



AGENDA

REGULAR MEETING LA JUNTA CITY COUNCIL

La Junta, Colorado

May 2, 2022

6:00 PM

Council Chambers

Municipal Building

601 Colorado Avenue

CALL TO ORDER (Mayor Ayala)

INVOCATION (Council Member Vela)

PLEDGE OF ALLEGIANCE (Mayor Ayala)

ROLL CALL (City Clerk)

Council Members

Supervisors

Others

Ramirez

Velasquez

McIntyre

Ayala

Ochoa

Vela

Pantoya

MINUTES OF PREVIOUS MEETINGS (Mayor) (Action)

Regular Meeting April 18, 2022

CITIZEN PARTICIPATION FOR NON AGENDA ITEMS ONLY *(5 minute time limit per person)*

NEW BUSINESS

- A. A Resolution Concerning a Petition for Annexation (City Attorney) (Action)
- B. First Reading/AN ORDINANCE CONCERNING AN ANNEXATION FOR PROPERTY (City Attorney) (Action)
- C. First Reading/AN ORDINANCE AMENDING ORDINANCE NUMBER 1242 (THE ZONING ORDINANCE) OF THE CITY OF LA JUNTA AS CONCERNS AN APPLICATION FOR ANNEXATION BY THE PHILLIP W. BUFORD AND MARY JEAN BERG BUFORD LIVING TRUST DATED 04/15/2014 (City Attorney) (Action)
- D. First Reading/AN ORDINANCE OF THE CITY OF LA JUNTA, COLORADO TO UTILIZE THE COLORADO DEPARTMENT OF REVENUE SALES AND USE TAX COLLECTION PROCEDURES (City Attorney) (Action)
- E. Committee/Board Reports
- F. City Manager's Comments
- G. Governing Body Comments
- H. ADJOURN

*Subject to approval at
the May 2, 2022
City Council Meeting*

STATE OF COLORADO)
COUNTY OF OTERO) SS
CITY OF LA JUNTA)

CALL TO ORDER: A regular meeting of the City Council of the City of La Junta, Colorado, was called to order by Mayor Ayala on Monday, April 18, 2022, at 6:00 p.m. in the Council Chambers of the Municipal Building.

INVOCATION: Mayor Ayala gave the invocation.

PLEDGE OF ALLEGIANCE: Mayor Ayala led everyone in the Pledge of Allegiance.

ROLL CALL: The following Council Members were present:

- Damon Ramirez, Ward 1
- Paul Velasquez, Ward 1
- Elaine McIntyre, Ward 2
- Joe Ayala, Mayor
- Chandra Ochoa, Ward 2
- Edward Vela, Ward 3
- Lisa Pantoya, Ward 3

Absent: none

- Also present:
- Rick Klein, City Manager
 - Phil Malouff Jr., City Attorney
 - Melanie Scofield, City Clerk
 - Paula Mahoney, Admin. Asst.
 - Chris Arguello, Line Crew
 - Larry Aragon, Line Crew
 - Juan Garcia, Line Crew
 - Anthony Aguilar, Line Crew
 - Drew Yochum, Line Crew
 - Gary Cranson, UB Commissioner
 - Bette McFarren, RF Gazette

PROCLAMATION: Mayor Ayala signed a proclamation declaring the week of April 24 – 30 , 2022 as National Crime Victims’ Rights Week.

MINUTES OF PREVIOUS MEETING: Mayor Ayala asked if there were any corrections or additions to the minutes of the Regular City Council Meeting of April 4, 2022. After hearing none, the Mayor asked for a motion to approve the minutes as published.

MOTION TO ACCEPT THE APRIL 4, 2022 MINUTES AS PUBLISHED: Ochoa

SECOND: Pantoya

DISCUSSION: There was no discussion

VOTE: The motion carried 7-0

CITIZEN PARTICIPATION FOR NON-AGENDA ITEMS (5 minute time limit per person):

1. Chris Arguello, Electric Superintendent: Explained that they had to remove some trees to re-locate a line at 18th & Colorado Avenue. Solar lights have been installed for the trail and have also installed more poles using fabricated brackets.

CITY COUNCIL MEETING – April 18, 2022

NEW BUSINESS

A. Committee/Board Reports

1. Utilities Board (Mayor Ayala):
 - Waiting on Bill to continue our discussion on net metering and solar.
 - Brought on Joe Kelley to help out with the Ark Valley Conduit.
 - A meeting with AVC has been scheduled for May 16th at 5:00 p.m. for Council and Utilities Board.
2. AVRMC Board (Council Member McIntyre):
 - Shared the 1st Quarter Executive Summary. Meeting all of the trigger points.
3. Senior Center Board (Council Member Velasquez):
 - Have 495 members.
 - The breakfasts have been really busy. Shout out to the City departments for supporting the meals.
 - Congratulations to Dawn Block for her appointment to the Governors Clean Transit Enterprise Governing Board.
 - Lunch will be ham and scalloped potatoes on the 21st.
 - The “Senior Prom” will be on the 29th. The theme is the “Kentucky Derby”.
 - Membership: 50 years of age and \$6.00 per year.
4. Urban Renewal (Mayor Ayala):
 - The video of the last meeting was sent out. I encourage you all to watch it.

B. City Manager’s Comments

- The new turf being installed at 22nd Street Ball Field by Otero College is almost done.
- We have four new picnic tables at Livewell Park and lights and shades are ordered.
- Its weed season. All crews are preparing for spring.
- Moltz Construction has inspected the project at the water tank pump replacement and are scheduling materials and installation.
- We had fires at Bent’s Fort and Fort Lyon at the same time. Fire departments from around the State were helping. There was 85% of Bent’s Fort 800 acres burnt.
- Soccer has started. The games are on week nights.
- We have been putting out the bikes from our Bike Share grant. Road signs are going up.
- T-Ball, Softball/Baseball registrations are open until May 6th.
- The equipment for the Brick and Tile Park has arrived. We will finish prepping the ground and placing concrete as soon as the area is prepared.
- We helped Otero County tear down a structure at the 1300 block of Kenilworth.
- We are told that asphalt won’t be available until May. We are looking at different sources now.

C. Governing Body Comments

1. Council Member Velasquez:
 - Next week is National Administrative Professionals Day.
2. Council Member McIntyre:
 - The bathrooms at City Park are open. We need to be respectful.
3. Mayor Ayala:
 - The new microphones and voting equipment should be installed by our next meeting.
 - The Kids Theatre would like to utilize the Livewell Park for their performance of Wizard of Oz. The production dates are July 15, 16, and 17 at 3:00 p.m.
 - We will have a Strategic Planning Session with Michael Yerman on April 27th and May 9th at 5:30 in the AVRMC Medical Education Rooms.
 - Brad and the other firefighters are great host, working together. We have amazing workers for the City.
4. Council Member Ramirez:
 - Commended the businesses and those who donated to the firefighters. Thank you.

There being no further business, the meeting adjourned at 6:46 p.m.

ATTEST:

CITY OF LA JUNTA

Melanie R. Scofield, City Clerk

Joseph Ayala, Mayor

RESOLUTION NO. R-11-2022

WHEREAS, the Planning Commission of the City of La Junta has held a public hearing on April 21, 2022 concerning the Petition for Annexation filed by THE PHILLIP W. BUFORD AND MARY JEAN BERG BUFORD LIVING TRUST DATED 04/15/2014, concerning certain lands; and

WHEREAS, after hearing the City Council of La Junta finds as follows:

1. The applicable sections of Section 31-12-104 entitled "Eligibility for Annexation", and the applicable sections of Section 31-12-105 entitled "Limitations" have been met;
2. That there is no requirement of an election pursuant to the terms of 31-12-107(2); and
3. The terms of 31-12-107 (l)(g) are applicable and controlling.
4. That all other requirements of the Petition for Annexation having been met;

WHEREAS, the recommendation of the Planning Commission is that the sites described above and in the Petition for Annexation should be annexed into the City, zoned "C-S".

BE IT RESOLVED that the above findings are made absolute.

CITY OF LA JUNTA

Joseph Ayala, Mayor

ATTEST:

Melanie R. Scofield, City Clerk

ORDINANCE NO. 1633

**AN ORDINANCE CONCERNING
AN ANNEXATION FOR PROPERTY**

WHEREAS, there was filed with the City Council of the City of La Junta, Colorado on the 8th day of March, 2022, a Petition for Annexation and Subdivision to the City of La Junta, the real estate in this Ordinance described; and

WHEREAS, said territory is eligible for annexation under the provisions of Colorado Revised Statutes 1973, Chapter 31, Article 12, and said Petition and documents and maps thereto attached comply with the requirements of Colorado Revised Statutes 1973, 31-12-104 and 31-12-105; and

WHEREAS, the Petition is in substantial compliance of Colorado Revised Statutes 1973, 31-12-107;

WHEREAS, the owner of 100 percent of the area to be annexed has petitioned for annexation;

NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO:

Section 1. All proceedings for the annexation of the City of La Junta, Colorado, of the lands hereinafter described are approved.

Section 2. There is hereby annexed to the City of La Junta, Colorado, real estate described as follows, to-wit:

Lot 32, Stark's Subdivision of the W/2NW/4 of Section 4, Township 24 South, Range 55 West of the 6th P.M. in Otero County, Colorado.

Section 3. The City Clerk of the City of La Junta is hereby directed, upon final passage and approval of this ordinance to keep on file in her office, a map or plat of the annexed territory, and to file two copies of said map or plat and two certified copies of said ordinance with the County Clerk and Recorder of Otero County, Colorado; one copy of the Ordinance and the map to be retained

by the Clerk and Recorder and the other copy of the Ordinance and map to be filed with the Division of Local Government of the Department of Local Affairs.

Passed on first reading this 2nd day of May, 2022.

ADOPTED AND APPROVED on second reading and final reading this _____ day of May, 2022.

CITY OF LA JUNTA

Joseph Ayala, Mayor

ATTEST:

Melanie R. Scofield, City Clerk

ORDINANCE NO. 1634

AN ORDINANCE AMENDING ORDINANCE NUMBER 1242 (THE ZONING ORDINANCE) OF THE CITY OF LA JUNTA AS CONCERNS AN APPLICATION FOR ANNEXATION BY THE PHILLIP W. BUFORD AND MARY JEAN BERG BUFORD LIVING TRUST DATED 04/15/2014

WHEREAS, the Planning Commission of the City of La Junta has recommended that certain changes be made to Ordinance Number 1242;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO AS FOLLOWS:

Section 1. That the zoning map which is a part of Ordinance Number 1242 be amended as follows:

Section 2. That said lands be zoned "C-S".

PASSED on first reading this 2nd day of May, 2022.

ADOPTED AND APPROVED this ____ day of May, 2022.

CITY OF LA JUNTA

ATTEST:

Joseph Ayala, Mayor

Melanie R. Scofield, City Clerk

ORDINANCE NO. 1635

**AN ORDINANCE OF THE CITY OF LA JUNTA,
COLORADO TO UTILIZE THE COLORADO DEPARTMENT
OF REVENUE SALES AND USE TAX COLLECTION
PROCEDURES**

WHEREAS, the City of La Junta, Colorado, (the "City"), is a home rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution, the right to enact, administer and enforce sales taxes is clearly within the constitutional grant of power to the City and is necessary to raise revenue with which to conduct the affairs and render the services performed by the City; and

WHEREAS, pursuant to such authority, the City has adopted and enacted a Sales and Use Tax Code (the "Code"), under which City sales tax is levied on all sales and purchases of tangible personal property or taxable services at retail unless prohibited, as applicable to the provision of this Ordinance, under the Constitution or laws of the United States; and

WHEREAS, the United States Supreme Court in *South Dakota v. Wayfair*, 138 S.Ct. 2080 (2018), overturned prior precedent and held that a State is not prohibited by the Commerce Clause from requiring a retailer to collect sales tax based solely on the fact that such retailer does not have a physical presence in the State ("Remote Sales"); and

WHEREAS, based upon such decision, the retailer's obligation to collect Remote Sales is no longer based on the retailer's physical presence in the jurisdiction by the Constitution or law of the United States, and the City's Sales and Use Tax Code needs to be amended to clearly reflect such obligation consistent with said decision; and

WHEREAS, the delivery of tangible personal property, products, or services into the City relies on and burdens local transportation systems, emergency and police services, waste disposal, utilities and other infrastructure and services; and

WHEREAS, the failure to tax remote sales creates incentives for businesses to avoid a physical presence in the State and its respective communities, resulting in fewer jobs and increasing the share of taxes to those consumers who buy from competitors with a physical presence in the State and its municipalities; and

WHEREAS, it is appropriate to adopt uniform definitions to encompass marketplace facilitators, marketplace sellers, and multichannel sellers that do not have a physical presence in the City, but that still have a taxable connection with the City;

WHEREAS, absent such amendment, the continued failure of retailers to voluntarily apply and remit sales tax owed on remote sales exposes the municipality to unremitted taxes and permits an inequitable exception that prevents market participants from competing on an even playing field; and

WHEREAS, an additional goal of adopting this ordinance is to join in on the simplification efforts for collection of sales tax; and

WHEREAS, the City adopts this ordinance with the intent to address tax administration, and, in connection with, establish economic nexus for retailers or vendors without physical presence in the State and require the retailer or vendor to collect and remit sales tax for all sales made within the marketplace.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LA JUNTA, COLORADO, that:

SECTION 1. Section 3.04.015 is amended as follows:

SECTION 3.04.015 Definitions in general is hereby amended and changed to read as follows:

- (a) The former definition of "Engaged in Business in the City" is repealed.
- (b) The following definition of "Engaged in Business in the City" is enacted as follows:

Engaged in Business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person:

- (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; [or]
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a twelve-month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in the "*Economic Nexus*" Subsection of this Section.

- (c) The former definition of "Retailer or Vendor" is repealed.
- (d) The following definition of "Retailer or Vendor" is enacted as follows:

Retailer or Vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The terms "retailer" shall include, but is not limited to, any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property; or
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

(d) The following definition of "Economic Nexus" is enacted as follows:

Economic Nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and:

- (1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or
- (2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

- (e) The following definition of "Marketplace" is enacted as follows:

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

- (f) The following definition of "Marketplace Facilitator" is enacted as follows:

Marketplace Facilitator means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

"Marketplace Facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

- (g) The following definition of "Marketplace Seller" is enacted as follows:

Marketplace Seller means a person, regardless of whether or not the person is engaged in business in the city,

which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

(h) The following definition of "Multichannel Seller" is enacted as follows:

Multichannel Seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

SECTION 2. SECTION 3.04.016 "Vendor liable for tax" is hereby enacted as follows:

SECTION 3.04.016: Vendor Liable for Tax: Except for qualifying limitations with respect to marketplace sales as set forth above, every retailer (also herein called vendor) shall be liable and responsible for the payment of an amount equivalent to 3% the rate of tax imposed on all sales made by him or her of commodities or services as specified above, and shall, before the 20th day of each month make a return to the state for the preceding calendar month and remit an amount equivalent to said 3%, the rate of tax imposed above of such sales to the state, less 3% an amount equivalent to the rate of tax imposed above of such tax to cover the vendor's expense in the collection and remittance of said tax. Such returns of the taxpayer, or his or her duly authorized agent, shall contain such information and be made in such manner and upon such forms as the State may prescribe. The burden of proving that any retailer is exempt from collecting the tax on any goods sold and paying the same to the city clerk, or from making such returns, shall be on the retailer or vendor under such reasonable requirements of proof as the state may prescribe.

SECTION 3. SECTION 3.04.017 is hereby enacted as follows:

SECTION 3.04.017 - Marketplace Sales.

(1) Responsibility.

- a. A marketplace facilitator engaged in business in the city is required to collect and remit sales

tax on all taxable sales made by the marketplace facilitator, or facilitated by it for marketplace sellers or multichannel sellers to customers in the city, whether or not the marketplace seller for whom sales are facilitated would have been required to collect sales tax had the sale not been facilitated by the marketplace facilitator.

- b. A marketplace facilitator shall assume all the duties, responsibilities, and liabilities of a vendor under the "Retailer or Vendor". Marketplace facilitators shall be liable for the taxes collected from marketplace sellers or multichannel sellers. The City may recover any unpaid taxes, penalties, and interest from the marketplace facilitator that is responsible for collecting on behalf of marketplace sellers or multichannel sellers.
- c. The liabilities, obligations, and rights set forth under this article are in addition to any duties and responsibilities of the marketplace facilitator has under this article if it also offers for sale tangible personal property, products, or services through other means.
- d. A marketplace seller, with respect to sales of tangible personal property, products, or services made in or through a marketplace facilitator's marketplace, does not have the liabilities, obligations, or rights of a retailer under this article if the marketplace seller can show that such sale was facilitated by a marketplace facilitator:
 - 1. With whom the marketplace seller has a contract that explicitly provides that the marketplace facilitator will collect and remit sales tax on all sales subject to tax under this article; or
 - 2. From whom the marketplace seller requested and received in good faith a certification that the marketplace facilitator is registered to collect sales tax and will collect sales tax on all sales subject to

tax under this article made in or through the marketplace facilitator's marketplace.

e. A marketplace seller makes that is not facilitated by a licensed marketplace facilitator in a marketplace, the marketplace seller is subject to all of the same licensing, collection, remittance, filing and recordkeeping requirements as any other retailer.

(2) Auditing. With respect to any sale, the city shall solely audit the marketplace facilitator for sales made by marketplace sellers or multichannel sellers but facilitated by the marketplace. The city will not audit or otherwise assess tax against marketplace sellers or multichannel sellers for sales facilitated by a marketplace facilitator.

SECTION 4. SECTION 3.04.018 is hereby enacted as follows:

SECTION 3.04.018: No obligation to collect the sales and use tax required by this article may be applied retroactively. Responsibilities, duties and liabilities described in of a marketplace facilitator, marketplace seller, or multichannel seller begin upon the earlier of when they became licensed to collect the city's sales tax or when they became legally obligated to collect the city's sales tax under Section 3.

SECTION 5. SECTION 3.04.121 is hereby enacted as follows:

SECTION 3.04.121: Without the intent of repealing any provision of the Municipal Code Sections related to the collection of sales tax as provided under Title 3, all enforcement and collection provisions of Title 3 of this code existing prior to the enactment of this Ordinance shall be stayed for so long as Section 3.04.122 is recognized as the choice of collection alternatives of the City.

SECTION 6. SECTION 3.04.122 is hereby enacted as follows:

Section 3.04.122: The collection, administration and enforcement of the sales tax shall be performed by the Executive Director of the Colorado Department of Revenue

(the "Executive Director") in the same manner as the collection, administration and enforcement of the Colorado state sales tax. The provisions of article 26 of title 39, C.R.S. and all rules and regulations promulgated thereunder by the Executive Director shall govern the collection, administration, and enforcement of the sales tax.

SECTION 7 . The effective date of this ordinance is June 1, 2022.

READ IN FULL AND PASSED, on first reading the 2nd day of May, 2022.

READ IN FULL AND ADOPTED on second reading this _____ day of May, 2022.

CITY OF LA JUNTA

Joseph Ayala, Mayor

ATTEST:

Melanie R. Scofield, City Clerk

City Manager Comments

- **The bikes from our Bike Share grant have been activated.**
- **T-Ball, Softball/Baseball registrations open until May 6th**
- **We have started setting blocks on the low part of the Brick & Tile Park. We need to finish the concrete pours this month as well as patch when asphalt is available.**
- **We have been placing the traffic counters around town.**
- **All of our 20 yard boxes are rented**
- **Working on Southeast Housing Project as well as presenting on our housing and demolition programs for Action 22**
- **City Park bathrooms have been vandalized twice since we have opened them.**
- **Working on the 50/50 tree removal program**
- **New City Engineer will start at end of May.**
- **Fire wind Stage 1 fire restrictions**
- **Water break at 2nd and San Juan**