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Tuesday - February 12, 1991 - 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**

The invocation was given by Vice-Mayor Moore.

**APPROVAL OF MINUTES**

Mayor Michalove announced the approval of the minutes of the February 5, 1991 meeting.

**I. PROCLAMATIONS:**

**A. Presentation to Sgt. 1st Class Royster.**

Mayor Michalove introduced Sgt. 1st Class Royster, Army

Recruiter for the Asheville Area, who spoke to members of Council on the importance of encouraging recruitment into the Armed Forces.

**B. Proclamation - "Salute to Hospitalized Veterans Week" -**

**February 10 - 16, 1991.**

Mayor Michalove read a proclamation for "Salute to

Hospitalized Veterans Week" February 10 - 16, 1991 and presented a copy to Darlene Kristin, Volunteer Coordinator for the VA Hospital.

**C. Proclamation - "Black History Month" -**

**February, 1991.**

Mayor Michalove read a proclamation for "Black History

Month" February, 1991 and presented a copy to Phyliss Sherrill, with the Asheville-Buncombe Community Relations Council.

**D. Proclamation - "WWNC Loves Wonderful Western North Carolina Week" - February 12 - 19, 1991.**

Mayor Michalove read a proclamation for "WWNC Loves Wonderful Western North Carolina Week" -

February 12 - 19, 1991 and presented a copy to Bud Polacheck with WWNC.

Mr. Polacheck said WWNC is celebrating their 65th

Anniversary and is beginning a year long campaign for "WWNC Loves Wonderful Western North Carolina." He highlighted events for the campaign during the year.

He also presented a large cake to members of Council.

**E. Proclamation - "Buckle Up for Love"**

**February 10 - 16, 1991**

Mayor Michalove read a proclamation for "Buckle Up for Love" February 10 - 16, 1991 and presented a copy to Luke Bigalow with the Asheville Police Department.

**II. PUBLIC HEARINGS:**

**A. Public hearing relative to rezoning property located on Forest Hill Drive for Memorial Mission Hospital.**

Mayor Michalove said the Asheville Planning and Zoning

Commission on September 5, 1990, reviewed and recommended denial of rezoning Ward 1, Sheet 8, Lot 31-1/2 (between Biltmore Avenue and Forest Hill Drive) from R-3 Residential District to OI Office Institutional. The petitioner has elected to appeal the decision by the

Planning and Zoning Commission to City Council.

Jim Taylor, with the Memorial Mission Hospital, read the following statement:

Upon inquiry of Mayor Michalove, the City Attorney

advised that since the petitioner withdrew the rezoning request there is no reason to continue with a public hearing since there would be no action Council could take on the issue. He said the petitioners, pursuant to the Zoning Ordinance, can not request the rezoning again for a period of one (1) year.

After discussion, Jim Taylor with the Memorial Mission

Hospital, said the Hospital would commit that they would not request the rezoning again for one (1) year from today's date, February 12, 1991.

Jim Salaski, President of the Kenilworth Residents

Association, said they are disappointed that this issue can not be settled at today's meeting since the residents are prepared to make a presentation to Council.

After discussion, Mayor Michalove suggested that within

the next six (6) weeks that Memorial Mission Hospital and the Kenilworth Residents Association schedule a meeting to begin a dialog between the hospital and the residents. He requested that members of Council be informed as to when the meeting is to be held in order

that they could attend if they so desired.

### **III. OLD BUSINESS:**

#### **A. Ordinance No. 1891 - Third reading of an ordinance**

##### **prohibiting structures within the public rights-of-way.**

Mayor Michalove said this ordinance will repeal Section

25-17 (Encroachment Agreements) of the Code of Ordinances of the City of Asheville and substitute new language prohibiting and/or regulating structures within the public rights-of-way. This ordinance was read on first reading on January 22, 1991 and on second

reading on February 5, 1991.

Upon the request of the City Attorney, Councilman Price

moved to amend Ordinance No. 1891 to add "The City Manager or his designee may grant a property owner an encroachment agreement only if the encroachment can be allowed without detriment to the health, safety and welfare of the general public." to Section 1(E)(4). This motion was seconded by Vice-Mayor Moore and

carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1891 passed

on third and final reading.

#### **Ordinance Book No. 12 - Page 313**

#### **B. Ordinance No. 1888 - Second reading of an ordinance**

##### **updating the provisions regarding the regulation of Pawnbrokers.**

Mayor Michalove said the ordinance updates provisions

regarding the regulation of pawnbrokers. The new language requires the owner/manager to provide a records check for the past ten years, and stipulates that the pledgor sign and thumb print the pawn ticket. It also requires a fee for the license, in addition to the Privilege License fee, and provides for an appeals process.

The City Manager said the staff met with the local

pawnbrokers and they are in agreement with the ordinance except the provisions that require "thumb prints." He said they felt that requirement is an excessive burden to have for just the pawnbrokers. He said staff would recommend the deletion of that requirement from the ordinance.

After discussion, Vice-Mayor Moore moved to amend

Ordinance No. 1888 to delete the provisions requiring the thumbprint on tickets. This motion was seconded by Councilman Price and carried unanimously.

On a roll call vote of 7 - 0, Ordinance No. 1888 passed

on second reading.

Councilman Ellison moved to suspend the rules and

proceed to the third and final reading of Ordinance No. 1888. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7 - 0, Ordinance No. 1888 passed

on third and final reading.

### **Ordinance Book No. 12 - Page 301 - 309**

#### **V. NEW BUSINESS:**

##### **A. Ordinance No. 1893 - Ordinance amending Section 25-16**

**of the Code of Ordinances of the City of Asheville regulating parades, picket lines and group demonstrations.**

The City Attorney said Subsection (c) (3) of Section

25-16 of the Code of Ordinances of the City of Asheville authorizes the Chief of Police or his designee to refuse to issue permits for parades or group demonstrations to be held at the same time and place as those designated in a permit issued pursuant to a written application previously received by the Chief of Police or his designee. Subsection (g) (4) of Section 25-16 of the Code however, provides that the Chief of Police shall allot time to each group of pickets for the use of such sidewalk on an equitable basis if pickets promoting different objectives desire to use the same sidewalk for picketing and such use would result in the presence of more than ten (10) pickets thereon. These two subsections conflict with each other. This ordinance amendment will eliminate that conflict.

John Eubanks and Mike Creul from Toccoa, Ga. complained

to members of Council regarding their arrest on October 6 for holding a protest without a permit. They said they were carrying signs on South Tunnel Road alongside the Asheville Mall urging individuals to vote for Senator Jesse Helms and they technically weren't demonstrating or holding a campaign rally - as required by the parade ordinance - but demonstrating for an individual. They asked that members of Council address their concerns in this particular ordinance.

Councilman Price moved for the adoption of Ordinance

No. 1893. This motion was seconded by Vice-Mayor Moore.

On a roll call vote of 7-0 Ordinance No. 1893 passed on

first reading.

Councilman Ellison moved to suspend the rules and

proceed to the second reading of Ordinance No. 1893. This motion was seconded by Vice-Mayor Moore and carried unanimously.

On a roll call vote of 7-0, Ordinance No. 1893 passed  
on second reading.

Councilman Ellison moved to suspend the rules and  
proceed to the third reading of Ordinance No. 1893. This motion was seconded by Vice-Mayor Moore and carried  
unanimously.

On a roll call vote of 7-0, Ordinance No. 1893 passed  
on third and final reading.

**Ordinance Book No. 12 - Page 315**

**B. Resolution No. 91-11 - Resolution authorizing the Mayor**

**to execute a contract with the Department of Transportation for railroad crossing signals in Asheville.**

The City Manager said this action will provide for the  
installation of railroad crossing signals at the intersection of Stoner Road and the Southern Railroad.

Mayor Michalove said copies of the resolution had  
previously been distributed to members of Council, and the resolution would not be read unless there was a specific  
request to do so.

Upon motion of Vice-Mayor Moore, seconded by Councilman  
Ellison, Resolution No. 91-11 was unanimously adopted.

**Resolution Book No. 18 - Page 330**

**C. Resolution No. 91-12 - Resolution appointing a member  
to the Planning and Zoning Commission.**

Mayor Michalove said this action will appoint Dr.

Albert Anderson as a member of the Planning and Zoning Commission to serve the unexpired term of Wanda Henry  
Coleman, term expiring August 14, 1991.

Upon motion of Vice-Mayor Moore, seconded by Councilman  
Ellison, Resolution No. 91-12 was unanimously adopted.

**Resolution Book No. 18 - Page 331**

**D. Report on Sale of Personal Property by Purchasing  
Director.**

The City Manager said Resolution No. 85-99 adopted by  
City Council on June 25, 1985 established procedures for disposing of personal property valued at less than five

hundred dollars (\$500.00) for any one item or group of items. The regulations require the Purchasing Director to make a written report to City Council as to any property disposed of on the first day of February for the period from July 1 through December 31 of the prior year.

The City Manager reported that the Purchasing Director

sold round tables that were in the Civic Center to the

YMI Cultural Center for \$120.00 on December 14, 1990.

**V. CONSENT:**

**VI. OTHER BUSINESS:**

**®REPORT OF GROUP DEVELOPMENT ACTIONS BY THE PLANNING AND ZONING**

**COMMISSION**

Don Sherrill from the Planning Department, 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. She said in accordance with the new procedure, the action of the Commission shall be final unless the City Council determines at their meeting to schedule a public hearing on the matter. She said the following action was taken by the Planning and Zoning Commission at their

meeting on February 6, 1991.

**®(1) HAW CREEK MEWS APARTMENTS - NEW HAW CREEK ROAD**

Ms. Tallerday said the Asheville Planning and Zoning Commission on February 1, 1989, reviewed and approved the site plan of **Haw Creek Mews Apartments - New Haw Creek Road** subject to

three (3) contingencies:

1. Submit and receive approval of engineered drawings

from appropriate City staff, the Metropolitan Sewerage District (MSD), and the North Carolina Department of Transportation (NCDOT) prior to issuance of any required permits. The final

approved plans shall meet all City, State and

Federal regulations.

2. The developer shall meet and adhere to the

conditions set forth in Michael Brookshire's January 22, 1991 letter regarding the construction and land disturbance activity within the easement for the thirty-six (36) inch waterline that crosses the

property.

3. No three (3) story buildings shall be constructed

adjacent to any property line.

Councilman Price moved to schedule a public hearing relative to the group development review of the Haw Creek Mews Apartments for March 5, 1991. This motion was seconded by Vice-Mayor Moore and carried unanimously.

**®(2) LAKEVIEW MOBILE HOME PARK EXTENSION (RESUBMITTAL)**

Don Sherrill said the Asheville Planning and Zoning Commission on February 6, 1991, reviewed and approved the site plan of **Lakeview Mobile Home Park Extension (Resubmittal)** subject

to the following contingencies:

1. Approval by City Council of a variance to permit the placement of seven (7) mobile homes on a site of 47,700 square feet; and
2. All relocated mobile homes shall be at least twenty (20) feet from internal streets.

Councilman Ellison moved to schedule a public hearing relative to the group development review of the Lakeview Mobile Home Park Extension for March 5, 1991. This motion was seconded by Councilman Price and carried unanimously.

**®(3) INGLES MARKET ON CORNER OF HAYWOOD ROAD AND S.**

**LOUISIANA AVENUE**

Don Sherrill said the Asheville Planning and Zoning Commission on February 6, 1991, reviewed and approved the site plan of **Ingles Market on Corner of Haywood Road and S. Louisiana**

**Avenue** subject to the following contingencies:

1. NCDOT and City approval of driveway entrances

Councilman Price moved to schedule a public hearing relative to the group development review of the Ingle's Market on Corner of Haywood Road and S. Louisiana Avenue for March 5, 1991. This motion was seconded by Councilman Frank and carried unanimously.

**ABC PERMITS - APPROVAL/DISAPPROVAL**

The City Manager presented the following ABC Permits:

**1. Off The Wall - 9 Kenilworth Knoll**

- A. Fire Department - Fire Code Violations (defective emergency lighting and exit lights)
- B. Collections Division - Unable to obtain application for City beer and wine license.
- C. Police Department - Applicant has 2 charges for DWI and his drivers license is currently revoked. No other criminal charges are noted. No complaint reports have been filed for this location during the past year.

Councilman Bratton moved to disapprove the ABC Permit for Off the Wall until all code violations are corrected. This motion was seconded by Councilman Ellison and carried unanimously.

**2. Asheville Beverage, Inc. - 61 N. Lexington Avenue**

Establishments meets requirements of all departments. There are no criminal or driving records on applicants, and no complaints reports have been filed for this location during the past year.

Council approved the ABC Permit by taking no action.

### **3. D.J.'s Burger Bar - 1 Haywood Road**

A. Inspections Division - Electrical and plumbing violations - improperly installed circuit in panel and flood light circuit on front of building; water closets need to be reseated; floor around main water closet needs to be repaired to insure proper seating; and proper support of sink at bar.

B. Police Department - There is no driving or criminal record or on the applicant. A review of records for the past year indicates three (3) complaints were filed - one for forgery and two for burglary.

Councilman Bratton moved to disapprove the ABC Permit for D. J.'s Burger Bar until all code violations are corrected. This motion was seconded by Councilman Ellison and carried unanimously.

### **4. The McTap - 633 Merrimon Avenue**

A. Fire Department - Fire Code violations (remove two latch-type locks on approved means of egress doors).

B. Police Department - Applicant has no criminal record, but does have one (1) DWI and two speeding charges. No complaints reports have been filed for this location during the past year.

Councilman Bratton moved to disapprove the ABC Permit for The McTap until all code violations are corrected. This motion was seconded by Councilman Ellison and carried unanimously.

### **5. Southern Appalachian Lesbian and Gay Alliance**

A. Inspections Division - Electrical and plumbing violations (improper ground on counter-top outlets and open sewer under kitchen sink).

B. Police Department - Applicant has no criminal or driving record. A review of records for the past year indicates five (5) complaints were filed - three forgeries, one fraud, and one robbery.

Councilman Bratton moved to disapprove the ABC Permit for the Southern Appalachian Lesbian and Gay Alliance until all code violations are corrected. This motion was seconded by Councilman Ellison and carried unanimously.

**Claims -T. Edmund Whitmire (Water) -William Cahill (Wastewater) - Rebecca D. Edwards (Water) - City of Asheville (City vehicle**

**damaged)**

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The City Manager said claims were received from T. Edmund

Whitmire, William Cahill, Rebecca D. Edwards, and the City of Asheville.

Mayor Michalove said the claims have been referred to the appropriate insurers for investigation.

### **Cancellation of Public Hearing - Hillside Development Regulations**

Councilman Ellison moved to cancel the public hearing relative to Hillside Development Regulations scheduled for March 26, 1991. This motion was seconded by Councilman Frank and carried unanimously. This issue will be brought back to Council at a later date.

**Cancellation of Public Hearing - Extraterritorial Zoning - West Area**

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Councilman Ellison moved to cancel the public hearing relative to Extraterritorial Zoning in the West Area scheduled for February 19, 1991. This motion was seconded by Councilman Frank and carried unanimously. This issue will be brought back to Council at a later date.

**Downtown Design Review Forum - February 13, 1991 - 7:00 p.m.**

Vice-Mayor Moore encouraged members of Council to attend the Downtown Design Review Forum at the Asheville-Buncombe Library -

Lord Auditorium on February 13, 1991 at 7:00 p.m.

**VII. ADJOURNMENT**

Mayor Michalove adjourned the meeting at 5:50 p.m.

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MAYOR CITY CLERK

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