

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

September 2, 2009

The City Council of the City of Grand Junction convened into regular session on the 2nd day of September 2009 at 7:00 p.m. in the City Auditorium. Those present were Councilmembers Bonnie Beckstein, Teresa Coons, Tom Kenyon, Gregg Palmer, Bill Pitts, Linda Romer Todd, and Council President Bruce Hill. Also present were City Manager Laurie Kadrich, City Attorney John Shaver, and City Clerk Stephanie Tuin.

Council President Hill called the meeting to order. Councilmember Beckstein led in the Pledge of Allegiance.

Citizen Comments

Melissa LeHew, 3182 William Drive, from Mesa State College, an at-large senator for the associated student government, spoke to the City Council regarding a campaign to make Mesa State College a smoke-free campus. They are having a forum next Thursday, September 10th at 6:00 p.m. in the Academic Classroom Building, Room 104.

CONSENT CALENDAR

THERE ARE NO ITEMS FOR THE CONSENT CALENDAR

ITEMS NEEDING INDIVIDUAL CONSIDERATION

Public Hearing—Regulating the Use of City Medians

The incidence of persons standing on City medians has increasingly become a problem for motorists using the streets. Persons that stand, sit or otherwise occupy medians create a dangerous situation for motorists, pedestrians and traffic. City Staff recommends that an ordinance be adopted to regulate use of the City medians.

The public hearing was opened at 7:04 p.m.

John Shaver, City Attorney, presented this item. He described the provision contained within the proposed ordinance; specifically, the ordinance will make it illegal to occupy a median except as a pedestrian. The ordinance is very specific as to the behaviors that are allowed within a median. The term median is defined by function; it is designed for the regulation of traffic. The ordinance is not geared toward solicitation, although solicitation is not an allowed activity within the medians. The purpose of the ordinance is for safety and prohibits all kinds of solicitations within medians.

Councilmember Kenyon said a citizen felt the ordinance would prohibit City workers from being allowed to work within the median. He asked the City Attorney to elaborate. City Attorney Shaver said an exception could be written into the ordinance but generally a worker would have safety equipment in place. Councilmember Kenyon was agreeable to not including all the exceptions.

Councilmember Coons inquired if holding political signs would be prohibited. City Attorney Shaver said yes, including for protesting or demonstration purposes. Councilmember Coons asked if sidewalks are included in the ordinance. City Attorney Shaver said sidewalks are not in anyway addressed in the ordinance.

Karen Kulp, 581 Heidel Street, affiliated with gjresults.com, read into the record a statement which included a standard definition of a median. Her concern was that the functional definition may encompass sidewalks. She also took exception to comments made in the newspaper by Councilmember Palmer. She then read her statement (Attached).

She felt that if the ordinance does not include sidewalks and the grassy areas behind them, it should specifically exclude them.

Sister Karen Bland, representing the Chiefs Advisory Council, referred to a letter the group sent supporting the ordinance but there were also suggestions on how to address the other issues regarding solicitation. She suggested there be a ten year plan to put an end to homelessness. There are models around the Country to follow.

There were no other public comments.

The public hearing was closed at 7:19 p.m.

Councilmember Todd said the ordinance is not against free speech, it is about safety to protect all.

Councilmember Coons said she supports the ordinance as written. The Council found themselves trying to address a safety issue that did confuse the issue. Homelessness is a big issue and they need to take a look at all the different things they can do as a community. The ordinance deals with a very specific issue of people in the medians. She thanked Sister Karen for coming and addressing the issue.

Councilmember Beckstein said she supports the ordinance; the ordinance does not need to answer every question and meet every need. The City Council has a responsibility to protect citizens, having people in the median puts them and drivers in peril. She is encouraging Council to pursue the problem of aggressive panhandling.

However, the City may not have the resources nor is it the City's responsibility to lead the charge on solving the panhandling problem.

Councilmember Pitts said he will support the ordinance.

Councilmember Kenyon thanked the Chiefs Advisory Council and said they have many good suggestions. For the audience, the Police Department has advised that there are currently sufficient laws on the books to handle aggressive panhandling but people have to report it for the problem to be addressed. The City Council is willing to let the Police Department and the Staff work within the existing laws.

Councilmember Palmer had nothing to add.

Council President Hill referred to the firefighters who in the past have solicited donations for MDA in the streets but they will lead by example and change their methods. It is a safety issue.

Ordinance No. 4382—An Ordinance Concerning the Use of City Medians

Councilmember Palmer moved to adopt Ordinance No. 4382 and ordered it published. Councilmember Coons seconded the motion. Motion carried by roll call vote.

Non-Scheduled Citizens & Visitors

There were none.

Other Business

There was none.

Adjournment

The meeting was adjourned at 7:30 p.m.

Stephanie Tuin, MMC
City Clerk

Attachment

What is wrong with the new City Ordinance entitled, "An Ordinance Concerning The Use Of City Medians?"

This ordinance is the product of an evolution. The original purpose as stated was an emergency ordinance to prohibit aggressive panhandling, but there was a problem. The courts have ruled that panhandling is a form of protected free speech. In order to regulate panhandling it is necessary to define it as a safety hazard. Thus it would fall under the City Council's empowering statute of health and safety; there is a consequence that other forms of protected free speech would have to go along for the ride. That is the slippery slope. All but forgotten is the original purpose to prohibit aggressive panhandling. Under the present definition, attempts to communicate are deemed a safety hazard. Interestingly enough, what is prohibited and interpreted in this ordinance as a safety hazard on one side of the street would be perfectly legal and safe activity on the other side of the street, yet there is no material difference other than a constructed definition. Omitted from this new ordinance are all the definitions of aggressive panhandling: following, harassing, intimidating etc. It would appear that the intent and the purpose of the new ordinance is not to stop aggressive panhandling but rather to move it to a different location and along with it the constitutional protected right of effective free speech now defined as "political campaign activities" even though those activities have not included any type of solicitation but rather are prohibited as a safety hazard in an attempt to communicate, as defined in this ordinance which has all the earmarks of a camel from a Council whose original purpose was to design a horse. Going forward down this slippery slope will the eye of the beholder define free speech as a prohibited attempt to communicate and a safety hazard to the public because it is a distraction to or may result in a slow-down of government activities and present as such a safety hazard to the public, but isn't that the purpose of free speech, to impede and even reverse the actions of government that the people find objectionable? And to that end how effective indeed, and of what use is the right of free speech, hidden away on the side streets. I would ask you to weigh in and balance the destruction of effective free speech. Even if this ordinance is successful and motivating aggressive panhandlers to pursue the version of free speech to the back street

sidewalks and residential blocks which defy traffic going in opposite or different directions would it be any less of a distraction or less objectionable to those neighborhoods? Certainly would be less effective as would non-solicitation free speech, is that the purpose of this ordinance or an unintended consequence as it is possible that this council is unaware of its evolutionary actions for much of the same reason that a fish does not realize it is wet. There is a price that must be paid by free people for liberty and the pursuit of that liberty, which historically has been fraught with hazards and has never been safe. It is not within the power of the government to right all wrongs, to restrict all behavior that some may find objectionable, or to replace individual responsibility with the force of the law. This ordinance that City Council has embarked upon is systematic destruction of the foundations of our liberty. That is the true destination of this slippery slope, and all in the misguided attempts to addressing minor annoyance which by conversion now hazards the very foundation of our beloved republic.