

Tuesday - June 25, 1996 - 5:00 p.m.

Regular Meeting

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; City Attorney William F. Slawter; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

MAYOR'S CUP RAFT RACE

Councilman Worley proudly announced that the City of Asheville finished in 4th place in the Mayor's Cup Raft Race held on June 23, 1996.

Mayor Martin expressed his thanks to Councilmen Sellers and Worley for their participation, along with Mountain Xpress writer Margaret Williams and Finance Director Larry Fisher who were recruited to help in the raft.

I. PROCLAMATIONS:

A. RESOLUTION NO. 96-104 - RESOLUTION OF APPRECIATION TO LARRY A. FISHER, FINANCE DIRECTOR

City Manager Westbrook read the resolution stating that Larry Fisher has been employed by the City of Asheville for 26 years and has requested retirement from his position as Finance Director. Mayor Martin expressed City Council's appreciation to Larry for his service to the City of Asheville and its citizens.

Resolution No. 96-104 was adopted by acclamation.

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B. PROCLAMATION PROCLAIMING JUNE 26, 1996, AS "OLYMPIC TORCH RELAY DAY"

Mayor Martin read the proclamation proclaiming Wednesday, June 26, 1996, as "Olympic Torch Relay Day" in the City of Asheville. He presented the proclamation to Mr. George Pfeiffer and Glenn Wilcox who briefed the Council on some activities that would be taking place during the day.

C. PROCLAMATION PROCLAIMING JULY 1996, AS "RECREATION AND PARKS MONTH"

Mayor Martin read the proclamation proclaiming the month of July, 1996, as "Recreation and Parks Month" in the City of Asheville. He presented the proclamation to Mr. Bill Estes, Chairman of the Recreation Board, who briefed the Council on some activities that would be taking place during the month. Mr. Estes also said that under the leadership of Parks & Recreation Director Irby Brinson, the City of Asheville has a lot to be proud of in terms of parks and recreation.

II. PUBLIC HEARINGS:

A. PUBLIC HEARING ESTABLISHING STANDARDS FOR TELECOMMUNICATIONS TOWERS IN ALL ZONING DISTRICTS

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B. PUBLIC HEARING TO REDUCE THE FRONT BUILDING SETBACK REQUIREMENTS FOR NON-RESIDENTIAL USES IN R-1A, R-2, R-3, R-4 AND R-5 ZONING DISTRICTS

ORDINANCE NO. 2290 - ORDINANCE AMENDING APPENDIX A - ZONING ORDINANCE OF THE CITY OF ASHEVILLE

City Attorney Slawter recommended that these two public hearings be combined because the ordinance amendments for both matters are lengthy and have to be set forth in their entirety and it would be simpler to combine the two matters and have one vote - making both amendments at the same time. He said it would be cheaper with our recodifiers to do it this way as well.

Mayor Martin opened the public hearing at 5:17 p.m.

City Clerk Burlison presented the notices to the public setting the time and date of the public hearings.

Ms. Julia Cogburn, Planning & Development Director, explained the telecommunications tower regulation draft by saying that this ordinance is proposed in order to establish regulations for telecommunications towers in all zoning districts within the jurisdiction of the City of Asheville.

The City of Asheville's current zoning regulations have very few requirements addressing the siting of telecommunications towers. At the direction of City Council, the staff of the Planning & Development Department has conducted research and drafted a proposal for regulating such towers.

This draft ordinance proposes standards for the height; setback; lighting; and buffering of telecommunication towers along with other specifications. In early May these suggested standards were sent to representatives of the telecommunications industry as well as to citizens groups in Asheville for their review.

At the Planning and Zoning Commission meeting on June 5, 1996, the Commission reviewed the staff draft. It was decided at that meeting to continue the meeting to Thursday, June 13, 1996, in order to provide an opportunity for staff to meet further with industry representatives to try to address any remaining concerns.

As a result of the worksession held on June 18, 1996, City Council asked staff to look further into placing height restrictions on the towers and adding incentives to the ordinance to make it more advantageous to co-locate on towers.

Based upon those comments, she then reviewed the following amendments to the draft ordinance Council had before them:

1. Amend Sections 15, 16, 17, 18, 20, 21, 22 and 23 of the draft ordinance to delete "telecommunications towers" as permitted uses in the CR (30-5-7.A.), CS (30-5-8.A.), CG (30-5-9.A.), CH (30-5-10.A.), OI (30-5-12.A.), LI (30-5-13.A.), HI (30-5-14.A.) and NC (30-5-15.A.) districts, but keep the language which allows "antennas" as permitted uses, subject to certain conditions in these same zoning districts, but using those conditions in the draft ordinance which apply to antennas in the residential districts.

2. Include new sections in the draft ordinance to amend Sections 30-5-7.B (CR), 30-5-8.B. (CS), 30-5-9.B. (CG) and 30-5-10.C. (CH) of the Code to allow telecommunications towers as a conditional use in those zoning districts.

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3. Include a new section in the draft ordinance to add a new Section 30-5-12.C. (OI) to the Code to allow telecommunications towers as a conditional use in the OI zoning district.

4. Include a new section in the draft ordinance to amend Section 30-5-13.F. (LI) of the Code to allow telecommunications towers as a conditional use in the LI zoning district.

5. Include a new section in the draft ordinance to add a new Section 30-5-14.F. (HI) to the Code to include the conditional uses now set forth in Section 30-5-14.A.15. and 16. of the Code and to include telecommunications towers as a conditional use in the HI zoning district.

6. Include a new section in the draft ordinance to add a new Section 30-5-16.C. (NC) to the Code to allow telecommunications towers as a conditional use in the NC zoning district.

7. Include a new section in the draft ordinance to add a new Section 30-7-1.Q. to the Code which includes the 14 conditions set forth previously in the draft ordinance where telecommunications towers were to be allowed as permitted uses in the CR, CS, CG, CH, OI, LI and HI zoning districts and adding three new conditions as follows:

(15) The Board of Adjustment may require any other conditions found necessary to ameliorate the impact of the tower on the adjacent properties and uses. Such conditions shall include, but are not limited to: the height of the tower; the construction or type of tower; and co-location of the antennae and facilities of different parties on a single tower.

(16) No telecommunications towers shall be permitted which exceeds 300 feet in height.

(17) Telecommunications towers which have remained inactive for a period of 180 days or longer shall be removed by the owner of the tower. In the event that the City determines that a tower has not been removed pursuant to this requirement, the City may provide the owner of the tower with a written notice sent by certified mail, return receipt requested, or by hand delivery or by any other method allowed under the North Carolina Rules of Civil Procedure for Service, that the tower or antenna should be removed within 90 days of receipt of that notice.

8. In all Number 2 conditions in all of these sections, it needs to be amended to read: "All telecommunications towers and antennas must comply with FCC and Federal Aviation Administration (FAA) guidelines. The telecommunications towers and antenna owners shall provide the City each year with a copy of any FCC and FAA license required."

9. In all Number 3 conditions which deal with lighting that are found throughout the ordinance, it needs to be amended to read: "Towers that do not require FAA compliant lighting shall be equipped with at least one steady burning red obstruction lamp meeting FAA specification L-810 in order to alert helicopter ambulances that approach and depart at low altitudes to the presence of such towers."

She said the first two amendments basically take telecommunication towers from being a permitted use in those districts to becoming a conditional use in those districts. That means that they are subject to certain conditions that would also be subject to review before the Board of Adjustment. The Board of Adjustment would be looking at whether or not those conditions had been met, as well as being allowed to add any additional

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conditions that they saw fit as appropriate for the particular location of that tower.

Upon inquiry of Councilman Cloninger, Ms. Cogburn said that there is a total prohibition on towers in all residential areas, noting that antennas are allowed subject to certain requirements. All towers must sit back at least 125 feet from a residential district as well.

Councilman Skalski noted that in Roanoke, they have a height restriction of 45 feet on all structures erected in the City. Ms. Cogburn said that basically that has the effect of prohibiting towers altogether and that the industry has had to turn to antennas. That is an option Council can look at, but staff felt that was too prohibitive in nature.

When Councilman Skalski asked about fees associated with the tower construction, Ms. Cogburn said that there is a \$100 conditional use permit fee to appear before the Board of Adjustment. City Manager Westbrook also said that if the telecommunication industry wanted to put the tower on City property or publicly owned property, we would try to negotiate a rental fee for the use of public property.

Councilman Skalski suggested some sort of regulatory fee structure and/or incentive for the industries to co-locate the antennas. Along those lines, Vice-Mayor Field wondered if the permit fee could be attached to the height - so the higher the height, the larger the permit fee.

Upon inquiry of Councilman Hay about the height restrictions, Ms. Cogburn said that in no instance could the Board of Adjustment approve a tower over 300 feet. The Board of Adjustment hearing would be subject to public notice for those who are concerned in the immediately surrounding area. They could come in and comment as to what additional conditions might make it blend in better in that particular area.

Fire Chief John Rukavina responded to Councilman Hay's question about the lit towers. The Fire Chief said that they are proposing the least intrusive light in the catalog of FAA lighting requirements. It doesn't flash - it's simply a steady burning light that would let a helicopter ambulance know that there is a tower there.

Mr. Scott Smith, Site Acquisition Administrator for GTE, answered various questions from Council. He said that each tower costs \$750,000 to construct. He explained that as the system matures, the tower heights will be reduced, but you will need more of them and they'll need to be closer together. He said that most of the towers now are 150 to 180 feet tall. He said that typically what they pay in other cities where they construct the towers is a fee based on the actual cost of construction of the tower.

Upon inquiry of Councilman Hay, Mr. Smith said that the tallest tower in Buncombe County is 190 feet and they have no plans to build any taller than that.

When Vice-Mayor Field asked about any clearance around the tower in case one falls, Ms. Cogburn said that the setback is 125 feet or the height of a tower from a residential district. She said that they have not proposed that type of a setback in any of the other districts. Mr. Smith also responded by saying that the towers are virtually designed not to fall; however, they can be designed to buckle a certain way but not fall.

In response to Councilman Cloninger, Mr. Smith said that as technology advances, the industry will be able to put up shorter towers. Actually, in some places, they are lowering their antennas on the taller towers. In fact, they perceive a time when the towers will be no taller than a light pole and

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the equipment building could be below the ground. He noted that sometimes when the occasion arises that an antenna can be lowered, it might be better not to reduce the tower height because a co-locator might need that height.

When Councilman Worley asked if we have made certain that there is no federal regulation that somehow preempts a portion of our ordinance, Ms. Cogburn said that our legal staff has looked at this ordinance in those terms and they have no concerns.

Upon inquiry of Councilman Hay, Ms. Cogburn said that if changes are made to the towers (not simple maintenance) would they have to comply with this ordinance.

Mr. Phil Davis, representative of Citizens for Media Literacy, asked that (1) City Council hold a public hearing on this very comprehensive policy; (2) higher fees be considered in this multi-million dollar industry; and (3) public access to the tower usage. He asked that adoption be delayed.

Council explained to Mr. Davis that this is the public hearing and there is a sense of urgency in getting this ordinance in place. As it stands right now, the City has no control over the regulation of these towers, but if in the future amendments need to be made, they can be.

Upon inquiry of Ms. Leni Sitnick, Ms. Cogburn said that the ridge law does specifically exempt towers, however, she did not think that was an issue here.

Councilman Skalski asked that Council postpone adoption of this ordinance in order to give staff time to develop a fee structure, some sort of incentives, and the element of use and density. He was uncomfortable with adoption of this ordinance since Council has only had it a short time.

Mayor Martin said that the Council's Fees and Charges Committee will have the charge to look at the fee structure and didn't favor holding off adoption of the ordinance until they meet and give their recommendations.

Ms. Amy Richardson, Zoning Coordinator for BellSouth, voiced concern about the towers being a conditional use and the conditions that the Board of Adjustment will be allowed to place on those towers, specifically the height restrictions. She suggested adoption of the ordinance be delayed.

Ms. Richardson asked if they would have to come in and get another conditional use permit if they were to co-locate. Ms. Cogburn said she would research that matter a little further and if the ordinance needed to be amended, she would bring that back to Council.

Mr. Smith asked that Council postpone taking action on this ordinance until a

final draft could be drawn up and reviewed by the telecommunications towers industry.

Mr. Mike Matteson, Urban Planner, briefed Council on the proposed amendments in this ordinance which would reduce the front building setback requirements for non-residential uses in the R-1A, R-2, R-3, R-4 and R-5 zoning districts; increase the front setback requirements for utility substations in all of the residential zoning districts; revise the definition of public utility; add or clarify height restrictions in the R-1A, R-1 and R-2 zoning districts; clarify lot size increase requirements for multi-family uses in the R-2 zoning district; and remove the spacing requirements for family care homes in R-1, R-2, R-3, R-4 and R-5 zoning districts.

At their May 28, 1996 meeting, City Council approved a wording amendment reducing the front setback requirement for non-residential uses in the R-1

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zoning district. This new wording amendment would reduce the front setback requirement for non-residential uses in the remaining residential zoning districts to be the same as that required for residential uses.

At their June 5, 1996 meeting, the Planning and Zoning Commission voted unanimously to approve this proposed wording amendment.

Councilman Skalski stated that he did not support the portion of the draft ordinance regarding regulation of telecommunications towers; however, he did support the ordinance amendments to reduce the front building setback requirements for non-residential uses in the R-1A, R-2, R-3, R-4 and R-5 zoning district.

Mayor Martin closed the public hearing at 6:14 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2290, with the amendments outlined above by Ms. Cogburn. This motion was seconded by Vice-Mayor Field.

Councilman Hay understood the urgency of getting regulations in place quickly but was still concerned about the height of the towers. Since the industry feels that 180 feet is about as high as they need to build, then why not limit the height to 180 in our ordinance. If, in the future, Council sees a need to raise that height restriction, the ordinance can be amended. He offered an amendment to the motion that the height of the towers be limited to 200 feet, instead of 300 feet.

Vice-Mayor Field stated that there are other kinds of towers that might be affected by this height restriction, like radio and television towers. Ms. Cogburn said that Planning staff did talk with a consultant that works with radio and television companies in terms of the siting. He felt that 200 feet was not an issue primarily because typically inside the City limits they will use the dishes on tops of buildings and their towers would be located further away from the city itself.

Mr. Clay Dover, representative of BellSouth, said that height restriction is a little bit of a problem. There are some areas that the industry may want to erect a new tower that is away from anything, perhaps in a canyon, and it may need to be over 200 feet to bring itself up above the elevation of the

terrain. He felt that restricting it to 200 feet may be of some concern.

Ms. Cogburn said that the Board of Adjustment would not be able to vary the height restrictions.

Councilman Cloninger amended his motion to adopt Ordinance No. 2290 with the amendments outlined above by Ms. Cogburn and placing a 200 feet height restriction on towers. Vice-Mayor Field accepted his amended motion.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2290 passed on its first and final reading.

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C. PUBLIC HEARING TO DEFINE RECYCLING COLLECTION CENTERS; IDENTIFY RECYCLING COLLECTION CENTERS AS A CONDITIONAL USE IN CERTAIN NON-RESIDENTIAL ZONING DISTRICTS; AND ESTABLISH CONDITIONS FOR THE DEVELOPMENT OF RECYCLING COLLECTION CENTERS

ORDINANCE NO. 2291 - ORDINANCE AMENDING THE ZONING ORDINANCE TO DEFINE RECYCLING COLLECTION CENTERS; IDENTIFY RECYCLING COLLECTION CENTERS AS A CONDITIONAL USE IN CERTAIN NON-RESIDENTIAL ZONING DISTRICTS; AND ESTABLISH CONDITIONS FOR THE DEVELOPMENT OF RECYCLING COLLECTION CENTERS

Mayor Martin opened the public hearing at 6:21 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Gerald Green, Senior Planner, said that at the Planning & Zoning Commission ("Commission") meeting on June 5, 1996, the Commission voted unanimously to recommend approval of an amendment to the Asheville Code of Ordinances which would: define recycling collection centers; identify recycling collection centers as a conditional use in certain non-residential zoning districts; and establish conditions for the development of recycling collection centers.

Recycling collection centers are currently not addressed in the city's zoning ordinance. As recycling becomes more a part of our daily lives, the need for recycling centers will increase. Standards are needed to govern the location of the collection centers to assure that they do not impose on adjacent properties or create problems for the community. The proposed ordinance amendments address potential problems created by recycling collection centers by designating certain zoning districts in which they can locate and establishing certain standards for their development. The centers would be permitted as a conditional use in the commercial general, commercial highway, commercial service, commercial regional, and light industrial zoning districts. Standards regulating setbacks, screening, and containment of the recycling collection center are established by the proposed ordinance. As a conditional use, the plans for the collection centers would be reviewed by the Board of Adjustment to assure that the center would comply with the established standards. All existing facilities will be grandfathered in.

The proposed ordinance was reviewed by the Commission at their May 1 meeting. Revisions were made based upon the comments of Commission members and resubmitted to the Commission at their June 5 meeting. At this meeting, the proposed amendment was recommended for adoption by City Council.

The Commission has unanimously recommended approval of the proposed ordinance

amendment as does the Planning and Development Department staff.

Mayor Martin closed the public hearing at 6:24 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Skalski moved for the adoption of Ordinance No. 2291. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2291 passed on its first and final reading.

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D. PUBLIC HEARING TO REZONE THREE PARCELS IN THE ROCK HILL PLACE AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-5 RESIDENTIAL

ORDINANCE NO. 2292 - ORDINANCE AMENDING THE ZONING OF THREE PARCELS IN THE ROCK HILL PLACE AREA FROM R-3 MEDIUM DENSITY RESIDENTIAL TO R-5 RESIDENTIAL

Mayor Martin opened the public hearing at 6:26 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Erin McLoughlin, Urban Planner, said that a public hearing was held on May 28, 1996, to rezone seven parcels off Rock Hill Road from R-3 Medium Density Residential to R-5 Residential. As a result of an error by the Asheville Citizen-Times, the legal ad which ran only contained four of the seven lots. The City Attorney's Office felt it would be in the City's best interest to hold another public hearing for the three lots left out of the original legal ad.

She reminded the Council that the Planning staff received a request to rezone seven parcels, approximately 10 acres, off of Rock Hill Road from R-3 Medium Density Residential to R-5 Residential. The properties are located north of Rock Hill Road, bordering Rock Hill Place. R-3 is a medium density residential district which allows 16 units per acre. R-5 is a medium density residential district with allows 10 units per acre and also allows manufactured homes on single family lots. The current land use is predominately manufactured homes. The 2010 Plan calls for low density residential. One person voiced their opposition to this rezoning at the May 1, 1996, Planning & Zoning Commission meeting.

At the Planning & Zoning Commission meeting, the Commission voted unanimously to approve the rezoning request. The Planning staff recommended approval of the rezoning also.

Mayor Martin closed the public hearing at 6:27 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2292. This motion was seconded by Councilman Sellers.

On a roll call vote of 7-0, Ordinance No. 2292 passed on its first and final reading.



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E. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 349 LONDON ROAD

ORDINANCE NO. 2293 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 349 LONDON ROAD

Mayor Martin opened the public hearing at 6:28 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

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Mr. Bob Hixson, Director of Building Inspections, said that 349 London Road is a dilapidated structure. The owner Nellie Hunsucker have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. 349 London Road was inspected by Building Safety Department staff on January 9, 1995. Inspector Dennis Treadway found the following conditions, which have been documented by still photographs and video tape:

- The dwelling walls and roof are structurally unsound.
- The dwelling has no operational electrical, or plumbing systems.
- The dwelling is abandoned and being occupied by vagrants.

Inspector Dennis Treadway sent a correction order to the property taxpayer of record on 1/9/95. There was no response. A formal hearing was then scheduled and held on 349 London Road and no one attended. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owner Nellie Hunsucker to repair or demolish 349 London Road within 30 days on 11/1/95. As of this date, no action has been taken by the owner of legal record.

The present fair market value (house and land) is \$1,700. The property without the house on it is \$7,716. The cost of rendering the dwelling fit for human habitation is \$41,162. The City's estimate to demolish the house, site clearing, grass seed application and refuse disposal is \$8,500.

N.C.G.S. 160.A-443(5) authorizes the City Council to direct by ordinance the demolition of 349 London Road subsequent to failure of the owner Nellie Hunsucker to demolish or repair as described above, N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

Upon inquiry of Mayor Martin regarding notice requirements, Mr. Hixson said that legal notification has been given.

Ms. Nellie Hunsucker, owner of the house, said that she has had an offer to sell the house for \$2,000 but was told that she could get more out of the sale if the house were not on it. She said it would cost her \$2-8,000 to tear the house down herself, but she doesn't have the money to do that. She said that she also owes about \$200 in taxes and asked for guidance from City Council on how to proceed.

Councilman Skalski said that it might be better to let the City tear down the house, place a lien on it and then she could try to sell the land.

Councilman Cloninger explained that with a lien on the property after it's been demolished, she could sell the property and the proceeds from that sale could be used to pay off the lien.

Upon inquiry of Councilman Cloninger regarding the City's policy on executing on a lien for demolition, City Attorney Slawter said that the City has not specifically brought an action to cause the property to be sold to satisfy a lien. Very often these properties are also delinquent in taxes and the tax collector initiates tax foreclosure proceedings which accomplishes the same thing.

At the suggestion of Councilman Worley, City Attorney Slawter said that he would give her a name and phone number of someone who might be able to explain the pros and cons to her in a little more detail.

Mayor Martin closed the public hearing at 6:42 p.m.

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Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Cloninger moved for the adoption of Ordinance No. 2293. This motion was seconded by Councilman Worley.

On a roll call vote of 7-0, Ordinance No. 2293 passed on its first and final reading.

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F. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 112 BROOKLYN ROAD

Mayor Martin opened the public hearing at 6:43 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Hixson, Director of Building Inspections, said that 112 Brooklyn Road is a dilapidated structure. The owners Bernard and Olivia Rutherford have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. 112 Brooklyn Road was inspected by Building Safety Department staff on August 8, 1995. Inspector Dan Stewart found the following conditions, which have been documented by still photographs and video tape:

- The dwelling walls and roof are structurally unsound.
- The dwelling is more than 50% gutted by fire.
- The dwelling has no operational electrical, or plumbing systems.
- The dwelling is abandoned and being occupied by vagrants.

Inspector Dan Stewart sent a correction order to the property taxpayer of record on 8/8/95. There was no response. A formal hearing was then scheduled for 11/1/95. On 11/1/95 the hearing was opened and the previous owner and new owner attended. The hearing was continued until 11/8/95 at which time no one attended. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owners

Bernard and Olivia Rutherford to repair or demolish 112 Brooklyn Road within 30 days on 112 Brooklyn Road. As of this date, no action has been taken by the owner of legal record.

After the initial title search was done on this house, the house changed hands in December of 1995. Mr. Hixson said that Mr. Ranson Rutherford (the new owner) said that the seller did not tell him about the condemnation proceedings in progress. Mr. Hixson was told that Mr. Rutherford said that he attempted to get a building permit to repair the house, but to date a permit has not been issued. Mr. Hixson was also informed Mr. Rutherford said that he would like to fix the house at his own pace.

The present fair market value of the dwelling only is \$2,500. The cost of rendering the dwelling fit for human habitation is \$60,038.

Mr. Rutherford asked Council to postpone taking action on this ordinance for at least 60 days. That should give him enough time within which to get a building permit and start repairing the house. He said he has received estimates to repair the house in the neighborhood of \$25-32,000.

Councilman Worley moved to continue this public hearing until August 27, 1996, at 5:00 p.m., without further advertisement. This motion was seconded by Vice-Mayor Field and carried unanimously.

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It was the consensus of Council that before August 27, 1996, Mr. Rutherford have a building permit and a report on what he has been doing to renovate the house.

G. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 3 NORTH CRESCENT STREET

ORDINANCE NO. 2294 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 3 NORTH CRESCENT STREET

Mayor Martin opened the public hearing at 6:51 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Hixson, Director of Building Inspections, said that 3 North Crescent Street is a dilapidated structure. The Owners Rosa Mae Garlington and John Garlington have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. 3 North Crescent Street was inspected by Building Safety Department staff on 1/3/95. Inspector Tim Jones found the following conditions, which have been documented by still photographs and video tape:

- The dwelling walls and floor are structurally unsound.
- The dwelling roof is damaged beyond repair.
- The dwelling has insufficient sanitary facilities.
- The dwelling is abandoned and being occupied by vagrants.

Inspector Tim Jones sent a correction order to the property taxpayer of record on 1/3/95. There was no response. A formal hearing was then scheduled and held on 3 North Crescent Street and no one attended. Based on the evidence presented

at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owners Rosa Mae Garlington and John Garlington to repair or demolish 3 North Crescent Street within 30 days on 10/20/95. As of this date, no action has been taken by the owner of legal record.

The present fair market value is \$24,200. The cost of rendering the dwelling fit for human habitation is \$57,400. The City's estimate to demolish the house, site clearing, grass seed application and refuse disposal is \$11,000. The estimate of the property without the house is \$900.

N.C.G.S. 160.A-443(5) authorizes the City Council to direct by ordinance the demolition of 3 North Crescent Street subsequent to failure of the owners Rosa Mae Garlington and John Garlington to demolish or repair as described above, N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

Mr. Hixson said that a power of attorney has been signed over to Mr. Jack Eugene Garlington who is in jail for approximately another year. Mr. Hixson said that Mr. Jack Garlington has attempted to give a power of attorney to Ms. Florence Clark Holloway who has asked that the demolition be delayed until Mr. Garlington can get out of jail.

Mayor Martin closed the public hearing at 6:56 p.m.

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Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2294. This motion was seconded by Councilman Skalski.

On a roll call vote of 7-0, Ordinance No. 2294 passed on its first and final reading.

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H. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 25 MICHAEL STREET

ORDINANCE NO. 2295 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 25 MICHAEL STREET

Mayor Martin opened the public hearing at 6:56 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Hixson, Director of Building Inspections, said that 25 Michael Street is a dilapidated structure. The Owner Thomas A. Hutchinson have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. 25 Michael Street was inspected by Building Safety Department staff on 6/1/94. Inspector Tim Jones found the following conditions, which have been documented by still photographs and video tape:

- The dwelling walls and roof are structurally unsound.
- The dwelling has insufficient sanitary facilities.

- The structure is abandoned and being occupied by vagrants.

Inspector Tim Jones sent a correction order to the property taxpayer of record on 6/1/94. There was no response. A formal hearing was then scheduled and held on 25 Michael Street and no one attended. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the Owner Thomas A. Hutchinson to repair or demolish 25 Michael Street within 30 days on 11/1/95. As of this date, no action has been taken by the owner of legal record.

The present fair market value of the dwelling is \$1,500. The cost of rendering the dwelling fit for human habitation is \$30,816. The City's estimate to demolish the house, site clearing, grass seed application and refuse disposal is \$11,000. The estimate of the property without the house is \$900.

N.C.G.S. 160.A-443(5) authorizes the City Council to direct by ordinance the demolition of 25 Michael Street subsequent to failure of the owner Thomas A. Hutchinson to demolish or repair as described above, N.C.G.S. 160A-443(6) authorizes placement of a lien on the property to recover the cost of a demolition so ordered by City Council.

Mayor Martin closed the public hearing at 6:57 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

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Councilman Sellers moved for the adoption of Ordinance No. 2295. This motion was seconded by Vice-Mayor Field.

On a roll call vote of 7-0, Ordinance No. 2295 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

I. PUBLIC HEARING DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 20 SPRINGSIDE DRIVE

ORDINANCE NO. 2296 - ORDINANCE DIRECTING THE DIRECTOR OF BUILDING SAFETY DEPARTMENT TO DEMOLISH THE DWELLING LOCATED AT 20 SPRINGSIDE DRIVE

Mayor Martin opened the public hearing at 6:57 p.m.

City Clerk Burlison presented the notice to the public setting the time and date of the public hearing.

Mr. Bob Hixson, Director of Building Inspections, said that 20 Springside Drive is a dilapidated structure. The owners William Darden Jr. and wife Delana Darden have not responded to the Order of the Director Designee of the Building Safety Department to repair or demolish this structure. 20 Springside Drive was inspected by Building Safety Department staff on 7/21/95. Inspector Natalie Berry found the following conditions, which have been documented by still photographs and video tape:

- The dwelling has no operational electrical, or plumbing systems
- The dwelling roof and floors have severe water damage.
- The dwelling is abandoned and being occupied by vagrants.

Inspector Natalie Berry sent a correction order to the property taxpayer of record on 7/21/95. There was no response. A formal hearing was then scheduled and held on 20 Springside Drive and only a neighbor attended, not the owner. Based on the evidence presented at that hearing the Building Safety Department hearing officer issued a "Findings of Fact and Order" to the owners William Darden Jr. and wife Delana Darden to repair or demolish 20 Springside Drive within 30 days on 11/15/95. As of this date, no action has been taken by the owners of legal record.

The present fair market value is \$49,500. The cost of rendering the dwelling fit for human habitation is \$62,768. The City's estimate to demolish the house, site clearing, grass seed application and refuse disposal is \$11,275. The estimate of the

This property is in foreclosure proceedings by Buncombe County and the County has asked that the City delay implementation of the demolition ordinance.

Mayor Martin closed the public hearing at 7:01 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved for the adoption of Ordinance No. 2296, with the effective date of the ordinance be delayed six months to allow Buncombe County to complete their foreclosure proceedings. This motion was seconded by Councilman Worley.

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On a roll call vote of 7-0, Ordinance No. 2296 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

J. PUBLIC HEARING TO AMEND THE CURRENT FLOODPLAIN MANAGEMENT REGULATIONS TO REFERENCE A NEWLY COMPLETED STUDY WHICH DELINEATES THE FLOOD-PRONE AREAS IN THE CITY OF ASHEVILLE'S JURISDICTION

ORDINANCE NO. 2297 - ORDINANCE TO AMEND THE CURRENT FLOODPLAIN MANAGEMENT REGULATIONS TO REFERENCE A NEWLY COMPLETED STUDY WHICH DELINEATES THE FLOOD-PRONE AREAS IN THE CITY OF ASHEVILLE'S JURISDICTION

Mayor Martin opened the public hearing at 7:01 p.m.

City Clerk Burleson presented the notice to the public setting the time and date of the public hearing.

Ms. Julia Cogburn, Planning & Development Director, said that this ordinance is proposed in order to amend the City of Asheville's current floodplain management regulations to reference a newly completed study which delineates the flood-prone areas in our jurisdiction.

The City of Asheville, as a participant in the National Flood Insurance Program, is required to adopt certain floodplain management measures and apply those measures to areas delineated on maps provided to the City by the Federal Emergency Management Agency (FEMA). The FEMA maps indicate those areas in the City which have been identified through engineering evaluations as flood hazard areas (areas susceptible to flooding and, therefore, in need of regulation).

The City's current flood ordinance references 1980 Flood Insurance Rate Maps

produced by FEMA in defining the area of applicability of the City's floodplain regulations. FEMA recently (May 6, 1996) released a new Flood Insurance Study for Buncombe County, North Carolina, and its incorporated areas which the City must utilize in determining those areas subject to floodplain management in accordance with the National Flood Insurance Program.

This proposed ordinance amends our floodplain regulations to reference the new study.

The Planning and Development staff recommends approval of this ordinance. At their June 5, 1996 meeting, the Asheville Planning and Zoning Commission unanimously recommended approval of the adoption of this ordinance.

Mayor Martin closed the public hearing at 7:02 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2297. This motion was seconded by Councilman Skalski.

On a roll call vote of 7-0, Ordinance No. 2297 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

At 7:07 p.m., Mayor Martin announced a ten minute recess.

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### III. UNFINISHED BUSINESS:

#### A. DECISION REGARDING RECYCLING PROGRAM TO BE WEEKLY OR BI-WEEKLY AND WHETHER TO USE BIN OR BLUE BAG SYSTEM

Mr. Mark Combs, Public Works Director, provided the following additional information regarding weekly vs. bi-weekly recycling collections.

Following is 'pro' and 'con' information pertaining weekly and bi-weekly systems:

#### Weekly Collection Schedule - Pros:

- customer habits easier/quicker to establish
- Education easier
- In communities w/high participation rates, up to 10% more materials collected
- Customers do not have to 'stockpile' recyclables

#### Weekly Collection Schedule - Cons:

- Higher cost to Provider (city) for service
- Fewer recyclables picked up per stop
- Increased traffic in neighborhood

#### Bi-Weekly Collection Schedule - Pros:

- Lower cost to provider (city) for service
- More recyclables picked up per stop
- Less neighborhood traffic
- Less difficult to expand vs. reduce services

Bi-Weekly Collection Schedule - Cons:

- Education program more critical to program
- Greater potential for customer confusion/decreased convenience
- Customers must 'stockpile' recyclables
- Potential decrease (10%) of collected recyclables

Staff recommends that City Council authorize the Mayor to enter into a formal contract with the lowest bi-weekly bidder, Curbside Management, Inc. The reasons for this recommendation are low costs, the potential to expand service frequency and the utilization of a bin-type collection system.

Vice-Mayor Field said that she has found out that some people in the County use bins and some use blue bags, so the issue with consistency with the County might be okay. She did state that she was very concerned about bi-weekly pickups; however, she did understand the reason for it. If, for some reason, the bi-weekly system does not succeed, she hoped Council would be agreeable to put a little more money into going weekly. She felt consistency with the County, along with ease for the residents was important. She wanted the program to work not only in the City, but in the entire region.

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Councilman Skalski expressed concern over the five year term of the contract. Mr. Combs responded that there are performance clauses written into the contract.

Councilman Skalski then said that he has seen results of a neighborhood survey and 60% were willing to pay for recycling. Therefore, he felt that the entire cost should be borne by the consumer in user fees.

Councilman Hay said that he would support a weekly bin program.

Councilman Cloninger agreed that a weekly bin program would be acceptable, however, he felt that we should start on a bi-weekly basis first and if need be, graduate to a weekly basis.

Mr. Combs responded to a question raised by Vice-Mayor Field about the Public Works Department bidding on this project.

Councilman Cloninger moved to accept the lowest bid of Curbside Management, Inc., which is a bi-weekly pickup with a bin method collection. This motion was seconded by Councilman Worley and carried unanimously.

City Manager Westbrook said that recycling is very important and staff will be continually monitoring the system.

B. ORDINANCE NO. 2298 - ORDINANCE ADOPTING THE BUDGET AND FIXING THE TAX RATE OF THE CITY OF ASHEVILLE FOR FISCAL YEAR 1996-97



Mayor Martin said that the public hearing on the 1996-97 Annual Operating Budget was held on June 11, 1996.

Audit/Budget Director Bob Wurst presented the recommended General Fund budget in the amount of \$49,944,345. The ordinance as recommended sets the tax rate at \$.57/\$100 valuation (as in the current fiscal year with no increase). This budget ordinance includes increased funding for CityWorks, outside agencies and the Asheville-Buncombe ID Bureau. Funding has been increased in the Building Safety Department to reflect increased Minimum Housing Code fees and a half-time position is adjusted to full-time. The budget includes funding for a recycling program based on a January 1, 1997, implementation. The budget also includes adoption of the 1996-97 CDBG and HOME budgets previously reviewed in the Consolidated Plan.

Councilman Skalski moved to (1) add \$40,000 for a Senior Planner to the Planning and Development Department. He said that we are now remapping every zone in the City and have only one senior planner; (2) reduce "City Development" allocation from \$220,000 to at least \$70,000. He felt that we didn't need another layer of bureaucracy; and (3) remove the entire \$200,000 from the General Fund budget and place it in the "user fees". The citizens were surveyed and are willing to pay for the program. This will also be an incentive for them to work to make it more effective. Councilman's Skalski's motion died for a lack of a second.

Mayor Martin made rebutting statements to each of the three items outlined above in Councilman's Skalski's motion.

Councilman Skalski moved to (1) eliminate the \$90,000 for the Chamber of Commerce. He said it already gets a room tax subsidy for promotion of tourism member companies; (2) fund the Buncombe County Drug Commission at last year's level (\$15,000). No one has shown their effectiveness and we should give them another year to try; (3) eliminate \$2,000 for the Sister Cities Program since that program is tourism oriented and should not be funded by the City; and (4) eliminate the \$15,000 for the "VISION" since we give them "in kind" office

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space. He asked if we really needed to set up a whole function of government for this? Councilman's Skalski's motion died for a lack of a second.

Mayor Martin made rebutting statements to each of the four items outlined above in Councilman's Skalski's second motion.

Councilman Skalski moved to endorse the Metropolitan Sewerage District of Buncombe County, North Carolina's current "line extension policy" as adopted at their June 15, 1996, board meeting, and ask that the Asheville-Buncombe Water Authority adopt a similar policy. He said the resolution adopted by MSD calls for the implementation of "... a comprehensive, county-wide land use plan to provide a rational basis for engineering and financial projections ..." City Council endorses this and will work to have the Asheville-Buncombe Water Authority adopt similar guidelines. He said comprehensive planning calls for an "economic/social, balance sheet" which includes the coordination of all infrastructure needs in the area, including roads, sewers, water and schools. This will help our area grow wisely, by employing impact statements and studies in our planning. Finally, comprehensive planning, conservation districts, accompanied by impact statements and studies should also be included in the new Unified Development Ordinance ("UDO"). It is not in the UDO and the current UDO Committee Chairman, Councilman Worley, surely would want it included. Councilman Skalski's motion died for a lack of a second.

Mayor Martin agreed that we want to help our area grow wisely, he didn't agree that the MSD policy of no sewer extensions sends the right message.

Councilman Worley stated that the Water Authority does have a Master Plan and it showed water line extensions going into the County. He strongly agreed in comprehensive planning, however, he thinks there is a misconception about what the UDO is. The UDO is not a planning document - it is a compilation of our various development ordinances into one format where they can be easily ascertained and followed. The planning document that the UDO recognizes is the 2010 Plan and it's subsequent revisions.

Councilman Skalski moved to create the position of "Community Conservation Coordinator/Facilitator." He said that in lieu of "community oriented government", to create the position of "Community Conservation Coordinator/Facilitator". This person could help make city services and information more accessible to communities/neighborhoods, both residential and commercial. The cost would be the same - \$81,071. This facilitator would coordinate joint ventures to facilitate community involvement in government. These ventures would rely on existing business, neighborhood and individual volunteers to bring people together to do proactive area planning and economic development programs throughout the area to update the 2010 Plan. This position should be budgeted in a non-governmental department (outside agency) line item defined as an agent acting as a conservation coordinator/facilitator out in the community, with the cost of \$81,071 already allocated. Councilman Skalski's motion field for a lack of a second.

Councilman Cloninger was impressed with staff's proposals regarding the development of a community oriented government program and he felt the program presented to the Council will provide all of the services outlined in Councilman Skalski's motion.

Ms. Leni Sitnick applauded Council's efforts in community oriented government, the implementation of the recycling program and the hiring of an arborist. She suggested (1) Council begin their worksessions later in the day so that members of the public do not have to miss work to attend their meeting; (2) worksessions be held in the Council Chamber if they anticipate a crowd so that everyone will have a chair; (3) a sound system in Room 623 in order to let the audience hear all of the discussions taking place; (4)

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provide better notification of the budget public hearing next year - perhaps ARNIE and a cable crawl on the television; and (5) attract economic development by having all amenities and infrastructure in place and stroke the existing businesses. She asked Council (1) to try to find ways to increase the contingency fund; (2) to make sure there is \$100,000 for stormwater maintenance; and (3) to make sure that the appropriation for water conservation is \$155,000. As a representative of the Bicentennial Committee, she asked to see the line item in the Parks and Recreation budget for the \$6,700 for the Bicentennial Committee.

Mayor Martin said that members of Council have been previously furnished with a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2298. This motion was seconded by Vice-Mayor Field.

Councilman Skalski said that he could not vote in favor of the 1996-97 General Fund budget. He said "the budget that we have before us could have many elements and policies attached to it that would greatly enhance the standard of

living of the citizens of Asheville, the working families that live in the neighborhoods that elected this City Council. We can help them - all of us - you must surely realize the fact that all national and state politics are local. By recognizing that, we can help them.

During the past several months while we have been deliberating the issues in and around the \$67,000,000 budget we have before us, I have heard it repeated over and over again by Council members and echoed by staff that it can't be done because Raleigh won't allow it, or, they'll never consider it. I repeat, all national and state politics are local. And, it's a historic fact, that all policy changes begin at the local level. We must do so in order to help our local families.

1. The budget is approximately \$500,000-\$1,000,000 short of meeting our fund balance goal of 15% of general fund operations. This goal is far below the state average of 24%. This is unacceptable.
2. How shall we replace the \$200,000 cut in federal grants for the Transit Authority? We, as a group, could have worked much harder with our state legislators about adjusting where our transportation dollars are spent. I was the only one who even asked. It should be City policy to pursue every avenue, we have no choice. Do our citizens want us to sit here and do nothing but raise unfair local taxes ad infinitum? I say no.
3. The "General Fund Contingency" should be at \$500,000. This money is set aside for unplanned or unexpected expenses. Last year it was \$450,000. We used up the entire \$450,000 last year. This year we have set aside only \$150,000. This is not prudent management. Having a mere \$150,000 is not enough because we are going to have even more cuts at the federal and state level in the next year. We need more, not less.
4. Citizens' property tax money should not continue to be spent for sidewalks or streets. These are "transportation" dollars that should come from the state Department of Transportation and revenue sharing through the existing Powell Bill money. Grandiose four lane highways are too expensive to build and there is no money for maintenance. For example, all the new sidewalk work currently underway on state maintained Biltmore Avenue was taken from the City treasury. This should come from the state. This policy must be changed. Our working families in Asheville deserve better. Local policy must be enacted and moved toward Raleigh.
5. Our water bills are among the highest in the country and our sewer rates among the highest in the state. We have had no policies to control

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costs, no guidelines for development. We must start implementing comprehensive planning now. We cannot give away the store in the name of progress. The triangle area, Wake County, North Carolina, which is in the top five in the country in bringing in new jobs, now has 400 trailers for school students. Where did all the money go? With all the new taxes being raised with record growth, there should be money for infrastructure to spare. There isn't. Are we on the same path? Yes, we are. We must change this path by implementing comprehensive planning now. Our budget policies should reflect restraint. Speculative investing should be by private business not underwritten by the taxpayers. Private failure should be borne by private investors, not taxpayers. Working families property taxes should not be used for sewer and water line extensions.

These are just a few examples of important issues for the hard working families

of Asheville. This Council was elected by the neighborhoods where all these hard working families live. Shouldn't we begin to right the wrongs of the past 20 years in this City? Shouldn't we start reassessing our priorities? This budget doesn't address our priorities. I can't vote for it."

Councilman Worley was also concerned about the \$500,000 short of meeting our fund balance goal. He would like to see us at our fiscal policy of 15% as a minimum. He was also concerned about the general fund contingency. He felt that the loss in transit fees is a concern shared by all Council. He said that in order for Council to reach those goals, \$1,000,000 would have to be added to the budget and that translates to somewhere between a 3-5 cent increase in the tax rate. He felt that Council could handle the budget as is presented without the necessity of a tax increase. He was not willing to raise the taxes at this point and that was the only place that he saw the money could come from.

Vice-Mayor Field said that the Local Government Commission requires that we keep approximately 8% in our fund balance - our fiscal policy is 15%. She said that we have actually added \$300,000 from the fund balance from last year, so the fund balance is actually increasing. She has actually written both the state and federal governments about our transit moneys. She, too, is very concerned about the transit money. She clarified what Asheville does in terms of maintenance of our city streets and highways. She also was concerned about Councilman Skalski's statement regarding speculative investing - if it meant that it was inappropriate for the City to help industry, she could not agree with that.

Councilman Cloninger commented that he disagreed that this budget didn't address Council's priorities.

On a roll call vote of 6-1 (with Councilman Skalski voting "no"), Ordinance No. 2298 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

Councilman Hay suggested Councilman Skalski bring his concerns to Council early on in the budget process so his concerns can be addressed.

#### IV. NEW BUSINESS:

##### A. ORDINANCE NO. 2299 - ORDINANCE AMENDING ARTICLE IV (PROCESSIONS AND ASSEMBLAGES OF CHAPTER 16 OF THE CODE OF ORDINANCES)

Police Chief Will Annarino said that this ordinance amends Article IV (processions and Assemblages) of Chapter 16 of the Code of Ordinances of the City of Asheville.

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In November of 1993, the Honorable Robert P. Johnston, Buncombe County Superior Court Judge, found the definitional section defining "picket lines" of the City's ordinance to be unconstitutional on the grounds that same was vague and over-inclusive. While an appeal from that decision was taken by the Buncombe County District Attorney's Office at the request of the City to the North Carolina Court of Appeals, it was subsequently determined that the appeal should be withdrawn. Upon withdrawing the appeal, the City decided to revisit its parade/picket ordinance in light of current developments in case law.

After extensive research and meetings of staff, an amended ordinance that was approved by the North Carolina Attorney General's Office was submitted to City Council for consideration and adoption on July 25, 1995. Members of City

Council asked staff to revisit the ordinance by inviting members of the public to participate in the drafting of the ordinance.

The efforts at revising the July 25, 1995, amended ordinance have been extensive, including numerous staff meetings, revisions, amendments, meetings with citizens interested in the amended ordinance, receiving their input, subsequently revising the ordinance consistent with comments received from the public, additional meetings between staff, substantial research with the final result being the attached ordinance.

He summarized the revisions as follows: (1) the new proposed ordinance eliminates a number requirement to trigger a parade permit; (2) there are no time notification restraints for a picketing; (3) no administrative filing fee for pickets; (4) the definition of "parade" and "picketing" has been spread out and further defined; (5) eliminates the 15 foot single file requirement for pickets; (6) eliminates the sign regulation requirement; (7) it reduces from 72 hours to 48 hours the notification for parades; (8) it includes an administrative filing escort fee of \$20 and \$10 respectively for parades; (9) it adds an indigency clause for parades; (10) it bans focused residential picketing; (11) it eliminates firearms and dangerous weapons from parades and permits; (12) it limits parade hours from sunrise to sunset; (13) it institutes a right to appeal the Chief of Police decision on parades; and (14) it develops a severability clause for the ordinance in case one or certain parts of it are held unconstitutional.

The Asheville Police Department recommends adoption of the amended ordinance.

Mr. Meredith Hunt, representative of Life Advocates, questioned the interpretation of two parts of the ordinance. He did feel that this was an outstanding ordinance allowing for the maximum amount of free speech in the City of Asheville. However, he did object to it being unlawful for any person to engage in picketing focused on and taking place in front of a particular residence. He didn't think it was necessary, but if it remained he suggested amending the sentence to add the word "solely". Without that word inserted, he didn't think it would stand a constitutional challenge. Another amendment he suggested was to include in the ordinance exceptions that relate to any business activity that is included at a residence or any public activity.

City Attorney Slawter responded to both issues presented by Mr. Hunt but recommended the ordinance remain as presented by Chief Annarino.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Field moved for the adoption of Ordinance No. 2299. This motion was seconded by Councilman Worley.

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On a roll call vote of 7-0, Ordinance No. 2299 passed on its first and final reading.

ORDINANCE BOOK NO. 16 - PAGE

B. RESOLUTION NO. 96-105 - RESOLUTION REQUESTING THE PUBLIC WORKS DEPARTMENT TO INSTALL ADDITIONAL TRAFFIC CONTROL DEVICES AND MEASURES ALONG EDGEWOOD ROAD BETWEEN MERRIMON VENUE AND THE UNC-ASHEVILLE CAMPUS

Mr. Doug Spell, Assistant City Manager, said that this resolution is staff's recommendation and it will authorize City staff to implement the necessary

traffic control measures to convert the intersection of Edgewood Road/Darcy Lane and Edgewood Road/Hyannis Drive to 3-way stop and to convert the section of Edgewood Road from Hyannis Drive southward to University Heights to one-way with the direction of travel being northbound.

Ms. Leni Sitnick encouraged Council to adopt the staff recommendation. She suggested the intersection of W.T. Weaver Boulevard and University Heights be studied for possible traffic signalization. She also suggested a one page flyer could be given to the students at UNC-A in the fall to make them aware of the road changes.

Mr. Bruce Larson, Chair of the Faculty Center at UNC-A, spoke in support of the 3-way stop but was opposed to changing the section on Edgewood Road to one way.

Mr. Gene McDowell, Director of the Asheville Graduate Center, asked Council to consider starting with the 3-way stop, then if the stop signs do not work, Council can consider other measures.

Mr. Stephen Smith, vice-president of the Edgewood Road Neighborhood Association, voiced overwhelming support of the 3-way stop and changing the section of Edgewood Road to one way. He urged Council to reduce the volume of traffic on Edgewood Road and increase safety for the community by adopting staff's recommendations. The property owners have been battling this issue for two years.

Upon inquiry of Mayor Martin, Police Chief Annarino said that there have been five reported accidents reported on Edgewood Road in the last two years.

An unidentified man voiced concern on the staff's recommendations noting the very serious safety problems on Edgewood Road.

Ms. Julia Pruninger, member of church beside Hyannis Drive, felt there were still a lot of questions that needed to be answered. She asked Council to postpone this action and think through the different alternatives.

The Student Body President of UNC-A, felt the residents, in particular at UNC-A, were not informed of these proposals. He asked Council delay any decision until school started in the fall so that the "other group of residents" could voice their views. He felt that Council might be able to solve the problems by just installing the 3-way stop.

Mr. David Whitley, resident on Edgewood Road, stated the many different ways that notice was given over two years about the concerns of the Edgewood Road residents and hoped Council adopted the staff's recommendations.

Ms. Beverly Modlin, vice-chancellor at UNC-A, stated that UNC-A is supportive in making Edgewood Road better for all concerned. She said that UNC-A would support the 3-way stop but not changing the section on Edgewood

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Road one way. She said that the impact of the 3-way stop should be analyzed before implementing any drastic steps.

Councilman Cloninger supported the full recommendation of staff. He noted that stop signs will address speed, but not the volume. He said that if these recommendations, once implemented, do not address the concerns on Edgewood Road, they can certainly be changed.

Councilman Skalski moved to adopt staff recommendations by (1) converting the intersection of Edgewood Road/Darcy Lane and Edgewood Road/Hyannis Drive to 3-way stop, and (2) converting the section of Edgewood Road from Hyannis Drive southward to University Heights to one-way with the direction of travel being northbound. This motion was seconded by Councilman Cloninger.

Councilman Worley could not support the motion. He didn't think a one way street was in the best interest of the City of Asheville overall. He supported the 3-way stop being implemented first and in three months, revisit the one-way issue.

Vice-Mayor Field questioned if the City's transportation planner was involved in these meetings. She suggested traffic circles.

Mayor Martin felt that the Council should start with the 3 way stop first and then if that doesn't solve any problems, they can revisit the one-way issue.

By a show of hands, Councilman Skalski's motion died on a 3-4 vote, with Councilmen Cloninger, Hay and Skalski voting "yea" and Mayor Martin, Vice-Mayor Field and Councilmen Sellers and Worley voting "no".

Councilman Worley then moved to convert the intersection of Edgewood Road/Darcy Lane and Edgewood Road/Hyannis Drive to a 3-way stop and that Council revisit the outcome of that move in about 6-8 months. This motion was seconded by Councilman Hay and carried on a 6-1 vote, with Councilman Skalski voting "no".

Councilman Skalski said that everybody mentioned the problems of traffic and inconvenience, but there is a real danger about people getting killed on that road. He felt that just putting stop signs alone on Edgewood Road will not work. He said that all the arguments he has heard has been over convenience of one minute.

RESOLUTION BOOK NO. 23 - PAGE 219

#### V. CONSENT:

At the request of a member of the audience, Item G regarding the McDowell Street viaduct was pulled from the Consent Agenda to be discussed individually.

#### Resolutions & Motions:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 1996, AND THE WORKSESSION HELD ON JUNE 18, 1996

B. RESOLUTION NO. 96-106 - RESOLUTION AWARING BIDS FOR FIRE TACTICAL RESPONSE MIDI-PUMPER

Summary: Sealed bids were received to furnish one tactical response midi pumper for the Fire Department. Three bids were received. This unit will be a replacement for Vehicle #MT945, a 1990 Chevrolet pickup with a slide

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in response unit. Staff recommends that the award be made to the low bidder, Chief's Fire and Rescue Inc., Jefferson, N.C., in the amount of \$150,218 for the purchase of one 1997 Freightliner cab and chassis with a 3-D Model Midi Pumper Rescue Squad body. The following bids were received:

#### Vendor Net Cost

Chief's Fire & Rescue Inc., Jefferson, N.C. \$150,218

Hackney & Sons Inc., Washington, N.C. \$150,285

Emergency Vehicles, Inc., Lake Park, Florida \$166,200

Funds for this purchase are appropriated in Account Code 20-420-40-471-00-5741.

RESOLUTION BOOK NO. 23 - PAGE 220

C. RESOLUTION NO. 96-107 - RESOLUTION AWARDDING BIDS FOR STATION ALERTING SYSTEM FOR FIRE DEPARTMENT

Summary: Sealed bids were received to purchase a station alerting system for the Fire Department. Three bids were received.

The station alerting system will be an addition to the existing communication center console which is maintained under a maintenance agreement with Motorola Inc., Installation of the system alerting system will require a portion of that console to be dismantled and programmed to interface with the new system. The Motorola maintenance agreement requires all work performed on the console to be performed by a factory authorized Motorola Service Center. Bidders were informed of these requirements in the bid specifications.

The low bidder, Whitley's Communications, Asheville, N.C., is not recommended to receive the award because they are not authorized by Motorola to perform this work, and no provisions were included in their proposal to furnish installation of the system through an authorized service agent.

Staff recommends that the award be made to the second low bidder meeting all requirements of the bid specifications, Communication Service Asheville, N.C., in the amount of \$35,566.50 for the purchase and installation of a "Zetron" station alerting system. The following bids were received:

Vendor Net Cost

Whitley's Communications, Asheville, N.C. \$33,995.00

Communication Service, Asheville, N.C. \$35,566.50

Asheville Communications, Asheville, N.C. \$37,967.00

Funds for this purchase are appropriated in Account Code 20-420-40-471-00-5741.

RESOLUTION BOOK NO. 23 - PAGE 222

D. RESOLUTION NO. 96-108 - RESOLUTION APPROVING AN OUTDOOR SPECIAL EVENTS PACKAGE

Mr. Jeff Joyce, Program Supervisor, said that the purpose of this resolution is to approve the "Outdoor Special Events Package" for use by all City Departments. This package provides our customers, the general public, with all the information they need in preparing for the conduction of an Outdoor Special Event.

Any group that wishes to conduct an Outdoor Special Event in the City of Asheville presently must go to as many as five different departments of the



City in order to obtain permission. This package provides Event Organizers with all the specific information, permits, and instructions that will help them make the Event a success.

The Parks and Recreation Department, along with the Special Events Task Force, requests that the Outdoor Special Events Package be approved for immediate use by City departments.

RESOLUTION BOOK NO. 23 - PAGE 224

E. RESOLUTION NO. 96-109 - RESOLUTION ESTABLISHING FAIR REUSE VALUE FOR CERTAIN DISPOSAL PARCELS IN THE EAST END/VALLEY STREET AND HEAD OF MONTFORD REDEVELOPMENT PROJECTS

Summary: Certain disposal parcels in the East End/Valley Street and Head of Montford have been appraised, the appraisals reviewed and it is now necessary to establish the Fair Reuse Value in order to market the property.

Disposal Parcel 9A is located on Dundee Street in the East End and due to its small size is most likely to be sold to an adjacent owner. Disposal Parcels 6B and 6C are located on Montford Avenue in Montford, comprising approximately 1.4 acres and zoned for commercial development. Tract 3 is located on Short Street in Montford and due to its small size is most likely to be sold to an adjacent owner.

Each Disposal Parcel was appraised by Francis Naeger, MAI. The appraisals were reviewed by Benjamin T. Beasley, MAI, who concurred and recommended the appraised values as the Fair Reuse values.

Disposal Parcel # Approved Use Appraisal

6B Commercial \$179,500

6C Commercial \$ 69,400

Tract 3 Residential \$ 3,300

East End - 9A Residential \$ 2,000

RESOLUTION BOOK NO. 23 - PAGE 225

F. RESOLUTION NO. 96-110 - RESOLUTION DESIGNATING DIRECTOR OF PUBLIC WORKS FRANKLIN MARK COMBS AS AGENT FOR THE CITY OF ASHEVILLE TO REQUEST REIMBURSEMENT OF COSTS ASSOCIATED WITH STORMS COVERED UNDER THE FEDERAL EMERGENCY MANAGEMENT ACT

Summary: The Public Works Department is required to submit an updated "Designation of Applicant's Agent" form with each request for reimbursement of costs associated with storms covered under the Federal Emergency Management Act. This is for the storms of January 6-9 and 12-14, 1996.

The Public Works staff recommends that Franklin Mark Combs, Director of Public Works, be designated as the Applicant's Agent.

RESOLUTION BOOK NO. 23 - PAGE 226

G. RESOLUTION APPROVING PROJECT NO. B-1070 CONSISTING OF REPLACEMENT OF THE McDOWELL STREET VIADUCT, BRIDGE NO. 76 OVER S.R. 3556, NORFOLK-SOUTHERN RAILWAY, SWANNANOVA RIVER, AND APPROACHES ON U.S. 25 AND AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPARTMENT OF TRANSPORTATION

This item was deleted from the Consent Agenda to be discussed individually.

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H. RESOLUTION NO. 96-111 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER OF PURCHASE FOR UPSET BIDS REGARDING DISPOSAL OF 17.282 ACRES OF VACANT LAND OFF ASCENSION DRIVE

Summary: The City has received an offer from Cornerstone Realty Group Incorporated in the amount of \$200,000 for the purchase of 17.282 acres of vacant land off Ascension Drive. This action will advertise for upset bids.

The City is the owner of record of a 17.282 acre tract of vacant land off Ascension Drive adjacent to the Meadows Apartments. The property has remained vacant since the City acquired it in 1981. The City has received, from Cornerstone Realty Group Inc. an offer to purchase this tract of land. As the current owner of Meadows Apartments, Cornerstone Realty Group Inc. is an REIT corporation and intends to construct market rate apartments on the property.

RESOLUTION BOOK N. 23 - PAGE 227

I. RESOLUTION NO. 96-112 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A NON-WARRANTY DEED RELINQUISHING AN EASEMENT IN A ROADWAY FORMERLY KNOWN AS HIGHLAND PLACE

Summary: This resolution authorizes the Mayor to execute a non-warranty deed relinquishing an easement owned by the City now Highland Place, a former roadway that once provided access to the former residence of William Quarterman.

On May 25, 1979, the N.C. Dept. of Transportation conveyed to the City of Asheville a deed of easement 20 feet in width for the purpose of constructing, locating, maintaining and repairing a sanitary sewer and/or water line across an access roadway leading to the former residence of William Quarterman known as Highland Place. Thereafter, the Department discovered that it had, by mistake, conveyed to the City the entire roadway in Deed Book 1219 at Page 59. In Deed Book 1400 at Page 30, the City of Asheville corrected that mistake by preparing a deed of correction whereby the City reconveyed the entire roadway to the Department, reserving for itself a joint use easement over the roadway for use as a fire lane in addition to the purpose of constructing, locating, maintaining and repairing a sanitary sewer and/or water line easement with a width of 20 feet. The roadway (as described in Deed Book 1400 at Page 30) is not open on the ground. The easement has not, and continues not, to be utilized by the City of Asheville for fire purposes nor by the Asheville/ Buncombe Water Authority for water line purposes.

Appropriate City staff have been consulted and neither the Fire Department nor the Water Resources Department, through the Asheville/Buncombe Water Authority, utilize the easement and anticipates no future use of such easement to the extent it crosses Mr. and Mrs. Candler's property.

Staff recommends that the City relinquish the easement to the extent it crosses Mr. and Mrs. Candler's property.

RESOLUTION BOOK NO. 23 - PAGE 228

J. RESOLUTION NO. 96-113 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MR. D'S CLEANING TO PERFORM JANITORIAL SERVICES FOR THE CITY HALL BUILDING FOR ONE YEAR

Summary: The City, through the Parks & Recreation Department, periodically solicits bid proposals for janitorial services for City Hall using the informal bid process. Bid specifications are distributed along with

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the advertisement for bids so that all bid proposals reflect the same scope of work. The informal bid process was engaged in April, 1996. A total of 71 advertisement for bid letters were sent out, including 25 to certified minority businesses registered with the City. Advertisement letters were also sent to the Asheville Business Development Center, the City's Minority Business Office and other similar business resource organizations. Seven bid proposals were received, including five from certified minority businesses. The three lowest bidders were qualified and are listed below:

Firm Name and Location Base Bid

Mr. D's Cleaning, Asheville, N.C. \$35,040  
RCL Carpet Cleaning & Janitorial Service, Asheville, N.C. \$46,000  
L&M Janitorial Services, Asheville, N.C. \$49,995

After review of these bid proposals and the qualification process of the bidders, it was determined that Mr. D's Cleaning would be selected as the lowest qualified bidder and City staff seeks Council's approval to enter into a contract to perform janitorial services for the City Hall building for one year for the bid amount of \$35,040.

RESOLUTION BOOK NO. 23 - PAGE 229

K. RESOLUTION NO. 96-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BARNEY P. WOODARD, AIA, ARCHITECT, FOR DESIGN SERVICES FOR THE SKYLAND FIRE STATION (ASHEVILLE FIRE STATION NO. 4)

Summary: Pursuant to its lease agreement with the Skyland Fire Department, the City of Asheville is ready to retain an architect for design of a new fire station to serve the South Asheville area.

On November 21, 1995, the Council approved a lease agreement with the Skyland Fire Department, through which the City would hold a 99-year lease on land owned by the Skyland Fire Department on which to build a new fire station for the South Asheville area.

The Skyland Fire Department is also building a new fire station on the same site. It was anticipated in the lease agreement (z) that, although on separate pieces of property, the Skyland and Asheville fire stations would be contained in the same building shell, and (b) that, for the purposes of economy and compatibility, the underlying design of each fire station would be the same. It is the opinion of the Fire Chief that these interests can best be addressed by retaining Barney P. Woodard, the architect that Skyland has retained, to perform the architectural services required for Asheville's fire station.

Mr. Woodard has proposed a standard fee of 7.5% of estimated construction costs of \$350,000. The City's estimated construction cost has been included as part of the City's Capital Improvement Program for this (and succeeding) fiscal years.

RESOLUTION BOOK NO. 23 - PAGE 230

L. RESOLUTION NO. 96-115 - RESOLUTION APPOINTING A CHAIRMAN TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: This resolution will appoint Scott Jarvis as Chairman of the Downtown Commission to serve until his successor has been appointed and qualified.

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RESOLUTION BOOK NO. 23 - PAGE 231

M. RESOLUTION NO. 96-116 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, N.C., ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE AND LOCATED AT THE INTERSECTION OF CATAWBA STREET AND BROADWAY AVENUE

Summary: The City of Asheville and the Metropolitan Sewerage District of Buncombe County ("MSD") wish to enter into an Easement Agreement for a sewer easement across Malvern Hills Park and Catawba/Broadway.

The City of Asheville and MSD have been working for a period of time to address an Easement Agreement across property operated by the Parks and Recreation Department. The two parcels of property are Malvern Hills Park and Catawba/Broadway. MSD has been willing to work with the City to protect and preserve trees within both areas. In addition, MSD has been sensitive to the concern of the Parks and Recreation Department in regard to the timing of the project in Malvern Hills. They have agreed to not allow construction of the sewer line replacement during the swimming pool season. Both parties agree that the increased number of participants in the Park during this time could cause a potential liability that should be avoided. Both agreements have been reviewed and approved by the Legal staff.

The Parks and Recreation Department recommends that City Council approve easement agreements to allow sewer line replacement across Malvern Hills Park and Catawba/Broadway.

RESOLUTION BOOK NO. 23 - PAGE 232

N. RESOLUTION NO. 96-117 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT OF BUNCOMBE COUNTY, N.C., ACROSS PROPERTY OWNED BY THE CITY OF ASHEVILLE AND KNOWN AS THE MALVERN HILLS PARK

SUMMARY: See above Item O.

RESOLUTION BOOK NO. 23 - PAGE 233

O. RESOLUTION NO. 96-118 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE BUNCOMBE COUNTY DRUG COMMISSION

Summary: City Council supports a contribution to The Buncombe County Drug Commission, Inc. for work with the Mayor's Drug Forum in the amount of \$15,000.

The Buncombe County Drug Commission has submitted a request to the City Council Outside Agency Committee for \$15,000 as the City's contribution to the funding of the Drug Commission's work in support of the Mayor's Drug Forum. The City Council desires to fund this request in the current fiscal year.

City of Asheville procedures regarding outside agency funding require a written agreement between the City and The Buncombe County Drug Commission, Inc. outlining the use of the funds.

City staff recommends the City Council approve the resolution authorizing the City Manager to enter into an agreement between the City of Asheville and The

Buncombe County Drug Commission for the \$15,000 contribution.

RESOLUTION BOOK NO. 23 - PAGE 234

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Mayor Martin said that members of Council have been previously furnished with copies of the resolutions on the Resolutions & Motions Consent Agenda and they will not be read.

Councilman Cloninger moved to approve the Resolutions & Motions Consent Agenda. This motion was seconded by Councilman Sellers and carried unanimously.

Ordinances:

A. ORDINANCE NO. 2300 - BUDGET AMENDMENT RELATIVE TO THE LIVINGSTON STREET BALLFIELD LIGHTS

Summary: This budget amendment, in the amount of \$60,000, is to replace the lights at Livingston Street Ballfield.

ORDINANCE BOOK NO. 16 - PAGE

B. ORDINANCE NO. 2301 - BUDGET AMENDMENT TO REFLECT INCREASES IN THE COST OF THE CITY'S MOTOR VEHICLE FUEL PURCHASES

Summary: This budget amendment, in the amount of \$65,000, is to reflect increases in the cost of the City's motor vehicle fuel purchase.

ORDINANCE BOOK NO. 16 - PAGE

C. ORDINANCE NO. 2302 - BUDGET AMENDMENT RELATIVE TO THE BUNCOMBE COUNTY DRUG COMMISSION

Summary: This budget amendment, in the amount of \$15,000 is the City's contribution to the funding of the Drug Commission's work in support of the Mayor's Drug Forum.

ORDINANCE BOOK NO. 16 - PAGE

Mayor Martin said that members of Council have been previously furnished with copies of the ordinances on the Ordinance Consent Agenda and they will not be read.

Councilman Worley moved for the adoption of the Ordinance Consent Agenda. This motion was seconded by Councilman Sellers.

On a roll call vote of 7-0, the Ordinance Consent Agenda was passed on its first and final reading.

ITEM PULLED OFF CONSENT AGENDA FOR DISCUSSION:

RESOLUTION NO. 96-119 - RESOLUTION APPROVING PROJECT NO. B-1070 CONSISTING OF REPLACEMENT OF THE McDOWELL STREET VIADUCT, BRIDGE NO. 76 OVER S.R. 3556, NORFOLK-SOUTHERN RAILWAY, SWANNANOA RIVER, AND APPROACHES ON U.S. 25 AND AUTHORIZING THE MAYOR TO EXECUTE A MUNICIPAL AGREEMENT WITH THE N.C. DEPARTMENT OF TRANSPORTATION

Summary: This agreement with the N.C. Dept. of Transportation ("NC DOT") will outline the responsibilities of the City and NC DOT for replacement of the

McDowell Street viaduct. The City will be responsible for making necessary changes, relocation and adjustments to any public or privately-owned utility or any municipally-owned utilities. Adjustments to utility manholes of two feet or less will be made by NC DOT. The City is required to enforce the traffic operating controls. The bridge design includes outriggers and a conduit system for mounting lights for the poles and fixtures proposed for the project.

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Project plans have been completed and the right-of-way has been acquired. At present, all issues with the bridge replacement have been resolved by the NC DOT, the Historic Resources Commission ("HRC") and the N.C. Historical Resources Commission. A Certificate of Appropriateness is pending approval from HRC.

Mr. Keith Jackson, 48 St. Dunstons Circle, urged Council to ask NC DOT to place a conservation easement along the residual properties that the original owners don't wish to buy back with regard to the McDowell Street viaduct project. He noted that on April 12, 1995, the Historic Resources Commission requested NC DOT place a conservation easement on all properties within Saint Dunstons required for the right-of-way acquisition. He felt that NC DOT should create some sort of a greenway along McDowell to prevent further encroachment created by the exposure of all the residual properties. He asked why the City didn't put a conservation easement on the piece of property that the City sold to NC DOT not long ago in connection with this project. He felt that if NC DOT was going to spend about \$100,000 for the retaining wall to protect the neighborhood, why can't they spend \$30-40,000 to write off the residuals.

Director of Public Works Mark Combs responded to questions raised by Mr. Jackson stating that if we would have made a stipulation on the piece of property that we sold, they would have condemned the whole piece of property.

Ms. Sharon Tabor, resident of 25 St. Dunstan's Circle and owner of Acorn Cottage Bed and Breakfast said that Bed and Breakfast will be strongly impacted by the McDowell Street viaduct. She stated that they want to salvage some of the trees and to protect the isolation of the neighborhood. She asked that mature trees be planted sooner in the process - now they are not planning to plant anything until the project is finished which could be as much as six years from now.

Councilman Cloninger visited the site and agrees that there will be a tremendous impact on Ms. Tabor's property. All she is asking is that NC DOT do a lot of its landscaping earlier in the process.

Vice-Mayor Field, Chairman of the Transportation Advisory Committee ("TAC"), was curious why this issue never came before the TAC Committee, which deals with NC DOT on issues like this. She urged Mr. Jackson and Ms. Taylor to come to their next meeting. The TAC could make a request of NC DOT for them and it would have the effect of the support from all the members, who are elected officials in the Asheville urban area. She couldn't say that they would agree with them, but asking NC DOT to do something sooner, rather than later, could very well be a possibility.

Mayor Martin said that members of Council have been previously furnished with a copy of this resolution and it will not be read.

Councilman Worley moved for the adoption of Resolution No. 96-119. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 235

VI. OTHER BUSINESS:

A. CANCELLATION OF JULY 2, 1996, WORKSESSION

It was the consensus of Council to cancel the July 2, 1996, worksession.

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B. COMMENTS BY MS. LENI SITNICK

Ms. Leni Sitnick (1) passed out to Council a copy the cities in North Carolina that do have impact/development fees; (2) supported Council pursuing ISTEA ("Intermodal Surface Transportation Efficiency Act of 1991") moneys; and (3) encouraged Council to review past documents to come up with a formula for a fair and intelligent stormwater utility.

C. CHARLOTTE STREET SMALL AREA PLAN COMMITTEE

At the request of the Charlotte Street Small Area Plan Committee, Councilman Sellers asked for some guidance on whether an alternate could be appointed in the absence of one of the members and also if a proxy could be appointed to vote.

After a brief discussion, it was the consensus of Council to have no proxy voting and no alternate members being appointed.

Councilman Sellers raised another concern relative to the one representative of the commercial tenants.

It was the consensus of Council that since Ingles does lease the property and they have selected Mr. Spake to represent them on the Committee, that Mr. Spake be allowed to continue in that capacity.

D. RESOLUTION NO. 96-120 - RESOLUTION APPOINTING MEMBERS TO THE CARRIAGE PERMIT ADVISORY BOARD

At the request of the City Council Boards and Commissions Committee, City Clerk Burleson read the resolution appointing Dr. Deanna Kraft, Ms. Sally Rhoades, Ms. Linda S. Wiggs, Ms. Deena C. Knight and Mr. M. Michael Hyatt to the Carriage Permit Advisory Board to each serve a three year term respectfully.

Councilman Cloninger moved for the adoption of Resolution No. 96-120. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 236

E. CLAIMS

The following claims were received by the City of Asheville during the week of June 6-13, 1996: Betty Parker (Streets), Helen Waneski (Finance), Nancy Allen (Parks & Recreation) and Raymond Miller (Streets).

The following claims were received during the week of June 14-20, 1996: Ellen Caplan (Streets), Lourie Capps (Streets), Terry Felkel (Streets), Charles Brewer (Streets), Kevin Sebastian (Streets), Marie Penland (Water), Will Neville (Streets), Daniel Thomas (Streets), Sheba Bradley (Streets) and Oren Coin (Sanitation).

These claims will be referred to Asheville Claims Corporation for investigation.

F. LAWSUIT

The City was served with the following lawsuit on June 7, 1996, which is generally described as follows: Matter - May v. McDade v. City of Asheville, City of Asheville Police Department, et al. The nature of the proceeding is negligence, contribution and indemnification.

This lawsuit has been referred to Fred Barbour for legal representation.

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G. RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE ASHEVILLE WATERSHED CONSERVATION EASEMENT

At 10:30 p.m., Councilman Worley moved to continue this meeting until Friday, June 28, 1996, at 1:45 p.m. at the Radisson Hotel at the Year of the Mountains Commission 1995-96 Year End Conference, to consider a resolution authorizing the Mayor to execute the Asheville Watershed conservation easement. This motion was seconded by Councilman Skalski and carried unanimously.

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Friday - June 28, 1996 - 1:54 p.m.

Radisson Hotel

Continuation of Regular Meeting of June 25, 1996

Present: Mayor Russell Martin, Presiding; Vice-Mayor Barbara Field; Councilman M. Charles Cloninger; Councilman Edward C. Hay Jr.; Councilman Thomas G. Sellers; Councilman James J. Skalski; and Councilman Charles R. Worley; and City Manager James L. Westbrook Jr.

RESOLUTION NO. 96-121 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE ASHEVILLE WATERSHED CONSERVATION EASEMENT

City Attorney Slawter said that at the June 11, 1996, City Council meeting, Council adopted a resolution authorizing publication of a notice of intent to convey a conservation easement related to the Asheville watershed. This resolution will authorize the Mayor to execute a perpetual conservation easement in the Asheville watershed.

Mayor Martin said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Cloninger moved for the adoption of Resolution No. 96-121. This motion was seconded by Vice-Mayor Field and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 237

VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 2:03 p.m.

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CITY CLERK MAYOR

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