

Tuesday - June 12, 1990 - 4:00 P.M.

Regular Meeting

Present: Mayor Kenneth M. Michalove, Presiding; Vice-Mayor

William G. Moore; Councilmen Mary Lloyd Frank, Norma T. Price, Wilhelmina Bratton, Eugene W. Ellison and William W. Estes; Corporation Counsel William F. Slawter; City Manager Douglas O. Bean; and Associate

City Manager/City Clerk William F. Wolcott, Jr.

Absent:

INVOCATION

Invocation to be given by Councilman Frank.

APPROVAL OF MINUTES

Mayor Michalove announced the approval of the minutes of the June 5, 1990 meeting.

I. PROCLAMATIONS:

A. Resolution No. 90-77 - Resolution commending the North Carolina Department of Transportation, Division of Highways, for the highway wildflower plantings.

Mayor Michalove read the resolution stating that the

highway wildflower plantings program has received rave reviews from volunteers, garden and civic groups. The wildflowers provide a source of pride to Asheville residents. This resolution commends the North Carolina Department of Transportation for this program and urges the continuation of the program.

Upon motion of Councilman Frank, seconded by Vice-Mayor

Moore, Resolution No. 90-77 was unanimously adopted.

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Mayor Michalove presented the resolution to Gene Edmonds, Western Division Engineer for the North Carolina Department of Transportation.

II. PUBLIC HEARINGS:

A. Public hearing relative to closing a portion of Irving Street.

Mayor Michalove said a petition was received from David

Thompson and wife, Betty Thompson, and the Grace Memorial Church of Asheville

requesting that a portion of Irving Street be closed.

Mayor Michalove opened the public hearing at 4:12 p.m.

The City Clerk presented the notice to the public

setting the time and date for the public hearing.

Charles Penny, Assistant City Manager, requested that

the public hearing be continued giving the Operating Departments an opportunity to review the closing of a portion of Irving Street to determine if the City needs to reserve any utility easements.

Councilman Ellison moved to continue the public hearing

for one week, June 19, 1990, without further advertisement. This motion was seconded by Councilman

Price and carried unanimously.

### III. OLD BUSINESS:

#### A. Motion adopting the Water Authority Budget.

Mayor Michalove said the Water Agreement provides that

the Water Authority, the Asheville City Council and the Buncombe County Board of Commissioners approve the Water Authority Budget. The Water Authority Budget was presented to members of Council on May 15, 1990.

Mayor Michalove indicated that the budget includes a

Capital Improvement Program as well as day-to-day operations and members of Council reviewed the entire budget.

Councilman Frank moved for the approval of the Water

Authority Budget as presented to members of Council on May 15, 1990. This motion was seconded by Councilman

Bratton and carried unanimously.

#### B. Report on Sign Ordinance.

Mayor Michalove said on June 5, 1990 the City Council

established a committee to review the Sign Ordinance.

Vice-Mayor Moore, Chairman of the Sign Committee,

presented the following report:

"The meeting was held at 1:30 p.m. on Monday, June 11,

in Asheville City Hall. Present were: Moore, Frank, Bean, Bryson, Cogburn.

The committee carefully analyzed the concerns enumerated

in the mayor's memorandum of June 5 and the city attorney's memorandum of June

1. Other concerns not enumerated in the memoranda, also were discussed.

#### CONCLUSIONS

- \* That sufficient resources in terms of telephone lines, trained technicians, money and manpower are available to adequately handle questions from sign owners whose signs are not in compliance.
- \* That the sign ordinance, as adopted is enforceable.
- \* That in order to honor the mayor's commitment that an adequate window be provided for sign owners who want to file suit, mailing of the notices should proceed without delay.
- \* That revision of some parts of the sign ordinance may be desirable at a point in the future.

#### RECOMMENDATIONS

1. Mail the notices as speedily as practicable.
2. Require the Sign Administrator on or about Dec. 15, to make a complete report to council detailing the results of the first year's experience under the ordinance. This report should include an estimate of the cost of legally defending the ordinance. It also should include major complaints about the way the ordinance operated and any recommendations the Sign Administrator may have about revising the ordinance technically, substantively or both.
3. This report could serve as the basis for (a.) the appointment by the mayor of a Sign Ordinance Revision Committee that would operate on the City Council level, (b.) a decision to create a whole new Sign Ordinance Revision Commission, (c.) a decision to continue to handle any problems that arise administratively."

Vice-Mayor Moore moved to accept the report of the Sign Committee. This motion was seconded by Councilman Frank.

Councilman Ellison expressed concern that persons outside the city structure are not being involved in the process. He asked the City Attorney if the City could be financially liable for noncompliance signs and if this is considered a "taking" of property without compensation.

The City Attorney said this matter was addressed during the adoption of the Sign Ordinance and it was and still is his opinion under existing law that the ordinance is valid and the taking down of the noncompliance signs would not be a "taking" of property. He said a court challenge could answer this question.

Councilman Ellison said it is his understanding that several court cases in other cities are now pending on this matter and

questioned whether or not it would be prudent to delay notifying businesses of noncompliance until these cases are decided. He said he was concerned about the financial impact this decision could have on the city.

Albert Sneed, Attorney representing Summey Outdoor

Advertising Company, requested that Council proceed with the notifications as promised. He said his client feels the Sign Ordinance was enacted rapidly and the Sign Commission did not listen to the concerns of the Sign Companies. He said the impact of the Sign Ordinance on the business community will be devastating. He said after the notices are mailed out and Council hears from the business community a forum could be held before September, 1990 to determine if the City Council needs to take further action on the Sign Ordinance.

It was noted that September 4, 1990 is the deadline for anyone filing a lawsuit regarding the Sign Ordinance.

Mike Plemmons, with Council of Independent Business

Owners, requested that Council go ahead and mail the notices to businesses and to have a forum before September.

Ben Slosman, private business owner, also requested that the notices be mailed.

Upon inquiry of Mayor Michalove, Julia Cogburn, Director

of Planning, said the notices could be mailed out within the next three (3) weeks.

After discussion, Councilman Ellison made a substitute

motion to accept the report of the Sign Committee and that for the purpose of reviewing the complaints that arise from the sending out of the notices that a Sign Ordinance Review Committee be appointed by the Mayor to include the Sign Committee members as well as others. This motion was seconded by Councilman Estes.

After further discussion, Councilman Ellison and

Councilman Estes withdrew their motion.

Councilman Price made a substitute motion to accept only

Recommendation No. 1 of the Sign Committee that being, "mail the notices as speedily as practicable". This motion was seconded by Councilman Ellison and carried on a voice vote of 5-2 with Vice-Mayor Moore and Councilman Frank voting "no".

Councilman Price then moved that the Sign Committee,

appointed by the Mayor, come back to Council within two (2) weeks with a recommendation for a timetable for a forum, to be held in July, 1990; as well as a recommendation on the type of committee that should be established, their purpose, and the appointing authority. This motion was seconded by Councilman

Ellison which was unanimously adopted.

IV. NEW BUSINESS:

A. Resolution No. 90-74 - Resolution rescinding Resolution

No. 88-10 - Resolution recognizing years of service for retiring Asheville Police Officers by presentation of

the badge and gun carried during their career.

Mayor Michalove said the City is in the process of

acquiring new automatic pistols and the current pistols can be used as trade-ins. Due to the cost of the new pistols it does not appear that it would be cost

effective to award guns to retirees.

The City Manager noted that the police officers will

still be presented their badges and they are being given the opportunity to purchase their pistols from the vendors.

Upon motion of Vice-Mayor Moore, seconded by Councilman

Price, Resolution No. 90-74 was unanimously adopted.

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B. Ordinance No. 1854 - Ordinance of the City of Asheville

("Grantor") authorizing the transfer of a Cable Television Franchise from United Artists Holdings, Inc., to UACC Midwest, Inc.

The City Attorney said United Artists Holdings, Inc., is

the holder of a franchise from the City of Asheville allowing the operation of Asheville Cablevision. United Artists Holdings, Inc., is restructuring its financing, and in connection with that restructuring, is transferring the assets of Asheville Cablevision to its subsidiary, UACC Midwest, Inc. Approval of the transfer is required by Section 23 of the franchise ordinance. UACC Midwest, Inc., is a subsidiary corporation owned by United Artists Holdings, Inc.

Councilman Ellison moved for the adoption of Ordinance

No. 1854. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0, Ordinance No. 1854 passed on first reading.

Joe Haight, General Manager of Asheville Cablevision,

said since this is only a paperwork transaction he would request three readings on the ordinance at today's meeting.

Councilman Ellison moved to suspend the rules and

proceed to the second reading of Ordinance No. 1854. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1854 passed on second reading.

Councilman Ellison moved to suspend the rules and proceed to the third reading of Ordinance No. 1854. This motion was seconded by Councilman Estes and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1854 passed on third and final reading.

Ordinance Book No. 12 - Page 127 - 128

C. Resolution No. 90-75 - Resolution authorizing the Mayor

to execute agreements with the N. C. Department of Transportation for highway projects near the Asheville

Regional Airport.

The City Attorney said the North Carolina Department of

Transportation has requested certain rights of way and easements across property owned by the City of Asheville at the Asheville Regional Airport. These are in connection with State Project No. 6.804747 (Airport Road) and State Project No. 8.1950203 (N.C. 280 & I-26 Interchange). He said the execution of these agreements

are only for entry and the amount of compensation for the rights of way will be negotiated at a later date.

Upon motion of Vice-Mayor Moore, seconded by Councilman

Frank, Resolution No. 90-75 was unanimously adopted.

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E. Ordinance No. 1855 - Ordinance for the levy and collection of business licenses taxes.

The City Manager said the City's ordinance is in two

parts. In one section the City sets rates and in the other the General Assembly sets the rates and regulations. He said state regulated items in the Revenue Ordinance needs to be revised in order to comply with changes mandated by the State to become effective July 1, 1990.

Members of Council requested information as to key

changes being made in the ordinance and a determination why revenues will be decreased by \$11,000. It was noted that this information would be furnished to Council prior to the second reading.

Councilman Ellison moved for the adoption of Ordinance

No. 1855. This motion was seconded by Councilman Frank.

On a roll call vote of 7-0, Ordinance No. 1855 passed on first reading.

F. Resolution No. 90-76 - Resolution authorizing the City

Manager to amend the Technical Services contract (#88-84) with the Land-of-Sky Regional Council.

Patty Tallerday, with the Planning Department, said the

contract amendment extends period of performance for one year, to June 30, 1991 and increases the contract amount by \$70,000. Contract amendment is needed for Land-of-Sky Regional Council to continue to perform the transportation FY 1991 Planning Work Program. She said the City's portion of funding would be \$10,500.

Upon motion of Councilman Ellison, seconded by

Councilman Price, Resolution No. 90-76 was unanimously approved.

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V. CONSENT:

VI. OTHER BUSINESS:

ADVERTISEMENT FOR SHINDIG ON THE GREEN

Mayor Michalove said Milkco, Inc. is now advertising Shindig on the Green on all their milk cartons. He showed members of Council a sample of the milk cartons. He expressed appreciation to Milkco, Inc. for this effort.

A. Group development action by the Planning and Zoning Commission

Mr. Gerald Green, Senior Planner, said the City Council adopted a procedure whereby the Planning Director reports final recommendations of the Planning and Zoning Commission relative to group developments at the next scheduled regular meeting of the City Council. The action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. The following actions were taken by the Planning and Zoning Commission at their meeting on June 6, 1990:

1. Cottages at Richmond Hill Inn - 87 Richmond Hill Drive

Mr. Gerald Green, Senior Planner in the Planning Department, said that the Planning and Zoning Commission, at its June 6, 1990 meeting, reviewed and approved the site plan for the Cottages at Richmond Hill Drive, contingent upon the approval by City Council of a variance for a reduction in the required width of the landscaped buffer from 20 feet to 10 feet.

Councilman Price moved to schedule a public hearing relative to the Cottages at Richmond Hill Inn for June 26, 1990. This

motion was seconded by Vice-Mayor Moore and carried unanimously.

2. Public Works Complex - South Charlotte Street

Mr. Gerald Green, Senior Planner in the Planning Department, said that the Planning and Zoning Commission, at its June 6, 1990 meeting, reviewed and approved the site plan for the Public Works Complex located on South Charlotte

Street, contingent upon the following conditions:

- 1) Approval of driveway permit, as required, by NCDOT;
- 2) Approval by City Council of the closing of a portion of Beaumont Street and Dixon Alley;
- 3) Approval by City Council of a variance permitting a reduction in the required front setback; and
- 4) The developer (the City of Asheville) and the architect meet with representatives of Mt. Zion Baptist Church to discuss impacts of the project on the church.

Councilman Ellison moved to schedule a public hearing relative to the Public Works Complex for June 26, 1990. This

motion was seconded by Vice-Mayor Moore and carried unanimously.

COMMENTS RELATIVE TO BUDGET FOR 1990-91

Diana Bilbrey encouraged members of Council to fund the "Downtown Street Lamps". She suggested that the street lamps be funded by sponsors for street lamps by banks, garden clubs, and civic clubs. She said each sponsors name could be placed on the lamp. She said this would reduce the cost to maintenance and upkeep of the street lamps.

Paul Hensley, Chairman of the Asheville Transit Authority, expressed concern about the proposed cuts for the Transit Authority budget. He said these cuts would cause a decrease in service due to the elimination of a bus route. He said this would also cause the elimination of employees.

Mark Richards, Assistant Manager of Management, said the decrease in funding would be an overall degrading of the bus system. He said the transit system needs fund for marketing, i.e. radio announcements, flyers, new maps, new logo, in an effort to increase service. He said a decrease of \$65,000 would be a net loss of one bus. He suggested that Council look at alternative funding methods.

Bob Wurst, Audit and Budget Director, reviewed the proposed Transit Authority budget. He said the budget has a 6.3% increase in operating expenses.

After discussion, it was decided that Vice-Mayor Moore, Council's liaison for the Asheville Transit Authority, meet with the City Staff and the Asheville Transit Authority to determine the overall effects of the budget cuts and to bring Council some recommendations.

CLAIMS - TINA ADAMS (TRAFFIC ENGINEERING) - L. R. CLAYTON (SEWER)

The City Manager presented claims received from Tina Adams and L. R. Clayton.

Mayor Michalove referred the claims to the City Attorney for investigation and recommendation.

RALPH BISHOP - LOTTERY SALES

Ralph Bishop again spoke to members of Council relative to the lottery sales at 704 Riverside Drive.



ADJOURNMENT - EXECUTIVE SESSION - LEGAL MATTER

Councilman Bratton moved that Council adjourn the meeting and meet in executive session to discuss a legal matter. This motion was seconded by Councilman Ellison.

The meeting adjourned at 6:10 p.m.

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MAYOR CITY CLERK

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