bennett, City Manager 325 E. Aspen Avenue Fruita, Co 81521

If to Tenant to:

Region 10 LEAP, Inc. Attn: Michelle Haynes 145 S. Cascade Ave. Montrose, Colorado 81401 Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

## **19. Brokers**

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

#### 20. WAIVER

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

## 21. RECORDING OF LEASE

This Lease may be recorded in the public records of the Mesa County Clerk and Recorder, or in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

# 22. GENERAL PROVISIONS

- A. The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease. All covenants are to be construed as conditions of this Lease. This Agreement may be executed in counterparts. Time shall be of the essence of this Agreement.
- **B.** The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.
- C. Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.
- **D.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.
- **E.** This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Colorado. If either party commences an action to enforce any covenant contained in this Lease, or for breach of any covenant or condition, the prevailing party shall recover reasonable attorney's fees in arbitration or litigation.

- **F.** Tenant covenants and warrants that at the termination or cancellation of this Lease, Tenant shall quit and surrender said Premises in good condition, reasonable wear and tear excepted.
- **G.** No representations, warranties or certifications, express or implied, shall exist as between the parties, except as specifically stated in the Lease.
- **H.** Nothing herein shall represent a multi-year fiscal obligation to the COMMUNITY, and any expenditures of money by the COMMUNITY in accordance with this Lease shall be subject to the annual appropriation of funds.
- I. The Tenant shall be responsible for collecting all sales and use tax associated with the business related to taxable sales made upon the leased premises, and submitting said tax to Mesa County and the City of Fruita, as applicable, and keeping appropriate books and records thereof, pursuant to applicable County Ordinances and Regulations. Payment of sales and use taxes to Mesa County and the City of Fruita shall be a material provision of this Lease.
- **J.** There shall be no third-party beneficiaries to this Lease with rights of enforcement. This Lease may only be enforced by the Landlord and the Tenant.
- K. No key copies may be made by Tenant or at its direction without the express written consent of Landlord. All keys shall be obtained from Landlord, and all keys shall be returned to Landlord upon the end of the tenancy. Tenant acknowledges that copies of all keys will be retained by Landlord and Tenant agrees that the locks shall not be changed or new locks installed by Tenant, unless at Landlord's request.

IN WITNESS WHEREOF, the parties have executed and made effective this Lease as of the day and year first above written.

LANDLORD:	TENANT: REGION 10 LEAP, INC.
Mike Bennett, City Manager	Michelle Haynes, Executive Director
ATTEST:	ATTEST:

# EXHIBIT A LEASED PREMISES DESCRIPTION

#### FLOOR PLAN DRAWING

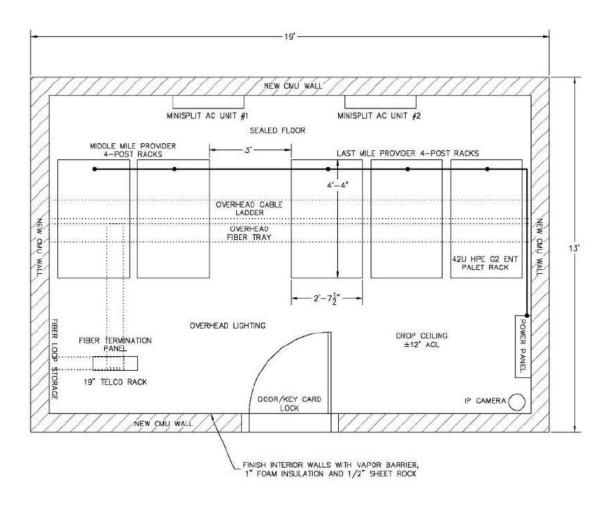


Figure A: Floor plan of the building located at 900 Kiefer Avenue, Fruita Co 81521with leased premises and authorized access route shown.



#### AGENDA ITEM COVER SHEET

**TO:** Fruita City Council and Mayor

**FROM:** Lieutenant Nick Peck and Neighborhood Services Coordinator Matt Carson

**DATE:** February 20, 2024

**AGENDA TEXT:** Ordinance 2024-10 – First Reading – An Introduction of an Ordinance Amending

the Fruita Municipal Code and Creating a New Title IX Chapter to Regulate

Unmanned Aircraft Systems.

#### **BACKGROUND**

The purpose of this coversheet is to provide the City Council with the updated regulations pertaining to all Unmanned Aircraft Systems (UAS) operating within the boundaries of the City of Fruita. Following multiple City Council discussions, the ordinance was modified to remove restrictions for the use of UAS on City property and to provide more access for UAS operations. This modification also removes the necessity for a UAS operator to seek written authorization from the City Manager or their designee prior to operating a UAS on City property. The current ordinance aligns with FFA regulations with the exception of prohibiting the operation of UAS on or over another's private property without prior consent from the property owner. Staff met with local UAS operators and attended an FAA UAS Law Enforcement Seminar to better understand public concern and safety implications surrounding UAS usage. This draft ordinance was presented and discussed with the City Council at the November 28, 2023 City Council Workshop, at which the City Council directed staff to proceed with bringing this ordinance forward through the first and second reading process.

#### FISCAL IMPACT

There is additional fiscal impact associated with this amendment to the Fruita Municipal Code.

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The city's primary goal is to protect the health, safety and welfare of the city's residents. Additionally, the proposed Ordinance is intended to align with Fruita's Community Values where people feel safe in their neighborhoods, in their homes, and on their property. Quality of Place is another strong focus of Staff and the City Council, as a community where residents and visitors love where they are.

#### OPTIONS AVAILABLE TO THE COUNCIL

- Approve First Reading as presented and Schedule Public Hearing for March 19, 2024
- Advise staff to revise ordinance and make any changes, then schedule Public Hearing for March 19, 2024.

Staff recommendation is for City Council to make a motion to approve as proposed.

#### RECOMMENDATION

MOVE TO PUBLISH A SYNOPSIS OF ORDINANCE 2024-10 AMENDING THE FRUITA MUNICIPAL CODE AND CREATING A NEW CHAPTER IN TITLE IX TO REGULAR UNMANNED AIRCRAFT SYSTEMS FOR PUBLIC HEARING BEFORE THE CITY COUNCIL TO BE HELD ON MARCH 19, 2024.

#### **ORDINANCE 2024-10**

# AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO AMENDING SECTION IX OF THE FRUITA MUNICIPAL CODE AND CREATING A NEW TITLE IX CHAPTER TO REGULATE UNMANNED AIR SYSTEMS.

**WHEREAS**, The City of Fruita is a home rule municipality with the powers and authority vested under the Colorado Law; and

WHEREAS, Congress has provided the Federal Aviation Administration (FAA) with exclusive authority to regulate aviation safety, the efficiency of the navigable airspace, and air traffic control; and

WHEREAS, the FAA has promulgated and enforces 14 C.F.R. Part 107 regarding the safe and orderly operation of UAS; and

**WHEREAS**, the Fruita City Council has requested the ability for the Police Department to address unmanned aircraft systems throughout Fruita, and

WHEREAS, Title IX of the Fruita Municipal Code addresses the Public Peace, Morals, and Welfare of Fruita, and

WHEREAS, over the past year, staff and the Fruita City Council has been working on language and an update to Municipal Code to include language on the use of unmanned aircraft systems, and

**WHEREAS**, this update has included the recommendation on adding a new chapter to the Fruita Municipal Code on unmanned aircraft systems, and

WHEREAS, in this new chapter, unmanned aircraft systems are defined, along with prohibited acts, exemptions to the chapter, and enforcement of the provisions of the chapter, and

WHEREAS, the Fruita City Council finds it necessary to add this chapter to maintain the the public peace, morals, and welfare of Fruita.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO:

<u>Section 1:</u> Section Chapter 9.16 of the Fruita Municipal Code is hereby added and included as follows of the Fruita Municipal Code, and as detailed in Exhibit A:

# PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL THIS 19th DAY OF MARCH, 2024.

Section	~	14000	•
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ATTEST:	CITY OF FRUITA
City Clerk	Mayor Joel Kincaid

#### **EXHIBIT A**

#### Chapter 9.16

#### UNMANNED AIRCRAFT SYSTEMS

#### **Sections:**

9.16.010	<b>Purpose and intent</b>
9.16.020	<b>Definitions</b>
9.16.030	<b>Prohibited Acts</b>
9.16.040	<b>Enforcement</b>

**9.16.010 PURPOSE AND INTENT**. The purpose of this Chapter is to establish regulations pertaining to all unmanned aircraft systems, ("UAS") operating within the jurisdictional borders of the City of Fruita. It is the intent of this Chapter to be interpreted in conformance with any existing or future federal or state laws or regulations that address the operation of unmanned aircraft systems.

**9.16.020 DEFINITIONS**. For the purposes of this section, unless the context otherwise requires:

Aircraft means any contrivance invented, used, or designed to navigate or fly in the air.

Model aircraft means an unmanned aircraft that is: (a) capable of sustained flight in the atmosphere; (b) flown within visual line of sight of the person operating the aircraft; and (c) flown for hobby or recreational purposes.

Navigable airspace means airspace above the minimum altitudes of flight prescribed by FAA regulations, including airspace needed to ensure safety in takeoff and landing of aircraft.

Operate means to fly, use, launch, land, employ or navigate an unmanned aircraft system.

City airspace means and includes all airspace above the jurisdictional boundaries of the City, to the full extent such airspace can legally be regulated by the City.

Unmanned aircraft system or UAS means an aircraft, powered aerial vehicle, or other device without a human pilot on board, the flight of which is controlled either autonomously by on board computers or by remote control of a pilot operator on the ground or in another vehicle or aircraft, and all associated equipment and apparatus. It includes model aircraft and drones.

- **9.16.030 PROHIBITED ACTS**. The following acts are prohibited in the operation of an unmanned aircraft system anywhere in the City or City airspace:
- (a) No person shall operate a UAS to endanger, harm or harass the life or property of any person nor shall any person operate a UAS in a reckless or careless manner. No person may operate a UAS near any person, pedestrians, bicyclists, motorists to the extent it creates or is perceived to create a public safety threat to life or property.
- (b) No person shall operate a UAS to endanger, harass, harm or injure any livestock, companion animal or wildlife.
- (c) No person shall operate a UAS who is under the influence of alcohol, marijuana, or one (1) or more controlled substances as defined in Article 18 of Title 18 of the Colorado Revised Statutes.
- (d) No person shall operate a UAS if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a UAS, or if he or she knows or has reason to know that UAS equipment is not in proper working order.
- (e) No person shall enter, hover, land or otherwise operate an unmanned aircraft system on or over another person's private property without the prior consent of the property owner. Such unauthorized entry onto another's property shall be deemed a trespass.
- **9.17.040 EXEMPTION.** For the purposes of this section, the following are exemptions for prohibited acts:
- (a) This ordinance is not intended and does not prohibit the use of any UAS by a Fire Department, Emergency Medical Services, Law Enforcement, or other City employees for the benefit of public safety.
- (b) Nothing in this ordinance is intended to prohibit commercial UAS operators from using any UAS in the performance of their business that is outside of the scope of hobby and recreational purposes.
- **9.16.050 ENFORCEMENT**. It shall be unlawful to violate any provision of this Chapter. Any Person who is convicted of a violation of any provision of this Chapter shall be punished in accordance with Section 1.28.020 of this Code. In addition, any UAS operated in violation of this Chapter may be immediately impounded in the interest of public safety. Law enforcement officers are authorized to disable any UAS operating within the City Airspace that poses an imminent threat to public safety.



#### **AGENDA ITEM COVER SHEET**

**TO:** Fruita City Council and Mayor

**FROM:** Margaret Sell, Finance Director/City Clerk

**DATE:** February 20, 2024

**AGENDA TEXT:** FINANCIAL REPORTS – A request to approve the January 2024 Financial

Reports

#### **BACKGROUND**

<u>Sales and use tax revenues</u>. The following table provides a summary of sales and use tax revenues for December sales compared to sales in the same period in 2022. Reductions in sales and use tax revenues were anticipated in the 2023 Budget. Collectively, these revenues have surpassed the budget through December by \$597,901. On a year-to-date basis county sales tax revenues are flat compared to the prior year, use taxes on building materials and vehicles are down 12% and 11%, respectively from the prior year, and city sales tax and lodging tax revenues are up 6% from the previous year.

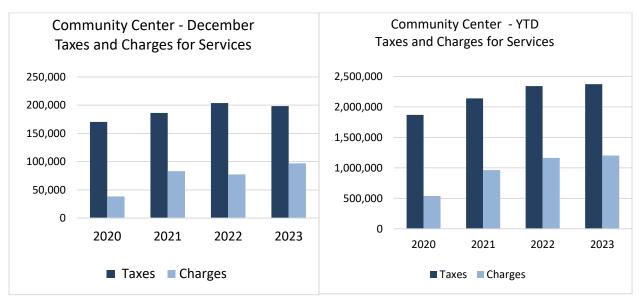
Summary of Sales and Use Tax Revenues - December 2023									
		Percent (%	) Change		Dollar (\$	) C	hange		
Туре	Month	Month	Y-T-D		m prior ır - YTD	Between actual and budget - YTD			
City Sales Tax (2%)	Dec-23	5.5%	6%	\$	201,538	\$	353,414		
Use tax on Motor Vehicles (2%)	Dec-23	-23.3%	-11%	\$	(92,028)	\$	(35,311)		
Use tax on Building Materials (2%)	Dec-23	-45.8%	-12%	\$	(45,634)	\$	29,441		
Lodging Tax (3%)	Dec-23	96.8%	6%	\$	10,593	\$	41,442		
County Sales Tax	Dec-23	0.0%	0%	\$	10,794	\$	179,802		
Public Safety Tax	Dec-23	0.0%	1%	\$	3,299	\$	29,113		
				\$	88,562	\$	597,901		

The following table shows a monthly comparison between December 2022 and 2023 city sales tax collections by NAICS category. Wholesale trade had the largest increase of 248% with the largest reductions in utilities, oil and gas and retail trade. Remote sales were up 9% over the prior year.

Sales Tax Revenues by Category (3%)  Dec-23								
Description	2021	2022	2023	1 yr % Chg	1 yr \$ Chg			
Retail Trade	237,688	244,562	238,297	-3%	(6,265)			
Food	57,432	72,123	71,741	-1%	(382)			
Other Miscellaneous	15,276	1 <i>7,</i> 301	18,242	5%	941			
Utilities	35,908	48,445	40,841	-16%	(7,604)			
Manufacturing	10,491	14,378	12,378	-14%	(2,000)			
Rental and Leasing	5,639	<i>7,</i> 219	12,161	68%	4,942			
Other Services	3,916	7,635	9,552	25%	1,917			
Lodging	12,821	6,965	10,788	55%	3,823			
Wholesale Trade	17,097	16,363	56,903	248%	40,540			
Communications	16,952	16,277	15,444	-5%	(833)			
Oil and Gas	306	11,001	1,150	-90%	(9,851)			
Total	413,526	462,269	487,497	5%	25,228			
Remote retailers	45,272	55,961	60,902	9%	4,941			

#### <u>Community Center Fund Charges for Services – December 2023</u>

December 2023 charges for services (pass fees and recreation programs) were up 26% from the prior year while sales and use tax revenues were down 3% from the prior year. Annual revenues are up 3% for user fees and 1% for tax revenues from the prior year.



<u>Actual vs Budget Report – January 2024.</u> The attached Actual vs Budget report presents comparison information on budgeted vs actual revenues and expenses by fund and department for all funds for January 2024. The following is a summary of the report by fund.

Revenues and Expenses as Percentage of Budget -								
January 2024 (8%)								
Column1	Revenues as a % Budget	Expenses as a % of Budget						
General Fund	7%	6%						
Conservation Trust Fund	0%	0%						
Economic Development Fund	7%	0%						
Marketing	7%	1%						
Public Places Fund	7%	16%						
Community Center	9%	3%						
Fruita Housing Authority	0%	0%						
Capital Projects	0%	0%						
Debt Service	0%	0%						
Devils Canyon Center	0%	0%						
Irrigation Water *	1%	13%						
Sewer*	6%	14%						
Trash*	9%	0%						
Fleet Maintenance Fund	0%	9%						
Total	5%	5%						

#### FISCAL IMPACT

None.

#### APPLICABILITY TO CITY GOALS AND OBJECTIVES

These reports provide financial information to the Council to monitor the City's financial position and may be used as a tool to hold staff accountable for accomplishing goals and objectives set forth in the Budget.

#### OPTIONS AVAILABLE TO THE COUNCIL

Approval of Financial Reports

Approval of Financial Reports with clarification on specific items

#### RECOMMENDATION

It is the recommendation of staff that the Council by motion:

#### ACCEPT THE JANUARY 2024 FINANCIAL REPORTS AS PRESENTED



#### **SALES AND USE TAX REPORTS**

	City Sales Tax - 2% General Fund (110-3131)								
	2019	2020	2021	2022	2023	\$ Variance	% Variance		
Jan	124,973.08	190,392.44	204,830.52	222,224.08	272,043.95	49,819.87	22.42%		
Feb	144,100.65	167,749.86	201,246.04	241,043.51	257,301.07	16,257.56	6.74%		
Mar	165,160.52	242,722.52	274,325.31	241,256.77	274,681.30	33,424.53	13.85%		
Apr	191,027.30	211,354.97	275,116.14	307,724.72	310,799.52	3,074.80	1.00%		
May	198,826.37	236,158.52	299,751.07	315,266.10	337,385.69	22,119.59	7.02%		
Jun	197,471.05	229,208.70	280,881.50	315,464.89	334,549.58	19,084.69	6.05%		
Jul	190,974.84	280,361.25	268,022.29	290,659.73	306,866.03	16,206.30	5.58%		
Aug	200,644.07	229,018.92	259,681.40	321,372.15	319,767.61	-1,604.54	-0.50%		
Sep	193,024.68	239,752.16	281,301.78	303,829.93	335,023.25	31,193.32	10.27%		
Oct	205,934.68	243,770.76	266,678.57	302,938.30	300,395.33	-2,542.97	-0.84%		
Nov	192,966.14	224,503.72	251,620.04	281,773.52	279,460.03	-2,313.49	-0.82%		
Dec	208,689.86	243,087.11	275,684.31	308,179.47	324,997.78	16,818.31	5.46%		
TOTAL	2,213,793.24	2,738,080.93	3,139,138.97	3,451,733.17	3,653,271.14	201,537.97	5.84%		
%	15.26%	23.68%	14.65%	9.96%	5.84%				

2023 Budget= \$3,300,000, 4.4% decrease from 2022 Actual Revenues

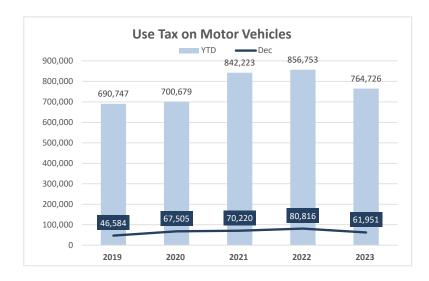
Dec 2,213,793.24 2,738,080.93 3,139,138.97 3,451,733.17 3,653,271.14 201,537.97 5.84% 3% 3,320,689.86 4,107,121.40 4,708,708.46 5,177,599.76 5,479,906.71 302,306.96 5.84%

	Use Tax on Motor Vehicles - 2% General Fund (110-3132)								
	2019	2020	2021	2022	2023	\$ Variance	% Change		
JAN	59,067.65	44,776.20	59,327.64	47,309.36	49,751.32	2,441.96	5.16%		
FEB	35,431.97	59,554.07	38,721.90	46,447.50	60,836.73	14,389.23	30.98%		
MAR	56,995.69	53,618.86	69,952.45	74,968.11	74,791.15	-1 <i>7</i> 6.96	-0.24%		
APR	58,679.47	37,062.83	56,918.15	79,891.83	54,713.24	-25,1 <i>7</i> 8.59	-31.52%		
MAY	90,700.80	35,122.84	73,577.89	94,600.69	81,719.62	-12,881.07	-13.62%		
JUN	52,822.10	72,285.02	73,709.93	64,351.62	50,023.47	-14,328.15	-22.27%		
JUL	67,463.71	89,038.90	79,197.84	64,357.92	54,891.13	-9,466.79	-14.71%		
AUG	66,028.27	73,161.03	111,272.20	83,056.00	93,114.18	10,058.18	12.11%		
SEP	46,789.04	69,374.11	55,871.85	71,679.10	64,187.04	-7,492.06	-10.45%		
OCT	51,469.53	61,789.73	80,751.67	81,246.37	67,369.67	-13,876.70	-17.08%		
NOV	58,715.01	37,390.30	72,701.97	68,028.87	51,376.62	-16,652.25	-24.48%		
DEC	46,583.89	67,505.07	70,219.53	80,815.93	61,951.47	-18,864.46	-23.34%		
YTD	690,747.13	700,678.96	842,223.02	856,753.30	764,725.64	(92,027.66)	-10.74%		
%	9.88%	1.44%	20.20%	1.73%	-10.74%				



Dec 690,747.13 700,678.96 842,223.02 856,753.30 764,725.64 -92,027.66 -10.74% 3% 1,036,120.70 1,051,018.44 1,263,334.53 1,285,129.95 1,147,088.46 -138,041.49 -10.74% for chart only



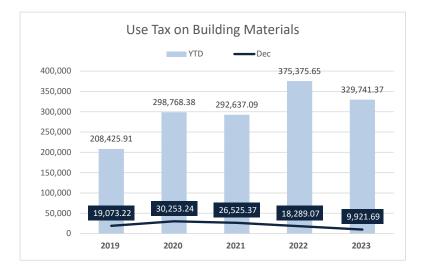






#### **SALES AND USE TAX REPORTS**

Use Tax on Building Materials - 2% General Fund (110-3133)								
	2019	2020	2021	2022	2023	\$ Variance	% Change	
JAN	19,357.85	14,922.55	16,599.65	22,964.41	16,208.89	-6,755.52	-29.42%	
FEB	19,056.71	10,930.68	27,922.86	31,415.26	52,028.31	20,613.05	65.61%	
MAR	9,936.56	41,435.81	32,453.39	58,817.72	9,971.22	-48,846.50	-83.05%	
APR	24,173.95	10,766.83	27,295.09	44,288.18	42,054.83	-2,233.35	-5.04%	
MAY	32,410.86	38,491.01	17,464.96	34,286.83	19,000.44	-15,286.39	-44.58%	
JUN	26,190.88	1 <i>7,</i> 591.28	33,914.75	38,355.04	41,803.15	3,448.11	8.99%	
JUL	16,836.31	37,279.04	24,039.63	18,894.10	26,846.41	7,952.31	42.09%	
AUG	8,864.92	20,497.47	10,941.09	19,619.37	42,886.61	23,267.24	118.59%	
SEP	3,865.13	23,043.51	15,065.96	30,588.98	23,227.32	<i>-7,</i> 361.66	-24.07%	
ОСТ	16,537.07	20,654.70	41,315.52	37,933.25	20,223.19	-1 <i>7,</i> 710.06	-46.69%	
NOV	12,122.45	32,902.26	19,098.82	19,923.44	25,569.31	5,645.87	28.34%	
DEC	19,073.22	30,253.24	26,525.37	18,289.07	9,921.69	-8,367.38	-45.75%	
YTD	208,425.91	298,768.38	292,637.09	375,375.65	329,741.37	-45,634.28	-12.16%	
%	-42.35%	43.35%	-2.05%	28.27%	-12.16%			



2023 Budget = \$300,000 -20% decrease from 2022 Actual revenues

208,425.91 298,768.38 292,637.09 375,375.65 329,741.37 -45,634.28 -12.16% 3% 312,638.87 448,152.57 438,955.64 563,063.48 494,612.06 -68,451.42 -12.16% for charmonly

- , -	/	/								
	City Lodging Tax - 3% (125-3134)									
	2019	2020	2021	2022	2023	\$ Variance	%			
Jan	2,611.13	3,573.20	3,452.69	4,465.16	4,145.44	-319.72	-7.16%			
Feb	3,774.09	4,018.26	4,145.37	5,490.69	7,399.14	1,908.45	34.76%			
Mar	8,249.09	4,677.20	10,961.79	12,266.06	10,093.53	-2,172.53	-17.71%			
Apr	8,046.43	2,305.15	16,557.26	14,135.42	16,355.71	2,220.29	15.71%			
May	15,242.71	5,512.69	19,501.69	27,925.85	24,540.57	-3,385.28	-12.12%			
Jun	22,312.67	8,463.77	23,011.89	24,010.29	26,405.31	2,395.02	9.97%			
Jul	15,335.70	11,150.71	19,979.13	14,726.50	19,695.54	4,969.04	33.74%			
Aug	12,712.49	11,047.44	16,446.92	13,107.77	18,237.56	5,129.79	39.14%			
Sep	9,427.07	12,255.47	21,282.81	20,312.24	25,090.28	4,778.04	23.52%			
Oct	18,400.75	13,854.54	18,243.68	27,831.93	14,577.28	-13,254.65	-47.62%			
Nov	6,398.12	7,447.85	11,126.88	10,712.63	12,772.58	2,059.95	19.23%			
Dec	4,558.22	5,195.64	7,209.43	6,475.52	12,740.56	6,265.04	96.75%			
TOTAL	127,068.47	89,501.92	171,919.54	181,460.06	192,053.50	10,593.44	5.84%			
	-1.29%	-29.56%	92.08%	5.55%	5.84%					



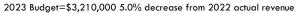
2023 Budget = \$150,000 - 17% decrease from 2022 actual revenues

Dec 127,068.47 89,501.92 171,919.54 181,460.06 192,053.50 10,593.44 5.84% 6% 254,136.94 179,003.84 343,839.08 362,920.12 384,107.00 21,186.88 5.84%



#### **SALES AND USE TAX REPORTS**

	County Sales Tax - 2% (110-3130)								
	2019	2020	2021	2022	2023	\$ Variance	% Variance		
Jan	168,991.80	178,526.13	199,569.41	227,801.34	235,100.74	7,299.40	3.20%		
Feb	161,231.36	181,438.93	200,816.29	232,761.64	234,963.31	2,201.67	0.95%		
Mar	198,980.47	188,855.08	268,529.43	283,096.69	283,146.64	49.95	0.02%		
Apr	197,897.18	187,855.58	270,209.01	279,500.97	277,150.11	-2,350.86	-0.84%		
May	209,011.45	220,166.38	266,353.47	293,351.88	299,401.48	6,049.60	2.06%		
Jun	213,850.33	233,449.26	281,089.81	304,783.41	306,021.87	1,238.46	0.41%		
Jul	210,475.42	227,956.26	264,407.19	283,763.03	289,221.95	5,458.92	1.92%		
Aug	216,142.51	222,314.16	259,705.93	308,357.00	292,640.77	-15,716.23	-5.10%		
Sep	206,870.89	230,820.91	274,282.88	297,059.99	292,818.85	-4,241.14	-1.43%		
Oct	210,951.31	228,020.45	263,951.60	278,430.83	283,059.19	4,628.36	1.66%		
Nov	204,326.68	211,965.09	252,758.87	275,219.04	281,096.69	5,877.65	2.14%		
Dec	233,401.07	248,034.85	296,934.24	316,028.45	316,327.00	298.55	0.09%		
TOTAL	2,432,130.47	2,559,403.08	3,098,608.13	3,380,154.27	3,390,948.60	10,794.33	0.32%		
%	6.99%	5.23%	21.07%	9.09%	0.32%				



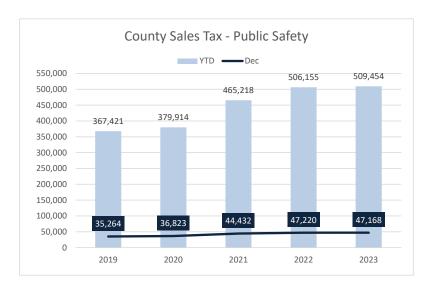
2,432,130,47 2,559,403,08 3,098,608,13 3,380,154,27 3,390,948,60 10,794,33 0,5

		County	Sales Tax				
3,500,000 -		YT	Dec Dec	3,380,154	3,390,949		
3,300,000	3,098,608						
3,000,000							
2,500,000	2,432,130	2,559,403					
2,000,000							
1,500,000							
1,000,000							
500,000 -	233,401	248,035	296,934	316,028	316,327		
0 -							
	2019	2020	2021	2022	2023		

	County Sales Tax - 0.37% Public Safety Tax (110-3129)									
	2019	2020	2021	2022	2023	\$ Variance	% Variance			
Jan	25,508.99	26,762.07	29,794.36	34,330.68	35,660.02	1,329.34	3.87%			
Feb	24,195.07	26,744.72	30,522.74	35,019.51	35,427.83	408.32	1.17%			
Mar	30,31 <i>7</i> .68	26,640.82	41,095.99	42,371.66	42,812.82	441.16	1.04%			
Apr	30,643.86	27,635.27	40,485.69	41,898.53	41,149.35	-749.18	-1.79%			
May	32,085.32	32,800.08	39,900.10	43,792.01	45,752.66	1,960.65	4.48%			
Jun	32,143.50	35,125.60	42,158.45	45,827.75	46,220.47	392.72	0.86%			
Jul	31,495.72	34,219.03	39,786.84	42,639.68	43,521.83	882.15	2.07%			
Aug	32,200.79	33,414.60	38,714.05	45,747.00	43,705.32	-2,041.68	-4.46%			
Sep	31,197.04	34,227.49	41,1 <i>77</i> .94	44,829.02	43,705.41	-1,123.61	-2.51%			
Oct	31,996.22	34,007.72	39,502.32	41,678.35	42,311.45	633.10	1.52%			
Nov	30,373.05	31,513.90	37,647.08	40,801.66	42,018.88	1,217.22	2.98%			
Dec	35,263.78	36,822.92	44,432.47	47,219.60	47,168.00	-51.60	-0.11%			
TOTAL	367,421.02	379,914.22	465,218.03	506,155.45	509,454.04	3,298.59	0.65%			
%	9.41%	3.40%	22.45%	8.80%	0.65%					



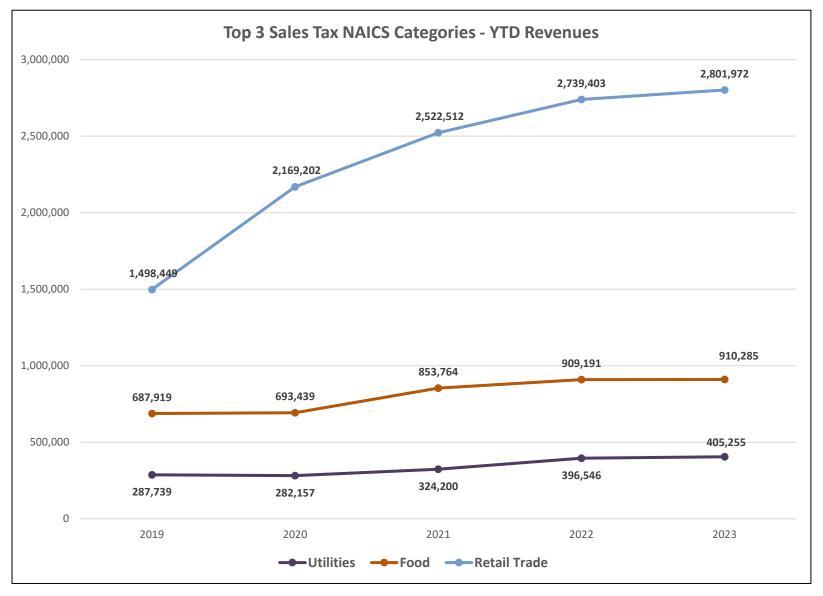
Dec	367.421.02			0.65%





	Sales a	nd Use Ta	ax Revenu	es by Cate	egory (3%)	)		
		Jar	nuary-Dec	ember				
Description	2019	2020	2021	2022	2023	1 yr % Chg	1 yr \$ Chg	% of 2023 Total
Sales taxes								
Other Services	56,661	64,301	75,517	89,063	133,343	50%	44,280	2%
Other Miscellaneous	80,519	118,049	159,577	218,860	215,367	-2%	(3,493)	3%
Manufacturing	62,496	104,293	134,373	154,380	153,078	-1%	(1,302)	2%
Wholesale Trade	95,772	132,602	1 <i>7</i> 9, <i>57</i> 9	249,911	329,738	32%	79,827	5%
Rental and Leasing	132,848	119,029	86,725	83,212	89,694	8%	6,482	1%
Communications	195,889	140,823	156,802	174,069	1 <i>7</i> 6,299	1%	2,230	2%
Oil and Gas	82,140	169,100	6,980	-40,657	59,289	246%	99,946	1%
Utilities	287,739	282,1 <i>57</i>	324,200	396,546	405,255	2%	8,709	6%
Lodging	140,258	114,126	208,679	203,622	205,587	1%	1,965	3%
Food	687,919	693,439	853,764	909,191	910,285	0%	1,094	13%
Retail Trade	1,498,449	2,169,202	2,522,512	2,739,403	2,801,972	2%	62,569	39%
Subtotal	3,320,690	4,107,121	4,708,708	5,177,600	5,479,907	6%	302,307	<b>77</b> %
Use taxes								
Vehicles	1,036,121	1,051,018	1,263,335	1,285,130	1,147,088	-11%	(138,041)	16%
Building materials	312,639	448,153	438,956	563,063	494,612	-12%	(68,451)	7%
Subtotal	1,348,760	1,499,171	1,702,290	1,848,193	1,641,701	-11%	(206,493)	23%
Total	4,669,450	5,606,292	6,410,998	7,025,793	7,121,608	1%	95,814	100%
Online soles	170 217	204.072	401 105	551.027	616.740	120/	CA 913	- 094
Online sales	1 <i>7</i> 8,21 <i>7</i>	384,073	481,185	551,927	616,740	12%	64,813	9%





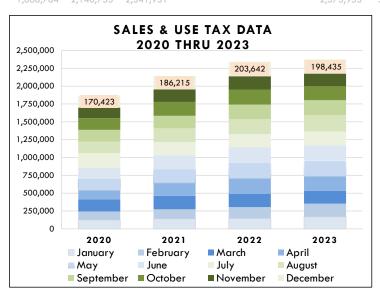
202	3 City Lodging	g Tax - M	arketing Fund	3% (125	-3134)
	Hotels Campgro		VRBC	) <b>'</b> S	
	Revenue	% of Total	% of Revenue Total		Monthly Total
Jan	3,1 <i>57</i>	76%	988	24%	4,145
Feb	6,406	87%	993	13%	7,399
Mar	7,823	77%	2,310	23%	10,133
Apr	11,609	71%	4,746	29%	16,355
May	18,352	75%	6,189	25%	24,541
Jun	20,206	77%	6,199	23%	26,405
Jul	15,180	77%	4,515	23%	19,696
Aug	13,927	76%	4,311	24%	18,238
Sep	18,745	75%	6,345	25%	25,090
Oct	9,304	64%	5,274	36%	14,577
Nov	9,678	76%	3,094	24%	12,773
Dec	10,250	80%	2,491	20%	12,741
TOTAL	144,637	75%	47,455	25%	192,092

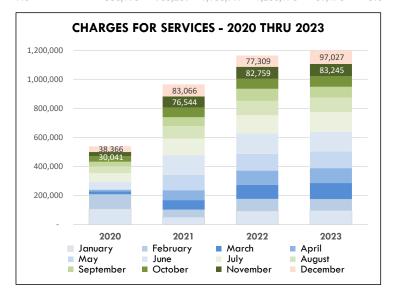
	2023 City	Lodging	Tax - Other	Funds 3	%
	Econo	mic			Monthly
	Develor	ment	Public Pl	aces	Total
		% of		% of	
	Revenue	Total	Revenue	Total	
Jan	2,763	67%	1,382	33%	4,145
Feb	4,932	67%	2,473	33%	7,404
Mar	6,764	67%	3,372	33%	10,136
Apr	13,772	69%	6,052	31%	19,824
May	16,359	67%	8,182	33%	24,541
Jun	1 <i>7,</i> 602	67%	8,803	33%	26,405
Jul	13,129	67%	6,566	33%	19,695
Aug	12,1 <i>57</i>	67%	6,080	33%	18,237
Sep	16,725	67%	8,365	33%	25,090
Oct	9,71 <i>7</i>	67%	4,860	33%	14,577
Nov	8,514	67%	4,258	33%	12,772
Dec	8,493	67%	4,247	33%	12,740
TOTAL	130,926	67%	64,640	33%	195,567

#### **2023 COMMUNITY CENTER FUND REVENUES**

						2023 Tax	Revenues		
Month	2020	2021	2022	City Sales	Use Tax Motor Vehicles	Use Tax Building Materials	2023	\$ Change	% Chg
January	125,046	140,379	146,249	136,022	24,876	8,104	169,002	22,753	16%
February	119,11 <i>7</i>	133,945	159,453	128,651	30,418	26,014	185,083	25,630	16%
March	168,889	188,406	187,521	137,341	37,396	4,986	179,722	<i>-7,</i> 800	-4%
April	129,592	179,665	215,952	155,400	27,357	21,027	203,783	-12,169	-6%
May	154,886	195,397	222,077	168,693	40,860	9,500	219,053	-3,024	-1%
June	159,543	194,253	209,085	167,275	25,012	20,902	213,188	4,103	2%
July	203,340	185,630	186,956	153,433	27,446	13,423	194,302	7,346	4%
August	161,339	190 <b>,</b> 947	212,024	159,884	46,557	21,443	227,884	15,860	7%
September	166,085	176,120	203,049	167,512	32,094	11,614	211,219	8,170	4%
October	163,108	194,373	211,059	150,198	33,685	10,195	194,078	-16,981	-8%
November	147,398	175,424	184,863	139,730	25,689	12,785	178,203	-6,660	-4%
December	170,423	186,215	203,642	162,499	30,976	4,961	198,435	-5,207	-3%
TOTAL	1,868,764	2,140,753	2,341,931	1,826,636	382,364	164,954	2,373,953	32,023	1%
% Change	20.06%	14.55%	9.40%						
2023 Budge	t			1,650,000	400,000	150,000	2,200,000		
% of Budget				110.71%	95.59%	109.97%	107.91%		
	1.868.764	2.140.753	2.341.931				2.373.953	32.023	1%

	Charges for Services									
Month	2020	2021	2022	2023	\$ Change	% Chg				
January	108,150	50,712	94,372	97,499	3,127	3%				
February	99,658	52,470	81,894	78,473	(3,421)	-4%				
March	21,361	65,392	98,073	109,728	11,655	12%				
April	9,239	68,466	97,049	102,490	5,441	6%				
May	8,041	105,543	116,172	114,132	(2,040)	-2%				
June	48,220	135,621	140,195	135,399	(4,796)	-3%				
July	58,968	113,550	125,561	137,877	12,316	10%				
August	47,293	85,139	98,449	99,965	1,516	2%				
September	31,642	62,246	83,220	72,984	(10,236)	-12%				
October	37,214	66,519	68,943	74,354	5,411	8%				
November	30,041	76,544	82,759	83,245	486	1%				
December	38,366	83,066	77,309	97,027	19,718	26%				
TOTAL	538,193	965,269	1,163,997	1,203,173	39,176	3%				
2023 Budget	1,275,000	694,300	1,190,300	1,196,500						
% of Budget	42.21%	139.03%	97.79%	100.56%						
	538,193	965,269	1,163,997	1,203,173	39,176	3%				





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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
110	General Fund					
000						
R01	Taxes	-735,736.68	-735,736.68	-11,211,500.00	-10,475,763.32	6.56
R02	Licenses and permits	-11,815.00	-11,815.00	-61,900.00	-50,085.00	19.09
R03	Intergovernmental revenue	-41,686.32	-41,686.32	-582,350.00	-540,663.68	7.16
R04	Charges for services	-26,113.56	-26,113.56	-443,000.00	-416,886.44	5.89
R05	Fines and forfeitures	-1,568.16	-1,568.16	-31,650.00	-30,081.84	4.95
R06	Interest	-66,589.88	-66,589.88	-400,000.00	-333,410.12	16.65
R07	Donations	0.00	0.00	-30,000.00	-30,000.00	0.00
R08	Miscellaneous	-1,433.42	-1,433.42	-2,500.00	-1,066.58	57.34
R09	Transfers from other funds	0.00	0.00	-251,125.00	-251,125.00	0.00
R10	Other financing sources	-18,187.00	-18,187.00	0.00	18,187.00	0.00
R12	Rents	-8,388.91	-8,388.91	-49,000.00	-40,611.09	17.12
000		-911,518.93	-911,518.93	-13,063,025.00	-12,151,506.07	6.98
410	General Government					
	Department					
E01	Personnel services, salaries	50,404.10	50,404.10	548,600.00	498,195.90	9.19
E02	Personnel services, benefits	21,328.07	21,328.07	165,250.00	143,921.93	12.91
E03	Purchased professional	9,676.70	9,676.70	194,100.00	184,423.30	4.99
E04	service	621.50	621.50	40,000,00	40 170 41	1.27
E04	Purchased property services	621.59	621.59	48,800.00	48,178.41	1.27
E05	Other purchased services	3,910.49	3,910.49	40,500.00	36,589.51	9.66
E06	Supplies	2,287.23	2,287.23	63,100.00	60,812.77	3.62
E07	Capital	57,808.28	57,808.28	45,000.00	-12,808.28	128.46
E08 410	Special projects General Government	34,600.00 180,636.46	34,600.00	45,800.00	11,200.00 <i>970.513.54</i>	75.55 <i>15.</i> 69
410	General Government Department	180,030.40	180,636.46	1,151,150.00	9/0,313.34	15.09
415	Administration Department					
E01	Personnel services, salaries	42,699.58	42,699.58	634,800.00	592.100.42	6.73
E01 E02	Personnel services, benefits	42,099.38 17.155.15	42,099.38 17.155.15	225.825.00	208.669.85	7.60
E02 E03	Purchased professional	55,799.01	55,799.01	143,650.00	87,850.99	38.84
LUJ	service	33,733.01	33,177.01	143,030.00	07,030.99	30.04
E04	Purchased property services	14,040.59	14,040.59	188,150.00	174,109.41	7.46
E04 E05	Other purchased services	14,040.39	14,040.39	24,900.00	24,887.88	0.05
E06	Supplies	3,059.35	3,059.35	67,850.00	64,790.65	4.51

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
F07	G 7.1	0.00	0.00	25,000,00	25,000,00	0.00
E07 E08	Capital Special projects	0.00 0.00	0.00 0.00	35,000.00 5,000.00	35,000.00 5,000.00	0.00 0.00
415	Administration Department	132,765.80	132,765.80	1,325,175.00	1,192,409.20	10.02
413	Administration Department	132,703.00	132,703.00	1,323,173.00	1,192,409.20	10.02
418	Engineering Department					
E01	Personnel services, salaries	28,027.20	28,027.20	361,400.00	333,372.80	7.76
E02	Personnel services, benefits	18,294.65	18,294.65	135,675.00	117,380.35	13.48
E03	Purchased professional service	654.90	654.90	13,000.00	12,345.10	5.04
E04	Purchased property services	0.00	0.00	8,975.00	8,975.00	0.00
E05	Other purchased services	0.00	0.00	2,800.00	2,800.00	0.00
E06	Supplies	20.00	20.00	7,100.00	7,080.00	0.28
418	Engineering Department	46,996.75	46,996.75	528,950.00	481,953.25	8.88
419	Community Development Dpmt					
E01	Personnel services, salaries	41.056.61	41.056.61	529,250.00	488.193.39	7.76
E02	Personnel services, benefits	25,491.04	25,491.04	201,350.00	175,858.96	12.66
E03	Purchased professional	525.32	525.32	57,500.00	56,974.68	0.91
203	service	323.32	323.32	37,500.00	30,771.00	0.71
E04	Purchased property services	798.00	798.00	26,800.00	26,002.00	2.98
E05	Other purchased services	101.24	101.24	26,300.00	26,198.76	0.38
E06	Supplies	1,888.28	1,888.28	29,700.00	27,811.72	6.36
E08	Special projects	0.00	0.00	500.00	500.00	0.00
419	Community Development	69,860.49	69,860.49	871,400.00	801,539.51	8.02
	Dpmt					
421	Police Department					
E01	Personnel services, salaries	136,122.70	136,122.70	1,743,875.00	1,607,752.30	7.81
E02	Personnel services, benefits	87,943.43	87,943.43	747,465.00	659,521.57	11.77
E03	Purchased professional	2,080.00	2,080.00	16,025.00	13,945.00	12.98
	service					
E04	Purchased property services	12,362.24	12,362.24	161,225.00	148,862.76	7.67
E05	Other purchased services	0.00	0.00	378,000.00	378,000.00	0.00
E06	Supplies	2,546.72	2,546.72	96,425.00	93,878.28	2.64
E07	Capital	29,004.00	29,004.00	80,500.00	51,496.00	36.03
421	Police Department	270,059.09	270,059.09	3,223,515.00	2,953,455.91	8.38
431	Public Works Department					
E01	Personnel services, salaries	47,906.94	47,906.94	736,675.00	688,768.06	6.50
E02	Personnel services, benefits	36,955.18	36,955.18	382,450.00	345,494.82	9.66
E03	Purchased professional service	24,337.37	24,337.37	232,125.00	207,787.63	10.48
E04	Purchased property services	1,279.21	1,279.21	669,325.00	668.045.79	0.19
E05	Other purchased services	0.00	0.00	6,650.00	6,650.00	0.00
E06	Supplies	5,392.65	5,392.65	407,020.00	401,627.35	1.32
E07	Capital	138,300.00	138,300.00	445,000.00	306,700.00	31.08
431	Public Works Department	254,171.35	254,171.35	2,879,245.00	2,625,073.65	8.83
	•					

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% ExpendCollect
451	Danks and Decreation Dent					
E01	Parks and Recreation Dept Personnel services, salaries	35,088.84	35,088.84	581,525.00	546,436.16	6.03
E01 E02	Personnel services, salaries Personnel services, benefits	27,868.53	27,868.53	236,800.00	208,931.47	
E02 E03	,	*	*	· ·	,	11.77 37.02
EUS	Purchased professional service	22,709.17	22,709.17	61,350.00	38,640.83	37.02
E04	Purchased property services	577.03	577.03	190,400.00	189,822.97	0.30
E05	Other purchased services	0.00	0.00	9,800.00	9,800.00	0.00
E06	Supplies	5,745.18	5,745.18	245,550.00	239,804.82	2.34
E07	Capital	0.00	0.00	77,500.00	77,500.00	0.00
E08	Special projects	1,567.00	1,567.00	92,000.00	90,433.00	1.70
451	Parks and Recreation Dept	93,555.75	93,555.75	1,494,925.00	1,401,369.25	6.26
490	Non-Departmental Expenses					
E01	Personnel services, salaries	0.00	0.00	71,000.00	71,000.00	0.00
E02	Personnel services, benefits	-18.83	-18.83	0.00	18.83	0.00
E03	Purchased professional	40,896.68	40,896.68	88,000.00	47,103.32	46.47
	service					
E04	Purchased property services	0.00	0.00	8,000.00	8,000.00	0.00
E05	Other purchased services	60,370.65	60,370.65	268,350.00	207,979.35	22.50
E06	Supplies	0.00	0.00	25,000.00	25,000.00	0.00
E08	Special projects	0.00	0.00	77,275.00	77,275.00	0.00
E11	Contingency	0.00	0.00	300,000.00	300,000.00	0.00
E12	Transfers to other funds	0.00	0.00	7,224,570.00	7,224,570.00	0.00
490	Non-Departmental	101,248.50	101,248.50	8,062,195.00	7,960,946.50	1.26
	Expenses					
Revenue Total		-911,518.93	-911,518.93	-13,063,025.00	-12,151,506.07	-6.9779
Expense Total	Committee	1,149,294.19	1,149,294.19	19,536,555.00	18,387,260.81	5.8828
110	General Fund	237,775.26	237,775.26	6,473,530.00	6,235,754.74	3.67

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
121	Conservation Trust Fund					
000						
R03	Intergovernmental revenue	0.00	0.00	-175,000.00	-175,000.00	0.00
R06	Interest	-107.86	-107.86	-1,000.00	-892.14	10.79
000		-107.86	-107.86	-176,000.00	-175,892.14	0.06
880	Parks, Trails and Open Space					
E12	Transfers to other funds	0.00	0.00	100,000.00	100,000.00	0.00
880	Parks, Trails and Open Space	0.00	0.00	100,000.00	100,000.00	0.00
Revenue Total Expense Total		-107.86 0.00	-107.86 0.00	-176,000.00 100,000.00	-175,892.14 100,000.00	-0.0613 0
121	Conservation Trust Fund	-107.86	-107.86	-76,000.00	-75,892.14	0.14

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
124	<b>Economic Development</b>					
	Fund					
000						
R01	Taxes	-8,492.75	-8,492.75	-114,000.00	-105,507.25	7.45
000		-8,492.75	-8,492.75	-114,000.00	-105,507.25	7.45
465	Marketing and ED					
	Operations					
E08	Special projects	0.00	0.00	15,000.00	15,000.00	0.00
E12	Transfers to other funds	0.00	0.00	5,100.00	5,100.00	0.00
465	Marketing and ED	0.00	0.00	20,100.00	20,100.00	0.00
	Operations			,	•	
Revenue Total		-8,492.75	-8,492.75	-114,000.00	-105,507.25	-7.4498
Expense Total		0.00	0.00	20,100.00	20,100.00	0
124	<b>Economic Development</b>	-8,492.75	-8,492.75	-93,900.00	-85,407.25	9.04
	Fund	5,152170	5,152110	22,20000	35,107.25	<b>7.0.1</b>

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
125	Marketing and Promotion Fund					
000						
R01	Taxes	-12,740.56	-12,740.56	-171,000.00	-158,259.44	7.45
R04	Charges for services	-20.00	-20.00	0.00	20.00	0.00
R06	Interest	-42.06	-42.06	0.00	42.06	0.00
R09	Transfers from other funds	0.00	0.00	-12,000.00	-12,000.00	0.00
000		-12,802.62	-12,802.62	-183,000.00	-170,197.38	7.00
465	Marketing and ED Operations					
E01	Personnel services, salaries	2,032.55	2,032.55	25,525.00	23,492.45	7.96
E02	Personnel services, benefits	1,118.89	1,118.89	8,350.00	7,231.11	13.40
E03	Purchased professional service	0.00	0.00	10,000.00	10,000.00	0.00
E04	Purchased property services	0.00	0.00	1,625.00	1,625.00	0.00
E05	Other purchased services	0.00	0.00	102,000.00	102,000.00	0.00
E08	Special projects	0.00	0.00	88,500.00	88,500.00	0.00
465	Marketing and ED Operations	3,151.44	3,151.44	236,000.00	232,848.56	1.34
Revenue Total		-12,802.62	-12,802.62	-183,000.00	-170,197.38	-6.996
Expense Total		3,151.44	3,151.44	236,000.00	232,848.56	1.3354
125	Marketing and Promotion Fund	-9,651.18	-9,651.18	53,000.00	62,651.18	-18.21

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
126	Dakka Dlassa Farad					
126	Public Places Fund					
000	m	4 2 45 45	1 2 1 5 1 5	55,000,00	50 550 55	5.45
R01	Taxes	-4,247.45	-4,247.45	-57,000.00	-52,752.55	7.45
000		-4,247.45	-4,247.45	-57,000.00	-52,752.55	7.45
452	Public Space					
E04	Purchased property services	9,000.00	9,000.00	10,000.00	1,000.00	90.00
E06	Supplies	0.00	0.00	35,000.00	35,000.00	0.00
E08	Special projects	0.00	0.00	10,000.00	10,000.00	0.00
452	Public Space	9.000.00	9,000.00	55,000,00	46,000.00	16.36
		,,,,,,,,,	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	,,,,,,,,,,	.,	
Revenue Total		-4,247,45	-4.247.45	-57,000.00	-52,752.55	-7.4517
Expense Total		9,000.00	9,000.00	55,000.00	46,000.00	16.3636
126	Public Places Fund	4,752.55	4,752.55	-2,000.00	-6,752.55	-237.63
120	r ublic r laces rulid	4,752.55	4,752.55	-2,000.00	-0,752.55	-237.03

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
40=						
127	Community Center Fund					
000		4=0=0=40	1=0=0=10	• 400 000 00		- 40
R01	Taxes	-179,707.10	-179,707.10	-2,400,000.00	-2,220,292.90	7.49
R04	Charges for services	-130,415.10	-130,415.10	-1,317,500.00	-1,187,084.90	9.90
R06	Interest	-4,658.37	-4,658.37	-40,000.00	-35,341.63	11.65
R07	Donations	-75.00	-75.00	0.00	75.00	0.00
R08	Miscellaneous	160.95	160.95	0.00	-160.95	0.00
R09	Transfers from other funds	0.00	0.00	-95,000.00	-95,000.00	0.00
R12	Rents	-22,134.61	-22,134.61	-74,000.00	-51,865.39	29.91
000		-336,829.23	-336,829.23	-3,926,500.00	-3,589,670.77	8.58
451	Parks and Recreation Dept					
E01	Personnel services, salaries	105,137.94	105,137.94	1,582,650.00	1,477,512.06	6.64
E02	Personnel services, benefits	35,539.18	35,539.18	342,275.00	306,735.82	10.38
E03	Purchased professional	10,999.01	10,999.01	69,325.00	58,325.99	15.87
	service					
E04	Purchased property services	5,474.47	5,474.47	164,250.00	158,775.53	3.33
E05	Other purchased services	10,419.05	10,419.05	60,950.00	50,530.95	17.09
E06	Supplies	8,623.58	8,623.58	409,250.00	400,626.42	2.11
E07	Capital	0.00	0.00	1,820,000.00	1,820,000.00	0.00
E11	Contingency	0.00	0.00	40.000.00	40,000.00	0.00
E12	Transfers to other funds	0.00	0.00	762.200.00	762,200.00	0.00
451	Parks and Recreation Dept	176,193.23	176,193.23	5,250,900.00	5,074,706.77	3.36
Revenue Total		-336,829.23	-336,829.23	-3,926,500.00	-3,589,670.77	-8.5784
Expense Total		176,193,23	176,193,23	5,250,900.00	5,074,706.77	3.3555
127	<b>Community Center Fund</b>	-160,636.00	-160,636.00	1,324,400.00	1,485,036.00	-12.13

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
129	Fruita Housing Authority Fund					
000						
R04	Charges for services	0.00	0.00	-50,000.00	-50,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-5,100.00	-5,100.00	0.00
000		0.00	0.00	-55,100.00	-55,100.00	0.00
463	Housing Authority					
E03	Purchased professional service	0.00	0.00	55,000.00	55,000.00	0.00
E05	Other purchased services	0.00	0.00	100.00	100.00	0.00
463	Housing Authority	0.00	0.00	55,100.00	55,100.00	0.00
Revenue Total		0.00	0.00	-55,100.00	-55,100.00	0
Expense Total		0.00	0.00	55,100.00	55,100.00	0
129	Fruita Housing Authority Fund	0.00	0.00	0.00	0.00	0.00

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
130	Capital Projects Fund					
000						
R06	Interest	-14,898.15	-14,898.15	0.00	14,898.15	0.00
000		-14,898.15	-14,898.15	0.00	14,898.15	0.00
708	Downtown Improvements					
E07	Capital	0.00	0.00	350,000.00	350,000.00	0.00
R03	Intergovernmental revenue	0.00	0.00	-150,000.00	-150,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-200,000.00	-200,000.00	0.00
708	Downtown Improvements	0.00	0.00	0.00	0.00	0.00
710	Broadband Connection					
E07	Capital	0.00	0.00	197,500.00	197,500.00	0.00
R03	Intergovernmental revenue	0.00	0.00	-197,500.00	-197,500.00	0.00
710	Broadband Connection	0.00	0.00	0.00	0.00	0.00
733	Sidewalk Replacement					
E07	Capital	0.00	0.00	50,000.00	50,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-50,000.00	-50,000.00	0.00
733	Sidewalk Replacement	0.00	0.00	0.00	0.00	0.00
734	South Mesa Improvements					
E07	Capital	9,055.00	9,055.00	2,130,581.50	2,121,526.50	0.43
R03	Intergovernmental revenue	0.00	0.00	-1,736,000.00	-1,736,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-309,000.00	-309,000.00	0.00
734	South Mesa Improvements	9,055.00	9,055.00	85,581.50	76,526.50	10.58
735	Overlays					
E07	Capital	0.00	0.00	560,000.00	560,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-560,000.00	-560,000.00	0.00
735	Overlays	0.00	0.00	0.00	0.00	0.00
736	Business Park- 16 Rd Rail					
E07	Capital	0.00	0.00	388,870.00	388,870.00	0.00
R03	Intergovernmental revenue	0.00	0.00	-50,000.00	-50,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-188,570.00	-188,570.00	0.00
R11	Development impact fees	0.00	0.00	-121,700.00	-121,700.00	0.00
736	Business Park- 16 Rd Rail	0.00	0.00	28,600.00	28,600.00	0.00

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Section 6, Item J.
746	Maple Street Bridge					
E03	Purchased professional	0.00	0.00	250,000.00	250,000.00	0.00
D02	service	0.00	0.00	250,000,00	250 000 00	0.00
R03 746	Intergovernmental revenue <i>Maple Street Bridge</i>	0.00 <i>0.00</i>	0.00 0.00	-250,000.00 0.00	-250,000.00 0.00	0.00 0.00
740	Maple Sireel Briage	0.00	0.00	0.00	0.00	0.00
750	19 Road Improvements					
E07	Capital	0.00	0.00	6,000,000.00	6,000,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-5,750,000.00	-5,750,000.00	0.00
R11	Development impact fees	0.00	0.00	-250,000.00	-250,000.00	0.00
750	19 Road Improvements	0.00	0.00	0.00	0.00	0.00
785	Building Improvements					
E07	Capital	0.00	0.00	90,000.00	90,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-90,000.00	-90,000.00	0.00
785	Building Improvements	0.00	0.00	0.00	0.00	0.00
792	SH 340 Trail					
E03	Purchased professional	0.00	0.00	250,000.00	250,000.00	0.00
	service					
R03	Intergovernmental revenue	0.00	0.00	-160,000.00	-160,000.00	0.00
R07	Donations	0.00	0.00	-90,000.00	-90,000.00	0.00
792	SH 340 Trail	0.00	0.00	0.00	0.00	0.00
793	Snooks Bottom					
	improvements					
E07	Capital	0.00	0.00	100,000.00	100,000.00	0.00
R09	Transfers from other funds	0.00	0.00	-100,000.00	-100,000.00	0.00
793	Snooks Bottom	0.00	0.00	0.00	0.00	0.00
	improvements					
795	Reed Park Improvements					
E07	Capital	7,500.00	7,500.00	1,977,733.98	1,970,233.98	0.38
795	Reed Park Improvements	7,500.00	7,500.00	1,977,733.98	1,970,233.98	0.38
Revenue Total		-14,898.15	-14,898.15	-10,252,770.00	-10,237,871.85	-0.1453
Expense Total		16,555.00	16,555.00	12,344,685.48	12,328,130.48	0.1341
130	<b>Capital Projects Fund</b>	1,656.85	1,656.85	2,091,915.48	2,090,258.63	0.08

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
140	Debt Service Fund					
000						
R06	Interest	-3,546.20	-3,546.20	-22,000.00	-18,453.80	16.12
R09	Transfers from other funds	0.00	0.00	-726,200.00	-726,200.00	0.00
000		-3,546.20	-3,546.20	-748,200.00	-744,653.80	0.47
470	Debt Service					
E09	Debt service principal	0.00	0.00	400,000.00	400,000.00	0.00
E10	Debt interest & bond issuance	0.00	0.00	348,200.00	348,200.00	0.00
470	Debt Service	0.00	0.00	748,200.00	748,200.00	0.00
Revenue Total		-3,546.20	-3,546.20	-748,200.00	-744,653.80	-0.474
Expense Total		0.00	0.00	748,200.00	748,200.00	0
140	<b>Debt Service Fund</b>	-3,546.20	-3,546.20	0.00	3,546.20	0.00

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
210	Devils Canyon Center Fund					
000	T unu					
R06	Interest	-294.93	-294.93	0.00	294.93	0.00
000		-294.93	-294.93	0.00	294.93	0.00
Revenue Total		-294.93	-294.93	0.00	294.93	0
Expense Total		0.00	0.00	0.00	0.00	0
210	<b>Devils Canyon Center</b>	-294.93	-294.93	0.00	294.93	0.00
	Fund					

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
211	Irrigation Water Fund					
000	irigation water runu					
R04	Charges for services	-901.00	-901.00	-136,500.00	-135,599.00	0.66
R06	Interest	-42.01	-42.01	-50.00	-7.99	84.02
000	merest	-943.01	-943.01	-136,550.00	-135,606.99	0.69
431	Public Works Department					
E01	Personnel services, salaries	3,912.32	3,912.32	54,725.00	50,812.68	7.15
E02	Personnel services, benefits	2,937.91	2,937.91	22,750.00	19,812.09	12.91
E04	Purchased property services	0.00	0.00	2,975.00	2,975.00	0.00
E05	Other purchased services	0.00	0.00	10.000.00	10,000.00	0.00
E06	Supplies	10,382.04	10,382.04	20.475.00	10.092.96	50.71
E07	Capital	0.00	0.00	12,200.00	12,200.00	0.00
E11	Contingency	0.00	0.00	3,300.00	3,300.00	0.00
E12	Transfers to other funds	0.00	0.00	10.125.00	10.125.00	0.00
431	Public Works Department	17,232.27	17,232.27	136,550.00	119,317.73	12.62
Revenue Total		-943.01	-943.01	-136,550.00	-135,606.99	-0.6906
Expense Total		17,232.27	17,232.27	136,550.00	119,317.73	12.6198
211	Irrigation Water Fund	16,289.26	16,289.26	0.00	-16,289.26	0.00

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
212	Sewer Fund					
000						
R03	Intergovernmental revenue	0.00	0.00	-760,000.00	-760,000.00	0.00
R04	Charges for services	-323,655.55	-323,655.55	-4,481,500.00	-4,157,844.45	7.22
R06	Interest	-17,109.20	-17,109.20	-125,000.00	-107,890.80	13.69
R08	Miscellaneous	0.00	0.00	-2,000.00	-2,000.00	0.00
000		-340,764.75	-340,764.75	-5,368,500.00	-5,027,735.25	6.35
433	Sewer					
E01	Personnel services, salaries	57,571.61	57,571.61	721,375.00	663,803.39	7.98
E02	Personnel services, benefits	42,856.21	42,856.21	308,100.00	265,243.79	13.91
E03	Purchased professional service	2,395.84	2,395.84	89,925.00	87,529.16	2.66
E04	Purchased property services	6,092.74	6,092.74	122,000.00	115,907.26	4.99
E05	Other purchased services	14,450.88	14,450.88	179,000.00	164,549.12	8.07
E06	Supplies	7,029.93	7,029.93	482,125.00	475,095.07	1.46
E07	Capital	0.00	0.00	272,600.00	272,600.00	0.00
E09	Debt service principal	560,000.00	560,000.00	1,120,000.00	560,000.00	50.00
E10	Debt interest & bond issuance	83,690.00	83,690.00	170,005.00	86,315.00	49.23
E11	Contingency	0.00	0.00	55,150.00	55,150.00	0.00
E12	Transfers to other funds	0.00	0.00	165,000.00	165,000.00	0.00
E15	Reserves	0.00	0.00	500,000.00	500,000.00	0.00
433	Sewer	774,087.21	774,087.21	4,185,280.00	3,411,192.79	18.50
601	Lift Stations					
E03	Purchased professional service	0.00	0.00	29,000.00	29,000.00	0.00
E07	Capital	0.00	0.00	231,000.00	231,000.00	0.00
601	Lift Stations	0.00	0.00	260,000.00	260,000.00	0.00
604	Sewer Line Improvements					
E07	Capital	0.00	0.00	240,000.00	240,000.00	0.00
604	Sewer Line Improvements	0.00	0.00	240,000.00	240,000.00	0.00
606	Sewer Line Upgrades					
E07	Capital	0.00	0.00	1,000,000.00	1,000,000.00	0.00
606	Sewer Line Upgrades	0.00	0.00	1,000,000.00	1,000,000.00	0.00

Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Section 6, Item J.
607	Treatment System -					
E07	<i>Aeration</i> Capital	29.24	29.24	0.00	-29.24	0.00
607	Treatment System - Aeration	29.24	29.24	0.00	-29.24	0.00
Revenue Total		-340,764.75	-340,764.75	-5,368,500.00	-5,027,735.25	-6.3475
Expense Total	C F 1	774,116.45	774,116.45	5,685,280.00	4,911,163.55	13.6162
212	Sewer Fund	433,351.70	433,351.70	316,780.00	-116,571.70	136.80

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
215	Trash Fund					
000						
R04	Charges for services	-105,388.04	-105,388.04	-1,175,000.00	-1,069,611.96	8.97
R06	Interest	-47.67	-47.67	0.00	47.67	0.00
000		-105,435.71	-105,435.71	-1,175,000.00	-1,069,564.29	8.97
432	Sanitation Department					
E05	Other purchased services	0.00	0.00	1,105,000.00	1,105,000.00	0.00
E12	Transfers to other funds	0.00	0.00	70,000.00	70,000.00	0.00
432	Sanitation Department	0.00	0.00	1,175,000.00	1,175,000.00	0.00
Revenue Total		-105,435.71	-105,435.71	-1,175,000.00	-1,069,564.29	-8.9733
Expense Total		0.00	0.00	1,175,000.00	1,175,000.00	0
215	Trash Fund	-105,435.71	-105,435.71	0.00	105,435.71	0.00

User: msell

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Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
220	Fleet Maintenance Fund					
000						
R04	Charges for services	0.00	0.00	-448,275.00	-448,275.00	0.00
000	<u> </u>	0.00	0.00	-448,275.00	-448,275.00	0.00
431	Public Works Department					
E01	Personnel services, salaries	13,099.76	13,099.76	172,725.00	159,625.24	7.58
E02	Personnel services, benefits	9,222.75	9,222.75	80,300.00	71,077.25	11.49
E03	Purchased professional	3,550.00	3,550.00	8,500.00	4,950.00	41.76
	service					
E04	Purchased property services	2,332.48	2,332.48	58,400.00	56,067.52	3.99
E06	Supplies	7,104.99	7,104.99	108,850.00	101,745.01	6.53
E07	Capital	4,685.00	4,685.00	16,700.00	12,015.00	28.05
E11	Contingency	0.00	0.00	5,000.00	5,000.00	0.00
431	Public Works Department	39,994.98	39,994.98	450,475.00	410,480.02	8.88
Revenue Total		0.00	0.00	-448,275.00	-448,275.00	0
Expense Total		39,994.98	39,994.98	450,475.00	410,480.02	8.8784
220	Fleet Maintenance Fund	39,994.98	39,994.98	2,200.00	-37,794.98	1,817.95

# General Ledger Actual vs Budget Report

User: msell

Printed: 2/16/2024 9:49:30 AM

Period 01 - 01 Fiscal Year 2024



Sort Level	Description	Period Amt	End Bal	Budget	Variance	% Expend/Collect
Revenue Total		-1,739,881.59	-1,739,881.59	-35,703,920.00	-33,964,038.41	-4.8731
Expense Total		2,185,537.56	2,185,537.56	45,793,845.48	43,608,307.92	4.7726



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** ORDINANCE 2024-04 – 2ND Reading - Amending Chapters 2.41 and 2.42 of the

Fruita Municipal Code to eliminate voting rights for Council members appointed to the Police and Parks and Recreation Commissions, and excluding them from

quorum calculations.

#### **BACKGROUND**

In 2023, the City Council engaged with various city boards and commissions to: 1) assess their purpose and achievements, 2) provide guidance on aligning with Fruita's strategic and master plans, and 3) evaluate the roles of Council members on these bodies. The City Council aims to enhance the separation of roles between itself and the boards/commissions, fostering their independence. While Council members or the Mayor may still serve as liaisons, they won't have voting powers or contribute to quorum calculations for the boards/commissions.

The Fruita City Charter (Sections 6.3.4 and 6.3.5) outlines the membership requirements for the Police Commission and Parks and Recreation Commission, mandating the appointment of one Council member to each. City Charter amendments necessitate voter approval. This ordinance maintains Council members' presence on the Police Commission and Parks and Recreation Commission but withdraws their voting rights. Additionally, it specifies that Council members are not considered when determining a quorum.

#### FISCAL IMPACT

This Ordinance does not have any fiscal impact.

### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The removal of voting rights of Council members appointed to the Police Commission and Parks and Recreation Commission provides a degree of separation of roles and responsibilities between the City Council and these Commissions, and promotes independence of the Commissions.

#### **OPTIONS TO THE COUNCIL:**

- Approve the ordinance as presented, or with amendments, or
- Opt for no action, retaining the current voting privileges of Council members on the Police Commission and Parks and Recreation Commission, along with their inclusion in quorum calculations.

#### **RECOMMENDATION:**

ADOPT ORDINANCE 2024-04, AMENDING CHAPTERS 2.41 AND 2.42 OF THE FRUITA MUNICIPAL CODE TO ELIMINATE VOTING RIGHTS FOR COUNCIL MEMBERS APPOINTED TO THE POLICE AND PARKS AND RECREATION COMMISSIONS AND EXCLUDING THEM FROM QUORUM CALCULATIONS

#### ORDINANCE NO. 2024-04

### AN ORDINANCE AMENDING CHAPTERS 2.41 AND 2.42 OF THE FRUITA MUNICIPAL CODE CONCERNING QUORUMS AND VOTING FOR THE POLICE COMMISSION AND PARKS AND RECREATION COMMISSION

WHEREAS, the City Council met with the various boards and commissions of the City throughout 2023 to 1) review the purpose and accomplishments of the boards, 2) provide direction to them on how they can advise the Council to further priorities in Fruita's strategic and master plans, and 3) evaluate the roles of City Council members serving on various boards and commissions, and

**WHEREAS,** membership requirements of the Police Commission and Parks and Recreation Commission are established by the Fruita City Charter (Sections 6.3.4 and 6.3.5) and require one Council member be appointed to each of the Commissions, and

**WHEREAS**, the City Council desires to make the City Council members appointed to the Police Commission and Parks Recreation Commission non-voting members in order to provide better separation of roles and responsibilities between the City Council and the Commissions and promote independence of the Commissions.

# NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:

**Section 1:** Section 2.41.010 paragraph A of the Fruita Municipal Code and Ordinance 2005-17 concerning the Police Commission are hereby repealed and reenacted to read as follows:

#### 2.41.010 MEMBERSHIP REQUIREMENTS.

A. The Police Commission is established by Article VI of the Fruita City Charter. Members at large are appointed in accordance with the Fruita City Charter. The member appointed from the City Council shall be appointed by the City Council immediately following the regular municipal election held every two (2) years and shall be a non-voting member of the Police Commission. Members may continue to serve until their successors have been appointed.

<u>Section 2:</u> Section 2.41.030 of the Fruita Municipal Code and Ordinance 2005-17 concerning the Police Commission are hereby repealed and reenacted to read as follows:

#### 2.41.030 QUORUM AND VOTING.

A. A quorum shall be necessary for the Police Commission to take official action. A quorum is defined as a majority of the total voting membership, excluding vacant positions and the non-voting City Council member.

B. All actions of the Police Commission shall be taken by a majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member.

<u>Section 3:</u> Section 2.42.010 of the Fruita Municipal Code and Ordinance 2005-17 concerning the Parks and Recreation Commission are hereby repealed and reenacted to read as follows:

#### **2.42.010 MEMBERSHIP.**

A. The Parks and Recreation Commission is established by Article VI of the Fruita City Charter. Members at large are appointed in accordance with the Fruita City Charter. The member appointed from the City Council shall be appointed by the City Council immediately following the regular municipal election held every two (2) years and shall be a non-voting member of the Parks and Recreation Commission. Members may continue to serve until their successors have been appointed.

**Section 4:** Section 2.42.030 of the Fruita Municipal Code and Ordinance 2005-17 concerning the Parks and Recreation Commission are hereby repealed and reenacted to read as follows:

### 2.42.030 QUORUM AND VOTING.

- A. A quorum shall be necessary for the Parks and Recreation Commission to take official action. A quorum is defined as a majority of the total voting membership, excluding vacant positions and the non-voting City Council member.
- B. All actions of the Parks and Recreation Commission shall be taken by a majority vote, a quorum being present. A roll call vote shall be taken upon the request of any member.

# PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL ON THIS DAY OF FEBRUARY 2024

ATTEST:	CITY OF FRUITA
Margaret Sell, City Clerk	Joel Kincaid, Mayor



# AGENDA ITEM COVER SHEET

TO: FRUITA CITY COUNCIL AND MAYOR

FROM: MARGARET SELL, FINANCE DIRECTOR/CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** ORDINANCE 2024-05 – 2ND Reading - Amending Section 3.18.240 of the Fruita

Municipal Code concerning membership requirements for the Tourism Advisory

Council

#### **BACKGROUND**

In 2023, the City Council engaged with various city boards and commissions to: 1) assess their purpose and achievements, 2) provide guidance on aligning with Fruita's strategic and master plans, and 3) evaluate the roles of Council members on these bodies. The City Council aims to enhance the separation of roles between itself and the boards/commissions, fostering their independence. While Council members or the Mayor may still serve as liaisons, they won't have voting powers or contribute to quorum calculations for the boards/commissions.

Section 3.18.240 of the Fruita Municipal Code establishes membership of the Tourism Advisory Council and states that composition of the committee will include representatives of the lodging industry, area attractions, retail businesses, the City Council, and other interested parties. This Ordinance eliminates the reference to a City Council representative on the Board. The current Council member's position will be vacated, and an interested party will be appointed in their stead, ensuring the continuity of membership and quorums.

#### FISCAL IMPACT

This Ordinance does not have any fiscal impact.

### APPLICABILITY TO CITY GOALS AND OBJECTIVES

The removal of a representative from the City Council from the Tourism Advisory Council provides a degree of separation of roles and responsibilities between the City Council and the Advisory Council and promotes independence of the Advisory Council.

#### **OPTIONS TO THE COUNCIL:**

- Approve the ordinance as presented, or with amendments, or
- Opt for no action, retaining the current membership structure of the Tourism Advisory Council.

#### **RECOMMENDATION:**

Section B, Item 2)

ADOPT ORDINANCE 2024-05, AMENDING SECTION 3.18.240 OF THE FRUITA MUNICIPAL CODE REMOVING A REPRESENTATIVE FROM THE CITY COUNCIL FROM MEMBERSHIP OF THE TOURISM ADVISORY COUNCIL

#### ORDINANCE NO. 2024-05

# AN ORDINANCE AMENDING SECTION 3.18.240 OF THE FRUITA MUNICIPAL CODE CONCERNING MEMBERSHIP FOR THE TOURISM ADVISORY COUNCIL

WHEREAS, the City Council met with the various boards and commissions of the City throughout 2023 to 1) review the purpose and accomplishments of the boards, 2) provide direction to them on how they can advise the Council to further priorities in Fruita's strategic and master plans, and 3) evaluate the roles of City Council members serving on various boards and commissions, and

**WHEREAS**, membership requirements of the Tourism Advisory Council are established by Ordinance and state that composition of the committee will include representatives of the City Council, and

**WHEREAS**, the City Council desires to remove the City Council member(s) appointed to the Tourism Advisory Council in order to provide better separation of roles and responsibilities between the City Council and the Tourism Advisory Council and to promote independence of the Tourism Advisory Council.

# NOW, THEREFORE, IT IS ORDAINED BY THE CITY COUNCIL OF THE CITY OF FRUITA, COLORADO, THAT:

<u>Section 1:</u> Section 3.18.240 of the Fruita Municipal Code and Ordinances 1996-12 and 2005-17 concerning the Tourism Advisory Council are hereby amended to read as follows: (redline indicates deletion)

3.18.240 TOURISM ADVISORY COUNCIL. There is hereby created a Tourism Advisory Council which will consist of seven (7) members appointed by the City Council. Composition of the committee will include representatives of the lodging industry, area attractions, retail businesses, the City Council, and other interested parties. Members of the Commission may reside inside or outside the City limits Fruita and shall have an interest in marketing and promoting the City of Fruita. The Tourism Advisory Council shall advise the City Manager and City Council concerning the preparation of a budget for the expenditures of funds in the Tourism Promotional Fund. Members appointed to the Advisory Council shall serve terms as outlined in the Fruita City Charter. All members shall serve without compensation. (Ord. 1996-12, Ord. 2005-17)

# PASSED AND ADOPTED BY THE FRUITA CITY COUNCIL ON THIS \_\_\_ DAY OF FEBRUARY 2024

ATTEST:	CITY OF FRUITA
Margaret Sell, City Clerk	Joel Kincaid, Mayor



# AGENDA ITEM COVER SHEET

**TO:** Fruita City Council and Mayor

**FROM:** Planning & Development Department

**DATE:** February 20, 2024

**AGENDA TEXT:** APPEAL – This is an appeal of the Fruita Planning Commissions decision on a

request for a Conditional Use Permit for a drive-thru facility for a retail fueling

station.

#### **BACKGROUND**

This is an appeal of the Fruita Planning Commission's decision at its regular meeting on December 12, 2023, to deny a Conditional Use Permit application. Section 17.25.030 (A) states that, "Any person aggrieved by a decision by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment may appeal such decision as outlined herein" and that any application for appeal must be filed in writing with the Community Development Department within thirty (30) days of the decision.

The applicant submitted its application for appeal to the Community Development Department on January 11, 2024, and Staff deemed the application to be complete in accordance with Section 17.25.040 (A) on January 12, 2024.

Because this is an appeal of a decision made by the Planning Commission, Section 17.25.020 (B) states, "The City Council shall have the authority to hear and decide all other appeals of decisions made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment."

Section 17.25.040 (B) states, "The party making the appeal (the appellant) shall have the burden of proving the necessary facts to warrant reversal or amendment of the decision being appealed. Such proof shall include applicable specific section references within this Code and shall be provided with the application. The application shall be based on the record established in the decision-making process."

#### Attachments with this Coversheet:

- 1. Staff Report on appeal submission dated February 20, 2024.
- 2. Staff Report dated December 12, 2023, for Item 2023-35.
- 3. Application to Planning Commission for Conditional Use Permit.
- 4. Minutes of Planning Commission Meeting from December 12, 2023, pertaining to Item 2023-35.
- 5. Appeal Submission Documents dated January 11, 2024.
- 6. Letter of Completeness dated January 12, 2024.
- 7. Supplemental Legal Notice for Appeal Application.

#### **OPTIONS AVAILABLE TO THE CITY COUNCIL:**

- 1. Affirm the Planning Commission's decision to deny.
  - a. This would keep the denial in place.
  - b. Must state finding of fact to affirm the denial based upon applicant's failure to meet all of the Conditional Use Permit criteria.
- 2. Reverse the Planning Commission's decision to deny.
  - a. This would approve the Conditional Use Permit application.
  - b. Must state findings of fact to support reversing the Planning Commission's decision based upon applicant's compliance with all of the Conditional Use Permit Criteria.
  - c. May attach conditions of approval on any appeal to ensure the health, safety, and welfare of the City.



### PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT FEBRUARY 20, 2024

Application #: 2023-35

**Application Name: City Market Fueling Station** 

Application Type: Appeal of Planning Commission Decision Applicant: Brownstein, Hyatt, Faber, Shreck, LLP

Location: 437 W. Aspen Avenue

Zone: Downtown-Mixed Use (DMU)

Description: This is an appeal of the Fruita Planning Commissions decision on

December 12, 2023, to deny a request for a Conditional Use Permit for a drive-thru facility for a retail fueling station on approximately .52 acres.

#### **Project Description:**

This is an appeal of the Fruita Planning Commission's decision at its regular meeting on December 12, 2023, to deny a Conditional Use Permit application. Section 17.25.030 (A) states that, "Any person aggrieved by a decision by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment may appeal such decision as outlined herein" and that any application for appeal must be filed in writing with the Community Development Department within thirty (30) days of the decision.

The applicant submitted its application for appeal to the Community Development Department on January 11, 2024, and Staff deemed the application to be complete in accordance with Section 17.25.040 (A) on January 12, 2024.

Because this is an appeal of a decision made by the Planning Commission, Section 17.25.020 (B) states, "The City Council shall have the authority to hear and decide all other appeals of decisions made by the Community Development Director, Planning Commission, Historic Preservation Board, or Board of Adjustment."

Section 17.25.040 (B) states, "The party making the appeal (the appellant) shall have the burden of proving the necessary facts to warrant reversal or amendment of the decision being appealed. Such proof shall include applicable specific section references within this Code and shall be provided with the application. The application shall be based on the record established in the decision-making process."

Attachments with this Staff Report:

- Staff Report dated December 12, 2023, for Item 2023-35.
- Application to Planning Commission for Conditional Use Permit.
- Minutes of Planning Commission Meeting from December 12, 2023, pertaining to Item 2023-35.
- Appeal Submission Documents dated January 11, 2024.
- Letter of Completeness dated January 12, 2024.
- Supplemental Legal Notice for Appeal Application.

City Council shall consider the following, in accordance with Section 17.25.040 (E)(1)(i-iv), in determining whether to affirm, reverse or amend decision or interpretation made by the Planning Commission:

- i) The facts stated in the application, as presented by the appellant;
- ii) The requirements and intent of the applicable standards from this Code compared to the decision that is being appealed;
- iii) Evidence related to how the applicable standards from this Code have been administered or interpreted in the past; and
- iv) Consistency with the Comprehensive Plan.

# <u>SUMMARY OF DECEMBER 12, 2023, PLANNING COMMISSION MEETING MINUTES</u>

**Planning Commission Motion:** 

COMMISSIONER MULDER MOVED TO APPROVE APPLICATION 2023-35 THE CITY MARKET FUEL STATION CONDITIONAL USE PERMIT WITH THE CONDITION THAT ALL REVIEW COMMENTS BE ADEQUATELY ADDRESSED WITH THE SITE PLAN APPLICATION.

COMMISSIONER HANDLEY SECONDED THE MOTION.

**MOTION IS DENIED 3-4** 

The following is a summary of the Planning Commission's discussion on the application (adopted meeting minutes attached with this application):

- 1. The proposed use would infringe upon the walkability and pedestrian use of this area.
- 2. Growing pains of the extension of growth and redevelopment along West Aspen Avenue.
- 3. Compatibility with existing residential land uses.
- 4. Some felt that Fruita needed a fuel station.

- 5. This investment by City Market into the City of Fruita was a good sign and could potentially have positive impacts on the current store.
- 6. There was middle ground between compatibility with surrounding uses and what redevelopment could be.
- 7. If car and pedestrian circulation was a deciding factor, it should be considered with the Circulation Plan, not a land use application like this.

#### SUMMARY OF THE APPLICANT'S APPEAL APPLICATION

The applicant's letter of appeal states elements from the City's 2022-2025 Strategic Plan and the Comprehensive Plan as a basis for requesting the City Council reverse the decision of denial made by the Planning Commission.

The applicant states that the Planning Commission failed to properly interpret and apply the Strategic Plan in the following areas:

- 1. Work with City Market Representatives and other property owners and business to expand and improve food and grocery shopping options within the City (Strategic Plan, pg. 19)
- 2. Engaging in strategic negotiations to encourage the development of larger and/or new grocery stores within the City is an objective expressly set forth in the Strategic Plan as the means to support this goal. (Strategic Plan, pg. 19)
- 3. The transportation goal of making the downtown area of the City pedestrian-oriented and easy for visitors and vehicles to navigate. (Strategic Plan, pg. 25)

The applicant states that the Planning Commission failed to properly interpret and apply the Comprehensive Plan in the following areas:

- 1. The Comprehensive Plan's Economic Development Goal #3 provides that "[t]he community would like to see improved grocery and food store options in Fruita, as there is only one full-services supermarket at present" and that "more good paying jobs are needed in Fruita". (Comprehensive Plan, pg. 50). Economic Development Goal #3 of the Comprehensive Plan specifically directs the City to "work with City Market representatives and other property owners and businesses to expand and improve food and grocery shopping options in Fruita." (Comprehensive Plan, pg. 54.)
- 2. As part of this goal, the Comprehensive Plan identifies the following policy: work with City Market representatives on options for renovating, expanding, or possibly relocating. (Comprehensive Plan, pg. 54.)
- 3. The Comprehensive Plan also sets forth the Transportation Goal #3 of making the downtown a pedestrian-oriented area that is easy for visitors and vehicles to navigate. (Comprehensive Plan, pg. 84.)
- 4. Pursuant to the Downtown Subareas Map of the Comprehensive Plan, the Property is designated as within the Downtown West subarea, not within the Downtown Core. (Comprehensive Plan, p. 41.) This issue was not raised by the applicant before the

Planning Commission and is not actually a relevant distinction in the Comprehensive Plan but was solely a means by which the City created residential and commercial design standards within these subareas but these subareas are not separate zoning classifications nor do they establish future land use or zoning.

The applicant states that the Planning Commission failed to properly interpret and apply the relevant provisions of the Land Use Code criteria for Conditional Use Permits as follows:

- 1. The proposed use is consistent with the provisions and purposes of the Code, with the purposes of the zone in which it is located, and with the Comprehensive Plan;
- 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C, providing that "compatibility" exists when a proposed land use can co-exist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s);
- 3. The proposed use will not materially endanger the public health or safety; and
- 4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

#### STAFF ANALYSIS OF THE LAND USE CODE - CONDITIONAL USE PERMIT

This is an excerpt from the Code showing permitted uses by right and those uses that are conditional or even prohibited – even though there appears to be some conflict (how could you have a gas station without a drive through) this is what the Code says and what must be applied. Conditional use permits, when granted, expire within a year if no action is taken to perfect the use.

Table 17.05.090 - LAND USE TABLE												
	RE	LLR	CR	SFR	MP	DMU	C-1	C-2	I	CSR	NCO	FLU
COMMERCIAL												
Retail Sales & Service												
Drive-Up/Drive-Through Facilities (with permitted use)	*	*	*	*	*	С	A	A	A	*	*	*
Fuel Sales, Automotive/Appliance (not including Drive-Up/Drive-Through uses)	*	*	*	*	*	A	A	A	A	*	*	*

- \* -Means not allowed
- A Means allowed outright in the indicated zone, subject to compatibility with surrounding properties, pursuant to Section 17.05.080.C, and any applicable special and supplementary zoning regulations and standards.
- C Allowed by Conditional Use Permit only, pursuant to Conditional Use Permit Section 17.05.030.

	DENSITY AND DIMENSIONAL STANDARDS TABLE								
ZONE DISTRICT	MAX RES. DENSITY (GROSS) (A)	MIN LOT AREA (B)		MIN SIDE YARD (D)	MIN REAR YARD (E)	MAX STRUCTURE HEIGHT (F)	MIN/MAX LOT COVERAGE (G)		
Downtown Mixed Use (DMU) – Core  (as designated in the Fruita Community Plan - south of Pabor Avenue and west of Elm Street)	N/A	2,500 sq ft	0 feet, or as required per building code	0 feet, or as required per building code	0 feet, or as required per building code	exceed 15 feet.	50% minimum 90% maximum		

#### **CONDITIONAL USE PERMIT APPROVAL CRITERIA**

A conditional use is defined as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.

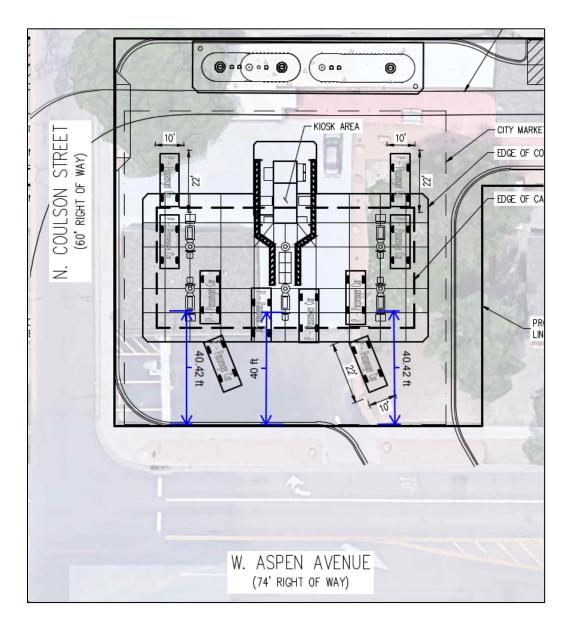
Section 17.09.030, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:

1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;

Based on this review, the proposed conditional use as it relates to the proposed fueling station can be consistent with the provisions and purposes of this Title (the Land Use Code), which is to promote the health, safety and welfare of the present and future inhabitants of the community.

The Land Use Code identifies the subject property as being in the Downtown Mixed-Use

Core area. Section 17.13.050 (A)(2)(c) of the Land Use Code states that new drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue. The plans submitted show a setback of approximately 40 feet. This portion of the code has been met.



Section 17.37.070 (B) states that, "For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide." The Site Plan provided shows two (2) stacking spaces per fueling station/bay will work and they meet the measurement requirements. It's unclear from the submittal that the additional stacking space for the exit side will work. It is Staff's interpretation that the Code requires 3 stacking spaces per bay. If the applicant can show

the additional exit side space or a total of 3 stacking spaces per bay, then this part of the Land Use Code can be met.

As for vehicular circulation, the proposed plan shows access from Willow Street, Aspen Avenue, and Coulson Street. The access from Aspen Avenue will need to be reviewed and approved by CDOT and as its proposed right now, the Aspen Avenue access is only a right in turn, similar to the Coloramo access from Aspen Avenue.

The purpose of the Downtown Mixed-Use zone is to maintain and enhance downtown as a vibrant, pedestrian-oriented commercial and residential area. The Master Plan supports development and redevelopment in the downtown area with an emphasis toward promoting businesses that support existing and future associations that advocate for the downtown area. The Fruita City Market has been a key focal point in the City's downtown area for many years. Additionally, the Master Plan supports and encourages revitalization of existing areas in the Downtown with a focus on areas where the community can see the benefits of redevelopment. The Land Use Code is one of the main documents used to implement the goals and policies of the City's Master Plan. This criteria has been met.

# 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080 (C); and

Section 17.05.080 (C) requires that a proposed development be compatible with adjacent properties, considering both existing and potential land uses on adjacent properties. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between a proposed use and existing uses in the vicinity to ensure compatibility.

It appears that this proposed drive-through facility will be compatible with surrounding land uses. This area is considered the Core area, which supports a number of allowed land uses that can be considered as compatible with a drive-through fueling station like the one proposed. It is important to consider that the property directly to the west has been approved for an 88-unit multi-family complex which consists of 3 apartment buildings and 16 townhome style residential units. The 1<sup>st</sup> of the 3 apartment buildings is currently under construction. In addition to multi-family, land uses supported in the Core area are restaurants, personal services, retail, hotels/motels, medical and dental clinics, and childcare.

There are many other businesses along Aspen Avenue in this area that have a drivethrough component to them. The most recent is the Coloramo Federal Credit Union, and

others are the Walgreens pharmacy, the City Market pharmacy, the Sinclair gas station, and the Burger King.

This criterion can be met.

3. The proposed use will not materially endanger the public health or safety; and

If the drive-through facility is placed in a manner to provide for adequate vehicle stacking on the subject property, then the proposed use doesn't appear that it will endanger the public health or safety. The project, if approved, will need to address concerns from CDOT. Some uses in the Downtown Mixed-Use zone generate more traffic than other uses. If the principle use were to change, a traffic study may be required in order to justify whether the use, in conjunction with a drive-through, can be safe. This criterion can be met.

4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

Public services and facilities have been available to this property and will continue to be available to this property. The drive-through facility is expected to put more pressure on the adjacent transportation system, most likely Willow Street and Coulson Street, however these roadways are designed and constructed to handle a large amount of daily traffic. Other public services and facilities are not expected to have a substantial increase. This criterion has been met.

#### **Legal Notice:**

Legal Notice (minimum of 15 days prior to Planning Commission)				
November 22, 2023	Post Cards			
November 22, 2023	Sign Posting			
November 22, 2023 Legal Ad				

#### **Review Comments:**

CDOT has provided written comments that require a Traffic Study and an access permit for the connection to Aspen Avenue, this comment will need to be addressed with the Site Plan application if the CUP is approved.

#### **Public Comments:**

\*\*Written public comments were received on Monday December 11, 2023, and emailed to the applicant's representative Nate Abbott with Galloway and the comments were also sent to the

Planning Commission and entered into the record at the public hearing. No verbal public comments were provided at the hearing.

## **Surrounding Land Uses and Zoning:**

Land Uses surrounding the subject property consist of a mix of residential and commercial. The Fruita Recreation Center and Family Health West Hospital are to the north along with residential land uses. The Walgreens, Balanced Rock Motel, and City Market are to the south and southeast. The Burger King and Coloramo Federal Credit Union are located to the east. Zoning surrounding the subject property consists of Downtown Mixed-Use (DMU) and the Comprehensive Plan identifies this area as the City's Core.

#### **Zoning Map**



# 2022 Location Map



#### **OPTIONS AVAILABLE TO THE CITY COUNCIL:**

- 1. Affirm the Planning Commission's decision to deny.
  - a. This would keep the denial in place.
  - b. Must state findings of fact to affirm the denial based upon applicant's failure to meet all of the Conditional Use Permit criteria.
- 2. Reverse the Planning Commission's decision to deny.
  - a. This would approve the Conditional Use Permit application.
  - b. Must state findings of fact to support reversing the Planning Commission's decision based upon applicant's compliance with all of the Conditional Use Permit Criteria.
  - c. May attach conditions of approval to ensure the health, safety, and welfare of the City.



### PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT DECEMBER 12, 2023

**Application #: 2023-35** 

**Application Name: City Market Fueling Station** 

Application Type: Conditional Use Permit

Representative: Galloway

Location: 437 W. Aspen Avenue

Zone: Downtown-Mixed Use (DMU)

Description: This is a request for approval of a Conditional Use Permit for a drive-

through facility for a retail fueling station on approximately .52 acres.

#### **Project Description:**

This is a Conditional Use Permit (CUP) application to allow for a drive-through type use in the Downtown Mixed-Use (DMU) zone. Section 17.05.090 the Land Use Code states that drive-up/drive-through Facilities require approval of a CUP. The overall use of the property is proposed to be a City Market Fueling Station. Fuel Sales are an allowed land use in the DMU zone and the primary purpose of this CUP application is to review the approval criteria for Conditional Uses in accordance with Section 17.09.030. As for process, Conditional Use Permits are reviewed by Staff and the decision-making body is the Planning Commission.

Currently, there are two (2) buildings and a parking lot on the property. On the southwest corner of the property is a 1,700 square foot building that has been used for different types of business uses over the past 10 years. The other building on the property is a 5-unit residential building.

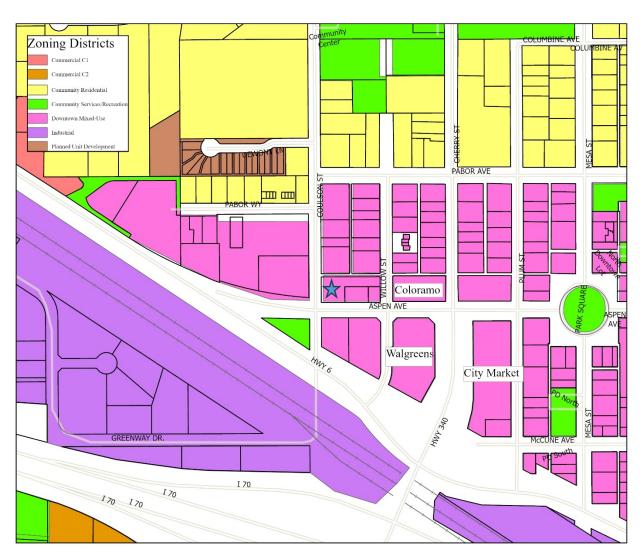
In order to make an informed decision on the Conditional Use Permit application, Staff has requested that the applicant provide a Site Plan (included with the Staff Report). The purpose of the site plan is to ensure that if the CUP is granted, that the site circulation and layout can work. If the CUP is approved, the applicant will then go through a Site Design Review Application process which can be approved administratively. With that said, the approval criteria and Staff's review of this application only pertains to the drive-through portion of the business.

#### **Surrounding Land Uses and Zoning:**

Land Uses surrounding the subject property consist of a mix of residential and commercial. The Fruita Recreation Center and Family Health West Hospital are to the north along with residential land uses. The Walgreens, Balanced Rock Motel, and City Market are to the south and southeast.

The Burger King and Coloramo Federal Credit Union are located to the east. Zoning surrounding the subject property consists of Downtown Mixed-Use (DMU) and the Comprehensive Plan identifies this area as the City's Core.

## **Zoning Map**





# 2022 Location Map

### **CONDITIONAL USE PERMIT APPROVAL CRITERIA**

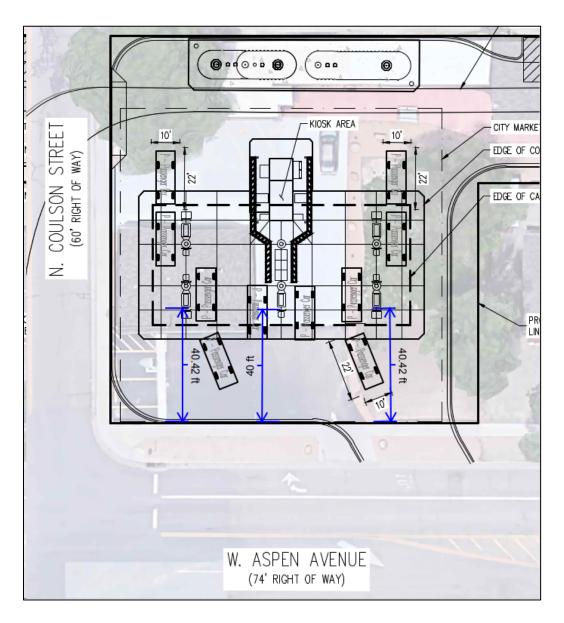
A conditional use is defined as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.

Section 17.09.030, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:

1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;

Based on this review, the proposed conditional use as it relates to the proposed fueling station can be consistent with the provisions and purposes of this Title (the Land Use Code), which is to promote the health, safety and welfare of the present and future inhabitants of the community.

The Land Use Code identifies the subject property as being in the Downtown Mixed-Use Core area. Section 17.13.050 (A)(2)(c) of the Land Use Code states that new drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue. The plans submitted show a setback of approximately 40 feet. This portion of the code has been met.



Section 17.37.070 (B) states that, "For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide." The Site Plan provided shows two (2) stacking spaces per fueling station/bay will work and they meet the measurement requirements. It's unclear from the submittal that the additional stacking space for the exit side will work. It is Staff's

interpretation that the Code requires 3 stacking spaces per bay. If the applicant can show the additional exit side space or a total of 3 stacking spaces per bay, then this part of the Land Use Code can be met.

As for vehicular circulation, the proposed plan shows access from Willow Street, Aspen Avenue, and Coulson Street. The access from Aspen Avenue will need to be reviewed and approved by CDOT and as its proposed right now, the Aspen Avenue access is only a right in turn, similar to the Coloramo access from Aspen Avenue.

The purpose of the Downtown Mixed-Use zone is to maintain and enhance downtown as a vibrant, pedestrian-oriented commercial and residential area. The Master Plan supports development and redevelopment in the downtown area with an emphasis toward promoting businesses that support existing and future associations that advocate for the downtown area. The Fruita City Market has been a key focal point in the City's downtown area for many years. Additionally, the Master Plan supports and encourages revitalization of existing areas in the Downtown with a focus on areas where the community can see the benefits of redevelopment. The Land Use Code is one of the main documents used to implement the goals and policies of the City's Master Plan. This criteria has been met.

# 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080 (C); and

Section 17.05.080 (C) requires that a proposed development be compatible with adjacent properties, considering both existing and potential land uses on adjacent properties. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between a proposed use and existing uses in the vicinity to ensure compatibility.

It appears that this proposed drive-through facility will be compatible with surrounding land uses. This area is considered the Core area, which supports a number of allowed land uses that can be considered as compatible with a drive-through fueling station like the one proposed. It is important to consider that the property directly to the west has been approved for an 88-unit multi-family complex which consists of 3 apartment buildings and 16 townhome style residential units. The 1<sup>st</sup> of the 3 apartment buildings is currently under construction. In addition to multi-family, land uses supported in the Core area are restaurants, personal services, retail, hotels/motels, medical and dental clinics, and childcare.

There are many other businesses along Aspen Avenue in this area that have a drivethrough component to them. The most recent is the Coloramo Federal Credit Union, and others are the Walgreens pharmacy, the City Market pharmacy, the Sinclair gas station, and the Burger King.

This criterion can be met.

3. The proposed use will not materially endanger the public health or safety; and

If the drive-through facility is placed in a manner to provide for adequate vehicle stacking on the subject property, then the proposed use doesn't appear that it will endanger the public health or safety. The project, if approved, will need to address concerns from CDOT. Some uses in the Downtown Mixed-Use zone generate more traffic than other uses. If the principle use were to change, a traffic study may be required in order to justify whether the use, in conjunction with a drive-through, can be safe. This criterion can be met.

4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

Public services and facilities have been available to this property and will continue to be available to this property. The drive-through facility is expected to put more pressure on the adjacent transportation system, most likely Willow Street and Coulson Street, however these roadways are designed and constructed to handle a large amount of daily traffic. Other public services and facilities are not expected to have a substantial increase. This criterion has been met.

#### **Legal Notice:**

Legal Notice (minimum of 15 days prior to Planning Commission)				
November 22, 2023	Post Cards			
November 22, 2023	Sign Posting			
November 22, 2023	Legal Ad			

#### **Review Comments:**

CDOT has provided written comments that require a Traffic Study and an access permit for the connection to Aspen Avenue, this comment will need to be addressed with the Site Plan application if the CUP is approved.

#### **Public Comments:**

No written public comments have been received regarding this application.

### **Staff Recommendation:**

Because all approval criteria either <u>have been met or can be met</u>, Staff recommends <u>approval</u> of application 2023-35 with the condition that all review comments and issues identified in the Staff Report be met.

### **Suggested Motion:**

Mr. Chair, I move to approve application 2023-35, the City Market Fuel Station Conditional Use Permit, with the condition that all review comments be adequately addressed with the Site Plan application.

5500 Greenwood Plaza Blvd., Suite 200 Greenwood Village, CO 80111 303.770.8884 • GallowayUS.com

#### Memorandum

# <u>Project Narrative – Conditional Use Permit for a Drive-Thru Facility</u> <u>City Market Retail Fueling Station</u>

#### **Project Description:**

On behalf of our client, Heslin Holdings, Galloway is requesting approval of a Conditional Use Permit (CUP) application that would allow a drive-thru facility with a permitted use. The permitted use will be a City Market branded retail fuel facility to support the adjacent City Market grocery store. The new facility will include a small pay-only kiosk, fueling canopy with five (5) multi-product fueling dispensers, trash enclosure and associated site improvements.

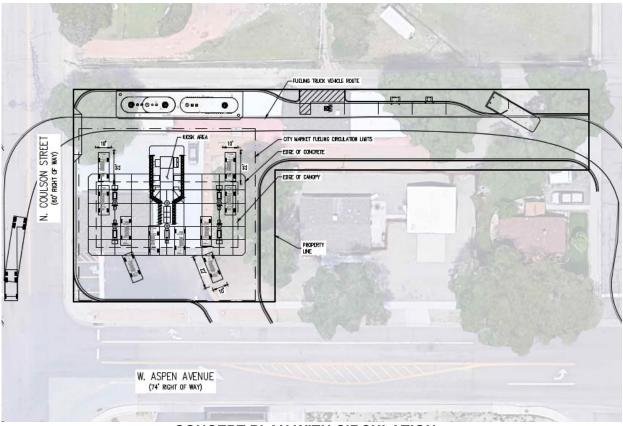
The proposed fueling facility will be located at 437 W Aspen Avenue on one parcel (PIN: 2697-172-17-024) and will include a Site Design Review Application at a later date.



SITE LOCATION MAP

The site is currently developed as a commercial retail use on approximately 0.52 acres of land.

Kroger (City Market) would like to construct an approximately 200 square foot pay-only kiosk, fueling canopy and five (5) multi-product dispensers. The proposed layout shows the facility setback from W. Aspen Avenue to allow for adequate stacking. The three existing access points are proposed to remain in the same general location in order to allow for adequate circulation throughout the subject property. The proposed layout is shown below:



CONCEPT PLAN WITH CIRCULATION

Access to the site will be provided from existing access points off of N. Coulson Street to the west, N. Willow Street to the east and W. Aspen Avenue to the south. Access points off or N. Coulson Street and N. Willow Street are proposed to be full-movement, whereas access off of W. Aspen Avenue is proposed as right-in, only.

#### **Surrounding Land Uses and Zoning:**

The subject site is currently zoned as Downtown Mixed Use (DMU) under the City of Fruita Land Use Code. The adjacent land uses are a mix of commercial and residential and are also zoned DMU as shown in the zoning map below. The Coloramo Federal Credit Union with drivethru teller lanes is located to the east along W. Aspen Avenue. The Balanced Rock Inn and Walgreens + drive-thru pharmacy are located to the south along W. Aspen Avenue. A future multifamily project is being proposed to the west, across N. Coulson Street.



**SURROUNDING ZONING** 

#### **Access and Circulation:**

There are three existing access points that service the site and will continue to be utilized in order to provide safe and efficient circulation throughout the site. CDOT's State Highway 340 Access Control Plan identifies a Right-In / Right-Out only access along Aspen Avenue which may be proposed with the Site Design Application. However, for the purpose of this submittal we are currently showing a Right-In only off of W. Aspen Avenue. Full movement access is being proposed along both N. Coulson Street and N. Willow Street. Fuel tanker truck access is being proposed off of N. Willow Street through the northern portion of the site in order to minimize conflicts with retail traffic flow.

Access ID	Approx. Milepost	Side of street	Address	Name	Land Use Served	Access Type			
Aspen Avenue, US 6 to Cherry Street									
1		North	West of 631 Aspen		Vacant lot	Full movement, unsignalized			
2		North	631 W. Aspen		Residence	Full movement, unsignalized			
3		North		Mobile home park	Residences	Full movement, unsignalized			
4		North	535 W. Aspen	Car Barn	Business	Full movement, unsignalized			
6		-		Coulson Street		Full movement, unsignalized			
7		South	126 S. Coulson	Balanced Rock Motel	Business	Right-in/Right-out, unsignalized (see note 1)			
8		South	126 S. Coulson	Balanced Rock Motel	Business	Closed (see note 1)			
9		North	437 W. Aspen	Magic Mirror Hairstyling	Business	Right-in/Right-out, unsignalized (see note 1)			
10		North	421 W. Aspen	High Desert Mountain Sports	Business	Right-in/Right-out, unsignalized (see note 1)			
11		South	404 W. Aspen		Residence	Full movement, unsignalized (future extension of Willow Street)			
12		South			Vacant (gas station)	Right-in/Right-out, unsignalized (see note 2)			
14		North	319 W. Aspen	Munchies Pizza & Deli	Business	Right-in only, unsignalized (see note 1)			
Α		North	319 W. Aspen	Munchies Pizza & Deli	Business	Right-out only, unsignalized			
15		-		Cherry Street		Full movement, future roundabout or signalized			

FIGURE A FROM CDOT ACCESS CONTROL PLAN

HSN#13- Fruita, CO City Market Fuel CUP Justification Letter

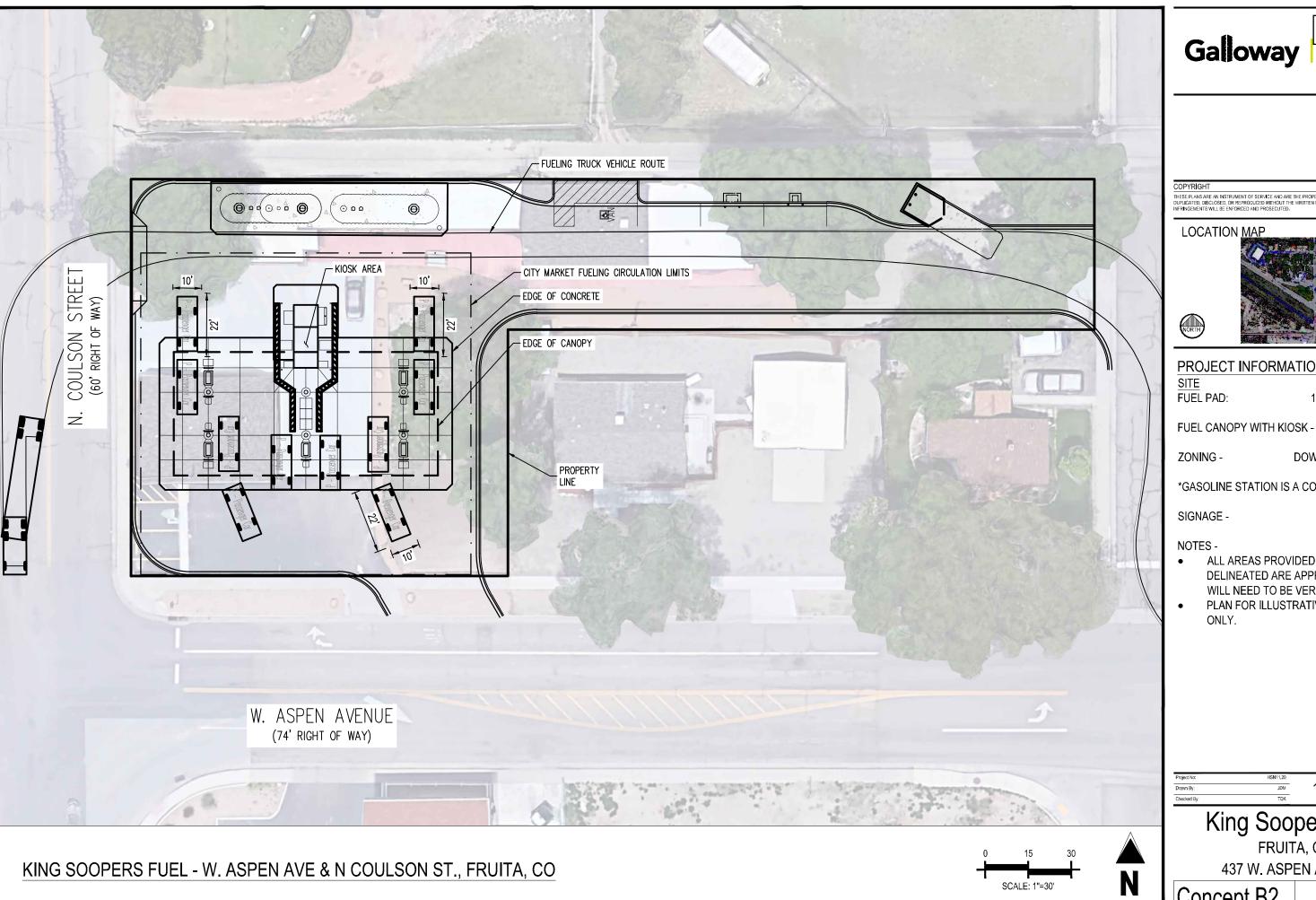
#### **Utilities:**

All utilities required to service the property as located in on or adjacent to the subject property.

#### Approval Criteria (17.13.040 CONDITIONAL USES)

A Conditional Use Permit may be granted for a conditional use in a particular zone provided the City Council finds as follows:

- 1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Comprehensive Plan; This project is consistent with Chapter 17 of the Land Use Code. Fuel Sales (not including Drive-Up/Drive-Thru uses) are a permitted use within the DMU zone district. Drive-Up/Drive-Through Facilities (with permitted use) are allowed by Conditional Use Permit only according to the Land Use/Zoning Table in Section 17.070.060 (F). Vehicle stacking requirements per Section 17.39.070 of the Land Use Code have been met, as shown on the attached concept plan.
- 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C; The surrounding uses are a combination of residential and commercial uses. There are some limited residential uses along W. Aspen Avenue. However, the majority of land uses along W. Aspen Avenue are commercial uses such as Walgreens and Coloramo Federal Credit Union, both of which have a Drive-Thru component.
- 3. The proposed use will not materially endanger the public health or safety; and Retail fueling establishments are commonplace in areas of both residential and commercial land uses and are subject to strict State regulations to ensure safe operations. Due to the fact that there is no convenience store associated with this proposed fueling station, there will be limited opportunities for pedestrian-vehicle conflicts. Adequate vehicle stacking coupled with multiple points of ingress/egress allows for safe circulation throughout the site.
- 4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use. Public services and facilities have been available to this property and will continue to be available to this property. The fueling facility is not expected to put more pressure on existing public services.



# Galloway

Section 8, Item A.

THESE PLANS ARE AN INSTRUMENT OF SERVICE AND ARE THE PROPERTY OF GALLOWAY, AND MAY NOT BE DUPLICATED, DISCLOSED, OR REPRODUCED WITHOUT THE WRITTEN CONSENT OF THE ARCHITECT, COPYS INFRINGEMENTS WILL BE ENFORCED AND PROSEQUITED.

LOCATION MAP



# PROJECT INFORMATION

FUEL PAD:

11,790 SF | +/-0.24 AC

DOWNTOWN MIXED USE

\*GASOLINE STATION IS A CONDITIONAL USE

- ALL AREAS PROVIDED AND PROPERTIES DELINEATED ARE APPROXIMATE AND WILL NEED TO BE VERIFIED.
- PLAN FOR ILLUSTRATIVE PURPOSES ONLY.

Project No:	HSN11,20	
Drawn By:	JDM	11/09/2023
Charled Bur	TOW	

King Soopers Fuel FRUITA, CO 437 W. ASPEN AVENUE

Concept B2

1 of 1 141

City of Fruita Planning Commission RE: Application #2023-35, City Market Fueling Station, Conditional Use Permit

To Whom it May Concern,

I am writing to you regarding my concerns over the planned City Market Fueling Station application #2023-35 located at 437 W. Aspen Avenue.

- 1. This property currently has several affordable housing units. The city of Fruita and surrounding areas are experiencing a severe affordable housing shortage. The City and the current residents can ill afford to lose any affordable housing. As a small business owner in the City of Fruita I see first hand that affordable housing is difficult to find in the area for my employees. Many cannot live in the City of Fruita and have to commute from outside the City from places that are more affordable. If this fueling station is approved it will add additional pressure on vulnerable and low income citizens in our community.
- 2. The fueling station will increase traffic congestion in the area. This area is not well suited for more traffic because it is in a residential area. Traffic turning out of the fueling station onto N Coulson or Aspen will cause more delays and the traffic will have to drive through the surrounding neighborhoods to exit the area. Also, the plan currently shows that traffic exiting the fueling station on to N Coulson will have to cross traffic and a double yellow line going south. This will cause many traffic accidents and more traffic congestion.

This area is also a heavy pedestrian and bike area. Many walkers and bikers access the riverfront trail from this area. Additional traffic will cause more vehicle and bike and vehicle and pedestrian incidents.

In addition vehicles trying to turn left at the stop light at N Cherry and Aspen off of the overpass many times backup traffic along the overpass which has caused many accidents. With the additional traffic attempting to turn left at the stop light this will make this problem worse.

- 3. The plan calls for a drive-through that will go between residential homes. It will go behind two homes currently on Aspen Street. In addition the fueling station will be lit 24 hours a day. Both these things will cause a loss of enjoyment in these properties for the property owners and a loss in the homes values. I would not be surprised if the City will find itself in litigation and possibly having to pay restitution to these property owners.
- 4. This fueling station will hurt other small locally owned businesses that have served the community and provided jobs for many decades. If this plan is approved this will show that the City of Fruita is not a place to own a small business and that small businesses are not welcome here.

Thank you for your time and consideration.

A concerned resident and small business owner.

M. Ryan Brown 303-868-0096

#### A. CALL TO ORDER

Seven Planning Commissioners were in attendance. (Jessica Hearns, Jesse Fabula, Mel Mulder, Derek Biddle, Josh McGuire, Patrick Hummel, and Michael Handley were present.)

#### **B. PLEDGE OF ALLEGIANCE**

Commissioner Biddle led the Pledge of Allegiance.

#### C. AMENDENTS TO THE AGENDA

None

#### D. APPROVAL OF THE AGENDA

COMMISSIONER FABULA MOVED TO APPROVE THE AGENDA

COMMISSIONER MULDER SECONDED THE MOTION

**MOTION PASSED 7-0** 

#### E. WITHDRAWN ITEMS

None

#### F. CONTINUED ITEMS

None

#### **G. CONSENT ITEMS**

APPROVAL OF MINUTES

October 10, 2023, Planning Commission meeting

COMMISSIONER HANDLEY MOVED TO APPROVE THE MINUTES

COMMISSIONER HUMMEL SECONDED THE MOTION

MOTION PASSED 6-0 (COMMISSIONER FABULA ABSTAINED FROM THE VOTE AS HE WAS NOT PRESENT AT THE LAST MEETING)

#### H. HEARING ITEMS

Application #: 2023-33 Application Name: 1873 K Road Application Type: Annexation

Applicant: Hays Development LLC

Location: 1873 K Road

Current Zone: Mesa County Zoning AFT

Description: This is a request to annex approximately 14.5 acres into the city limits.

Mr. Henry Hemphill, City Planner, gave the Staff presentation. He explained that the 1873 K Road annexation and rezone would be presented together but each application would need to be discussed and voted on separately.

Slide 1 – Introduction – 1873 K Road Annexation

Slide 2 – Application Details

Slide 3 – Legal Notice Images of the postcards and 350' buffer zone

Slide 4 – Legal Notice

Dates and photo of Site Posting

- Post Cards:
  - November 22, 2023
- Sign Posting:
  - November 22, 2023
- Newspaper:
  - November 24, 2023

Slide 5 – Zoning Map and Aerial View

Slide 6 – Future Land Use Map

Slide 7 – Review Criteria

- Section 17.17.050 (A)
- 9 criteria to consider.
  - Must meet the requirements of State Statutes -1/6<sup>th</sup> contiguity.
  - Must be within the UGB.
  - Can be served with police and other municipal services.
  - The area meets or can meet the existing infrastructure standards set forth by the City.

Slide 8 – Review Comments & Public Comments

- REVIEW COMMENTS:
- No reviewer expressed concerns with this annexation.
- PUBLIC COMMENTS:
- No written public comments have been received by Staff at this time.

Slide 9 – Suggested Motion – Pg. 29

• Mr. Chair, I move that we recommend <u>approval</u> to City Council, of application #2023-33, the annexation of 1873 K Road with the condition that there will be dedication of a 14-ft multipurpose easement adjacent to the right of way, additional right-of-way dedication along Ottley Avenue, and a prepared legal description of Ottley Avenue adjacent to the subject property.

# Slide 10 – Next Steps

- City Council on January 16, 2024
  - If approved the annexation will be effective 30 days after the Ordinance is adopted

Slide 11 – Introduction – 1873 K Road Rezone

Slide 12 – Legal Notice Images of the Post Cards and 350' Buffer Zone

Slide 13 – Legal Notice

Dates and Site Posting

- Post Cards:
  - November 22, 2023
- Sign Posting:
  - November 22, 2023
- Newspaper:
  - November 24, 2023

Slide 14 – Zoning Map and Aerial View

Slide 15 – Future Land Use Map

Slide 16 – Review Criteria

- Section 17.09.070
- 5 Criteria in total to consider
  - Zoning Compatibility with surrounding land uses.
  - Consistent with the Master Plan.
  - Is incidental to an annexation application.

### Slide 17 – Review Comments & Public Comments

- REVIEW COMMENTS:
  - No reviewer expressed concerns with the zone request.
- PUBLIC COMMENTS:
  - No written public comments have been received by Staff at this time.

Slide 18 – Suggested Motion – Pg. 53

• Mr. Chair, I move we recommend <u>approval</u> of Application 2023-34, 1873 K Road Rezone, zoning the property to Community Residential to the Fruita City Council.

Mr. Hemphill concluded his presentation.

Mr. Dane Griffin, Griffin Design and Construction, spoke on behalf of the current and future owner of 1873 K Road. He stated that it meets or can meet the criteria for annexation and rezone. He said that he appreciated their consideration.

Commissioner Biddle opened the meeting to public comment. There were none. He closed public comment and opened the meeting to Commissioner discussion.

Commissioner Hummel said that the annexation seemed to be a good fit as per the Land Use Code. He talked about the  $1/6^{th}$  contiguity and that the property could be serviced by utilities, police department, and fire department. He thanked Staff for the report. It made it clear to him that it was a simple application.

Commissioner Hearns asked if there was a change to the code? Are annexations and rezones required to have a public meeting?

Mr. Hemphill responded that annexations and zoning were required to have a public hearing. If a subdivision were to happen once the annexation has been finished that is an administrative process currently with a call-up option to the council.

Commissioner Hearns asked if there was a public meeting?

Mr. Hemphill asked if she meant a neighborhood meeting.

Commissioner Hearns said yes.

Mr. Hemphill stated that it was an optional choice. He said that the contiguity was so close with the urbanized development to the north it made sense to have the neighborhood meeting as a public hearing.

Commissioner Hearns thanked him.

Commissioner Biddle said it was a clean application and presentation.

COMMISSIONER HEARNS MOVED THAT THEY RECOMMEND APPROVAL TO THE CITY COUNCIL THE APPLICATION 2023-33 1873 K ROAD ANNEXATION WITH THE CONDITION THAT ALL REVIEW COMMENTS AND ISSUES IDENTIFIED IN THE STAFF REPORT ADEQUATELY ADDRESS OR INCLUDED WITH THE ANNEXATION ORDINANCE

COMMISSIONER HUMMEL SECONDED THE MOTION

**MOTION PASSED 7-0** 

Application #: 2023-34 Application Name: 1873 K Road Application Type: Rezone

# **Planning Commission Meeting**

December 12 Section 8, Item A.

Location: 1873 K Road

Applicant: Hays Development LLC Current Zone: Mesa County Zoning AFT

Description: This is a request to rezone approximately 14.5 acres from Mesa County

Zoning AFT to Community Residential (CR).

Mr. Henry Hemphill gave the Staff presentation with the previous application.

Commissioner Biddle opened the meeting to public comment for application 2023-34 1873 K Road Rezone. There were no public comments. He closed public comment and opened to Commissioner discussion.

Commissioner Biddle stated that it was a very clean application.

COMMISSIONER FABULA MOVED TO APPROVE THE REZONE REQUEST FOR COMMUNITY RESIDENTIAL WITH NO CONDITIONS TO THE FRUITA CITY COUNCIL

## COMMISSIONER MULDER SECONDED THE MOTION

#### **MOTION PASSED 7-0**

Application #: 2023-31

Project Name: Wildcat Residences Application: Site Design Review

Representative: Wildcat Acquisition LLC

Zone: PUD – Commercial/Residential

Location: 1807 Wildcat Avenue

Description: This is a request for approval of a Site Design Review of two (2) twenty

(20) unit apartment buildings and five (5) 5-unit row home apartment

buildings for a total of 65 units on approximately 3.7 acres.

Mr. Henry Hemphill gave the Staff presentation.

Slide 1 – Introduction

Slide 2 – PUD Process

# • Concept Plan (optional step) - 17.19.030 (A)

- This step is optional.
- The Planning Commission and City Council both review the application in a workshop setting.
- Decisions and discussions are non-binding.

# • **Preliminary PUD Plan - 17.19.030 (B)**

- This step is required.
- The Planning Commission will make its recommendation to the City Council.

- As part of the Preliminary PUD Plan, the City Council shall enact an ordinance zoning the property to PUD.
- \*No zoning ordinance needed; property already zoned.
- Final PUD Plan 17.19.030 (C)
- This step is required after the Preliminary PUD Plan.
- This application is reviewed administratively in accordance with review agencies and City Councils' decision on the Preliminary PUD Plan.

## Slide 3 – Planned Unit Developments

- "The purpose of this Chapter is to encourage flexibility and innovation in developments in exchange for a community benefit that could not otherwise be realized through the strict adherence to the Code."
  - Section 17.19.010

# Slide 4 – Application Information

Slide 5 – Aerial View

Slide 6 – Zoning and Businesses nearby

# Slide 7 – History

- Preliminary Development Plan approved in 2007 with the Legacy PUD Subdivision.
  - Included zoning.
  - Vacant since.
- Commercial & Residential uses allowed.
- Focus on neighborhood commercial areas.

# Slide 8 – Development Plan

- 2, 20-unit buildings.
- 5, 5-unit row home buildings.
- Access from Blair Street (stub) and Wildcat Avenue.

## Slide 9 – Renderings

## Slide 10 – Code Requirements

# **Planned Unit Developments**

- Section 17.19.030 (A)(1) (a-d)
- Comprehensive Plan
- Flexibility
- Surrounding character

## **Site Design Review**

- Section 17.09
- Comprehensive Plan

<sup>\*</sup>Property already zoned

- Design Standards Section 17.13
- Compatibility
- Ability to resolve recommendations from reviewers.

## Slide 11 – Parking

• The proposed application is required to have 92 total parking spaces per Section 17.37.030. The project is proposing a total of 143 total parking spaces.

### Slide 12 – Code Requirements

- Review agency comments can be adequately resolved.
- No major concerns from:
  - Ute Water
  - Lower Valley Fire Department
  - Grand Valley Power (GVP)
  - City Engineer

#### Slide 13 – Review Comments & Public Comments

#### • REVIEW COMMENTS:

- All review comments received are included with this Staff Report. All review comments must be adequately resolved with the Final Plat application.
- PUBLIC COMMENTS:
- Public comments received on 12/12/23. Provided to the Planning Commission and applicant.

#### Slide 14 – Staff Recommendation

• Because the application meets the requirements of a Planned Unit Development Site Design Review, Staff recommends <u>approval</u> of the proposed Wildcat Residences Site Design Review with the condition that the application adequately resolve outstanding review agency concerns with the Final PUD application and/or approval of a Building Permit.

#### Slide 15 – Suggested Motion – Pg. 69

• Mr. Chair, because the application meets or can meet all applicable approval criteria for a Site Design Review, I move to recommend **approval** to the Fruita City Council with the condition that the applicant adequately resolve outstanding review agency concerns with the Final PUD application and/or approval of a Building Permit.

# Mr. Hemphill concluded his presentation.

Commissioner Biddle thanked him and invited the applicant to speak.

Mr. Mark Austin, Austin Civil Group, went up to speak. He stated that they were there tonight to request their approval to proceed with the Wildcat Residence project located at the northeast

corner of Wildcat Avenue and South Pine Street. He complimented Mr. Hemphill on his presentation. He presented a PowerPoint. He introduced his design team, the owners Mackenzie Flanders, their architects from Zaga Architect, and Sandy and Becky with Zaga and their traffic engineering consultant Skip Hudson with Turnkey Consultants.

He showed the site plan that demonstrated how they were proposing to develop the project site. He stated that they had 65 units on the site, 2 apartment buildings with 20 units and the outside edge of the project were lined with row homes. He said it was a townhome looking product, they have garages on the back side and up along the street frontage which is one of the new urbanism principles that this PUD is encouraging. There are some small storage units that they are looking to provide for the residents. They will completely relandscape all the detention and open space areas that abut the residential properties. He added that they were providing 143 parking spaces throughout the project site. This consists of 73 surface parking places, 50 parking spaces within garages, and 20 parking spaces out front. He thought that they had done a good job of making sure all the parking can happen within the project and it doesn't spill out into the adjacent neighborhoods. They are proposing their access location off Wildcat Avenue on the eastern portion of the project site where traffic can come in and circulate and park. They also have access of off Legacy Way that aligns with Blair. There is two access points which helps meet their requirements for the Fire Department as well. All utilities needed to serve this project are on or adjacent to the project site. He mentioned the detention facility that was constructed as part of the original Legacy subdivision PUD. He said that this assumed the full development on this parcel. He said that they don't have to expand the detention facility for this project, but there are newer State requirements for water quality treatment that has kicked in and will require them to modify the detention facility to provide water quality treatment and as part of this they will be relandscaping and providing a new irrigation system. He said that the detention area is roughly around .3 acres in size. He spoke about traffic and said that they knew it would be of concern. They hired Turnkey Consultants to look at this area of concern. They prepared a traffic study that has been submitted and reviewed by both the City and CDOT. The analysis indicated that all of their intersections perform as designed, there are no modifications to adjacent streets or lights or any intersection improvements that are required. He felt that they did a good job of addressing both the circulation and keeping their access locations away from existing intersections to reduce congestion. He called Becky and Sandy up to discuss the colored renderings.

Sandy Thompson with Zaga Design went up to speak. She stated that the goal architecturally of the project was to develop something that integrated but also promoted some of the new urbanism principles. They have a mix of two- and three-story buildings and tried to create individuality within each unit by creating planes that pushed and pulled and using a palette similar to the materials in the neighborhoods that surround the project. She showed what the row homes looked like. They were trying to create housing for the missing middle which is something that is needed. To be able to provide two different types of products on this property with the row home mix that has an attached garage and apartment complexes that are two stories and are flats providing a mix of which a majority are bedrooms but a couple of two-bedroom options as well. She showed another look at the apartments. Basically, two buildings with a connector piece creating a lot of outdoor spaces and an option for different income levels.

Mr. Austin wrapped it up stating that they were there to answer any questions.

Commissioner Biddle opened the meeting to public comment.

Mr. Don Ami, who lives at 1183 Shady Lane in the Legacy Subdivision went up to speak. He said that this project was going to directly impact his quality of life. He thought that as it is proposed it is a disaster. He said it was high density housing in an area that should never have high density housing. He added that this was one of the primary reasons they chose Fruita in the first place. He said that they have been here a year and a half, moved from a Chicago suburb which was all high density, they liked the open spaces, they liked the fact that there were many multi-unit apartment buildings in the area. When they bought the house the sign on the land said that it was zoned for commercial, they thought at some point that they would either put a strip mall or a restaurant there. They never dreamed that would be putting high density multi apartment buildings there. He added that the Legacy Subdivision as it currently stands is single family homes, they have one of those, and a couple of townhouses that are right on the border with Pine Street. He felt that this is all that should be in this one. Single family homes, townhouses so that it integrated seamlessly with its immediate neighbor. He said that if they were going to put that many people in this subdivision, he would at least ask that the entrance off Blair have an electrically operated gate with a code for first responders. They are going to make that entrance to their subdivision unusable. There are going to be too many people there. He said if it was just the row houses, he wouldn't have an objection to it but those apartment buildings pour a lot of people in there that shouldn't be.

#### Commissioner Biddle thanked him.

Mrs. Kris Sudrovech Ami, who lives at 1183 Shady Lane went up to speak. Her biggest concern was traffic. She said that the subdivision is right across the street from the high school. She said that she didn't know if any of them had been around the high school at their starting or ending times but there is a ton of traffic going in and off 18 Road. She said that she could see how the entrance onto 18 Road right now off Legacy is already busy at those times. She is really concerned. She knew that the gentleman said that there was a traffic report about this, she wanted to see a little bit more information about that. She added that 18 Road itself as they have been living there has gotten busier great north/south access in the village but there aren't too many other ones like that. She wanted them to consider the traffic considerations of adding 143 parking spaces in a small area. She echoed what Don said and that it is not consistent with the neighborhood as far as looks. Their neighborhood is single-family homes, this is not single-family homes. She wanted them to consider this before approving something like this.

#### Commissioner Biddle thanked her.

Ms. Lori Strate, who lives at 1154 Legacy Way went up to speak. She said that she agreed with Kris and Don that the traffic is a huge concern. There are a lot of students driving in there that pull out right in front of you and adding more cars was a real concern to her. She thought the design of it is attractive and it goes with the neighborhood, she is concerned about the density and population there.

Commissioner Biddle thanked her. He closed the meeting to public comment as there was no one else. He opened the meeting to Commissioner discussion.

Commissioner Handley stated that he was sympathetic to the residents that made comment. He said that he has lived the situation where they moved from. He bought a house in a single family detached neighborhood and then projects and zoning were changed to the point that multiple large apartment complexes moved in. It does have an impact on property values in the neighborhood. He thought that this was one consideration is this was going to impact property values of the existing properties and having lived this experience himself he was also concerned about the traffic load at Pine and Wildcat. They have all the traffic from the middle school moving now to what is now the 8/9 school. They have substantial development along J Road and if you think about the overall traffic flow that they are looking at in the next few years on J and at that intersection at rush hour and school start hours the concern is the traffic load. He asked if the existing intersection is configured to handle that overall load increase in the coming years as this development is completed, all the other developments are completed along J Road.

Commissioner Hearns said that she didn't quite understand the garages. She said it states it is on the first floor of the three-story row houses, but on Wildcat or do they enter all the way through the house?

Mr. Austin responded that the row homes are configured along Wildcat and South Pine Street and the garages are on the opposite side of those, so they don't face the street frontage, they are on the back side.

Commissioner Hearns clarified that she would drive into the parking lot where her storage units are and then get into my garage through the street they are creating.

Mr. Austin said that they were coming in off the access off Wildcat and would then turn left or right and then he showed her on the screen where it was on the site plan.

Commissioner Hearns thanked him.

Commissioner Hummel wanted clarification from the traffic engineer. He asked if he saw any concern with traffic loads? He asked if he could summarize.

Mr. Skip Hudson answered. He stated that he understood that traffic could be confusing. He appreciated everyone's comments related to concerns about traffic safety, especially around a high school. He had a couple of points that he wanted to make. He said that this would be considered a low traffic generating project. It is lower than what was originally proposed as part of Legacy PUD. He said he had the list, and it was a lot of residential and commercial restaurant much like the citizen said. Commercial would have generated a lot more traffic. He commented that it was the first time he had been at a hearing where someone was unobjecting to a commercial but not residential. What he means by low traffic generating project, the number of parking spaces does not equal the amount of traffic. Those are different calculations. The project trip generation would be around 50 vehicles an hour and that is in the morning and afternoon. It is about one vehicle per minute over the peak hour. They did the counts when

school was in session and the afternoon peak hour was when school was letting out. His analysis was done on that peak period when school was in. The other thing that he is required to do by CDOT, and the City is look at the 20-year condition. In terms of how is going to work in the future with the growth that was mentioned, that is all included in his report. Relatively low volume, he looked at two things, two technical aspects of the intersections and there were three intersections that he looked at. Pine Street, Highway 6 & 50, Wildcat, and Legacy. He then looked at the access, the south access on Legacy. He had a minor clarification on an earlier statement, there was one improvement that was recommended and that is a turn lane north on Pine Street turning onto Wildcat. This was based on traffic volumes, the amount of through traffic and the amount of right turning traffic. That lane is warranted now, but to build it you would need right of way from the trailer park. With traffic growth and project traffic it would add a little more. That would be an improvement that the city could consider in the future. He looked at turn lanes and didn't see a need for any other than the one he mentioned. The other thing he said he looked at was the traffic operations analysis which is level of service. He continued, that this measured vehicle delay, and it grades a test score, A is free flowing or not much delay, F is a lot of delay and a lot of conflicts. At the back of his report, he tried to simplify it a little bit so that they can see all this information in a snapshot. He added that table 11 of the report provides these results of this intersection operational analysis. Intersections in all periods, not just the intersections but the individual movements, left turns through a right turn all operate a level service C or better. For all the analysis conditions, morning, afternoon, opening near the project and a year or so and the 20-year condition. He said that he couldn't identify any operational problems that would require anything like traffic signals or things like that. He continued that there are some turn restrictions in this study area, as you all know that southbound left turn from Pine onto Wildcat is restricted. He stated that this would be a compelling reason to have access to the north side. People coming from the north, if they couldn't turn left on Legacy and get into the project, they couldn't turn left at Wildcat, where would they go? How would they get back to where they live? He felt that this would be problematic. He said that traffic is busy for some periods during the day, but he could safely say that for 23 hours a day the traffic works fine out there and even during the peak periods when he analyzed it, it showed that it worked okay.

Commissioner Hummel thanked him and said that this was helpful.

Commissioner Handley had a follow up question. He stated that District 51 has made it clear that they will close the current middle school and move all the middle school students to the current 8/9 building which is right next door to the high school. All the drop off and pick up traffic is now centered around the current middle school is moving to that new location. He asked in his traffic study if he anticipated that additional load in traffic during at least two periods of the day.

Mr. Hudson responded that nobody saw that coming. He certainly didn't when he did this study 3-4 months ago. It wasn't on the radar as something that was going to happen. He said that his report didn't look at possible changes in traffic and it would be tough to predict what those changes would be. He added that there would be a lot of assumptions and guest work in that, but in these cases the better situation is to look at it after it happens. The city can do some traffic counts after it happens and see if it has created some problems. It was not in his study.

Commissioner Hummel asked where is that intersection on your radar in terms of redevelopment and the Wildcat / Pine intersection? How high is that on the priority level for the city currently?

Mr. Sam Atkins, City Engineer, stated that it was not very high. He stated that the intersections that would be or the construction that would occur well before that would be Fremont and the intersection of Fremont and Wildcat. He said that should relieve some of that pressure. He added that the other thing to keep in mind is what wasn't mentioned is that except for Kingsview, all the Redlands and all of Appleton are going to be shipped to Grand Junction High School. The school district wasn't going to send all the kids that are currently at Fruita to the 8/9 and High School or that school would be over capacity. This is going to change some of the dynamics with the traffic.

Commissioner Biddle asked what trending have we done or noticed in the past in the traffic that those students driving from Redlands to high school, what path might they have typically taken?

Mr. Atkins responded that it depends. He said that they have already shipped Broadway and Scenic to Grand Junction. Formally if you lived on the east end of the Redlands, you would probably take the parkway and come in on the highway. If you were far enough west within the Redlands, you are going to take 340 into town, get out on the highway and then take a left onto Pine Street and a right onto Wildcat. He added that those are the students that are driving. He thought that most of traffic that is going to the 8/9 is probably coming from J and coming down J.3. He said that they can't make the left onto Wildcat coming southbound.

Commissioner Mulder stated that he became a Planning Commissioner because he thought that he could see problems in advance. He remembered 20 years ago when they put the light at the highway and 18 Road. He said that it surprised a lot of people, but it was a good light, and it was necessary. He added that they have had a lot of discussions about Wildcat and Pine Street since and the school traffic that was going on. Rimrock and the 8/9 got built. The traffic multiplied. Along with the fact that he lived north of the highway with many citizens going to work in the morning and coming home in the evening. He continued that when they thought about the load going to the schools in the morning, the loads coming out of the schools in the afternoon and people going to work in the morning, the people coming home din the evening, Pine Street has a load. He said that he has been involved in a double light change more than once waiting to get from Pine Street to the highway. Along with the fact that Maverick gas station has a substantial amount of traffic that comes out onto 18 Road, some of it turns a short turn to make a double left, some of it turns a long turn left to make a right. The car wash empties in the back of Pizza Hut and comes out on the highway. He continued that some of the car wash people come back out to the front and empty out in front of the car wash. He said that he had hopes that this property would be open space or at least minimum development. He said that this was a bit much. As a Commissioner for Planning and as a citizen of Fruita who uses that area frequently, it is not right. He stated that there will be a lot of people living there that will be trying to get out on the road, they will work in Grand Junction so they will come out onto Pine Street, go down to the light, take a left onto the highway and go into town. How many light changes will they have to wait on Pine Street and the highway, he couldn't say. What he felt that he could tell them was that when the high school kids are driving in and driving out, that is one mess. He hoped that there would be a reduction in the density of this project or at the very least two lights, one at

Wildcat and one at Legacy Way. He added that the traffic from Kiefer down Pine to the light at the highway gets substantial.

Mr. Dan Caris, Planning Director, stated that he wanted to make sure that the Planning Commission and members of the audience are aware that two things were discussed. What are the basic entitlements that already exist that this project is attempting to exercise and the site related plan as it specifically trying to meet the site design review criteria. He stated that when they mesh those two things together, they lose some consistency with what they are trying to render a decision or recommendation on. Do they disagree that this project has entitlements because it is their view and in the Staff recommendation this project already has entitlements, it is already zoned. This then becomes a conversation about the site plan and what is being proposed. There is a set of approval criteria specifically that the Code contemplates. He also mentioned that there is a conversation around the surrounding transportation network and how this project doesn't do anything to solve those problems. They would argue that they have taken a lot of steps that would fly in the face of that analysis, they collect capacity related transportation impact fees that go towards enhancing and increasing the capacity in the network that is surrounding this project for all projects. They do the traffic studies to find out not just if there are recommendations but there are requirements for improvements, and they collect money at building permit or CO and they go towards the improvements that they are going to see next year which is the 19 Road project and some others. These contribute to the overall transportation network as it relates to their impacts.

Commissioner Mulder stated that the word entitlement sets him on edge. Somewhere along the line a developer is going to do the right thing. He added that this project was not the right thing for that location.

Commissioner Biddle stated that there was no rezoning here, so by right they can build what they are looking to build. It was not up to them to decide if they could build it or not. They are there to recommend or not recommend the site plan and what it looked like.

Mr. Caris added that also whether they agreed that they have achieved the approval criteria that is in the Code.

Commissioner Biddle added that part of it, by right, is the density as it stood.

Mr. Caris said he was correct. He added that this was their view and analysis of the PUD guide and the densities that were afforded to the project at the time of zoning.

Commissioner Biddle said that looking at this, he could appreciate that they have gone over on the parking spaces. He said that this was a positive. He saw a concern with traffic flowing into it and not having that left hand turn on Wildcat. That means that they are either taking the long way around or cutting through Legacy. He didn't know what to do about that. He didn't know if there was an answer right of way.

Mr. Skip Hudson said that the city didn't have much say, nor does CDOT when a traffic signal goes in. The requirements for a traffic signal are relatively high and they needed to have more

than 15-20 minutes of traffic, they needed to have 4 – 8 hours of a certain volume of threshold where they meet the federal guidelines and requirements for when a traffic signal goes in. He added that there are a lot of CDOT studies that show when a signal goes in, crash rates go up. In the peak hours when you must wait for a cycle, you can get through the intersection safely and not compete with the side traffic. He stated that he was asked to talk about more details related to what quantifies the traffic, the volumes, and the percentage of what goes where. He spoke specifically about Legacy and Pine, they had 7% of project traffic making a southbound left to go onto Legacy and they had 17% going in from the south going northbound making a right onto Legacy. The same 17 % comes out and makes a left. Overall, no more than 17% are project traffic would be on Legacy Way. He asked what that meant in terms of actual volumes? This would be project trips, he showed the morning condition, this would be five vehicles making a left turn out of Legacy and heading south on Pine, there would be one vehicle making a right and heading north, there would be some through traffic on the main line that doesn't turn, two vehicles heading through, two vehicles turning right and the volume on the southbound left was one. The combination of the low trip generation, about 50 trips in an hour in the peak hour that is a combination of inbound and outbound, combined with the low distribution at that means it is less than five vehicles an hour making some of these movements at that intersection.

Commissioner Hearns asked staff why a traffic study is required. She said that she was failing to see where it fitted in the four criteria that she must make the decision on the PUD.

Mr. Atkins said that a traffic study was required once they met a certain threshold of units. What the studies produce are the required improvements based on national standards to the road network if a left turn is warranted, or a free right into the site. Those kinds of things are generated from traffic studies. It gives them a feel for if it is or isn't going to work and it is based on professional traffic engineers that put it together.

Mr. Hudson added that the other part is that the purpose of the traffic study is to give CDOT what they are looking for as well. In this case, if this project would have generated increased traffic by more than 20% where Pine connects into Highway 6 & 50 then a CDOT access permit would've been required that the city would have applied for. He said that they have involved CDOT all the way through this. He did a methodology document that told everyone what his assumptions would be, CDOT and the City approved that and then his final traffic study. In addition to the stuff Sam was talking about identifying improvements on a local road network, that applies to CDOT and state highways as well.

Commissioner Hearns talked about the criteria in the Land Use Code section 17.19.030, Staff outlined the criteria in the Staff report. The more she read them, she didn't interpret that her job tonight is to decide on these four criteria with a traffic study. She felt strongly that the traffic study is part of the other technical admin things that the city does, and she was looking to see if her interpretation is correct. She asked if the traffic study is necessary for the four criteria or for some other criteria.

Mr. Atkins said it was part of the overall site plan and not necessarily part of their criteria. It is part of the Staff's criteria to evaluate the project from a traffic standpoint.

Commissioner Handley complimented the design team. He thought this was a very attractive development. He stated that over the past 2-3 years they have had a lot of discussion about the need for attainable housing. He said that he has advocated for projects like this as part of the solution to our attainable housing problem. He didn't have a problem with this project, and he thought they were being unfairly taken to task on the traffic issue, but it is an issue. He has heard comments from residents that use 18 Road to go to work and come home, regular complaints about the back-up and delays on 18 Road. Part of their job is to look at the historic and current traffic conditions but to also anticipate the future traffic conditions that this project in addition to all the other developments going on will bring. He agreed with Commissioner Mulder that he had a concern about adding not much more traffic load but another piece of the traffic load in addition to everything else they know is coming. He was not sure where they would find the answer to this, the traffic problem isn't theirs to solve, it is the City's problem. How does the current City circulation plan fit into developments like this? He is in favor of this type of development to address attainable housing.

Mr. Hudson responded to traffic growth and how he factored in future development. He said that there is a travel model for the urban areas within Mesa County. He stated that it was administered by the County's Regional Transportation Planning office. That model is updated every five years, he has been on some of the teams that do the updates in the past. If you look at a map of the city, it is broken up by streets into different zones. The model identifies the land use, employment, and population in each of the zones called Traffic Analysis zones. He said that this comes from the local governments, the model goes from Fruita to Palisade and south and includes the major roadways in those communities. The local governments sign off on the land use assumptions that go with the model the existing roadwork is known and then it is asked to run, and the model runs, and it identifies congestion hot spots and the project to address those. He added that this regional model doesn't exist in any other community in Western Colorado, and it is a privilege to have something that looks into the future where the land use from the local governments is an input, and the partners are involved and producing these projections for the future traffic. In his study he looks at the base year model which is 2018 and they count traffic and make sure it matches and then they do the future model which is 2045. He has an estimate of what the future volumes are going to be on Highway 6 & 50 and Pine Street and Wildcat in the 2045 condition which includes the growth that they are talking about.

Commissioner Handley said he thought it was a difficult question. He is a computer scientist and understood flow and event modeling and how the process worked. He spoke about the people of Fruita who use the road today and will use 18 Road increasingly in the future.

Commissioner Hummel said that what he took from Mr. Atkins' response to Commissioner Hearns question was that the traffic study was not really part of their criteria. To him it seemed like a technicality that they leave to the professionals. He was left with what does this project do for the community and does it or not comply with their Comp Plan goals? It is an infill property, it provides a good mix of housing types that hits the missing middle, it gives them a good number of units in a relatively short time frame, it has amazing proximity to GVT with a stop outside and good for commuters who don't have a car and from a design perspective the buildings have good engagement with the pedestrian traffic which he appreciated. In his mind, it checks all the boxes that they have been looking for in terms of growth and development within

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a community. He said that they should leave the traffic engineering to the professionals and decide based on the design criteria.

Commissioner Fabula added that if the project didn't go forward with residential and instead goes to commercial, they would see a greater traffic impact. He felt that they needed to recognize that they could have something going to this property that would create a greater traffic impact.

Commissioner Hummel stated that this was the nature of growth. People move here because they are an inclusive community, people like the outdoors, and many people have moved here recently, and it seemed counter to him to say that they can't have this kind of development because they are concerned about traffic or property values. This is something that the community needs, and he is in full support of that.

Commissioner Fabula asked if the property would allow short term rentals?

Mr. Caris responded that it would. He added that it is outside the triangle. He mentioned that it was covenant controlled and that they could disallow those like any other covenant-controlled communities.

Commissioner Fabula thanked the developer for doing the row homes facing Wildcat and Pine. He appreciated the garage access on the back. He understood that the original PUD was in 2007 and he knew a lot happened in 2008. He thought it was a great-looking project. He asked them to describe to him what the detention area will look like. He asked if there was going to be a fence around it prohibiting people from walking through it or will they be able to walk through it? What would the residents on the adjoining property see when they looked out their back window towards the new development?

Mr. Austin pulled up the site plan. He stated that the original 2007 plans for the Legacy PUD, there was a concrete pad down in the bottom of the detention pond that had a picnic table, and they were trying to use the detention facility as an open space recreational amenity. The modifications that they must make to provide water quality treatment won't change the configuration of that detention facility. It changes the outlet control structure. He added that if they went out there now the irrigation system that used to be provided around the detention facility is in shambles and the lines are broken. He added that it is a weed patch right now. He said that the detention facility is in the center core of their development. Their project is going to redo the landscape area in that entire detention facility. It will still be a detention pond, but will be landscaped, better maintained, and irrigated. The original PUD commercial development had a road that ran along the backside of the residential development with all the commercial property out front. They tried to keep the vehicle traffic impacts away from the existing neighborhood area and their apartment project abuts to the back side of the residential units, but they did have a landscape strip that runs along the back side. All that area will be landscaped out. He showed an overall view of the landscape plan for the project.

Commissioner Fabula asked what the distance between building 1 and 2 and the property line to the north?

Mr. Austin showed that it was 27 ½ feet.

Commissioner Fabula asked if people would be able to walk their dogs in that 27 ½ feet?

Mr. Austin confirmed that they would and added that it was meant to be open space. The detention facility is open space right now.

Commissioner Fabula asked what the height of building 1 and 2?

Mr. Austin responded that they were two stories.

Commissioner Fabula asked Zaga Design if they have ever designed a project in Fruita?

Mr. Austin said that their project team has worked on the project on West Aspen that is under construction now. He added that Zaga has worked on other projects here as well.

Commissioner Fabula thanked them again for the row homes on the front, the garages in the back, and he appreciated the parking allotment. He talked about standards nationwide and talked about his personal experience with driving. He stated that it was nice to know that there are 50 garage units and that there are 97 parking spots. He said that he appreciated that they noticed it and that it has been a concern for other developments. He spoke regarding the people's comments on the density, he said that density is always a concern for him, and he appreciated them coming to the meeting and making comments and thanked them.

Commissioner Hearns asked if the City of Fruita had suggestions or requirements for which types of trees or landscape plantings they would like?

Mr. Hemphill responded that there is an appendix at the back of the Code that calls out certain landscape materials that are supported in this region based on the growth, soils, moisture, and seasonality. Those are in the Land Use Code. The landscape plan is required by state statute to be stamped and sealed by a landscape architect that is registered with the state. There are multiple vetting opportunities for landscaping plans to have the right materials in the right location. He added that they review the landscape plan in accordance with the utility plan to make sure that there are no conflicts with overhead power or growth underneath the ground with water lines and power and gas and clear site at the intersections.

Commissioner Hearns stated that she had not read that list of trees. She asked if Fruita allowed for a community amenity like fruit trees or blackberry bushes?

Mr. Hemphill said that they could consult the appendix and the applicant and with the architect they could figure out if that is something they want to do. He added that there were multiple pages of landscape materials allowed in the Code in the appendix that was drafted by the CSU extension. If it is stamped and sealed by the landscape architect, they are looking at heights and any conflicts that the landscape plan has or any opportunities to conserve irrigation water and place some drought tolerant landscaping.

Commissioner Hearns said that what she reviews is what she would like for the community and how she interpreted the community plan. She loved that they were speaking to open space for Commissioner Fabula's questions. She asked if they were interested in a different planting schedule that could be more of a community amenity.

Mr. Austin stated that they were open and if the city wanted us to look at different plant materials, they could do that.

Commissioner Biddle asked what the build out would look like? Would it be a quick process or in phased?

Mr. Austin said that they included a phasing plan with their application. He stated that it would depend on the market conditions. Their initial approach would be to build out the apartment units first and then move into the row homes. It will be market driven and they are hoping to get started next fall with construction.

Commissioner Hearns asked about the storage units. She wanted to know how many and how large they would be.

Mr. Austin responded that they were smaller units. Their client has them on other projects that they have done in Grand Junction. It is mainly to have room to store bikes and gear.

Commissioner Hearns liked the idea. She couldn't find the number of units.

Mr. Austin said that there were 35 total.

Commissioner Hearns felt strongly that this plan was thoughtfully designed and meets the four criteria that are required for a PUD Site Plan development.

COMMISSIONER HEARNS MOVED THAT BECAUSE THE APPLICATION MEETS OR CAN MEET ALL THE APPLICABLE APPROVED CRITERIA FOR A SITE DESIGN REVIEW, SHE MOVED TO RECOMMEND TO THE CITY COUNCIL WITH FRUITA THE CONDITION THAT THE APPLICATION ADEQUATELY RESOLVE THE OUTSTANDING REVIEW AGENCY CONERNS WITH THE FINAL PUD APPLICATION AND/OR APPROVAL OF A BUILDING PERMIT.

COMMISSIONER MCGUIRE SECONDED THE MOTION

**MOTION PASSED 6-1** 

There was a short recess.

Mr. Henry Hemphill gave the Staff presentation.

Application #: 2023-35

Application Name: City Market Fueling Station

Application Type: Conditional Use Permit
Applicant: Nathan Abbott and Galloway

Location: 437 W. Aspen Avenue

Description: This is a request for approval of a Conditional Use Permit for a drive-thru

facility for a retail fueling station on approximately .52 acres.

Mr. Henry Hemphill gave the Staff presentation.

Slide 1 – Introduction

Slide 2 – Application Details

Slide 3 – Legal Notice

Image of post card and 350' buffer zone.

### Slide 4 – Legal Notice

- Post Cards:
  - November 22, 2023
- Sign Posting:
  - November 22, 2023
- Newspaper:
  - November 22, 2023

# Slide 5 – Zoning Map and Aerial View

### Slide 6 – Review Criteria

- Section 17.09.030
- 4 criteria to consider.
  - Consistency with the Land Use Code, the purposes of the DMU zone and the Comprehensive Plan.
  - Compatibility with surrounding area.
    - Existing uses and allowed uses.
  - The drive-through should not endanger the public health or safety.
  - All public services are available to the subject property.

## Slide 7 – Vehicle Stacking

Image of proposed stacking and description.

• "For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide."

# Slide 8 – Aspen Avenue

## Section 17.13.050 (A)(2)(c)

• New drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue.

Slide 9 – Review Comments & Public Comments

- REVIEW COMMENTS:
- CDOT provided comments regarding access from Aspen Avenue.
  - Traffic Study & Access Permit
- PUBLIC COMMENTS:
- Written comments received on 12/11/23. Entered into the public record.

Slide 10 – Suggested Motion – Pg. 143

Mr. Chair, I move to <u>approve</u> application 2023-35, the City Market Fuel Station Conditional Use Permit, with the condition that all review comments be adequately addressed with the Site Plan application.

Mr. Hemphill concluded his presentation.

Commissioner Biddle thanked him.

Mr. Nate Abbott with Galloway, representative of City Market and Heslin Holdings, joined the meeting via Zoom. He introduced his team and gave the presentation. He showed the location of the project and the proximity to the existing City Market to give an understanding of where it is located. He stated it was at the northeast corner of Coulson and Aspen and two blocks west of the existing City Market as shown on the map. He zoomed in to show the lot configuration and he explained that it was one existing parcel, about a half-acre in size. What they were proposing here is a Conditional Use Permit for a City Market fuel station to support the existing City Market with 5 multiproduct dispensers and a small kiosk. He added that City Market felt that the fuel station would enhance their long-term financial health, viability, and commitment to the community as it would be a significant investment to benefit the community and the grocery store. He brought up the site plan for viewing. He continued that it was not something that they were looking at gaining approval on today. It would be a separate application, but it gave them a sense of the general layout of the small kiosk which was called out on the map, the edge of canopy and the property line. He showed three points of access, all three are existing, one-off West Aspen Avenue and two additional access points off North Coulson and one off of North Willow Street. He spoke more about the access off West Aspen is currently a right in only. They had not met with CDOT yet, but it is something that they would be doing if they get approval of the CUP. He noted that CDOT calls out for that access point to be right in / right out not just right in only. He felt that the layout could work with the existing access point off Aspen Avenue and two additional access points off Coulson and Willow. He showed a dash line on the map, he stated that they were calling it out as the fueling circulation limits. He talked about stacking for vehicles looking to fill up with fuel. He added that they wanted to make sure that there was adequate and safe circulation throughout the site to provide the highest level of customer service and client experience. He showed two fuel dispensers on the right, two on the left and one in the middle and a small kiosk area that one can walk up and pay as well. On the back he showed a tanker truck, this was a fuel delivery truck that is proposed to come off Willow through the back of the site to dispense fuel into the underground storage tanks, which are the oval shapes on the northwest corner and then exit back onto Coulson Street and then back on

Aspen and onto I-70. He mentioned Mr. Hemphill's presentation and that fueling is a permitted use within this area. He added that it was the drive-up component of this permitted use that they were seeking a Conditional Use Permit for. Mr. Abbott talked about the approval criteria. He showed the four Conditional Use criteria. The first one is the proposed use is consistent with the provisions and purposes of this title with the purposes of the zone to which it is located with the City's Master plan. He added that there were two sections that Mr. Hemphill alluded to that they had to meet. The first is the 40' setback of any drive through uses from Aspen which they felt was consistent based on the layout of their plan. The second was the stacking spaces as well. He stated that they were showing two stacking spaces at each one of the outer pumps and they do not interfere with the other required parking areas which was one of the criteria here. He showed the stacking along each one of the outer fueling pumps with enough access to be maintained along the northern portion of the site for truck access and circulation. He showed the setback off West Aspen at just over 41 1/2' or so. He stated that he felt the proposed use is compatible with existing and allowed uses surrounding the property. He stated that West Aspen Avenue was highly commercialized and commercial developments along with residential development continues to go to the west. He added that they were surrounded by other drive through uses, Walgreens, Coloramo Federal Credit Union, Burger King, all have a drive through component as does the existing Sinclair adjacent to the existing City Market. He stated that they did not feel the proposed use would materially endanger the public, health, or safety as it relates to the drive through components. He thought it was important to note that there is no convenience store associated with this fuel facility and this limits the opportunity for pedestrian / vehicle conflicts within the site. They felt that they had adequate vehicle stacking and multiple points of ingress / egress to allow for safe circulation throughout the site. He continued that public service and facilities, transportation systems, wastewater disposal treatment, domestic water, fire protection, police, storm, and drainage facilities are adequate to serve the proposed use. He said that this is an existing developed property with all services servicing the site. They would be going through a full construction drawing submittal process should the Conditional Use Permit be approved in conjunction with their site plan approval. He stated that they would be digging into those details and how it lays out with the site plan approval process. He concluded his presentation and asked for questions or comments.

Commissioner Biddle opened the meeting to public comment. There were none. He closed this portion of the meeting and opened it to Commissioner discussion.

Commissioner Hearns commented about the zoning and how it allowed fueling stations, but the Conditional Use Permit was for the drive through. She was trying to envision how they would have a fuel station without a drive-through.

Mr. Hemphill stated that it did beg that question. The reason for the Conditional Use Permit is not every type of Conditional Use, like not every fueling station with a drive through makes sense on every property that is zoned Downtown Mixed Use. This is why the Conditional Use Permit needed to be considered site specific. He added that it was too unique of a use to allow it by right all the time. He added that if this were somewhere else along the highway, they probably wouldn't be having a Conditional Use Permit, it would work. The Conditional Use Permit is needed because it is more unique in characteristics than just the fuel sales.

Commissioner Handley commented that the drive through basically allows the tanker truck to go into the site and leave the site.

Commissioner Hearns asked what the definition of a drive through was?

Mr. Hemphill responded that they would be driving up to a fuel station, being provided with a service from the business, and you drive away and not stay for too long. He gave the example of a restaurant as the opposite, you would park, go in and be served and be there for a while and then leave. That is why he thought a Conditional Use Permit is required for drive-through facilities for fuel stations because site circulation does matter and being able to get in and out efficiently makes sense for them to consider and for them to decide on.

Commissioner Hearns asked if it was possible to have a fueling station that is not a drive through?

Mr. Hemphill responded that it was probably not but because it is such a unique site characteristic, if they turned it or had a long narrow strip, it may make different sense. It may not work. The way that they have it configured is standard. He added that this was his opinion why a Conditional Use Permit is needed for drive-throughs or drive ups is because of their unique characteristics and it does not work for every property.

Commissioner Hearns asked if the Conditional Use Permit was approved to have a drive through, is that approval for any drive through or this specific one? Could they build some totally different structure that has a drive through? She asked what the technicality was?

Mr. Hemphill stated that a drive-through would be allowed.

Commissioner Hearns asked if the Conditional Use Permit ran with the land or the use?

Mr. Hemphill stated that it ran with the land. He did add that there were expirations on Conditional Use Permits if they are not used in a full calendar year.

Commissioner Fabula commented that consistency with the Code and compatibility in the Downtown Mixed-Use area is the things he struggled with the most. He added that the Downtown Mixed-Use area is the way it is today which means it has a lot of residential in it. Here they are trying to craft community growth in this part of town, and they get challenged with the idea of consistency and compatibility. He knew that with the existing uses of the land and the future allowed uses. This is the piece that gave him heartburn with this type of development. He said that he did not envision a gas station there. He felt that there were going to be a lot of changes to this part of town, he knew that if they went through this part of town and assigned the date that every structure was built, this isn't the oldest, but it is the residential section that is old and there is a good chance that it won't be there in 10-20 years because of its age. Here they have this first application coming forward for something that truly does fall into this Downtown Mixed-Use category, something that he felt would generate tax revenue. They have talked about commercial for other projects and they bemoan the fact that don't have enough commercial. He rarely fuels up in Grand Junction and all his fuel ups would be in Fruita if this were to take place.

He added that there were some strong benefits for the community, but he has heartburn on the idea how they would juggle this consistency and compatibility when they are trying to grow the downtown area. Those were his comments and he thanked Mr. Abbott for his presentation. He did understand that there were three accesses to the property, and he assumed that all three accesses would be ins and outs. He asked if this was correct?

Mr. Abbott thanked him for the question. He said that the two existing access points to the east and west onto Coulson and Willow will be both for ingress and egress. Currently as shown they have an ingress or right in only to the site as it is laid out from Aspen. They will be seeking what is called a right in and right out so they can turn as they are going west bound on Aspen, they can turn right into the site, and it would also allow for a right out of the site as well to continue to go westbound on Aspen. He continued, currently as it is laid out it is a right in only off of Aspen, but the other two access points would be full movements into and out of the site.

Commissioner Fabula stated that most traffic would enter from West Aspen, take the right in, they would fuel and then exit either to the east or to the west.

Mr. Abbott confirmed this or come off Willow. He admitted that they had not done a traffic study yet, but it was their assumption that a lot of traffic would be coming from the store to the east westbound along Aspen and then pulling in off Willow or Aspen.

Commissioner Fabula thanked him. He asked if this was currently an alley in the back right now?

Mr. Hemphill said it was. He said it was unimproved, just road base or gravel.

Commissioner Fabula stated that he knew that they had their standard requirements for improved alley access. He asked if there would be any type of visual element that is going to shield the properties to the north or to the south from this new traffic?

Mr. Hemphill stated that they would expect them to submit a landscape plan that would help deflect some of the visual aspects associated with being close to a fuel station like this. They haven't gotten down to that site specific detail. He felt it was important to consider. He stated that it was in the Code to require certain visual aspects to be taken into consideration when they are adjacent to a residential property. It would be on their minds as the application moves forward.

Commissioner Fabula said that he didn't want to sound negative about his comments about consistency and compatibility because he thought the reality is that most of the properties in the Downtown Mixed-Use area are going to change over the next 50 years. What they need to remember is how do they manage that change and how do they help it blend in? He didn't like light pollution. He spoke about his own experiences with light pollution in the Downtown area. He admitted that he would never go to a poorly lit gas station. He added that as a community we will go through growing pains of growing into the Downtown Mixed-Use area. Noise, smells, light, and traffic are those are things that they must become accustomed to. He asked Mr. Abbott to keep this in mind and those things reach further than the property line.

Commissioner Handley commented on the properties directly to the north have a large lawn area. He felt that there was a good deal of separation from the alley to the structures. He spoke about the character of that section of town that is already charted to change. He talked about the auto barn property, the old trailer court that was there and this was going to be a new multi-unit development. He agreed that the character of this part of town has already been approved for substantial change and he would expect many of those properties in that area will be of another use within 10-15 years.

Commissioner McGuire asked if they per Commissioner Hearn's comments on the last item, are they looking at traffic in this instance or is it something for the city?

Mr. Atkins responded that they would not be looking at it. He added that the review comments that came from CDOT, Aspen west of 340 to Coulson is part of the 340 system. This is how you get off 340 and make it to Highway 6. That is controlled by CDOT, and they want to see a traffic study and they want to see a queuing study. He added that they did not want traffic to be blocked out onto Aspen which creates a safety issue. Those two things must occur as part of their application as it moves forward.

Commissioner McGuire asked when they did the study if they would be asked if they would be looking at the development of the property where the auto barn was as well and how both of those new development potential properties would impact together?

Mr. Atkins stated that they should because they know it is coming. He said it was an approved project.

Commissioner Handley commented that it was encouraging for City Market to financially justify an additional investment in the community. He said it was a positive step for a grocery store expansion sometime in the not so distance future.

Commissioner Hummel said that he struggled with this one. He couldn't figure out how a fuel station could happen without a drive through. Also, the compatibility question. He understood that this area was slated for redevelopment over the next 10-15 years, but he couldn't help but think of those 3-4 residences right there and what their impact would be over those next 10-15 years. Going back to why it is split out as a Conditional Use for a drive through, the idea that not all uses are appropriate within the zoning parcels. He thought it was interesting that they have this opportunity to compare the land use for this compatibility as it is outlined in 3 in Chapter 17.05. for all land uses compatibility is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the others. He continued, traffic aside he thought the light levels of any kind of drive through would adversely affect those residences for the next 10-15 years until they got purchased by someone and turned into a commercial or multifamily development. He went back to the Comp Plan and read the downtown future land use description. He continued that the intent is for the area is to be vibrant, pedestrian oriented commercial and residential area and act as the civic heart of the community. It should have inviting streetscapes and multimodal corridors as a priority to encourage walking and biking to and from downtown destinations. He wondered if drive throughs per this land use are compatible with these ideals. A drive through inherently

crosses a pedestrian path and it is going to create conflict. If they don't have an onsite sales store, they are not creating onsite issues between traffic and pedestrians. He struggled with this and felt that there is a certain amount of conflict between the drive-through and the core values of what they wanted this downtown area to be.

Commissioner Hearns said that she struggled with this as well. She said she looked up the purpose of Title 17 because it was part of criteria 1. The purpose is to lessen congestion, avoid effects of public nuisances and negative impacts. Another purpose was to enhance the tax base. She said that she walked regularly from Circle Park to Walgreens and once she crossed the intersection at the light, she doesn't feel safe as a pedestrian. When she thought about the Future Land Use Map, she didn't feel encouraged to keep walking to the park or keep riding her bike to the trail and she felt strongly that a drive through is not appropriate if that is her highest goal for pedestrian oriented things. They also have a specific goal for City Market to be here and reduce people's trips to Grand Junction. She mentioned that she had expired City Market fuel points all of the time because she wouldn't drive to Grand Junction to use them. She felt other families would use them. She wondered if that goal in enhancing their tax base was more important than her walking all the way to the CO-OP. She wanted them to discuss this.

Commissioner Handley talked about the new development in the old auto barn area one of the justifications for that is that it is within walking distance of the downtown area. They would have a lot of people living in that area that want to walk directly across the egress area for the gas station.

Commissioner Hearns said that she read the Staff report and listen to the presentation that says it is compatible because we have four others drive throughs, but she felt strongly that this spoke to the disproportionate number of drive throughs and adding another doesn't necessarily make it compatible it makes it disproportionate.

Commissioner Hummel agreed with her. He also said that it is a past use where it was developed under previous land use goals that had those drive throughs in the area. He asked if they wanted to go back to the current core values or do they want to keep increasing these previous things that they have been building 20-30 years prior to their new stated goals? Do they want to adhere to what they had defined as the new land use and growth, or do they want to keep doing the same thing they have been doing?

Commissioner Handley stated that one could envision in the near future when the multiunit development is complete and there are several people living in that area if this wasn't a gas station, what other use might it be? Would that potential development be more compatible with the vision they have for the downtown area?

Mr. Caris said that he appreciated the incongruent nature of the conditionally allowed drive up or drive-through and a by right use for a fuel station. He provided context, his suspicion was that they were okay with the inconsistencies there to not create legal and conforming uses that had already been built. If they were to redevelop, they would not be allowed to redevelop in their current form which was a discussion point not necessarily specific to this situation, but it was talked about when they updated the Code not when they updated the Comp Plan. He thought for

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all the reasons they are having a thoughtful discussion about the aspirational goals of that, he wanted to provide some context to a spec that since they have some adjacency and some compatibility that was part of the conversation. And to provide a degree of flexibility for an individual user, that as Commissioner Hearns suggested is a purpose statement that is in the Comp Plan.

Commissioner Fabula said that he knew that the traffic study had to take place and he understood that CDOT had to review and approve that traffic study and the traffic study would come back with findings. They assume that those findings will be fulfilled, and the applicant would have their drive through Conditional Use Permit in hand, they will have the property in hand and will move onto the next step. They won't see that traffic study here before the Commission.

Mr. Caris said that this was correct.

Commissioner Fabula assumed that they don't fail traffic studies, they just recommend something, and they say it isn't financially feasible or it doesn't fit for they won't move forward.

Mr. Caris stated that CDOT has denied access in the past. He added that Coloramo access was not a foregone conclusion. He thought that the traffic studies are not the same thing.

Mr. Atkins said that the Coloramo access off Aspen almost didn't happen. He questioned whether it was usable. It is 180 grade turn because they felt they needed access off Aspen. He thought this application could end up where they physically must access from the alley and exit onto Aspen to keep the queuing from being an issue. He brought up Coloramo, he stated that they ended up needing to put in a median to prevent people from trying to left turn out. He also talked about the existing City Market and Burger King. He said that these are two examples of a failure in the fact that the pork chops do not function. He added that there were plenty of people that will turn into City Market from a westbound left. The pork chops are not big enough to prevent that movement from happening. He added that the same thing is happening for the left out that occurs at City Market and Burger King has the same problem. He continued, CDOT would most likely force this application to put that left turn median in to prevent that from happening and it is a safety thing.

Commissioner Hearns asked the other Commissioners what they thought was more important, pedestrian oriented downtown or economic vitality? She reminded them that the Conditional Use Permit ran with the land.

Commissioner Mulder felt that Fruita needed the fueling station. He added that it is what City Market has needed to put in the City of Fruita and he thought this is exactly what they need for Fruita.

Commissioner Biddle stated that they should look for the balance. He felt that there was a middle ground in there somewhere. He asked if they were in the middle ground or were they too far one side or the other? He felt that they were in the middle ground for both.

Commissioner Handley said that he was thinking about the entire community of Fruita. He asked if they were to deny City Market the ability to build a gas station there, would it discourage them from any other future development like expanding the grocery store? Do they want a walkable city or more financial vitality? He was with Commissioner Mulder; this is a project that Fruita needed for the consideration of future market development.

Commissioner Hummel countered that idea stating that for something to be feasible for City Market they are going to do it whether they approve it. (inaudible). He talked about the prioritizing of car traffic and travel for the last 70 years in this country. He felt that they needed to help pedestrian design along. He asked if this was the place to do it. He answered, probably not because there are several other drive throughs. He questioned the location. He agreed in terms of balance.

Commissioner Biddle stated that Staff has heard our conversation about pedestrians and will keep that in mind for projects moving forward.

Commissioner Fabula said that for him it wasn't about the pedestrian and the non-pedestrian. It was the fact that they have been trying to make updates to promote the development of their Downtown Mixed-Use zone. He thought that it was ambiguous what they looked like. He thought that none of them pictured going downtown and getting a snicker and gas for the car. He questioned whether it was their job to dictate what businesses come forward and try to start a venture. He added that if this was a drive through with some amazing burgers, they might have a totally different concept or feedback on this drive through application. He said that he was hung up on the fact that it is a gas station. He knew that this was not why he was there. He is not there to dictate what people choose or to say what the right business venture is to bring to Fruita. He was disappointed and was hopeful that it was going to be something different than a gas station. Will he use the gas station? Probably. They are running out of frontage on Aspen to be developed and this is going to lock up this lot for 20 years. There are two houses to the left, he was surprised they weren't there, and he felt that this was not what they would want as their next-door neighbor. They are going to take an alley and turn it into something that runs 24 hours a day. He did not feel this was compatible for residential. He asked if it was compatible for Downtown Mixed Use and the future development of Downtown Mixed Use? He said it was. This is why he felt that there would be growing pains. All in all, it was the first application to come forward and he thought they would be able to make the traffic aspect work.

Commissioner Handley said that he was thinking about the last project they approved and talking about traffic, he felt that it did need to be one of their considerations. He concluded that this was a problem better addressed through their overall circulation plan. If these are important issues and critical to the City, rather than them addressing it project by project, they need to be working with the City staff and updating the circulation plan and making it more amenable to their pedestrian traffic and better road infrastructure for the traffic they do have.

COMMISSIONER MULDER MOVED TO APPROVE APPLICATION 2023-35 THE CITY MARKET FUEL STATION CONDITIONAL USE PERMIT WITH THE CONDITION THAT ALL REVIEW COMMENTS BE ADEQUATELY ADDRESSED WITH THE SITE PLAN APPLICATION

## COMMISSIONER HANDLEY SECONDED THE MOTION

# **MOTION IS DENIED 3-4**

# I. OTHER BUSINESS

- 1. Community Development Updates None
- 2. Visitors and Guests None
- 3. Other Business

Commissioner Mulder brought up School District 51 and what they intended for the schools in Fruita with a discussion that followed. Commissioner Fabula was thanked for his time on the Planning Commission.

# Adjournment 8:34 pm

Respectfully submitted,

Kelli McLean

Planning Technician, City of Fruita

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# Brownstein

**Brownstein Hyatt Farber Schreck, LLP** 

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January 11, 2024

Carolynne C. White Attorney at Law 303.223.1197 direct cwhite@bhfs.com

Via Email: dcaris@fruita.org

Dan Caris
Planning Director
City of Fruita Community Development Department
325 E. Aspen Avenue
Fruita, CO 81521

RE: Appeal of Planning and Zoning Commission's Denial of a Conditional Use Permit for the City Market Fueling Station, Application # 2023-35

Dear Mr. Caris:

This law firm represents MJ Property Investors LLC (the "<u>Applicant</u>"), the contract purchaser on behalf of City Market (defined below) of a .52-acre parcel of land located at the intersection of West Aspen Avenue and Coulson Street with an address of 437 W Aspen Avenue (the "<u>Property</u>") in the city of Fruita (the "<u>City</u>"), county of Mesa ("<u>County</u>"), state of Colorado ("<u>State</u>"). The Applicant is proposing to construct a retail drive-through fuel facility on the Property featuring a small pay-only kiosk, a fuel canopy with five (5) multi-product fueling dispensers, a trash enclosure, and associated site improvements (the "<u>Fueling Station</u>" or "<u>Proposed Use</u>"), as shown on the concept plan attached hereto as <u>Exhibit A</u>. The Fueling Station will directly support the nearby City Market (Kroger) grocery store ("<u>City Market</u>").

On behalf of the Applicant and pursuant to Chapter 17.25 of the Town's Land Use Code (the "Code"), the Applicant hereby appeals the City of Fruita Planning and Zoning Commissions' (the "Commission") denial of the application (the "Application"), attached hereto as Exhibit B, for a conditional use permit ("CUP") for the City Market Fueling Station, which was issued by the Commission on December 12, 2023 (the "Denial").

## I. SUMMARY OF APPEAL

The Commission's Denial is inconsistent with the City's 2022-2025 strategic plan (the "<u>Strategic Plan</u>"), and the Commission therefore failed to properly interpret and apply the Strategic Plan. Economic Development Goal #3, as set forth in the Strategic Plan, specifically directs the City to work with City

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Market to encourage expansion and growth of grocery shopping options within the City as set forth in the Strategic Plan. The Denial runs afoul of Economic Development Goal #3.

The Commission's Denial is also inconsistent with the City's comprehensive plan (the "Comprehensive Plan"). The Comprehensive Plan provides that the City's goals for economic development include improving grocery store options, living wage jobs and workforce options to increase the vibrancy of the downtown and the overall quality of life within the City. The Commission therefore also failed to properly interpret and apply the Comprehensive Plan when it issued the Denial.

Moreover, the Commission's Denial was based upon incorrect information that the Property is within the Downtown Core (as defined below) subarea pursuant to the Comprehensive Plan. The Property is not within Downtown Core; instead, the Property is within the Downtown West (as defined below) subarea.

Lastly, in issuing the Denial, the Commission failed to properly interpret and apply the relevant provisions of the Code to the Application.

The Applicant therefore respectfully requests that the City Council reverse the Commission's Decision denying the Application for a CUP for the Fueling Station and approve the Application.

## II. BACKGROUND

Currently, there are two (2) buildings and a parking lot on the Property. The building on the southwest corner is a 1,700 square foot building that has been used for different types of businesses over the last ten (10) years. The second building is a five-unit residential building. The Applicant proposes to redevelop this Property for the City Market Fueling Station.

The Proposed Use is consistent with the current zoning for the Property and the Code's requirements. The Property is zoned Downtown Mixed-Use ("<u>DMU</u>"). The DMU zone is one of the base zone districts "established to provide a variety of commercial areas suited to the [different] neighborhoods and commercial needs [of] the city", and "the intent of these zones is to consolidate complimentary commercial uses in areas or nodes that are served by roads and sidewalks." *Code*, § 17.03.060. The Comprehensive Plan designates the Property as within the Downtown West subarea. "<u>Downtown West</u>" is described as a mixture of housing types and recreation opportunities with a mixture of uses such as offices, commercial and residential. *Comprehensive Plan*, p. 40.

The City Market Fueling Station is intended to support the City Market grocery store located two (2) blocks away. Pursuant to Section 17.050.090 of the Code, "Fuel Sales, Automotive/Appliance (not including Drive-Up/Drive-Through uses)" is a use permitted by right in the DMU zone. However, a Drive-Up/Drive-Through Facility accompanying a permitted use, such as this one, is a use requiring a CUP in the DMU zone. *Code*, § 17.050.090. Thus, even though the Fueling Station is a use permitted by right

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under the current zoning, because the Fueling Station will include a drive-up area for cars to refuel, a CUP is required for the Proposed Use. See Code, § 17.050.090.

The Proposed Use will also comply with the Code's requirements for vehicle stacking to ensure adequate vehicle circulation on the site. In compliance with Section 17.37.070.B. of the Code, the concept plan attached hereto as Exhibit A provides that two stacking spaces, at least twenty-two (22) feet long by ten (10) feet wide, are proposed for each bay on the entrance side and one such space on the exit side for service uses such as gas stations.

The Property is surrounded by commercial and retail land uses, many with drive-throughs, and some residential is located to the north. The Fruita Recreation Center and Family Health West Hospital are also located north of the Property. A Walgreens, Balanced Rock Motel and City Market are located to the south and southeast. Burger King and Coloramo Federal Credit Union are located to the east.

The Applicant submitted its Application for a CUP on November 14, 2023, which included a project narrative, attached hereto as <a href="Exhibit B">Exhibit B</a>, describing the Proposed Use and how the Application meets all the criteria of approval for a CUP under the Code. The Applicant also complied with all the procedural requirements pursuant to Sections 17.09.030 and 17.07.040 of the Code, and the Application was properly considered at a public hearing before the Commission on December 12, 2023 (the "PC Hearing") in accordance with Section 17.05.020 of the Code for a final decision on the Application. The Planning and Development Department staff ("Staff") prepared a staff report dated December 12, 2023 (the "Staff Report"), attached hereto as <a href="Exhibit C">Exhibit C</a>, in support of the Application, and also describing how the Application met all of the Code's requirements and the criteria of approval for a CUP.

During the PC Hearing, as summarized in the hearing minutes ("Minutes") attached hereto as Exhibit D and as stated in the video recording of the PC Hearing ("PC Hearing Video"), several of the Commissioners stated, as grounds for the Denial, that the Proposed Use would infringe upon the walkability of this area and that they felt fostering pedestrian design in this area was a higher priority for the City than encouraging the expansion and growth of City Market grocery stores. Minutes, p. 7-8;10; PC Hearing Video, at 2:23:07–2:26:35. These Commissioners cited to traffic and cars crossing a pedestrian path as reasons why the Proposed Use would conflict with the priority of fostering pedestrian design. Minutes, p. 7-8;10; PC Hearing Video, at 2:23:0–2:26:35.

Some commissioners also stated that they just do not want a gas station on this Property as their basis for the Denial. *Minutes, p. 10; PC Hearing Video, at 2:10:20–2:12:53*. Others stated that the Proposed Use is not compatible with the surrounding area because there are residential homes to the north of the Property. *Minutes, p. 8; PC Hearing Video, at 2:21:00–2:23:07*. The Commission thus Denied the Application with a 4-3 vote. *Minutes, p. 11*.

## III. STANDING

In accordance with Sections 17.25.020 and 17.25.030 of the Code, any person aggrieved by a decision by the Commission may appeal such decision to the City Council. Appeals are required to be filed in writing within thirty (30) days of the decision that is being appealed. *Code, § 17.25.040.A.* The City Council has authority to reverse or amend the decision of the Commission. *Code, § 17.25.040.E.* 

As the Applicant of the Application for a CUP, the Applicant is aggrieved by the Commission's denial and therefore has standing to appeal the Denial. This appeal has also been timely filed within thirty (30) days of the Commission's decision.

## **IV. STANDARD OF REVIEW**

Pursuant to Section 17.25040.E of the Code, in considering the appeal, the City Council shall consider the following in determining whether to affirm, reverse or amend a decision or interpretation made by the Planning Commission:

- The facts stated in the application, as presented by the appellant;
- The requirements and intent of the applicable standards from this Code compared to the decision that is being appealed;
- Evidence related to how the applicable standards from this Code have been administered or interpreted in the past; and
- Consistency with the Comprehensive Plan.

"The party making the appeal (the appellant) shall have the burden of proving the necessary facts to warrant reversal or amendment of the decision being appealed. Such proof shall include applicable specific section references within [the] Code and shall be provided with the application. The application shall be based on the record established in the decision-making process. *Code*, § 17.25.040.

#### V. THE COMMISSION'S DENIAL FAILED TO COMPLY WITH THE LAW

In denying the Application for a CUP for the Fueling Station, the Commission failed to comply with the law, as described herein below.

a. The Commission' Denial is Inconsistent With the City's Goals Set Forth in the Strategic Plan, and the Commission Therefore Failed to Property Interpret and Apply the Strategic Plan When it Issued the Denial.

The Strategic Plan also specifically directs the City to, as a 2023 priority, work with City Market representatives and other property owners and businesses to expand and improve food and grocery shopping options within the City. *Strategic Plan*, p. 19. Engaging in strategic negotiations to encourage

January 11, 2024 Page 5

the development of larger and/or new grocery stores within the City is an objective expressly set forth in the Strategic Plan as the means to support this goal. *Strategic Plan*, p. 19.

Another goal identified by the Strategic Plan for 2024 includes the transportation goal of making the downtown area of the City pedestrian-oriented and easy for visitors and vehicles to navigate. *Strategic Plan, p. 25.* The Commission's identified this goal as grounds for the Denial. Specifically, members of the Commission made the following comments during the PC Hearing (collectively, the "**Decision Grounds**") to support the Denial on the basis that a pedestrian-oriented design was a more important goal than expanding and improve food and grocery shopping options:

- This area should have inviting streetscapes and multimodal corridors as a priority to
  encourage walking and biking to and from downtown destinations, and because a drivethrough inherently crosses a pedestrian path the Proposed Use would create conflict and
  would not be compatible with these ideals. Minutes, p. 8; PC Hearing Video, at 2:23:07.
- The goal of encouraging walkability should be more important than enhancing the City's tax base. *Minutes, p. 8.*
- At least one commissioner would not be encouraged to keep walking to the park or riding her bike to the trail, and therefore felt strongly that a drive-through is not appropriate for her highest goal of participating in pedestrian-oriented activities. Minutes, p. 8; PC Hearing Video, at 2:24:12.
- A pedestrian-oriented downtown is more important than economic vitality. *Minutes, p. 9-10; PC Hearing Video, at 2:25:10; 2:32:40.*
- There are a disproportionate number of drive throughs. Adding another drive through doesn't make it compatible, but instead makes the use disproportionate. *Minutes, p. 8; PC Hearing Video, at 2:26:18.*
- The land use goals for this area have changed. *Minutes, p. 8; PC Hearing 2:26:30*.
- Car traffic and travel has been prioritized for the last 70 years in this country and the City needs to help pedestrian design along. *Minutes, p. 10; PC Hearing 2:26:35*.

First, the Commission failed to properly interpret and apply the Strategic Plan when it prioritized the goal of fostering a pedestrian-oriented downtown over the goal of working with City Market to expand grocery stores and food options within the City. For this reason, the Commission's Denial is therefore inconsistent with the Strategic Plan. The goal of expanding grocery stores is, in fact, a goal for 2023, whereas the goal of fostering pedestrian-oriented designs is a later goal of 2024. Thus, if any goal should be prioritized over the other, it is the goal of expanding more grocery stores and food options within the City. Moreover, these two goals can work in harmony with adequate site plan design. Site plan design will be reviewed and addressed later pursuant to the site plan approval process set forth in Chapter 17.07 of the Code.

January 11, 2024 Page 6

Second, the Proposed Use also does not conflict with the Strategic Plan's 2024 transportation goal to make the downtown area of the City pedestrian oriented and easy for visitors and vehicles to navigate. Strategic Plan, p. 25. As set forth in the Staff Report, the roadways adjacent to the Property that will most likely be used for access in and out of the site – Willow Street and Coulson Street – are designed and constructed to handle a large amount of traffic. Staff Report, p. 6. As such, the Staff Report concluded that the Proposed Use would not substantially increase or generate congestion on these roadways. Staff Report, p. 6. Moreover, it is understood that a traffic study and an access permit would be required if an access connection is proposed to Aspen Avenue. However, this issue will be addressed during site plan review only if the Applicant decides to propose connection to Aspen Avenue, and therefore this issue was not before the Commission during the PC Hearing. See Staff Report, p. 6. The Fueling Station would also provide for adequate stacking on the Property to ensure sufficient circulation of vehicles, as shown on the Concept Plan attached hereto as Exhibit A.

The Proposed Use is also consistent with many other uses in the immediate and adjacent area, including the Fruita Recreation Center, Family Health West Hospital, Walgreens, Balanced Rock Motel and City Market, Burger King, and Coloramo Federal Credit Union. **All of the aforementioned uses include drive-throughs or are uses generally accessed by vehicles with large parking lots**. In fact, the Property is located directly along the small portion of Aspen Avenue that is the designated truck route for "trucks that have no origin or destination in the City of Fruita urban area", as set forth on the Designated Truck Route Map attached hereto as <u>Exhibit E</u>. To create a pedestrian oriented design in this area, the City would need to redesign the Designated Truck Route Map and redevelop this entire area of the City to provide for more sidewalks, landscaping, parks and the like that would foster walkability. Thus, the Proposed Use would not infringe upon any pedestrian oriented designs already in place in this area.

Third, the Commission's Denial runs afoul of the Strategic Plan's specific goal of working with City Market representatives and other property owners and businesses to expand and improve food and grocery shopping options within the City. As described in the letter provided by City Market and attached hereto as <a href="Exhibit F">Exhibit F</a>, the Fueling Station will generate additional revenue for City Market, which in turn allows City Market to grow and expand its grocery shopping options within the City. At least one commissioner acknowledged that City Market's proposed Fueling Station demonstrates its intent to financially invest in the community and expand grocery store options in the not too distant future. PC Hearing Video, at 2:20:23.

Accordingly, the Commission's Denial is inconsistent with the Strategic Plan and the Commission therefore failed to properly interpret and apply the Strategic Plan when it issued the Denial on the basis that the goal of creating a pedestrian-oriented design for the downtown is more important than the goal of working with City Market to expand and grow grocery shopping options within the City.

b. The Commission' Denial is Inconsistent With the City's Goals Set Forth in the Comprehensive Plan, and the Commission Therefore Failed to Property and Interpret the Comprehensive Plan When it Issued the Denial.

The Comprehensive Plan's Economic Development Goal #3 provides that "[t]he community would like to see improved grocery and food store options in Fruita, as there is only one full-services supermarket at present" and that "more good paying jobs are needed in Fruita". Comprehensive Plan, p. 50. Economic Development Goal #3 of the Comprehensive Plan specifically directs the City to "work with City Market representatives and other property owners and businesses to expand and improve food and grocery shopping options in Fruita." Comprehensive Plan, p. 54. As part of this goal, the Comprehensive Plan identifies the following policy: work with City Market representatives on options for renovating, expanding, or possibly relocating. Comprehensive Plan, p. 54.

The Comprehensive Plan also sets forth the Transportation Goal #3 of making the downtown a pedestrian-oriented area that is easy for visitors and vehicles to navigate. *Comprehensive Plan, p. 84*.

These two goals of the Comprehensive Plan mirror those same goals set forth in the Strategic Plan discussed in <u>Section V.a</u> above. Again, the Commission based its Denial upon the grounds that the pedestrian-oriented aspect of Transportation Goal #3 is of higher importance than the Economic Development Goal #3 of working with City Market to expand and grow grocery store and food options within the City. The goals set forth in the Comprehensive Plan also do not have a hierarchy. Thus, the Commission erred in interpreting and applying the Comprehensive Plan to the Application when it prioritized one goal of the Comprehensive Plan over another and denied the Application on this basis. The Decision Grounds discussed in <u>Section V.c.</u> above demonstrate that the Commission's Denial runs afoul of the Comprehensive Plan's goal of working with City Market representatives to expand grocery shopping options.

Additionally, for the same reasons described in <u>Section V.c.</u> above, (1) these goals can be pursued simultaneously and harmoniously through strategic site plan design, the details of which will be determined later on during the site plan review process, (2) the Proposed Use is consistent with other uses in this area, and (3) the Proposed Use will generate additional revenue for City Market to grow and expand grocery shopping options within the City.

Therefore, for the reasons discussed herein and above in <u>Section V.c.</u>, the Commission's Denial is inconsistent with the City's goals set forth in the Comprehensive Plan and the Commission thus failed to properly interpret and apply the Comprehensive Plan when it issued the Denial.

c. The Commission's Denial Was Based on Incorrect Information That the Property is Within the Downtown Core Subarea of the Comprehensive Plan.

Pursuant to the Downtown Subareas Map of the Comprehensive Plan, the Property is designated as within the Downtown West subarea, not within the Downtown Core. *Comprehensive Plan, p. 41*. However, the Commission based its Denial on incorrect information that the Property is within the Downtown Core subarea. *See Staff Report, p. 2; PC Hearing Video, at 1:55:05*.

This distinction is particularly important because the Comprehensive Plan describes the Downtown Core as the most "walkable area" within the City, whereas the Downtown West subarea does not have this walkability characteristic. See Comprehensive Plan, p. 40-41. The Commission's failure to consider the distinction between these designations and incorrect belief that the Property is located within the Downtown Core resulted in the Commission's misunderstanding of the character of the subarea in which the Property is located. Although the Comprehensive Plan's Future Land Use Map provides an overall vision for the downtown, the Downtown Subarea Map sets forth the specific characteristics of each subarea and how the general vision for the downtown applies to each subarea. See Comprehensive Plan, p. 31; 41. In reading the differences between the Downtown Core and the Downtown West, it is the Downtown Core subarea that serves as the "heart of downtown" where "walkability" is a central characteristic, not the Downtown West subarea. Comprehensive Plan, p. 40. As mentioned above and as shown on the Designated Truck Route Map attached hereto as Exhibit E, the Property is located immediately adjacent to the roads designated as the truck route within the City, which is likely one reason why the Downtown West subarea of the downtown lacks the "walkability" and "heart of downtown" characteristics as one of its central features.

Thus, the Commission considered the wrong neighborhood characteristics in issuing the Denial. Although this incorrect information was likely an unintentional oversight and misunderstanding, it was nevertheless presented to the Commission and improperly influenced the Commissions deliberation and decision on the Application. See Staff Report, p. 2; PC Hearing Video, at 1:55:05. For example, all of the Decision Grounds discussed in Section V.c. above refer to walkability as the basis for the Denial despite the fact that walkability is not an express characteristic of the Downtown West subarea. Commissioner Hummel even stated that he went back to read the Comprehensive Plan, and he stated that a drive-through does not comport with the vision for the downtown as a vibrant, pedestrian-oriented community that would encourage walking and biking within this area that serves as the civic heart of the community. Minutes, p. 7; PC Hearing Video, at 2:22:30. However, Commissioner Hummel left his read of the Comprehensive Plan at just that, failing to consider the specific characteristics of the subareas that apply to the downtown area. The Commission therefore based its Denial on the incorrect information the Property is within the Downtown Core.

Accordingly, the Commission issued the Denial on the basis of incorrect information, and for this reason alone the Denial cannot stand.

# d. The Commission Failed to Properly Interpret and Apply the Relevant Provisions of the Code When It Issued the Denial.

Section 17.09.030 of the Code provides that a CUP may be granted for a conditional use in a particular zone if the following criteria of approval is met:

- The proposed use is consistent with the provisions and purposes of the Code, with the purposes of the zone in which it is located, and with the Comprehensive Plan;
- The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C, providing that "compatibility" exists when a proposed land use can co-exist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s);
- The proposed use will not materially endanger the public health or safety; and
- Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

As set forth in the project narrative included with the Application and attached hereto as <u>Exhibit B</u> and the Staff Report attached hereto as <u>Exhibit C</u>, the Application meets all of the above criteria of approval for a CUP. By denying approval of the Application on the basis that a drive-up Fueling Station would not foster pedestrian walkability within the area, the Commission failed to properly interpret and apply the Code's criteria for approval for a CUP.

As described in detail in <u>Section V.a.</u> and <u>Section V.b. above</u>, the Proposed Use is consistent with the Comprehensive Plan and the existing zoning for the Property. Moreover, "walkability" is not a criterion of approval for a CUP and none of the Decision Grounds discussed above or any other grounds provided by the Commission are based on any of the criterion of approval set forth in Section 17.09.030 of the Code. The only other basis the Commission provided for its Denial was that the Commission just did not want a gas station on this Property. *Minutes, p. 10; PC Hearing Video, at 2:10:20–2:12:53*. Commissioner Fabula stated that he was hung up on the fact that the Proposed Use is a gas station, although he admitted that the Proposed Use is compatible with the DMU zone and future development in the DMU zone. *Minutes, p. 10; PC Hearing Video, at 2:35:00*. Commissioner Hearns stated that she doesn't feel encouraged to keep walking to the park or riding her bike to the trail and that she therefore felt strongly that a drive-through is not appropriate for her highest goal of participating in pedestrian-oriented activities. *Minutes, p. 8; PC Hearing Video, at PC Hearing Video, at 2:24:12*. None of these reasons pertain to any criterion of approval for a CUP pursuant to the Code.

The Commission also reasoned that, based on the description of the Downtown Core designation, it felt the Proposed Use is not compatible with the residential to the north. *Minutes, p. 7*. Commissioner Hummel read the definition for the downtown under the Comprehensive Plan and reasoned that the

January 11, 2024 Page 10

intent for this area is to be a vibrant, pedestrian-oriented commercial and residential area and act as the civic heart of the community. *Minutes, p. 7; PC Hearing Video, at 2:21:00*. Commissioner Hummel felt that a drive-through therefore conflicts with the core values of the Comprehensive Plan's vision for the down. *Minutes, p. 7; PC Hearing Video, at Hearing Video, at 2:22:30*. As discussed in <u>Section V.c.</u> above, the Property is not within the Downtown Core. As mentioned, the Downtown West, the subarea in which the Property is instead located within, is not described as the civic heart of the community and walkability is not a characteristic of this area. *See Comprehensive Plan, p. 40-41*.

Moreover, the Comprehensive Plan specifically envisions, pursuant to the Future Land Use Map, that "commercial uses next to residential uses" would be next to each other on the same block. Comprehensive Plan, p. 31. Many nearby uses to the Property include drive-throughs, including but not limited to the Coloramo Federal Credit Union, the Walgreens pharmacy, the City Market pharmacy and the Burger King, some of which are actually within the Downtown Core subarea. Therefore, the drive-through for the Fueling Station is compatible with the surrounding area. It is also evident, from the fact that these nearby uses with drive-throughs are located in this area, some of which are located within the Downtown Core, that the City has historically determined that drive-throughs are compatible uses in the DMU zone. Therefore, this also demonstrates that applicable standards of the Code pursuant to Section 17.25.040 of the Code have been administered and applied differently in the past to other nearby uses with drive-throughs, and the Commission's Denial should be reversed on this basis.

Accordingly, none of the reasons provided by the Commission for the Denial are based on a failure to meet the criterion of approval for a CUP. Moreover, the only evidence before the Commission unequivocally established that the Application meets all the criteria of approval. *See Application; see also Staff Report*. Therefore, the Commission failed to properly interpret and apply the Code when it Denied the Application.

#### VI. CONCLUSION

Based upon the foregoing, the Commission failed to adhere to the law when it issued a Denial of the Application and the Applicant therefore respectfully requests that City Council reverse the Commission's Decision denying the Application for a CUP for the Fueling Station and approve the Application.

Additionally, the Applicant respectfully requests that additional arguments not presented in this appeal be preserved, as the Applicant requested the audio/video recording of the PC Hearing six (6) days prior to the deadline for the filing of this appeal, but only received the audio/video recording thirty-six (36) hours before the deadline.

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Sincerely,

Carolynne C. White

cc: Mike Bennet, City Manager

Mary Elizabeth Geiger, City Attorney

Henry Hemphill, City Planner

January 11, 2024 Page 12

### **LIST OF EXHIBITS**

Exhibit A – Concept Plan

Exhibit B – Application

Exhibit C – Staff Report

Exhibit D – Planning Commission Hearing Minutes

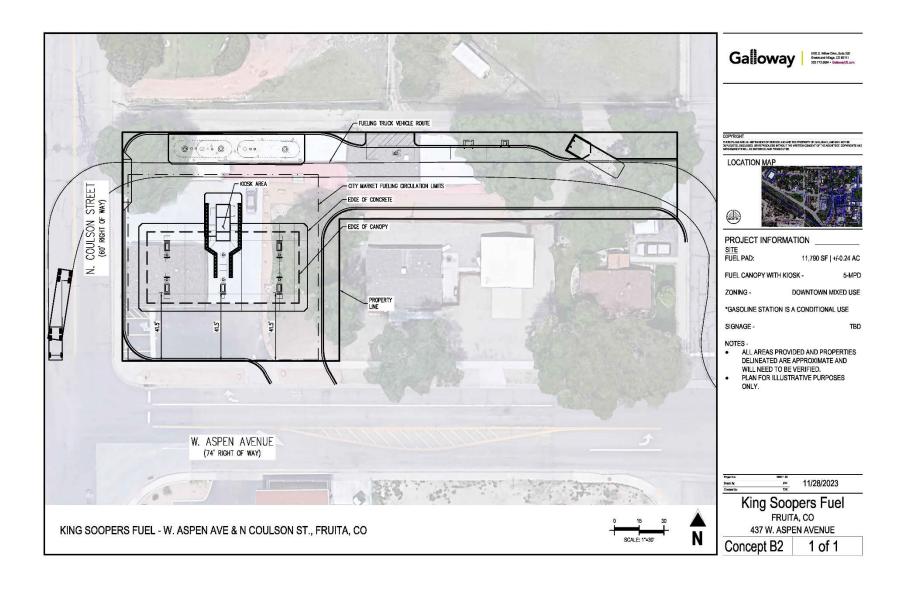
Exhibit E – Designated Truck Route Map

Exhibit F – Letter from City Market

### Exhibit A

### **Concept Plan**

[See attached]



### Exhibit B

### **Application**

[see attached]

Menu

#### **BACK TO DASHBOARD**

MORE ACTIONS V



### (III) Planning Approval

# 437 W ASPEN AVE, Fruita

Category Scope **Proposed use** Conditional Use New Standard

**SHOW MAP** HIDE FULL DATA

### Assigned to Henry Hemphill

**Q** Show messages

Email notifications ✓ YES

2697-172-17-024

#### **Application number**

202335

### **Municipal ID**

74748

### **Property code**

Duplex/Triplex

### **Legal description**

N 48FT OF LOTS 6-7 & 8 & ALL OF LOTS 9 & 10 BLK 8 OF TOWN OF FRUITA SEC 17 1N 2W UM

### **Submitted**

11/14/2023, 7:06 AM

### **Deemed complete**

11/14/2023, 10:08 AM by Henry Hemphill



CURRENT STEP: IN REVIEW

5/10

**NEXT STEP: DRAFT APPROVAL** 



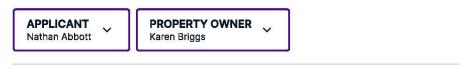
### 2 PARTIES TO THE APPLICATION

Close ^

### Mandatory roles for this application

To assign a role, click on the dropdown arrow and choose the action you wish to perform. This will walk you through the process of assigning an existing party to an application role or adding a new party.

### ASSIGN ROLES %



#### **Additional parties**

To invite additional parties to be involved in or have access to the application, click the "+" button to add a someone with their email address and specifying their role.

### ADD OR INVITE PARTY +



nathanabbott@gallowayus.com +1 13037708884 briggsmiller@gmail.com +1 9703760912 **FEES & PAYMENTS** Open Y **ATTACHMENTS** Close ^ **Required attachments Project Narrative** Site Plan Drag and drop files here or click here to select files from your computer. You can upload multiple attachments at the same time. Maximum individual file size is 100 MB. Allowed file types are PDF, image, Microsoft Office, OpenOffice and ZIP. ZIP files have to be uploaded individually Filter attachments **OTHER PROJECT NARRATIVE** SITE PLAN Q Search DOWNLOAD ALL 🕹

	Attachment type	Filename	Status
□ ∨	Other	CDOT Access Control Version 1	New version
□ ∨	Other Returned Postcard Nicholas Dennis Muntean	Nicholas Dennis Muni Version 1	New version
□ ∨	Project Narrative	HSN13-Narrative.pdf Version 1	New version
□ ∨	Site Plan	CO, Fruita-Concept B Version 1	New version

REVIEWS Close ^

Review	Status	Latest review comment	Reviewer	Review done
Plans Review	☐ Draft		Unassigned	

CIRCULATION Close ^

	Status	Assigned to	Request	Due date	Completed
<b>~</b>	Complete with conditions	Fruita - External Reviewers Brian Killian	11/14/2023, 11:06 AM by Kelli McLean	12/5/2023	11/27/2023 10:30 AM

	Status	Assigned to	Request	Due date	Completed
<b>~</b>	Complete with conditions	Fruita - Engineering Sam Atkins	11/14/2023, 11:06 AM by Kelli McLean	12/5/2023	12/12/2023 7:44 PM
~	No comments	Fruita - External Reviewers Kandis Aggen	11/14/2023, 11:07 AM by Kelli McLean	12/5/2023	12/15/2023 3:08 PM
<b>~</b>	Complete with conditions	Fruita - Engineering Henry Hemphill	11/14/2023, 11:05 AM by Kelli McLean	12/5/2023	12/5/2023 4:35 PM

release/240103 (60db60a1069e44fdc2f1669e522625cd512d2072) 2024-01-09T14:30:44.122Z (4)



5500 Greenwood Plaza Blvd., Suite 200 Greenwood Village, CO 80111 303.770.8884 • GallowayUS.com

#### Memorandum

#### <u>Project Narrative – Conditional Use Permit for a Drive-Thru Facility</u> <u>City Market Retail Fueling Station</u>

### **Project Description:**

On behalf of our client, Heslin Holdings, Galloway is requesting approval of a Conditional Use Permit (CUP) application that would allow a drive-thru facility with a permitted use. The permitted use will be a City Market branded retail fuel facility to support the adjacent City Market grocery store. The new facility will include a small pay-only kiosk, fueling canopy with five (5) multi-product fueling dispensers, trash enclosure and associated site improvements.

The proposed fueling facility will be located at 437 W Aspen Avenue on one parcel (PIN: 2697-172-17-024) and will include a Site Design Review Application at a later date.



SITE LOCATION MAP

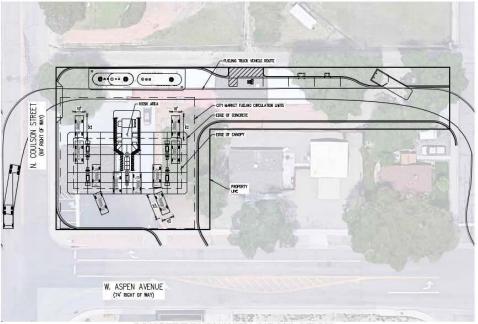
The site is currently developed as a commercial retail use on approximately 0.52 acres of land.

Kroger (City Market) would like to construct an approximately 200 square foot pay-only kiosk, fueling canopy and five (5) multi-product dispensers. The proposed layout shows the facility setback from W. Aspen Avenue to allow for adequate stacking. The three existing access points are proposed to remain in the same general location in order to allow for adequate circulation throughout the subject property. The proposed layout is shown below:

HSN13-Narrative.docx Page 1 of 4



HSN#13- Fruita, CO City Market Fuel CUP Justification Letter



CONCEPT PLAN WITH CIRCULATION

Access to the site will be provided from existing access points off of N. Coulson Street to the west, N. Willow Street to the east and W. Aspen Avenue to the south. Access points off or N. Coulson Street and N. Willow Street are proposed to be full-movement, whereas access off of W. Aspen Avenue is proposed as right-in, only.

#### Surrounding Land Uses and Zoning:

The subject site is currently zoned as Downtown Mixed Use (DMU) under the City of Fruita Land Use Code. The adjacent land uses are a mix of commercial and residential and are also zoned DMU as shown in the zoning map below. The Coloramo Federal Credit Union with drivethru teller lanes is located to the east along W. Aspen Avenue. The Balanced Rock Inn and Walgreens + drive-thru pharmacy are located to the south along W. Aspen Avenue. A future multifamily project is being proposed to the west, across N. Coulson Street.

Page 2 of 4

HSN#13-Fruita, CO City Market Fuel CUP Justification Letter



SURROUNDING ZONING

### Access and Circulation:

There are three existing access points that service the site and will continue to be utilized in order to provide safe and efficient circulation throughout the site. CDOT's State Highway 340 Access Control Plan identifies a Right-In / Right-Out only access along Aspen Avenue which may be proposed with the Site Design Application. However, for the purpose of this submittal we are currently showing a Right-In only off of W. Aspen Avenue. Full movement access is being proposed along both N. Coulson Street and N. Willow Street. Fuel tanker truck access is being proposed off of N. Willow Street through the northern portion of the site in order to minimize conflicts with retail traffic flow.



FIGURE A FROM CDOT A CCESS CONTROL PLAN

Page 3 of 4

HSN#13- Fruita, CO City Market Fuel CUP Justification Letter

#### **Utilities:**

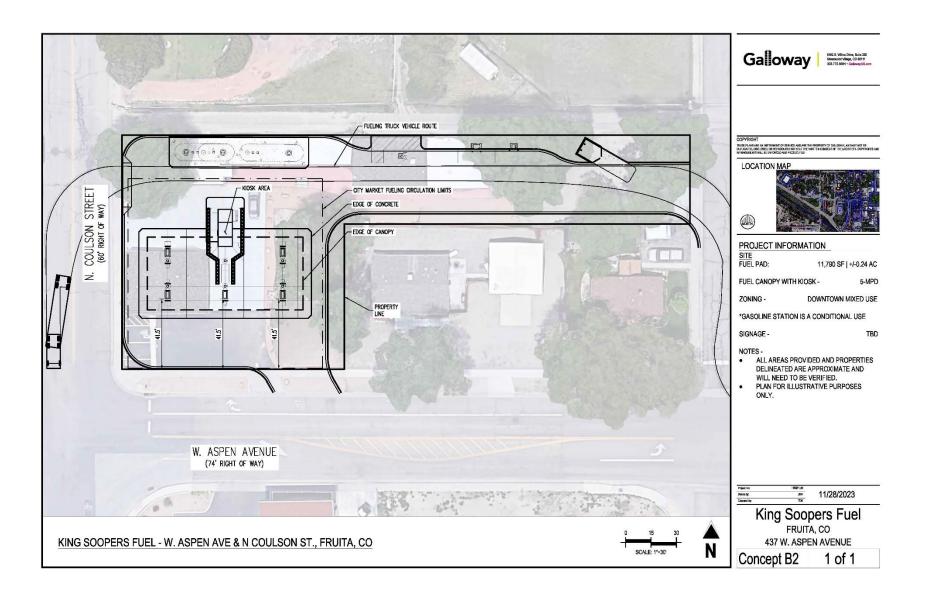
All utilities required to service the property as located in on or adjacent to the subject property.

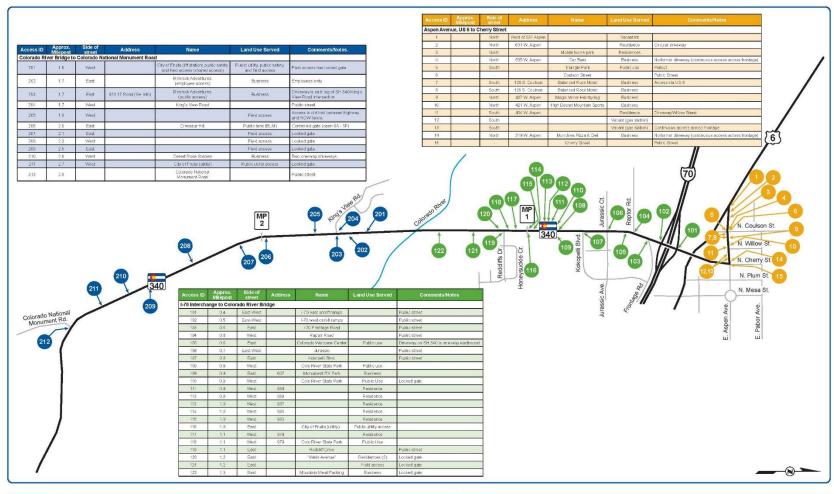
### Approval Criteria (17.13.040 CONDITIONAL USES)

A Conditional Use Permit may be granted for a conditional use in a particular zone provided the City Council finds as follows:

- 1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Comprehensive Plan; This project is consistent with Chapter 17 of the Land Use Code. Fuel Sales (not including Drive-Up/Drive-Thru uses) are a permitted use within the DMU zone district. Drive-Up/Drive-Through Facilities (with permitted use) are allowed by Conditional Use Permit only according to the Land Use/Zoning Table in Section 17.070.060 (F). Vehicle stacking requirements per Section 17.39.070 of the Land Use Code have been met, as shown on the attached concept plan.
- 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080.C; The surrounding uses are a combination of residential and commercial uses. There are some limited residential uses along W. Aspen Avenue. However, the majority of land uses along W. Aspen Avenue are commercial uses such as Walgreens and Coloramo Federal Credit Union, both of which have a Drive-Thru component.
- 3. The proposed use will not materially endanger the public health or safety; and Retail fueling establishments are commonplace in areas of both residential and commercial land uses and are subject to strict State regulations to ensure safe operations. Due to the fact that there is no convenience store associated with this proposed fueling station, there will be limited opportunities for pedestrian-vehicle conflicts. Adequate vehicle stacking coupled with multiple points of ingress/egress allows for safe circulation throughout the site.
- 4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use. Public services and facilities have been available to this property and will continue to be available to this property. The fueling facility is not expected to put more pressure on existing public services.

Page 4 of 4





STATE HIGHWAY 340
Corridor Study & Access Control Plan
Fruita to Colorado National Monument

Figure 2-1 Existing Access Points



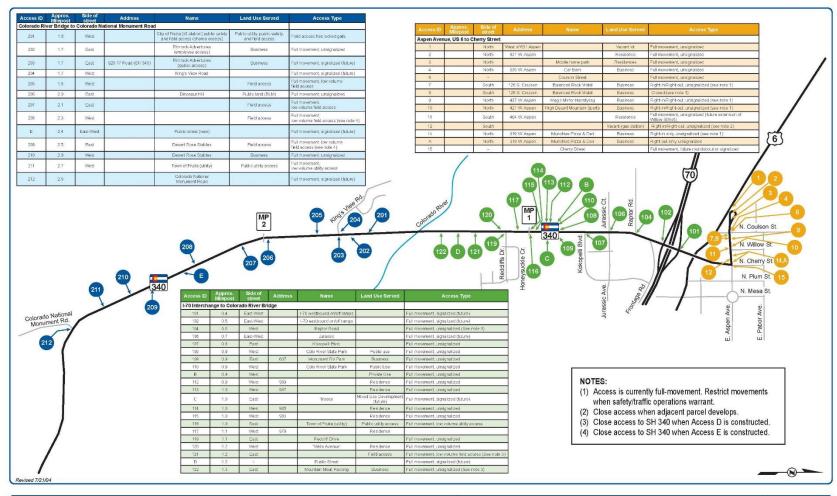
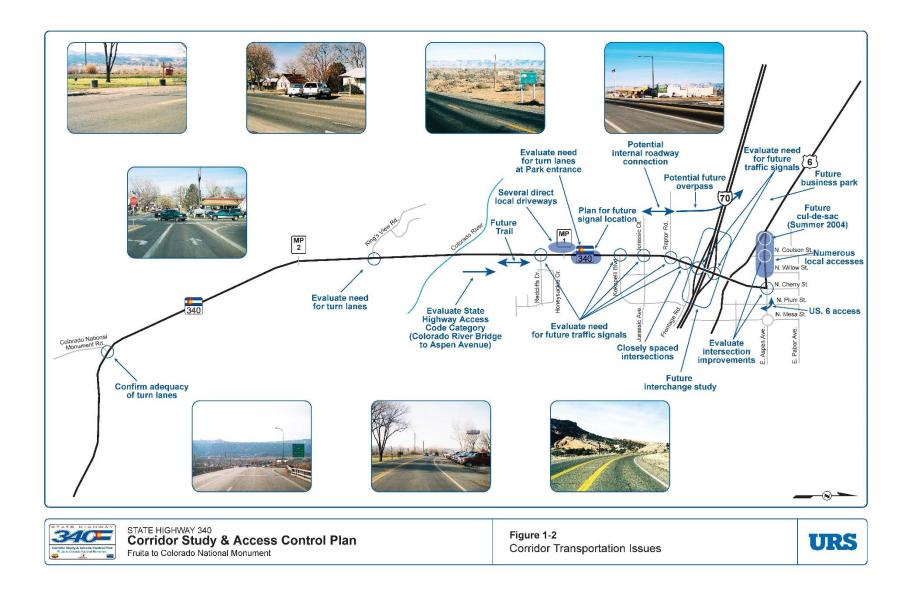
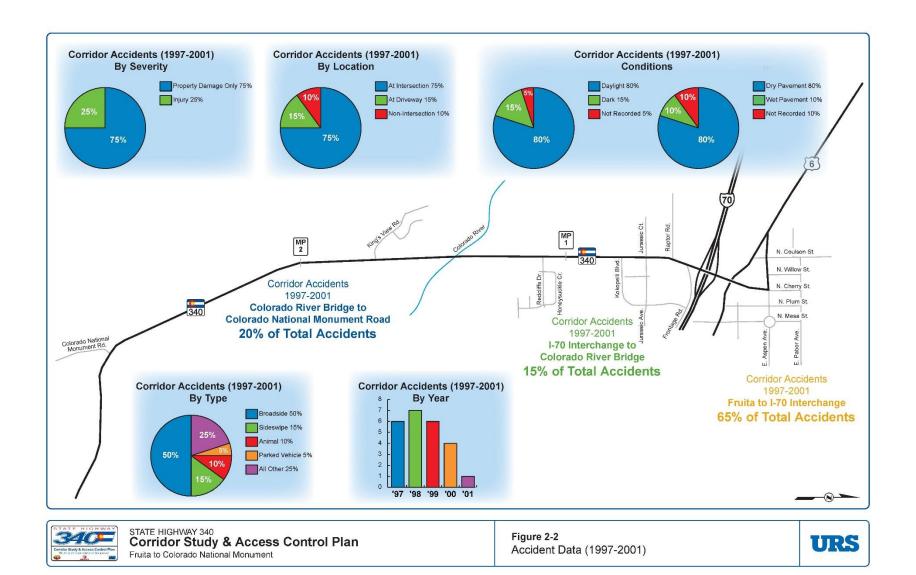


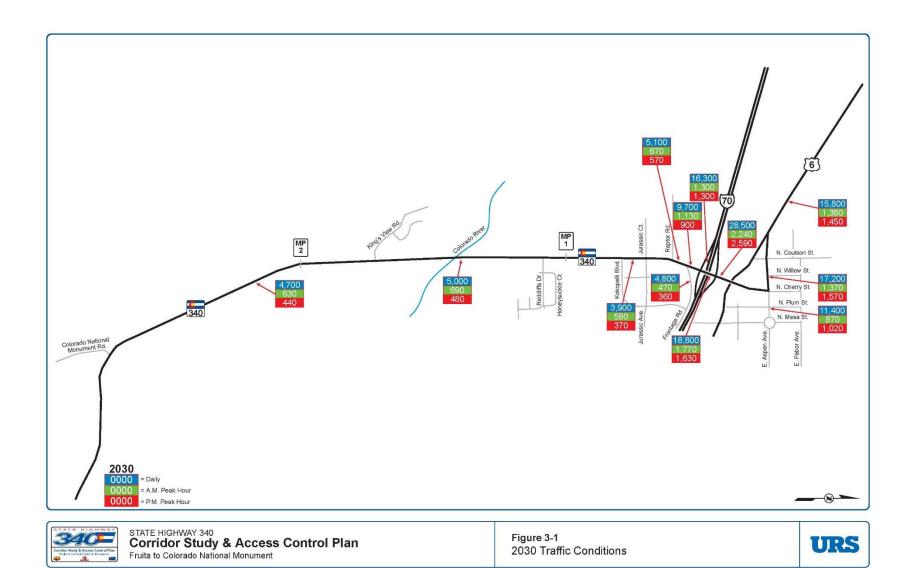


Figure A Proposed Access Points









### **Payment Receipt Confirmation**

### Your payment was successfully processed.

### **Receipt Contact Information**

Contact Name City of Fruita

Community

Development

Contact Phone (970) 858-0786

Contact Url ht Contact Address 32

https://www.fruita.org/cd 325 E. Aspen Avenue Fruita, CO 81521

### **Transaction Summary**

Receipt Confirmation

Description	Amount
City of Fruita ePermitting Online Payment	\$625.00
Service Fee	\$14.83
Colorado.gov Total Price	\$639.83

### Transaction Detail

The following amounts will be remitted back to the agency. An additional service fee will be applied after selecting a payment method. The service fee is \$.75 plus 2.25% of the order total for credit card payments or \$1 for electronic check payments.

SKU	Description	Unit Price	Quantity	Amount
1	City of Fruita ePermitting Online Payment	\$625.00	1	\$625.00
	Service Fee	\$14.83		\$14.83
			Total	\$639.83

This online service is provided by a 3rd party working in Partnership with the state of Colorado. The price of items purchased through this service includes revenue used to develop, maintain, and enhance the state's official web portal, Colorado.gov.

### **Customer Information**

**Customer Name** 11/14/2023 Nathan Abbott **Receipt Date** 6554045c-8f72-443a-**Local Reference ID Receipt Time** 04:36:57 PM MST

8258-92a3ed3fdd91

## **Payment Information**

\*\*\*\*\*1484 Credit Card Credit Card Num... **Payment Type Credit Card Type** VISA Order ID 219290296

> Name on Credit ... PAT HADJINICOLAOU

### **Billing Information**

**Billing Address** 5500 Greenwood **Phone Number** 3037708884

Plaza Blvd Suite 200 This receipt has been emailed to **Billing City, State** Greenwood Village,

the address below. CO

80111 Billing Zip/Posta... **Email Address** nathanabbott@galloway Country US

us.com

November 13, 2023

#### To Whom It May Concern

I, Karen Briggs and Daryn Miller (The Property owner), do hereby declare that the information contained in this application, the attached schedules and forms, the attached plans and specifications, and other attached documentation is true to the best of my knowledge. If a permit is granted, I agree to comply with Local Ordinances and the conditions of the permit. If the owner is a corporate or partnership, I have the authority to bind the corporation or partnership by signing off, I understand that it constitutes a legal signature confirming that I acknowledge and agree to the above declaration.

Karen Briggs

Co-owner K&D Enterprises, LLC

Daryn Miller

Co-owner K&D Enterprises, LLC

### **Exhibit C**

### **Staff Report**

[see attached]



### PLANNING & DEVELOPMENT DEPARTMENT STAFF REPORT DECEMBER 12, 2023

Application #: 2023-35

Application Name:City Market Fueling StationApplication Type:Conditional Use Permit

Representative: Galloway

Location: 437 W. Aspen Avenue

Zone: Downtown-Mixed Use (DMU)

Description: This is a request for approval of a Conditional Use Permit for a drive-

through facility for a retail fueling station on approximately .52 acres.

#### **Project Description:**

This is a Conditional Use Permit (CUP) application to allow for a drive-through type use in the Downtown Mixed-Use (DMU) zone. Section 17.05.090 the Land Use Code states that drive-up/drive-through Facilities require approval of a CUP. The overall use of the property is proposed to be a City Market Fueling Station. Fuel Sales are an allowed land use in the DMU zone and the primary purpose of this CUP application is to review the approval criteria for Conditional Uses in accordance with Section 17.09.030. As for process, Conditional Use Permits are reviewed by Staff and the decision-making body is the Planning Commission.

Currently, there are two (2) buildings and a parking lot on the property. On the southwest corner of the property is a 1,700 square foot building that has been used for different types of business uses over the past 10 years. The other building on the property is a 5-unit residential building.

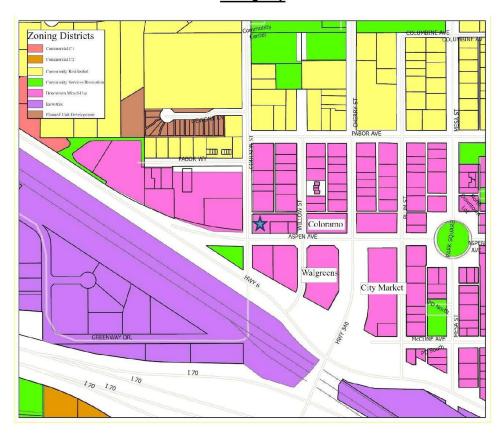
In order to make an informed decision on the Conditional Use Permit application, Staff has requested that the applicant provide a Site Plan (included with the Staff Report). The purpose of the site plan is to ensure that if the CUP is granted, that the site circulation and layout can work. If the CUP is approved, the applicant will then go through a Site Design Review Application process which can be approved administratively. With that said, the approval criteria and Staff's review of this application only pertains to the drive-through portion of the business.

### Surrounding Land Uses and Zoning:

Land Uses surrounding the subject property consist of a mix of residential and commercial. The Fruita Recreation Center and Family Health West Hospital are to the north along with residential land uses. The Walgreens, Balanced Rock Motel, and City Market are to the south and southeast.

The Burger King and Coloramo Federal Credit Union are located to the east. Zoning surrounding the subject property consists of Downtown Mixed-Use (DMU) and the Comprehensive Plan identifies this area as the City's Core.

### Zoning Map





#### 2022 Location Map

### CONDITIONAL USE PERMIT APPROVAL CRITERIA

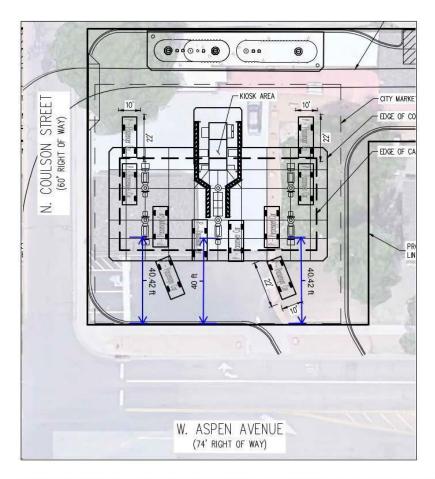
A conditional use is defined as a use which, because of its unique or varying characteristics, cannot be properly classified as an allowed use in a particular zone district.

Section 17.09.030, Conditional Uses, of the Land Development Code requires that a conditional use be approved after considering the following:

1. The proposed use is consistent with the provisions and purposes of this Title, with the purposes of the zone in which it is located, and with the city's Master Plan;

Based on this review, the proposed conditional use as it relates to the proposed fueling station can be consistent with the provisions and purposes of this Title (the Land Use Code), which is to promote the health, safety and welfare of the present and future inhabitants of the community.

The Land Use Code identifies the subject property as being in the Downtown Mixed-Use Core area. Section 17.13.050 (A)(2)(c) of the Land Use Code states that new drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue. The plans submitted show a setback of approximately 40 feet. This portion of the code has been met.



Section 17.37.070 (B) states that, "For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide." The Site Plan provided shows two (2) stacking spaces per fueling station/bay will work and they meet the measurement requirements. It's unclear from the submittal that the additional stacking space for the exit side will work. It is Staff's

interpretation that the Code requires 3 stacking spaces per bay. If the applicant can show the additional exit side space or a total of 3 stacking spaces per bay, then this part of the Land Use Code can be met.

As for vehicular circulation, the proposed plan shows access from Willow Street, Aspen Avenue, and Coulson Street. The access from Aspen Avenue will need to be reviewed and approved by CDOT and as its proposed right now, the Aspen Avenue access is only a right in turn, similar to the Coloramo access from Aspen Avenue.

The purpose of the Downtown Mixed-Use zone is to maintain and enhance downtown as a vibrant, pedestrian-oriented commercial and residential area. The Master Plan supports development and redevelopment in the downtown area with an emphasis toward promoting businesses that support existing and future associations that advocate for the downtown area. The Fruita City Market has been a key focal point in the City's downtown area for many years. Additionally, the Master Plan supports and encourages revitalization of existing areas in the Downtown with a focus on areas where the community can see the benefits of redevelopment. The Land Use Code is one of the main documents used to implement the goals and policies of the City's Master Plan. This criteria has been met.

# 2. The proposed use is compatible with existing and allowed uses surrounding or affected by the proposed use, pursuant to the criteria in Section 17.05.080 (C); and

Section 17.05.080 (C) requires that a proposed development be compatible with adjacent properties, considering both existing and potential land uses on adjacent properties. For all land uses, "compatibility" is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the other use(s). The city decision-making body may consider other uses existing and approved, and may consider all potential impacts relative to what customarily occurs in the applicable zone and those which are foreseeable, given the range of land uses allowed in the zone. The review authority may require conditions of approval to promote compatibility between a proposed use and existing uses in the vicinity to ensure compatibility.

It appears that this proposed drive-through facility will be compatible with surrounding land uses. This area is considered the Core area, which supports a number of allowed land uses that can be considered as compatible with a drive-through fueling station like the one proposed. It is important to consider that the property directly to the west has been approved for an 88-unit multi-family complex which consists of 3 apartment buildings and 16 townhome style residential units. The 1st of the 3 apartment buildings is currently under construction. In addition to multi-family, land uses supported in the Core area are restaurants, personal services, retail, hotels/motels, medical and dental clinics, and childcare.

There are many other businesses along Aspen Avenue in this area that have a drivethrough component to them. The most recent is the Coloramo Federal Credit Union, and others are the Walgreens pharmacy, the City Market pharmacy, the Sinclair gas station, and the Burger King.

This criterion can be met.

#### 3. The proposed use will not materially endanger the public health or safety; and

If the drive-through facility is placed in a manner to provide for adequate vehicle stacking on the subject property, then the proposed use doesn't appear that it will endanger the public health or safety. The project, if approved, will need to address concerns from CDOT. Some uses in the Downtown Mixed-Use zone generate more traffic than other uses. If the principle use were to change, a traffic study may be required in order to justify whether the use, in conjunction with a drive-through, can be safe. This criterion can be met.

4. Public services and facilities including, but not limited to, transportation systems, wastewater disposal and treatment, domestic water, fire protection, police protection, and storm drainage facilities are adequate to serve the proposed use.

Public services and facilities have been available to this property and will continue to be available to this property. The drive-through facility is expected to put more pressure on the adjacent transportation system, most likely Willow Street and Coulson Street, however these roadways are designed and constructed to handle a large amount of daily traffic. Other public services and facilities are not expected to have a substantial increase. This criterion has been met.

### **Legal Notice:**

Legal Notice (minimum of 15 days prior to Planning Commission)		
November 22, 2023	Post Cards	
November 22, 2023	Sign Posting	
November 22, 2023	Legal Ad	

#### **Review Comments:**

CDOT has provided written comments that require a Traffic Study and an access permit for the connection to Aspen Avenue, this comment will need to be addressed with the Site Plan application if the CUP is approved.

#### **Public Comments:**

No written public comments have been received regarding this application.

### **Staff Recommendation:**

Because all approval criteria either <u>have been met or can be met.</u> Staff recommends <u>approval</u> of application 2023-35 with the condition that all review comments and issues identified in the Staff Report be met.

### **Suggested Motion:**

Mr. Chair, I move to approve application 2023-35, the City Market Fuel Station Conditional Use Permit, with the condition that all review comments be adequately addressed with the Site Plan application.

### Exhibit D

### **Planning Commission Hearing Minutes**

[see attached]

Planning Commission Meeting

December 12, 2023

Commissioner Hearns said that what she reviews is what she would like for the community and how she interpreted the community plan. She loved that they were speaking to open space for Commissioner Fabula's questions. She asked if they were interested in a different planting schedule that could be more of a community amenity.

Mr. Austin stated that they were open and if the city wanted us to look at different plant materials, they could do that.

Commissioner Biddle asked what the build out would look like? Would it be a quick process or in phased?

Mr. Austin said that they included a phasing plan with their application. He stated that it would depend on the market conditions. Their initial approach would be to build out the apartment units first and then move into the row homes. It will be market driven and they are hoping to get started next fall with construction.

Commissioner Hearns asked about the storage units. She wanted to know how many and how large they would be.

Mr. Austin responded that they were smaller units. Their client has them on other projects that they have done in Grand Junction. It is mainly to have room to store bikes and gear.

Commissioner Hearns liked the idea. She couldn't find the number of units.

Mr. Austin said that there were 35 total.

Commissioner Hearns felt strongly that this plan was thoughtfully designed and meets the four criteria that are required for a PUD Site Plan development.

COMMISSIONER HEARNS MOVED THAT BECAUSE THE APPLICATION MEETS OR CAN MEET ALL THE APPLICABLE APPROVED CRITERIA FOR A SITE DESIGN REVIEW, SHE MOVED TO RECOMMEND TO THE CITY COUNCIL WITH FRUITA THE CONDITION THAT THE APPLICATION ADEQUATELY RESOLVE THE OUTSTANDING REVIEW AGENCY CONERNS WITH THE FINAL PUD APPLICATION AND/OR APPROVAL OF A BUILDING PERMIT.

COMMISSIONER MCGUIRE SECONDED THE MOTION

MOTION PASSED 6-1

There was a short recess.

Mr. Henry Hemphill gave the Staff presentation.

Application #: 2023-35

Application Name: City Market Fueling Station

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#### Planning Commission Meeting

December 12, 2023

Application Type: Conditional Use Permit
Applicant: Nathan Abbott and Galloway
Location: 437 W. Aspen Avenue

Description: This is a request for approval of a Conditional Use Permit for a drive-thru

facility for a retail fueling station on approximately .52 acres.

Mr. Henry Hemphill gave the Staff presentation.

Slide 1 – Introduction

Slide 2 – Application Details

Slide 3 - Legal Notice

Image of post card and 350' buffer zone.

Slide 4 - Legal Notice

- Post Cards:
  - November 22, 2023
- · Sign Posting:
  - November 22, 2023
- Newspaper:
  - November 22, 2023

Slide 5 – Zoning Map and Aerial View

Slide 6 - Review Criteria

- Section 17.09.030
- 4 criteria to consider.
  - Consistency with the Land Use Code, the purposes of the DMU zone and the Comprehensive Plan.
  - Compatibility with surrounding area.
    - Existing uses and allowed uses.
  - The drive-through should not endanger the public health or safety.
  - All public services are available to the subject property.

### Slide 7 - Vehicle Stacking

Image of proposed stacking and description.

 "For service uses (such as gas stations, quick lube and car washes), two stacking spaces shall be provided for each bay on the entrance side and one such space on the exit side. Stacking spaces shall not interfere with other required parking areas. Stacking spaces must measure at least twenty-two (22) feet long by ten (10) feet wide."

Slide 8 – Aspen Avenue

#### Section 17.13.050 (A)(2)(c)

• New drive-up/drive-through facilities (e.g., windows, ATM's, Etc.) are not permitted in the Downtown Core within forty (40) feet of Aspen Avenue.

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**Planning Commission Meeting** 

December 12, 2023

Slide 9 – Review Comments & Public Comments

- REVIEW COMMENTS:
- CDOT provided comments regarding access from Aspen Avenue.
  - Traffic Study & Access Permit
- PUBLIC COMMENTS:
- Written comments received on 12/11/23. Entered into the public record.

Slide 10 – Suggested Motion – Pg. 143

Mr. Chair, I move to <u>approve</u> application 2023-35, the City Market Fuel Station Conditional Use Permit, with the condition that all review comments be adequately addressed with the Site Plan application.

Mr. Hemphill concluded his presentation.

Commissioner Biddle thanked him.

Mr. Nate Abbott with Galloway, representative of City Market and Heslin Holdings, joined the meeting via Zoom. He introduced his team and gave the presentation. He showed the location of the project and the proximity to the existing City Market to give an understanding of where it is located. He stated it was at the northeast corner of Coulson and Aspen and two blocks west of the existing City Market as shown on the map. He zoomed in to show the lot configuration and he explained that it was one existing parcel, about a half-acre in size. What they were proposing here is a Conditional Use Permit for a City Market fuel station to support the existing City Market with 5 multiproduct dispensers and a small kiosk. He added that City Market felt that the fuel station would enhance their long-term financial health, viability, and commitment to the community as it would be a significant investment to benefit the community and the grocery store. He brought up the site plan for viewing. He continued that it was not something that they were looking at gaining approval on today. It would be a separate application, but it gave them a sense of the general layout of the small kiosk which was called out on the map, the edge of canopy and the property line. He showed three points of access, all three are existing, one-off West Aspen Avenue and two additional access points off North Coulson and one off of North Willow Street. He spoke more about the access off West Aspen is currently a right in only. They had not met with CDOT yet, but it is something that they would be doing if they get approval of the CUP. He noted that CDOT calls out for that access point to be right in / right out not just right in only. He felt that the layout could work with the existing access point off Aspen Avenue and two additional access points off Coulson and Willow. He showed a dash line on the map, he stated that they were calling it out as the fueling circulation limits. He talked about stacking for vehicles looking to fill up with fuel. He added that they wanted to make sure that there was adequate and safe circulation throughout the site to provide the highest level of customer service and client experience. He showed two fuel dispensers on the right, two on the left and one in the middle and a small kiosk area that one can walk up and pay as well. On the back he showed a tanker truck, this was a fuel delivery truck that is proposed to come off Willow through the back of the site to dispense fuel into the underground storage tanks, which are the oval shapes on the northwest corner and then exit back onto Coulson Street and then back on

Aspen and onto I-70. He mentioned Mr. Hemphill's presentation and that fueling is a permitted use within this area. He added that it was the drive-up component of this permitted use that they were seeking a Conditional Use Permit for. Mr. Abbott talked about the approval criteria. He showed the four Conditional Use criteria. The first one is the proposed use is consistent with the provisions and purposes of this title with the purposes of the zone to which it is located with the City's Master plan. He added that there were two sections that Mr. Hemphill alluded to that they had to meet. The first is the 40' setback of any drive through uses from Aspen which they felt was consistent based on the layout of their plan. The second was the stacking spaces as well. He stated that they were showing two stacking spaces at each one of the outer pumps and they do not interfere with the other required parking areas which was one of the criteria here. He showed the stacking along each one of the outer fueling pumps with enough access to be maintained along the northern portion of the site for truck access and circulation. He showed the setback off West Aspen at just over 41 1/2' or so. He stated that he felt the proposed use is compatible with existing and allowed uses surrounding the property. He stated that West Aspen Avenue was highly commercialized and commercial developments along with residential development continues to go to the west. He added that they were surrounded by other drive through uses, Walgreens, Coloramo Federal Credit Union, Burger King, all have a drive through component as does the existing Sinclair adjacent to the existing City Market. He stated that they did not feel the proposed use would materially endanger the public, health, or safety as it relates to the drive through components. He thought it was important to note that there is no convenience store associated with this fuel facility and this limits the opportunity for pedestrian / vehicle conflicts within the site. They felt that they had adequate vehicle stacking and multiple points of ingress / egress to allow for safe circulation throughout the site. He continued that public service and facilities, transportation systems, wastewater disposal treatment, domestic water, fire protection, police, storm, and drainage facilities are adequate to serve the proposed use. He said that this is an existing developed property with all services servicing the site. They would be going through a full construction drawing submittal process should the Conditional Use Permit be approved in conjunction with their site plan approval. He stated that they would be digging into those details and how it lays out with the site plan approval process. He concluded his presentation and asked for questions or comments.

Commissioner Biddle opened the meeting to public comment. There were none. He closed this portion of the meeting and opened it to Commissioner discussion.

Commissioner Hearns commented about the zoning and how it allowed fueling stations, but the Conditional Use Permit was for the drive through. She was trying to envision how they would have a fuel station without a drive-through.

Mr. Hemphill stated that it did beg that question. The reason for the Conditional Use Permit is not every type of Conditional Use, like not every fueling station with a drive through makes sense on every property that is zoned Downtown Mixed Use. This is why the Conditional Use Permit needed to be considered site specific. He added that it was too unique of a use to allow it by right all the time. He added that if this were somewhere else along the highway, they probably wouldn't be having a Conditional Use Permit, it would work. The Conditional Use Permit is needed because it is more unique in characteristics than just the fuel sales.

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Commissioner Handley commented that the drive through basically allows the tanker truck to go into the site and leave the site.

Commissioner Hearns asked what the definition of a drive through was?

Mr. Hemphill responded that they would be driving up to a fuel station, being provided with a service from the business, and you drive away and not stay for too long. He gave the example of a restaurant as the opposite, you would park, go in and be served and be there for a while and then leave. That is why he thought a Conditional Use Permit is required for drive-through facilities for fuel stations because site circulation does matter and being able to get in and out efficiently makes sense for them to consider and for them to decide on.

Commissioner Hearns asked if it was possible to have a fueling station that is not a drive through?

Mr. Hemphill responded that it was probably not but because it is such a unique site characteristic, if they turned it or had a long narrow strip, it may make different sense. It may not work. The way that they have it configured is standard. He added that this was his opinion why a Conditional Use Permit is needed for drive-throughs or drive ups is because of their unique characteristics and it does not work for every property.

Commissioner Hearns asked if the Conditional Use Permit was approved to have a drive through, is that approval for any drive through or this specific one? Could they build some totally different structure that has a drive through? She asked what the technicality was?

Mr. Hemphill stated that a drive-through would be allowed.

Commissioner Hearns asked if the Conditional Use Permit ran with the land or the use?

Mr. Hemphill stated that it ran with the land. He did add that there were expirations on Conditional Use Permits if they are not used in a full calendar year.

Commissioner Fabula commented that consistency with the Code and compatibility in the Downtown Mixed-Use area is the things he struggled with the most. He added that the Downtown Mixed-Use area is the way it is today which means it has a lot of residential in it. Here they are trying to craft community growth in this part of town, and they get challenged with the idea of consistency and compatibility. He knew that with the existing uses of the land and the future allowed uses. This is the piece that gave him heartburn with this type of development. He said that he did not envision a gas station there. He felt that there were going to be a lot of changes to this part of town, he knew that if they went through this part of town and assigned the date that every structure was built, this isn't the oldest, but it is the residential section that is old and there is a good chance that it won't be there in 10-20 years because of its age. Here they have this first application coming forward for something that truly does fall into this Downtown Mixed-Use category, something that he felt would generate tax revenue. They have talked about commercial for other projects and they bemoan the fact that don't have enough commercial. He rarely fuels up in Grand Junction and all his fuel ups would be in Fruita if this were to take place.

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He added that there were some strong benefits for the community, but he has heartburn on the idea how they would juggle this consistency and compatibility when they are trying to grow the downtown area. Those were his comments and he thanked Mr. Abbott for his presentation. He did understand that there were three accesses to the property, and he assumed that all three accesses would be ins and outs. He asked if this was correct?

Mr. Abbott thanked him for the question. He said that the two existing access points to the east and west onto Coulson and Willow will be both for ingress and egress. Currently as shown they have an ingress or right in only to the site as it is laid out from Aspen. They will be seeking what is called a right in and right out so they can turn as they are going west bound on Aspen, they can turn right into the site, and it would also allow for a right out of the site as well to continue to go westbound on Aspen. He continued, currently as it is laid out it is a right in only off of Aspen, but the other two access points would be full movements into and out of the site.

Commissioner Fabula stated that most traffic would enter from West Aspen, take the right in, they would fuel and then exit either to the east or to the west.

Mr. Abbott confirmed this or come off Willow. He admitted that they had not done a traffic study yet, but it was their assumption that a lot of traffic would be coming from the store to the east westbound along Aspen and then pulling in off Willow or Aspen.

Commissioner Fabula thanked him. He asked if this was currently an alley in the back right now?

Mr. Hemphill said it was. He said it was unimproved, just road base or gravel.

Commissioner Fabula stated that he knew that they had their standard requirements for improved alley access. He asked if there would be any type of visual element that is going to shield the properties to the north or to the south from this new traffic?

Mr. Hemphill stated that they would expect them to submit a landscape plan that would help deflect some of the visual aspects associated with being close to a fuel station like this. They haven't gotten down to that site specific detail. He felt it was important to consider. He stated that it was in the Code to require certain visual aspects to be taken into consideration when they are adjacent to a residential property. It would be on their minds as the application moves forward.

Commissioner Fabula said that he didn't want to sound negative about his comments about consistency and compatibility because he thought the reality is that most of the properties in the Downtown Mixed-Use area are going to change over the next 50 years. What they need to remember is how do they manage that change and how do they help it blend in? He didn't like light pollution. He spoke about his own experiences with light pollution in the Downtown area. He admitted that he would never go to a poorly lit gas station. He added that as a community we will go through growing pains of growing into the Downtown Mixed-Use area. Noise, smells, light, and traffic are those are things that they must become accustomed to. He asked Mr. Abbott to keep this in mind and those things reach further than the property line.

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Commissioner Handley commented on the properties directly to the north have a large lawn area. He felt that there was a good deal of separation from the alley to the structures. He spoke about the character of that section of town that is already charted to change. He talked about the auto barn property, the old trailer court that was there and this was going to be a new multi-unit development. He agreed that the character of this part of town has already been approved for substantial change and he would expect many of those properties in that area will be of another use within 10-15 years.

Commissioner McGuire asked if they per Commissioner Hearn's comments on the last item, are they looking at traffic in this instance or is it something for the city?

Mr. Atkins responded that they would not be looking at it. He added that the review comments that came from CDOT, Aspen west of 340 to Coulson is part of the 340 system. This is how you get off 340 and make it to Highway 6. That is controlled by CDOT, and they want to see a traffic study and they want to see a queuing study. He added that they did not want traffic to be blocked out onto Aspen which creates a safety issue. Those two things must occur as part of their application as it moves forward.

Commissioner McGuire asked when they did the study if they would be asked if they would be looking at the development of the property where the auto barn was as well and how both of those new development potential properties would impact together?

Mr. Atkins stated that they should because they know it is coming. He said it was an approved project.

Commissioner Handley commented that it was encouraging for City Market to financially justify an additional investment in the community. He said it was a positive step for a grocery store expansion sometime in the not so distance future.

Commissioner Hummel said that he struggled with this one. He couldn't figure out how a fuel station could happen without a drive through. Also, the compatibility question. He understood that this area was slated for redevelopment over the next 10-15 years, but he couldn't help but think of those 3-4 residences right there and what their impact would be over those next 10-15 years. Going back to why it is split out as a Conditional Use for a drive through, the idea that not all uses are appropriate within the zoning parcels. He thought it was interesting that they have this opportunity to compare the land use for this compatibility as it is outlined in 3 in Chapter 17.05. for all land uses compatibility is provided when a proposed land use can coexist with other existing uses in the vicinity without one use having a disproportionate or severe impact on the others. He continued, traffic aside he thought the light levels of any kind of drive through would adversely affect those residences for the next 10-15 years until they got purchased by someone and turned into a commercial or multifamily development. He went back to the Comp Plan and read the downtown future land use description. He continued that the intent is for the area is to be vibrant, pedestrian oriented commercial and residential area and act as the civic heart of the community. It should have inviting streetscapes and multimodal corridors as a priority to encourage walking and biking to and from downtown destinations. He wondered if drive throughs per this land use are compatible with these ideals. A drive through inherently

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crosses a pedestrian path and it is going to create conflict. If they don't have an onsite sales store, they are not creating onsite issues between traffic and pedestrians. He struggled with this and felt that there is a certain amount of conflict between the drive-through and the core values of what they wanted this downtown area to be.

Commissioner Hearns said that she struggled with this as well. She said she looked up the purpose of Title 17 because it was part of criteria 1. The purpose is to lessen congestion, avoid effects of public nuisances and negative impacts. Another purpose was to enhance the tax base. She said that she walked regularly from Circle Park to Walgreens and once she crossed the intersection at the light, she doesn't feel safe as a pedestrian. When she thought about the Future Land Use Map, she didn't feel encouraged to keep walking to the park or keep riding her bike to the trail and she felt strongly that a drive through is not appropriate if that is her highest goal for pedestrian oriented things. They also have a specific goal for City Market to be here and reduce people's trips to Grand Junction. She mentioned that she had expired City Market fuel points all of the time because she wouldn't drive to Grand Junction to use them. She felt other families would use them. She wondered if that goal in enhancing their tax base was more important than her walking all the way to the CO-OP. She wanted them to discuss this.

Commissioner Handley talked about the new development in the old auto barn area one of the justifications for that is that it is within walking distance of the downtown area. They would have a lot of people living in that area that want to walk directly across the egress area for the gas station.

Commissioner Hearns said that she read the Staff report and listen to the presentation that says it is compatible because we have four others drive throughs, but she felt strongly that this spoke to the disproportionate number of drive throughs and adding another doesn't necessarily make it compatible it makes it disproportionate.

Commissioner Hummel agreed with her. He also said that it is a past use where it was developed under previous land use goals that had those drive throughs in the area. He asked if they wanted to go back to the current core values or do they want to keep increasing these previous things that they have been building 20-30 years prior to their new stated goals? Do they want to adhere to what they had defined as the new land use and growth, or do they want to keep doing the same thing they have been doing?

Commissioner Handley stated that one could envision in the near future when the multiunit development is complete and there are several people living in that area if this wasn't a gas station, what other use might it be? Would that potential development be more compatible with the vision they have for the downtown area?

Mr. Caris said that he appreciated the incongruent nature of the conditionally allowed drive up or drive-through and a by right use for a fuel station. He provided context, his suspicion was that they were okay with the inconsistencies there to not create legal and conforming uses that had already been built. If they were to redevelop, they would not be allowed to redevelop in their current form which was a discussion point not necessarily specific to this situation, but it was talked about when they updated the Code not when they updated the Comp Plan. He thought for

December 12, 2023

all the reasons they are having a thoughtful discussion about the aspirational goals of that, he wanted to provide some context to a spec that since they have some adjacency and some compatibility that was part of the conversation. And to provide a degree of flexibility for an individual user, that as Commissioner Hearns suggested is a purpose statement that is in the Comp Plan.

Commissioner Fabula said that he knew that the traffic study had to take place and he understood that CDOT had to review and approve that traffic study and the traffic study would come back with findings. They assume that those findings will be fulfilled, and the applicant would have their drive through Conditional Use Permit in hand, they will have the property in hand and will move onto the next step. They won't see that traffic study here before the Commission.

Mr. Caris said that this was correct.

Commissioner Fabula assumed that they don't fail traffic studies, they just recommend something, and they say it isn't financially feasible or it doesn't fit for they won't move forward.

Mr. Caris stated that CDOT has denied access in the past. He added that Coloramo access was not a foregone conclusion. He thought that the traffic studies are not the same thing.

Mr. Atkins said that the Coloramo access off Aspen almost didn't happen. He questioned whether it was usable. It is 180 grade turn because they felt they needed access off Aspen. He thought this application could end up where they physically must access from the alley and exit onto Aspen to keep the queuing from being an issue. He brought up Coloramo, he stated that they ended up needing to put in a median to prevent people from trying to left turn out. He also talked about the existing City Market and Burger King. He said that these are two examples of a failure in the fact that the pork chops do not function. He added that there were plenty of people that will turn into City Market from a westbound left. The pork chops are not big enough to prevent that movement from happening. He added that the same thing is happening for the left out that occurs at City Market and Burger King has the same problem. He continued, CDOT would most likely force this application to put that left turn median in to prevent that from happening and it is a safety thing.

Commissioner Hearns asked the other Commissioners what they thought was more important, pedestrian oriented downtown or economic vitality? She reminded them that the Conditional Use Permit ran with the land.

Commissioner Mulder felt that Fruita needed the fueling station. He added that it is what City Market has needed to put in the City of Fruita and he thought this is exactly what they need for Fruita.

Commissioner Biddle stated that they should look for the balance. He felt that there was a middle ground in there somewhere. He asked if they were in the middle ground or were they too far one side or the other? He felt that they were in the middle ground for both.

December 12, 2023

Commissioner Handley said that he was thinking about the entire community of Fruita. He asked if they were to deny City Market the ability to build a gas station there, would it discourage them from any other future development like expanding the grocery store? Do they want a walkable city or more financial vitality? He was with Commissioner Mulder; this is a project that Fruita needed for the consideration of future market development.

Commissioner Hummel countered that idea stating that for something to be feasible for City Market they are going to do it whether they approve it. (inaudible). He talked about the prioritizing of car traffic and travel for the last 70 years in this country. He felt that they needed to help pedestrian design along. He asked if this was the place to do it. He answered, probably not because there are several other drive throughs. He questioned the location. He agreed in terms of balance.

Commissioner Biddle stated that Staff has heard our conversation about pedestrians and will keep that in mind for projects moving forward.

Commissioner Fabula said that for him it wasn't about the pedestrian and the non-pedestrian. It was the fact that they have been trying to make updates to promote the development of their Downtown Mixed-Use zone. He thought that it was ambiguous what they looked like. He thought that none of them pictured going downtown and getting a snicker and gas for the car. He questioned whether it was their job to dictate what businesses come forward and try to start a venture. He added that if this was a drive through with some amazing burgers, they might have a totally different concept or feedback on this drive through application. He said that he was hung up on the fact that it is a gas station. He knew that this was not why he was there. He is not there to dictate what people choose or to say what the right business venture is to bring to Fruita. He was disappointed and was hopeful that it was going to be something different than a gas station. Will he use the gas station? Probably. They are running out of frontage on Aspen to be developed and this is going to lock up this lot for 20 years. There are two houses to the left, he was surprised they weren't there, and he felt that this was not what they would want as their next-door neighbor. They are going to take an alley and turn it into something that runs 24 hours a day. He did not feel this was compatible for residential. He asked if it was compatible for Downtown Mixed Use and the future development of Downtown Mixed Use? He said it was. This is why he felt that there would be growing pains. All in all, it was the first application to come forward and he thought they would be able to make the traffic aspect work.

Commissioner Handley said that he was thinking about the last project they approved and talking about traffic, he felt that it did need to be one of their considerations. He concluded that this was a problem better addressed through their overall circulation plan. If these are important issues and critical to the City, rather than them addressing it project by project, they need to be working with the City staff and updating the circulation plan and making it more amenable to their pedestrian traffic and better road infrastructure for the traffic they do have.

COMMISSIONER MULDER MOVED TO APPROVE APPLICATION 2023-35 THE CITY MARKET FUEL STATION CONDITIONAL USE PERMIT WITH THE CONDITION THAT ALL REVIEW COMMENTS BE ADEQUATELY ADDRESSED WITH THE SITE PLAN APPLICATION

December 12, 2023

### COMMISSIONER HANDLEY SECONDED THE MOTION

### **MOTION IS DENIED 3-4**

#### I. OTHER BUSINESS

- 1. Community Development Updates
  None
- 2. Visitors and Guests None
- Other Business
   Commissioner Mulder brought up School District 51 and what they intended for the schools in Fruita with a discussion that followed. Commissioner Fabula was thanked for his time on the Planning Commission.

### Adjournment 8:34 pm

Respectfully submitted,

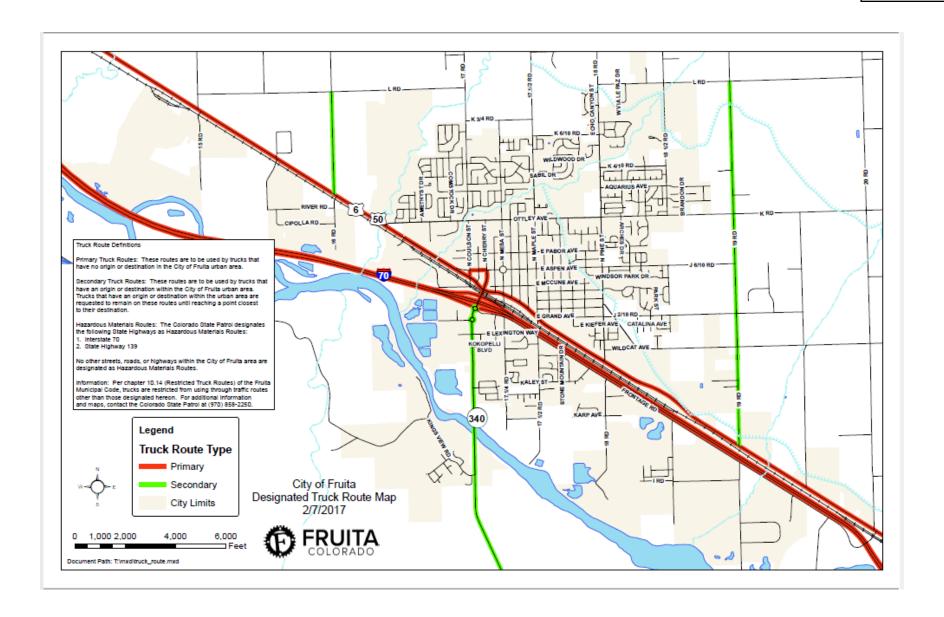
Kelli McLean

Planning Technician, City of Fruita

# Exhibit E

# **Designated Truck Route Map**

[see attached]



# Exhibit F

# **Letter from City Market**

[see attached]

Section 8. Item A.



65 Tejon Street
Denver, Colorado 80223

Dan Caris
Planning Director
City of Fruita Community Development Department
325 E. Aspen Avenue
Fruita, CO 81521

RE: Revenue Generation of City Market Fueling Station, Application # 2023-35

Dear Mr. Caris,

I am writing in support of MJ Property Investors LLC's (the "MJ Property Investors") application (the "Application") for a conditional use permit to develop a fueling station with a drive-through fuel facility (the "Fueling Station") on the property located at 437 W Aspen Avenue in Fruita, Colorado (the "Property"), and MJ Property Investors' subsequent appeal to City Council of the Planning Commission's denial of the Application.

The proposed Fueling Station will directly support the existing City Market grocery store located two blocks away. Fueling stations that accompany City Market grocery stores have historically demonstrated a significant increase in revenue for our grocery stores. I kindly request you to consider this proposal and its potential benefits for our organization and the community of Fruita.

By offering fuel alongside a comprehensive range of grocery products, we can attract a larger customer base, leading to increased footfall in our store. This, in turn, will result in higher sales and revenue generation at our existing grocery store, allowing City Market to expand and grow its presence of food and grocery shopping options within Fruita. The addition of the Fueling Station will provide a convenient one-stop destination for our customers' needs.

The Fueling Station will also provide an opportunity for cross-promotion between our grocery store and the Fueling Station. Customers who visit our Fueling Station may be enticed to explore the grocery store and make purchases. Similarly, existing grocery store customers will be encouraged to use our Fueling Station, enhancing customer loyalty, thus creating a mutually beneficial relationship between the two businesses. This synergy will undoubtedly foster growth and drive revenue for both entities.

Section 8, Item A.



65 Tejon Street Denver, Colorado 80223

Additionally, our loyal customers will appreciate the added convenience of being able to refuel their vehicles in Fruita while shopping for groceries, thus saving our customers time, effort and money. Our customers will be able to redeem their grocery shopping rewards points at a local City Market Fueling Station, rather than having to travel all the way to Grand Junction.

The proposed Fueling Station is imperative for our business growth in Fruita, and we kindly request your approval of the Application. Thank you for your consideration.

Sincerely,

# **Nicholas Tompkins**

Nick Tompkins | Senior Asset Manager Corporate Real Estate | The Kroger Co. Cell: 720-690-7476





1/12/2024

325 E Aspen Suite 155 Fruita CO 81521

Phone: 970-858-3663

Fax: 970-858-0210

E Mail fruita@fruita.org

Web Site fruita.org

City Manager's Office 970-858-3663

City Clerk/Finance 970-858-3663

Community Development 970-858-0786

Engineering 970-858-8377

Human Resources 970-858-8373

Public Works 970-858-9558

Recreation Dept. 970-858-0360

Brownstein Hyatt Farber Shreck, LLP Carolynne C. White, representative of MJ Property Investors LLC

Sent via Email to: tbailey@bhfs.com and cwhite@bhfs.com

RE: Letter of Appeal of the Fruita Planning Commissions Denial decision of a Conditional Use Permit, Application #2023-35

To whom it may concern,

The Fruita Community Development Department received your letter of appeal on January 10, 2024, regarding the decision for denial from Planning Commission on application #2023-35. I have reviewed your application and find the appeal application to be complete in accordance with Section 17.25.040 (A) of the Fruita Land Use Code.

If you have any questions or need more information, please call the Planning & Development Department at 970-858-0786.

Sincerely,

Dan Caris, Community Development Director

Cc: Mike Bennett, City Manager Mary Elizabeth Geiger, City Attorney Henry Hemphill, City Planner

## SUPPLEMENTAL LEGAL NOTICE – APPEAL APPLICATION

Section 17.25.040 (D) Scheduling and Notice of Public Hearings. The appeal shall be scheduled for a public hearing before the appropriate appellate body within forty-five (45) days of the date of the filing of the appeal. Public notice shall be provided in accordance with Subsection 17.07.040.E.

The application was deemed complete by Staff on January 12, 2024, and scheduled for a public hearing on February 20, 2024.

Section 17.07.040 (E) Public Notice. The Director shall establish a place and time certain for a hearing, if required by this Title, on the development application.

- 1) For every public hearing required by this Title, unless otherwise required by law or this Title, the city shall notify the public of such hearing by:
  - a) Publication once in a newspaper of general circulation within the city, at least fifteen (15) days prior to the public hearing; and

Completed and posted in the Daily Sentinel on January 24, 2024.

Published in Grand Junction Daily Sentinel on January 24, 2024

Location

Mesa County, Colorado

**Notice Text** 

## NOTICE OF PUBLIC HEARING

The Fruita City Council will hold a public hearing **Tuesday**, **February 20**, **2024** at **7:00 p.m.** at the Fruita Civic Center located at 325 E. Aspen Avenue, 2nd Floor . Details on how to access this meeting will be found at <a href="www.fruita.org">www.fruita.org</a> . The following item will be presented at the public hearing. The City Council will formulate a decision. Please check <a href="www.fruita.org">www.fruita.org</a> for more details. If you have an interest in the item please call 858-0786 or come to the Planning & Development Department office located at 325 E. Aspen Avenue to review the information in the file. Your appearance at the hearing is encouraged to ensure your concerns are accurately represented or you can write a letter outlining your concerns and submit it to the Planning & Development Department. Application: # 2023-35

Application Name: City Market Fueling Station

Application Type: Appeal of Planning Commission Decision

Applicant: Brownstein, Hyatt, Faber, Shreck, LLP

Location: 437 W. Aspen Avenue

Description This is a request to appeal the Fruita Planning Commissions decision of denial on December 12, 2023 for a request of a Conditional Use Permit for a drive-thru facility for a retail fueling station on approximately .52 acres.

Physically disadvantaged persons who wish to obtain information may call (970) 858-0786, the hearing impaired may call Relay Colorado at 1-800-659-2656, or visit our

website: www.fruita.org

https://gisentinel.column.us/search?activeNotice=r2ZahnKoxjtp9K2ZvJok-0

b) Posting notice at the Fruita City Hall, 325 East Aspen, Fruita, CO 81521, at least five (5) days prior to the hearing; and

Completed and posted at the Fruita City Hall on January 19, 2024.

c) Sign(s) shall be posted on or near the subject property, and shall be sufficiently conspicuous in terms of size, location and content to provide reasonably adequate notice to potentially interested persons of the land use action at a specified date and time. Such notice(s) shall be posted at least fifteen (15) days prior to the public hearing; and

Completed and posted on the subject property on January 19, 2024.



d) Written notice shall be mailed to property owners, as recorded at the office of the Mesa County Assessor, of property within three hundred and fifty (350) feet of the subject property, or more until a minimum of twenty (20) unique property owners are provided notice. Notice shall be provided at least fifteen (15) days prior to the public hearing. This requirement does not apply to applications that are not property specific such as Land Use Code or Master Plan amendments.

Completed and mailed out on January 19, 2024.

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The Fruita City Council will hold a public hearing **Tuesday**, **February 20**, **2024** at **7:00 p.m. at the Fruita Civic Center located at 325 E. Aspen Avenue**, **2**<sup>nd</sup> **Floor**. Details on how to access this meeting will be found at www.fruita.org. The following item will be presented at the public hearing. The City Council will formulate a decision. Please check <a href="www.fruita.org">www.fruita.org</a> for more details. If you have an interest in the item please call 858-0786 or come to the Planning & Development Department office located at 325 E. Aspen Avenue to review the information in the file. Your appearance at the hearing is encouraged to ensure your concerns are accurately represented or you can write a letter outlining your concerns and submit it to the Planning & Development Department.

Application # 2023-35

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Application Type Appeal of Planning Commission Decision
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City of Fruita

Planning & Development 325 E. Aspen Avenue

Fruita, CO 81521

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#### NOTICE OF PUBLIC HEARING

Section 8, Item A.

The Fruita City Council will hold a public hearing Tuesday, February 20, 2024 at 7:00 p.m. at the Fruita Civic Center located at 325 E. Aspen Avenue, 2<sup>nd</sup> Floor. Details on how to access this meeting will be found at www.fruita.org. The following item will be presented at the public hearing. The City Council will formulate a decision. Please check <a href="https://www.fruita.org">www.fruita.org</a> for more details. If you have an interest in the item please call 858-0786 or come to the Planning & Development Department office located at 325 E. Aspen Avenue to review the information in the file. Your appearance at the hearing is encouraged to ensure your concerns are accurately represented or you can write a letter outlining your concerns and submit it to the Planning & Development Department.

Application#

2023-35

Application Name

City Market Fueling Station

Application Type Applicant:

Appeal of Planning Commission Decision Brownstein, Hyatt, Faber, Shreck, J.L.P

Location

437 W. Aspen Avenue

Description

This is a request to appeal the Fruita Planning Commissions decision of denial on Recember 12, 2023 for a request of a Conditional Use Permit for a discount thru facility for a retail fueling station on

approximately 52 acres.

Physically disadvantaged persons who wish to obtain information may call (970) 858-0786, the hearing impaired may call Relay Colorado at 1-800-659-2656, or visit our website: www.fruita.org

Section 8, Item A.

City of Fruita Planning & Development 325 E. Aspen Avenne Fruita, CO 81521



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## **AGENDA ITEM COVER SHEET**

TO: FRUITA CITY COUNCIL AND MAYOR

**FROM:** DEBRA WOODS, DEPUTY CITY CLERK

**DATE:** FEBRUARY 20, 2024

**AGENDA TEXT:** EXECUTIVE SESSION – Discussion and possible action to consider a motion to

convene in Executive Session regarding personnel issues under C.R.S. Section 24-

6-402(4)(f) for the City Attorney's annual informal review

#### **BACKGROUND**

The City Council has reason to convene in Executive Session to discuss a personnel matter. To convene in executive session, state law requires that a motion with specific language requesting the executive session be passed with 2/3 of the governing body voting in the affirmative for said motion.

#### RECOMMENDATION

It is the recommendation of the Fruita City Staff that the Council:

 MOVE TO CONVENE INTO EXECUTIVE SESSION FOR DISCUSSION OF A PERSONNEL MATTER UNDER C.R.S. SECTION 24-6-402(4)(F) FOR THE CITY ATTORNEY'S INFORMAL REVIEW

## ANNOUNCEMENT NO. 1

ANNOUNCEMENT TO BE MADE BY MAYOR
AT THE BEGINNING OF THE EXECUTIVE SESSION
(MAKE SURE THE SESSION IS BEING RECORDED;
DO NOT STOP RECORDING DURING THE EXECUTIVE SESSION
UNLESS SO ADVISED BY LEGAL COUNSEL.)

It's February 20, 2024 and the time is For the record, I am the Mayor, Joel Kincaid. As required by the Open Meetings Law, this executive session is being electronically recorded.		
Also present at this executive session are the following persons:		
This is an Executive Session for the following purpose:	_•	
For discussion of a personnel matter under C.R.S. section 24-6	<b>5</b> -	

402(4)(f) for the City Attorney's Annual Informal Review

## **ANNOUNCEMENT NO. 2**

ANNOUNCEMENT TO BE MADE BY THE MAYOR BEFORE CONCLUDING THE EXECUTIVE SESSION (WHILE THE SESSION IS STILL BEING RECORDED)

discussion a	attest that this recording reflects the actual contents of the at the executive session and has been made in lieu of any written satisfy the recording requirements of the Open Meetings Law.
	I will have the Deputy City Clerk retain the recording for a 90-day period.
	OR
	(if City personnel was the
	subject of the session and
	was not present at the session)
	I will retain the tape in my possession for a 90-day period.
The time is	now, and we now conclude the executive
session and	return to the open meeting.
	(stop recording and return to open meeting)