

**FRUITA CITY COUNCIL  
IN PERSON AND VIRTUAL MEETING  
JUNE 20, 2022  
7:00 P.M.**

**1. CALL TO ORDER AND ROLL CALL**

Mayor Joel Kincaid called the regular meeting of the Fruita City Council to order at 7:00 p.m. The meeting was held 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

**Excused Absent:**

City Councilor Heather O'Brien

**City staff present:**

City Manager Mike Bennett  
Assistant to the City Manager Shannon Vassen  
City Clerk/Finance Director Margaret Sell  
Deputy City Clerk Deb Woods  
Communications and Engagement Specialist Ciara DePinto  
Human Resources Director Odette Brach  
City Attorney Mary Elizabeth Geiger (virtually)  
Public Works Director Kimberly Bullen  
City Engineer Sam Atkins

**Also present:**

Brad McCloud with Xcel Energy, Inc.  
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 stated that there were no changes to the agenda.

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

**4. PROCLAMATIONS AND PRESENTATIONS**

There were no Proclamations or Presentations on the agenda.

## **5. PUBLIC PARTICIPATION**

There were no comments from the public.

## **6. CONSENT AGENDA**

- A. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE MAY 3, 2022 REGULAR CITY COUNCIL MEETING**
- B. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE MAY 17, 2022 REGULAR CITY COUNCIL MEETING**
- C. MINUTES – A REQUEST TO APPROVE THE MINUTES OF THE MAY 24, 2022 CITY COUNCIL WORKSHOP MEETING**
- D. BOARDS AND COMMISSIONS APPOINTMENT – A REQUEST TO APPROVE THE REAPPOINTMENT OF JOHN RODWICK TO THE LIVABILITY COMMISSION FOR ANOTHER THREE-YEAR TERM TO EXPIRE IN JUNE OF 2025**
- E. SCHOOL LAND DEDICATION FEES – A REQUEST FOR DISBURSEMENT OF SCHOOL LAND DEDICATION FEES COLLECTED BY THE CITY OF FRUITA TO MESA COUNTY SCHOOL DISTRICT #51**
- F. FINANCIAL REPORTS – A REQUEST TO APPROVE THE MAY 2022 FINANCIAL REPORTS**
- G. ORDINANCE 2022-15 – FIRST READING – AN ORDINANCE GRANTING A FRANCHISE AGREEMENT TO PUBLIC SERVICE COMPANY OF COLORADO FOR THE RIGHT TO USE STREETS AND OTHER PROPERTY FOR THE TRANSPORTATION AND DISTRIBUTION OF GAS AND ELECTRICITY IN THE CITY**
- H. ORDINANCE 2022-16 – FIRST READING – AN ORDINANCE GRANTING A FRANCHISE AGREEMENT TO GRAND VALLEY RURAL POWER LINES, INC. FOR THE RIGHT TO USE STREETS AND OTHER PROPERTY FOR THE TRANSPORTATION AND DISTRIBUTION OF ELECTRICITY IN THE CITY**
- I. MOU WITH MESA COUNTY – A REQUEST TO APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF FRUITA AND MESA COUNTY, COLORADO FOR THE FUNDING OF LEGAL SERVICES FOR THE APPEAL OF THE TOTAL MAXIMUM DAILY LOADS (TMDL) BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT (CDPHE)**

**J. AGREEMENT WITH XCEL ENERGY – A REQUEST TO APPROVE THE CITY MANAGER TO SIGN AN AGREEMENT WITH XCEL ENERGY FOR THE ELECTRIC VEHICLE SUPPLY INFRASTRUCTURE PROGRAM**

Mayor Kincaid opened the Consent Agenda to public comments. Hearing none, he closed the public hearing and referred the Consent Agenda to the Council.

Councilor Breman had a few questions about Consent Item J. – the Agreement with Xcel Energy that were answered by City Manager Mike Bennett and Brad McCloud with Xcel Energy.

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

**7. PUBLIC HEARINGS**

**A. QUASI-JUDICIAL HEARINGS**

There were no quasi-judicial public hearings on the agenda.

**B. LEGISLATIVE HEARINGS**

**1) RESOLUTION 2022-15 – A REQUEST TO OPT OUT OF THE FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM (FAMLI) – *HUMAN RESOURCES DIRECTOR ODETTE BRACH***

City Manager Mike Bennett gave a short description of the Family and Medical Leave Insurance Program (FAMLI), a new state-run program for paid leave approved by Colorado voters in 2020. He explained that local governments have the opportunity to opt out as long as it is done by a vote “of a quorum of the governing body” before January 1, 2023.

Human Resources Director Odette Brach provided an overview of the FAMLI program, which provides covered employees with 12 weeks of paid leave to take care of themselves or a family member during life events like injury, serious illness or pregnancy and is separate from paid sick leave and the Family and Medical Leave Act (FMLA). She reiterated Mr. Bennett’s statement that FAMLI is not mandatory for local governments; that a municipality can opt out of the program.

Mrs. Brach reviewed FAMLI premiums, a FAMLI timeline and fiscal and other impacts of the program. By declining participation, the City of Fruita is able to save over \$30,000 per year and Mrs. Brach explained how employees who still want the paid benefits of FAMLI can participate individually without greater personal cost and without imposing a cost on the City and other employees who do not want to participate.

Mrs. Brach also explained that if the City does not opt out of FAMLI, every City employee will have deductions made from their pay for the program beginning January 1, 2023, regardless of whether they believe participating is the right choice for their family. She noted that if the City wishes to opt in at a

later date, it can do so by an affirmative vote “of a quorum of the governing body” at the beginning of the annual local budgeting cycle.

Mrs. Brach provided staff’s recommendation that the City Council vote to opt out of the program. Some of the reasons for this recommendation include:

- The cost of the FAMLI program will increase the City’s budget by at least 0.45% of its employees’ wages annually and potentially more.
- The City already offers competitive paid leave of 10 paid holidays, 1 Discretionary day, at least 2 weeks of vacation and 12 sick days – the latter two of which accrue over time.
- Of 45 jurisdictions surveyed in Colorado by the Colorado Municipal League (CML), only 3 said they were considering participating, 24 were considering opting out and 18 were undecided as of mid-April.

Mr. Bennett noted that he made sure that all Department Directors verbally shared all the information about FAMLI with their employees that may not have a City email address.

He also noted that City Attorney Mary Elizabeth Geiger (attending virtually) had just noticed that staff had the wrong version of the Resolution in the Council packet and would need to update it. Ms. Geiger stated that she had just sent the updated Resolution to Mr. Bennett and Margaret Sell, City Clerk/Finance Director.

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

Ms. Geiger stated that the amendments to the Resolution included the addition of a “Whereas” clause of findings that written notice had been provided on June 10<sup>th</sup> as required, that the City had provided regular notice as always under Open Meetings Laws about the hearing and that testimony was given by City staff that there were not any City employees or members of the public that provided any input.

Councilor Breman lamented the fact that private industry does not have the option of opting out like municipalities do. Mayor Kincaid concurred.

Councilor Kreie commented that if there were a sufficient amount of employees that were interested in participating, he wouldn’t mind the idea of the City collecting on their behalf because it would be easier for the City to do it, but it sounded like nobody had any interest in that happening.

- **COUNCILOR KREIE MOVED TO ADOPT RESOLUTION 2022-15 AS AMENDED APPROVING THE REQUEST TO OPT OUT OF THE FAMILY MEDICAL LEASE INSURANCE PROGRAM (FAMLI). COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

## **8. ADMINISTRATIVE AGENDA**

**A. 2021 DRAFT FINANCIAL STATEMENTS – PRESENTATION OF THE 2021 DRAFT FINANCIAL STATEMENTS AND FISCAL HEALTH ANALYSIS – *FINANCE DIRECTOR/CITY CLERK MARGARET SELL***

City Clerk/Financial Director Margaret Sell provided the 2021 Draft Financial Statements with a PowerPoint presentation to give a “snapshot” of where the City of Fruita is financially. She noted that the City’s auditors, Chadwick, Steinkirchner & Davis would be presenting their findings at the July 19, 2022 Council meeting.

Highlights of Mrs. Sell’s presentation were as follows:

- **Fund Types:**
  - **Governmental Activities** (primarily funded with tax and intergovernmental revenues)
    - ❖ General Fund
    - ❖ Community Center Fund
    - ❖ Capital Projects Fund
    - ❖ Debt Service Fund
    - ❖ Marketing and Promotion Fund
    - ❖ Economic Development Fund
    - ❖ Public Places Fund
    - ❖ Conservation Trust Fund
    - ❖ Fleet Maintenance Fund
  - **Business Type Activities** (intent is to recover all costs through user fees and charges)
    - ❖ Sewer Fund
    - ❖ Trash Fund
    - ❖ Irrigation Fund
    - ❖ Devils Canyon Center Fund (Dinosaur Journey)
    - ❖ Fiduciary Funds (School Land Dedication Fund)
- **Net Position** of City: Increase of \$5.1 million (5%) from prior year
  - \$1 million (1%) in Capital Assets
  - \$1.2 million (27%) in Restricted Assets
  - \$3.0 million (16%) in Unrestricted Assets
- **City Sales Tax** increase of \$400,000 (15%) from prior year
- **Community Center Fund Recovery**
  - Operating Revenues – recovery in 2021 with operating revenues at 78% of pre-pandemic levels compared to 52% in the prior year.
  - Tax Revenues – increase of 13% in tax revenues from prior year. Of the 1% City Sales and Use Tax Revenues, 60% is dedicated to bond payments and capital expenses and 40% is dedicated to operational expenses. The sales tax rate is reduced from 1% to 0.4% on December 31, 2038.
- **Lodging Tax Revenues**
  - The 3% voter-approved lodging tax rate went into effect on January 1, 2021 and is to be used for public places and economic development.

- Lodging tax revenues increased 92% in 2021 from the prior year (excluding revenue increase due to 3% increase in tax rate) and 35% from 2019 pre-pandemic levels.
- **Sewer Loan** – savings of \$2 million
  - The bonds underlying the City's loan from CWRPDA were refinanced in 2021 and savings of \$2 million passed on to the City in the form of annual interest credits of \$160,000 to \$170,000 through the life of the loan.
- **Net Position of \$105 million** = Assets minus liabilities. Within the Net Position, it is broken down in Government Wide Statements to include:
  - Long-term assets (current assets increased 24% from prior year - primarily cash)
  - Long-term assets (Capital assets decreased 0.4% from prior year (\$0.4 million))
  - Liabilities increased about \$1 million (primarily related to art grant/unearned revenue)
  - Deferred inflows of resources (property taxes)
  - 74% of \$105 Net Position is in non-spendable (capital) assets such as streets, bridges, sewer lines, irrigation lines, etc.
  - Restricted assets of \$5.5 million = assets with restrictions imposed by law – bond reserve funds
  - Unrestricted assets of \$22 million – City is able to spend (across 14 Funds)
  - Governmental Funds increased the City's Net Position by \$4.1 million
  - Business Type Funds increased the City's Net Position by \$1 million
- **General Fund Revenues and Expenses:**
  - Budget to Actual – positive variance of \$4.9 million
  - Fund Balance - \$15.8 million
  - Fund Balance – Increase of \$2.5 million from prior year
- **Community Center Fund Revenues and Expenses:**
  - Budget to Actual – positive variance of \$865,518
  - Fund Balance - \$3.7 million
  - Fund Balance – Increase of \$724,143 from prior year
- **Sewer Fund Revenues and Expenses:**
  - Budget to Actual – positive variance of \$1.3 million
  - Fund Balance - \$29.5 million
  - Fund Balance – Increase of \$1.06 million from prior year

Mrs. Sell also provided breakdowns of committed, restricted, unrestricted, assigned, unassigned, designated (for equipment replacement) and invested (in fixed assets) amounts of revenues, expenses and Fund Balances of the City's Funds above.

Her 2021 Financial Statements presentation concluded with a list of the dollar amounts of Capital Asset Additions for 2021 Capital Projects and a list of the City's outstanding long-term debt totaling \$26 million broken out by Governmental and Business-Type Activities.

Mayor Kincaid asked Mrs. Sell to email the Council members a copy of the PowerPoint presentation.

Mrs. Sell explained that a **Fiscal Health Analysis** is a set of 7 to 10 points that the state Auditor's Office uses to gauge a municipality's financial condition, not at just one point in time, but also in looking at past and future years to determine if there are any problem areas that need to be addressed. This is an annual report that compares a total of five years against a benchmark in order to:

1. Ensure that there is enough cash to pay current liabilities (*Cash to Liabilities Ratio*)
2. Determine how long reserves will last to pay future expenses (*Unrestricted Fund Balance Ratio*)
3. Ensure annual revenues cover debt service payments (*Debt Burden Ratio*)
4. Determine the relationship between population growth and tax revenue growth (*Tax Revenue per Capita*)
5. Determine the relationship between population growth and General Fund expenditures (*Expenditures per Capita*)
6. Determine how much is added to reserves for every dollar generated in revenues (*Operating Margin Ratio*)
7. Determine if the Net Position in the Enterprise Funds is increasing or decreasing (*Enterprise Funds Net Position*)

Mrs. Sell's presentation included an overview of the Financial Indicators for each category above for years 2017 through 2021. Financial Indicators illustrate whether or not there are causes for concern in regards to the Fiscal Health of an organization. Mrs. Sell noted that there were no areas of continuous decline; only steady or increasing numbers that represent a healthy financial condition of the City.

## **9. CITY MANAGER'S REPORT**

City Manager Mike Bennett had the following to report:

1. Mike asked City Attorney Mary Elizabeth Geiger to explain the corrections to Resolution 2022-15. She clarified that the version of Resolution 2022-15 (for opting out of the FAMLI Insurance Program) that was originally included in the Council packet was not the final version and it was only realized until after the vote was taken. She reiterated that there was no need to re-vote or re-open public comment because there were no substantive changes. The date that the notice went out to the employees was corrected to June 13<sup>th</sup> (from June 10<sup>th</sup>) and the recitals were edited to be clearer as to what FAMLI would have been requiring.
2. Mike reported that there have been some private business with sewer line issues on Aspen Avenue and on Wednesday and Thursday, repairs will be made that will require Aspen to be closed from the east side of the Circle to Mulberry for a time. Notices will be going out to all the businesses in the area and will be posted on all the City's channels.
3. Mike stated that when the City Council approved the Parks, Health, Recreation, Open Space and Trails Master Plan, one of the first goals was to have a review of the City's Impact Fee for parks, trails and open space. The City received a grant that began a process at the end of last year and now, it is at the point where the consultant that is working on the review will engage with stakeholders such as development groups to walk through the methodology and obtain feedback before scheduling a time for the consultant to give a presentation to the City Council. After that, decisions can be made on how to move forward. Mike said the stakeholder meeting was scheduled for the end of the following week.
4. Mike also reported that the Fruita Youth Action Council is one more board that needs a Council Liaison member. He said they are incredibly engaged leaders of youth in the Fruita community who meet once per month on the second Monday from 6:30 to 8:00 p.m. The decision was

made that Councilor Ken Kreie would serve on the Fruita Youth Action Council as the Council Liaison.

5. Mike stated that staff received notice from one of the HOAs in the community that House Bill 22-1139 was signed into law in May and will go into effect in 90 days. In summary, it prohibits HOAs from having the ability to create rules in the public right-of-way. Mike said it is very common for HOAs to have limitations on RVs or camper trailers on the street or how many cars can be parked in front of a house (for example), so when HB 22-1139 goes into effect, the HOAs will no longer have the power to regulate those areas, although municipalities can. The Fruita Planning and Development Department will be working with other Planning and Development Departments across the state on different ways to handle the issue so that staff will have something to bring to the Council to discuss in the future. Mike said the new law will affect many HOAs who are going to want to know how they should deal with the change.

## **10. COUNCIL REPORTS AND ACTIONS**

### **A. DISCUSSION AND POSSIBLE ACTION TO CANCEL THE TUESDAY, AUGUST 2, 2022 REGULAR CITY COUNCIL MEETING AND SCHEDULE A STRATEGIC PLANNING RETREAT FOR TUESDAY, AUGUST 2, 2022 FROM 5:00 TO 9:00 PM AT HIGHLINE LAKE**

- **COUNCILOR PURSER MOVED TO CANCEL THE TUESDAY, AUGUST 2, 2022 REGULAR CITY COUNCIL MEETING AND SCHEDULE A STRATEGIC PLANNING RETREAT FOR TUESDAY, AUGUST 2, 2022 FROM 5:00 TO 9:00 PM AT HIGHLINE LAKE. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

### **B. COUNCIL REPORTS**

#### COUNCILOR AMY MILLER

Amy reported that she attended her first Planning Commission meeting. There were a couple of annexations and rezonings, one close to the Fruita 8/9 School and the other off 19 Road. She said the applications were very straightforward and fit well within the City's Master (Comprehensive) Plan. She added that the Planning Commission also reviewed the Traffic Circulation Plan.

Amy also reported that she and Mayor Joel Kincaid interviewed two Planning Commission applicants before the Council meeting and the interviews were very productive.

#### COUNCILOR KEN KREIE

Ken reported that was just reappointed as the Chair of the Colorado National Monument Association.

Ken also said he has noticed that the quality of all of the City's tourism videos has gone down and it didn't seem like it was necessary because all platforms support high-resolution video.



Assistant to the City Manager Shannon Vassen said staff had just talked with the City's marketing firm, Colvita Creative earlier in the day and they were going to check the settings to make sure that when they do post on the Instagram stories, that it is always set at the highest resolution possible. He added that in the rebranding of the *Play Like a Local* campaign, it was possible that the video edits may have reduced the quality, but Colvita is looking into it to ensure it doesn't happen again.

#### COUNCILOR JAMES WILLIAMS

James announced that the Museums of Western Colorado is no longer looking for split-rail fencing.

James noted that the Fruita Tourism Advisory Council (FTAC) meeting for the month had been canceled.

James also reported that he is going to champion a dog park in Fruita at some point after having many members of the community ask him about it. Mike noted that it is one of the goals listed in the Parks, Health, Recreation, Open Space and Trails (PHROST) Master Plan including potential locations and trying to find funding. James said perhaps he could get with Mike and Shannon to see what that looks like.

#### COUNCILOR JEANNINE PURSER

Jeannine reported that the Downtown Advisory Board (DAB) met the previous week but summer seems to be a hard time to get members to attend, so the few that were there went over the results of the North Mulberry Street survey and what the Council voted on at the June 7<sup>th</sup> meeting. One of the board members is leaving the DAB and will be applying for appointment to another board, so the DAB is still looking for more members.

Jeannine also reported that the Livability Commission had a representative from AARP give a presentation to the board and also members of the public who were in attendance. She said the presentation was pretty fascinating; the City of Fruita ranks a 56 Livability Score that is a percentage but reflects a very good score. The AARP Representative stated that he thought Fruita was ahead of the curve on livability in general and specifically, for seniors. Councilor Purser stated that she gathered more information that she would share with the Council at a workshop meeting in the future.

Mayor Kincaid asked Deputy City Clerk Deb Woods to send the Council a list of the vacancies on the City's Boards and Commissions because it help them to recruit board members.

#### COUNCILOR MATTHEW BREMAN

Matthew reported that at the Fruita Chamber Board meeting, the members worked through the by-laws for the Chamber Foundation non-profit.

Matthew also reported that the Grand Junction Economic Partnership (GJEP) on June 30<sup>th</sup> will be interviewing two finalists for the Executive Director position.

#### COUNCILOR KEN KREIE

Ken remembered that he meant to report that he received positive feedback on the Thursday Night Concerts; someone from the public told him that they thought the quality of the acts that the City is getting are obviously professional and he wanted to pass along kudos concerning the bands that are being brought in.

COUNCILOR JEANNINE PURSER

Jeannine remembered that the coming Friday was a “Fruita Fourth Friday” presented by the Downtown Advisory Board. All the downtown businesses participate and Skip’s Farm to Market will be having their Open House in conjunction with the event. Jeannine urged everyone to go downtown.

MAYOR JOEL KINCAID

Joel reminded everyone that June 30<sup>th</sup> was the date for the City Council Ice Cream Social at the Thursday Night Concert.

COUNCILOR AMY MILLER

Amy asked if the matter concerning the resident with the light nuisance issue was resolved.

Joel responded that he talked to her personally and she understands the City’s point of view on the limitations of being able to help.

City Manager Mike Bennett added that the challenge with the situation is that all new builds require specific lighting that shines down, but the resident’s neighbor’s outdoor lights predate that, just like the majority of houses in Fruita. He said it was an example of something that should be simple to resolve with a conversation between two neighbors, but unfortunately, that wasn’t the case with this situation. He explained that the City has absolutely no ability to enforce anything, even though staff tried to have conversations to try to remedy the matter.

Joel said that the neighbor did not want to work the issue out with the resident.

James commented that the resident did not actually have blackout curtains.

Amy wondered if someone could give her some informative links to better blackout curtains.

Mike pointed out that by the time the Council members received the email from the resident, staff had been working with her for a couple of weeks already and the resident was just reaching out to everybody and anybody with the hopes of reaching a resolution.

MAYOR JOEL KINCAID

Joel reported that he went to the Mesa County Commissioners’ public hearing concerning marijuana cultivation, manufacturing and testing in the City of Fruita’s growth boundary, but the Commissioners moved for another postponement of the public hearing. He said he received an email from Mike about the Commissioners having a special meeting with the Town of Palisade, so he emailed Commissioner

Cody Davis to ask if they would be setting up a meeting with the City of Fruita, but he had not yet heard back from him. Joel said he would follow up.

Mike added that the public hearing for the marijuana Ordinance was continued to June 28<sup>th</sup> and the Mesa County Commissioners advised that they would be having a special workshop on June 22<sup>nd</sup>. He said staff has been asking about the workshop and were told that it was not an open meeting, but rather a workshop with Palisade residents that have concerns. Joel said he requested the same for Fruita and is still waiting to hear back.

Joel also reported that he attended the Juneteenth celebration to read the Proclamation and he thought the turnout was “okay,” most likely because it was also Father’s Day. He said it was still good to see that the people who were there had positive attitudes.

Joel noted that he would be absent for the July 19<sup>th</sup> regular Council meeting, so Mayor Pro Tem Matthew Breman would preside over the meeting.

Matthew noted that he would absent from the June 28<sup>th</sup> workshop meeting. Mike added that Tami Tanoue, the Executive Director of the City’s insurance company, CIRSA, would be walking the Council members through a Norms of Conduct exercise at the workshop meeting.

Councilor Kreie noted that he would be out of town for the July 5<sup>th</sup> regular Council meeting, but he could remote in.

## **11. ADJOURN**

With no further business before the Council, Mayor Kincaid adjourned the meeting at 8:35 p.m.

Respectfully submitted,

Debra Woods  
Deputy City Clerk  
City of Fruita