

Tuesday - November 25, 1997 - 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 Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Skalski gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Councilman Cloninger, Item O. was removed from the Consent Agenda to be discussed individually.

At the request of Councilman Skalski, Item D. was removed from the Consent Agenda to be discussed individually.

A. RESOLUTION NO. 97-217 - RESOLUTION ESTABLISHING MINIMUM PRICE FOR PROPERTY AT 110 MORRIS STREET

Summary: The Planning & Development Department, at the request of the Director of Parks & Recreation has recommended that surplus real property at 110 Morris Street be offered for sale. The property recommended for sale has undergone extensive interdepartmental review to insure that the property is not currently being utilized by the City and does not have an identifiable potential for future use by the City.

The parcel has been appraised by Ricky D. McClure at a value of \$79,500.00 and that value is the recommended minimum price.

Resolution No. 95-134 adopted by City Council authorized the City Manager to execute an agreement with Russell G. Wood of Beverly Hanks and Associates to market and sell certain City owned properties. The Planning & Development Department recommends listing the subject parcel for sale as part of said agreement.

Approval of the resolution will establish a minimum price for the property at 110 Morris Street and authorize offering the parcel for sale by and through an agreement with Beverly Hanks and Associates.

RESOLUTION BOOK NO. 24 - PAGE 283

B. RESOLUTION NO. 97-218 - RESOLUTION ENTERING INTO A CONTRACT WITH BUNCOMBE CONSTRUCTION CO. INC., BOLTON INC., AND PYATT HEATING AND COOLING INC. FOR THE RENOVATION OF THE OLD WATER MAINTENANCE BUILDING

Summary: In September, 1997, City staff solicited bids from thirty-seven, 16 of which were certified minority contractors, to renovate the Old Water Maintenance Building. Nine sealed bids from both single prime and separate prime contractors were received on October 2, -2-

1997, at 3:00 p.m. based on design plans and specifications by Padgett and Freeman Architects. An estimate for construction cost was prepared by Padgett and Freeman Architects in the amount of \$ 1,234,837 including site work and landscaping. The project specifications require the project to be completed in 160 consecutive calendar days with \$300 per day for liquidated damages assessed everyday thereafter. The bid process resulted in the following separate prime low bidders:

General Separate Prime -Buncombe Construction Co., Inc. \$ 770,500

Plumbing Separate Prime -Bolton, Inc. \$ 32,650

Electrical Separate Prime -Bolton, Inc. \$ 82,920

Mechanical Separate Prime -Pyatt Heating and Cooling, Inc. \$ 50,300

Total Project Cost: \$ 936,370

City staff has researched references given by the lowest bidders and concluded that they are competent Contractors. Sufficient funds are appropriated through the approved financing for this project.

RESOLUTION BOOK NO. 24 - PAGE 284

C. RESOLUTION NO. 97-219 - RESOLUTION ENTERING INTO A CONTRACT WITH JAMES MICHAEL KEYS; KEKO, INC., D/B/A KEYS CONSTRUCTION TO RENOVATE THE RESTROOMS AT THE ASHEVILLE CIVIC CENTER

Summary: In September, 1997, City staff solicited bids from 21 contractors to renovate the restrooms in the Asheville Civic Center, five of which were certified minority contractors. Two sealed bids from single prime contractors were received on October 9, 1997, at 4:00 p.m. based on design plans and specifications by Mathews and Glazer Architects. An estimate for construction cost was prepared by Mathews and Glazer Architects in the amount of \$80,651.00. The project specifications require the project to be completed in 90 consecutive calendar days. The City staff agreed that liquidated damages were not needed as an incentive to complete this project. The informal bid process resulted in the following single prime low bidder:

Single Prime Contractor James Michael Keys; Keko, Inc. DBA Keys Construction \$ 93,501.00

Alternate 1 \$ 30,646.40

Bid Total \$ 124,147.40

Total Project Cost: \$ 124,147.40

City staff has researched references given by the low bidder and concluded that James Michael Keys; Keko, Inc. DBA Keys Construction is a competent Contractor. Sufficient funds are appropriated in the Civic Center Budget.

RESOLUTION BOOK NO. 24 - PAGE 285

D. RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE THE PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY

This item was removed from the Consent Agenda for discussion.

E. RESOLUTION NO. 97-220 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BUCKEYE CONSTRUCTION CO. INC. FOR THE PROJECT KNOWN AS WEST AREA ANNEXATION SANITARY SEWER IMPROVEMENTS PHASE III, CONTRACT B

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Summary: The consideration of adopting a resolution awarding the contract to the lowest responsible bidder, Buckeye Construction Company Inc., in the amount of \$340,494.

The City Council approved 3.2 million dollars for sewer improvements. This project is known as West Area Annexation Sewer Improvements, Phase III - Contract B. These funds were to be used for priority sewer improvements in the West Area and Brevard Road annexation area.

The Engineering Department has developed construction plans for the West Area Annexation Sewer Improvements, Phase III - Contract B. The engineer's estimate for this project is in the amount of \$410,274.

The project was advertised for one month. On Tuesday, October 21, 1997, at 4:00 p.m., the Engineering Department received two bids for the project.. Therefore, a new advertisement was issued for bids to be opened on November 6, 1997, at 3:00 p.m., which was fifteen days from the first formal bid date. Bids were opened on November 6, 1997, at 3:00 p.m. and three bids were received. The low responsible bidder was Buckeye Construction Company Inc. of Canton, N.C., in the amount of \$340,494. This contractor has previously performed contract work for the City. The construction time for this project is identified as 120 calendar days in the contract documents. The contract stipulates liquidated damages in the amount of \$250 per calendar day beyond the approved contract time.

RESOLUTION BOOK NO. 24 - PAGE 286

F. RESOLUTION NO. 97-221 - RESOLUTION LEASING A PORTION OF THE OLD WATER MAINTENANCE BUILDING TO ASHEVILLE CITY SCHOOLS

Summary: The consideration of entering into an agreement with the Asheville City Schools to lease a portion of the Old Water Maintenance Building.

The Asheville City Schools now uses a portion of the basement of the Municipal Building for its Maintenance Division pursuant to a 1996 agreement with the City of Asheville. With the renovations of the Municipal Building, the maintenance operations for Asheville City Schools will be moved to a space in the Old Water Maintenance Building. The Asheville City Schools will pay for alternates for construction which will provide them adequate space in order to carry out their functions. The terms and conditions are outlined in the agreement.

RESOLUTION BOOK NO. 24 - PAGE 289

G. RESOLUTION NO. 97-222 - RESOLUTION AUTHORIZING THE EXCHANGE OF CITY-OWNED REAL PROPERTY LOCATED ON BARTLETT STREET (PART OF MURRAY HILL PARK PROPERTY) OWNED BY OVERLOOK APARTMENTS LIMITED PARTNERSHIP

Summary: This resolution will authorize the Mayor to convey City-owned real property on Bartlett Street in exchange for real property owned by Overlook Apartments Limited Company located near Bartlett Street (part of the Murray Hill Park property).

The City conveyed to Overlook Apartments LLC approximately 3 acres of land near

Bartlett Street for the construction of 48 units of elderly housing subject to Overlook Apartments constructing a passive park. The city owns approximately 7.4 acres of land surrounding Overlook's property. -4-

Overlook has agreed to exchange a portion of its land near Bartlett Street for a portion of the City's land on Bartlett street in a negotiated exchange whereby the passive park will be constructed as well as a greenway by the City.

The portion of real property owned by the City to be exchanged with Overlook has an estimated fair market value of \$21,555. The portion of real property owned by Overlook to be exchanged with the City has an estimated fair market value of \$53,583.

Approval of the resolution will initiate the exchange of the properties through the process provided in North Carolina General Statute Section 160A-271.

RESOLUTION BOOK NO. 24 - PAGE 290

H. RESOLUTION NO. 97-223 - RESOLUTION APPROVING AWARD OF CONTRACT WITH H.T.E. INC. TO PROVIDE A COMPUTER HARDWARE/SOFTWARE SYSTEM

Summary: The consideration of a resolution approving the award of a contract to provide computer hardware/software and associated training and technical support.

The City's present central computer systems are obsolete by today's industry standards and, most importantly, are not Year 2000 compatible. Additionally, several of the City's functions which could benefit from the speed and efficiency of computerization currently rely on manual recordkeeping and computation. To remedy these deficiencies, the City used a Request for Proposal process to select the best solution to our major computer automation needs. A team, with staff representation from each of the City's departments, developed central computer requirements for inclusion in an RFP and then evaluated contractors' proposals in response to the RFP. Proposals were solicited from eight companies; six of which responded. The evaluation process included: narrowing of the number of vendors under consideration by ranking of each of their written proposals; demonstrations of their systems by the selected vendors; site visits to other local governments with a vendor's systems in operational use; and extensive telephone discussions with other customers across the country. H.T.E., Inc. was selected as providing the best solution to the City's central computer hardware/software needs. Among the functions provided by the system are: accounting, cash receipts, inventory, purchasing, fixed assets, fleet management, work orders/facility management, personnel, land management, building permits, code enforcement, planning & zoning, business licenses. The initial cost of the H.T.E. system (including: license fees, training, data conversion, project management, technical support, and system hardware and software) is \$1,033,962.10. Subsequent year's continuing licensing and support is \$79,925.00. These amounts will spread across a five year lease of the system, as subsequent equipment schedules under the City's existing computer master lease agreement with Ontario Investments, Inc.

Funding for this project is budgeted in the Capital Improvement Plan beginning in the current fiscal year.

RESOLUTION BOOK NO. 24 - PAGE 291

I. RESOLUTION NO. 97-224 - RESOLUTION SETTING A PUBLIC HEARING ON DECEMBER 16, 1997, ON AN ECONOMIC DEVELOPMENT APPROPRIATION TO LUSTAR DYEING AND FINISHING LOCATED AT 144 CARIBOU ROAD -5-

Summary: The consideration of a resolution setting a public hearing on an economic development appropriation to Lustar Dyeing and Finishing, Inc.

Lustar Dyeing and Finishing, Inc. is looking to modernize and expand its manufacturing facility located at 144 Caribou Road. Plans call for the addition of 6,000 sq. ft. to the existing building and the major purchase of machinery and equipment in order to increase production. The company plans to hire an additional 20 employees by July 1, 1998. Wages will average \$12.50 per hour.

The firm plans to invest a total of \$3.6 million within six months in the renovation and equipment upgrades for this project.

Staff recommends that City Council provide a grant under the terms and conditions set forth in the City's current economic development incentive policy. Specifically, it is recommended that the award be limited to no more than the maximum allowed under the current guidelines, estimated at approximately \$15,390. per year for five years, for a total of \$76,950 based on current assessments.

RESOLUTION BOOK NO. 24 - PAGE 292

J. RESOLUTION NO. 97-225 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A GRANT FROM THE US DEPT. OF JUSTICE TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: The consideration of a resolution authorizing the Mayor to accept grant funds under the U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, Local Law Enforcement Block Grant Program.

The City of Asheville has been awarded a grant under the Fiscal Year 1997 Local Law Enforcement Block Grants Program in the amount of \$127,050. A local match of \$14,117 is required. The purpose of the grant program is to fund projects, allowed under the grant program, designed to reduce crime and improve public safety. The specific program for which these funds will be used by the City has not yet been determined.

This budget amendment will recognize as revenue the funds for the state grant and appropriate these funds.

City staff recommends adoption of the resolution authorizing the Mayor to accept the award and adoption of a budget amendment to provide for the local matching contribution.

RESOLUTION BOOK NO. 24 - PAGE 293

K. ORDINANCE NO. 2431 - BUDGET AMENDMENT, IN THE AMOUNT OF \$147,167, TO SET UP A BUDGET FOR THE GRANT FROM THE US DEPT. OF JUSTICE TO REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Summary: See above Item. J.

ORDINANCE BOOK NO. 16 - PAGE 354

L. ORDINANCE NO. 2432 - ORDINANCE ESTABLISH 25 MILES PER HOUR ON SONDDLEY PARKWAY, SONDDLEY DRIVE, SONDDLEY DRIVE NORTH, SONDDLEY WOODS PLACE AND SOUTH SONDDLEY DRIVE

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Summary: The City Traffic Engineer has performed the necessary traffic analyses associated with the following locations as per the Manual on Uniform Traffic

Control Devices and the North Carolina Supplement and is seeking authorization from the City Council to establish these speed limits:

Establish 25 MPH

- (1) Sondley Parkway (entirety)
- (2) Sondley Drive (entirety)
- (3) Sondley Drive North (entirety)
- (4) Sondley Woods Place (entirety)
- (5) South Sondley Drive (entirety)

These locations have been reviewed over the past twelve months as per the request of residents and motorists who utilize these roadways. Field surveys and speed studies were conducted and data reviewed based upon the 85<sup>th</sup> percentile speed, which is the speed at or below which 85 percent of the vehicles are moving. This speed is reviewed in relationship to the median speed and the pace speed range. The pace speed range is the range of speeds at which the largest concentration of motorists drive. These speeds were reviewed to address the lack of posted speed limits in the area.

ORDINANCE BOOK NO. 16 - PAGE 356

M. ORDINANCE NO. 2433 - BUDGET AMENDMENT FOR THE FAIR HOUSING ASSISTANCE PROGRAM 11TH YEAR FUNDING

Summary: On April 28, 1987, the City of Asheville was recognized by HUD as having a fair housing enforcement program which is substantially equivalent to that of the Federal Fair Housing Act. The City has been carrying out its fair housing program under contract with the Asheville-Buncombe Community Relations Council and Fair Housing Commission since January 1988.

The City has received approval from HUD of \$15,300 for the Fair Housing Assistance Program. This will be the eleventh year of funding through this program. The program is administered under contract by the Asheville-Buncombe Community Relations Council which provides staff support to the Asheville-Buncombe Fair Housing Commission. The City Community Development Division serves as Lead Entity and monitors the program.

ORDINANCE BOOK NO. 16 - PAGE 357

N. ORDINANCE NO. 2434 - BUDGET AMENDMENT TO APPROPRIATE FUNDING TO CONSTRUCT A PARK AT MURRAY HILL FROM REVENUES GENERATED FROM THE SALE OF PROPERTY

Summary: The Parks and Recreation Advisory Board and staff recommend approval of appropriation from the sale of a portion of property at Murray Hill for the development of a park.

Over the past year and a half, through a joint effort of Community Development and Parks and Recreation, an opportunity to develop a public/private venture has occurred with David Douglas and Associates. David Douglas proposed to purchase approximately three acres from the City of Asheville to construct 48 units for senior housing. The appraised value is \$136,000 and the commitment for park development, in addition to the appraised value, is \$50,000. The funds collected from -7-

the sale of the property will be used to construct a special populations park

on the remaining land at Murray Hill.

The Parks and Recreation Advisory Board and the Parks and Recreation staff request approval by City Council of the budget amendment.

ORDINANCE BOOK NO. 16 - PAGE 359

O. BUDGET AMENDMENT TO ESTABLISH A PROJECT BUDGET FUNDED FROM CERTIFICATES OF PARTICIPATION ISSUES 1997A AND 1997C

This item was removed from the Consent Agenda for discussion.

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

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Field and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION NO. 97-226 - RESOLUTION DIRECTING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE THE PROPERTY OWNED BY THE CITY OF ASHEVILLE KNOWN AS MEMORIAL STADIUM AND ASSOCIATED PROPERTY

Summary: The Parks and Recreation Department has been working for several months on the possibility of selling Memorial Stadium and using the revenue to further develop and enhance recreation facilities in the community.

Parks & Recreation has been in contact with a local architectural firm who has expressed interest in purchasing the property. The zoning of the property is institutional. The sale of this property is authorized under N.C. General Statute sec. 160A-266 which authorizes cities to dispose of real property. The sale is subject to the upset bid process established by N.C. General Statute under Section 160A-269.

Recognizing that approximately \$20 million is necessary over the next 15 years in order to enhance recreation facilities in the community, the Parks and Recreation Department has been exploring alternative financing to meet these needs without a tax increase. The revenue generated from the sale of Memorial Stadium will be used to develop and renovate other recreation facilities within Asheville. These include development of a multi-field youth baseball complex at Richmond Hill for use by the North Asheville Little League. In addition, a youth football field would be constructed to be used by the West Asheville Youth Football and the Asheville Rugby Club. Until construction is started, all activities can continued to use the area. The sale of Memorial Stadium also includes the purchase of approximately 100 feet of right-of-way at the end of Richmond Hill Drive into the Richmond Hill property. Funds will also be used to renovate the existing Mountainside Park to include new playground equipment and play area.

The Parks and Recreation Department recommends approval of a resolution authorizing the City Clerk to advertise an offer to purchase the property known as Memorial Stadium and associated property.

Councilman Skalski was concerned with selling 21 acres of park land in the middle of the City when Asheville needs more parks. He -8-

suggested City Council hold a public hearing to get input from the residents on this issue. He also felt that the 10 day upset bid process (established by

State law) was too short for a company to prepare a proposal if they were interested in bidding on the property.

Mr. H.K. Edgerton encouraged City Council to hold a public hearing on this matter, especially because of the proximity to Mountainside Apartments.

Mayor Martin noted that even though this area is 21 acres, there is only five acres that can be used as a part because the rest is hillside property.

Upon inquiry of Councilman Hay, Mr. Brinson said that a portion of the funds from the sale will be used to upgrade the playground facilities at Mountainside Apartments.

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

Councilman Worley moved for the adoption of Resolution No. 97-226. This motion was seconded by Vice-Mayor Field and carried on a 6-1 vote, with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 294

ORDINANCE NO. 2435 - BUDGET AMENDMENT TO ESTABLISH A PROJECT BUDGET FUNDED FROM CERTIFICATES OF PARTICIPATION ISSUES 1997A AND 1997C

At the request of Councilman Cloninger, Councilman Sellers moved to excuse Councilman Cloninger from voting due to a conflict of interest. This motion was seconded by Councilman Skalski and carried unanimously.

Summary: The consideration of a budget amendment, in the amount of \$19,025,060 to establish capital projects for improvements to the Municipal Building, Water Maintenance Building, City Hall and economic development projects for the Grove Arcade and Broadlands Building.

This budget amendment will establish project budget appropriations in the City's General Capital Projects Fund as follows:

						<u>Total Appropriation</u>
	Costs of Issue					\$220,238
	Municipal Building					11,071,595
	Water Maintenance Building					1,145,370
	City Hall					1,528,457
	Broadlands Infrastructure					310,000
	Economic Development Loan					2,500,000
	Grove Arcade Loan					<u>2,250,000</u>
						\$19,025,660

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Funding will be provided as follows:

	Sale of C.O.P.s 97A				\$13,771,965
	Sale of C.O.P.s 97C				4,587,000



Construction Interest				666,692
				\$19,025,660

Funding for debt service for the capital projects has been included in the City's Capital Improvement Plan adopted each year by City Council.

Councilman Skalski said that he was opposed to giving City money for private development.

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

Vice-Mayor Field moved for the adoption of Ordinance No. 2435. This motion was seconded by Councilman Worley and carried on a 6-1 vote, with Councilman Skalski voting "no".

ORDINANCE BOOK NO. 16 - PAGE 361

III. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING RELATIVE TO REZONING EIGHT PARCELS ON THE SOUTHSIDE OF BROAD STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY TO OFFICE

Mayor Martin said that City Council had received on November 19, 1997, an agreement signed by Mr. Dennie Martin, representing the Chestnut Hill Associates, and Arthur Davis, Vincent Ramsuer, Angela Scotchie and Colleen Watkins, representing the Chestnut Hill Neighborhood Association. Said agreement is dated November 17, 1997, and reads: "(1) The Association and Mr. Martin hereby jointly request a 30-day postponement of the public hearing scheduled for November 25, concerning the eight-lot section of Broad Street property. This rezoning request (RM-16 to Office) was petitioned by City Council, and involves two lots owned by Chestnut Partners. Postponement is requested in order to give the parties time to finalize negotiations for the purchase of said two Broad Street lots by Neighborhood Housing Services, for multi-family housing. (2) In consideration for these ongoing negotiations, the Broad Street neighbors will respect Mr. Martin's request that they also ask for postponement of the November 25 hearing regarding their own rezoning petition to change a 12-lot residential area from Office to RM-8 designation. (3) Mr. Martin, in return, agrees not to enter a Protest Petition regarding the 12-lot rezoning request, pending the closing of the sales transaction with Neighborhood Housing Service."

Vice-Mayor Field moved to continue the public hearing until January 13, 1998, without further advertisement. This motion was seconded by Councilman Worley and carried unanimously.

B. PUBLIC HEARING RELATIVE TO REZONING TWELVE LOTS LOCATED OFF BROAD STREET, WASHINGTON ROAD AND MADISON AVENUE FROM OFFICE DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

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See Item A. above.

Councilman Worley moved to continue the public hearing until January 13, 1998, without further advertisement. This motion was seconded by Vice-Mayor Field and carried unanimously.

C. PUBLIC HEARING TO CONSIDER REZONING PROPERTY ON AZALEA ROAD FROM RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT TO RIVER DISTRICT

Mayor Martin said that on November 24, 1997, City Council received a letter from Mr. Craig D. Justus, attorney representing the petitioner Darius Corbin. Mr. Justus said that his client is currently negotiating with RiverLink to donate one of the parcels to that organization. "The RiverLink Board is meeting December 4, 1997, to consider the donation. Since RiverLink's decision to accept this tract for a potential river park will play a major role in our rezoning application, my client and I would respectfully request that the public hearing be postponed until the Council's second meeting in December."

A representative of the Blue Ridge Parkway noted that the Parkway has a concern relative to an access issue and also a concern regarding land use. She requested Council continue the hearing until January 13, 1997.

Mr. Justus, attorney representing the petitioner, said that the access issue is moot and that the Parkway should have an opportunity to voice their concerns about land use at the public hearing.

Councilman Cloninger moved to continue the public hearing until December 16, 1997, without further advertisement. This motion was seconded by Vice-Mayor Field and carried unanimously.

D. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

ORDINANCE NO. 2436 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE DEFINITION OF ASSISTED LIVING FACILITIES

Mayor Martin opened the public hearing at 5:24 p.m.

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

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment to the Asheville City Council which deals with the definition of Assisted Living Facilities.

This ordinance amends Chapter 7 -Unified Development Ordinance- as it relates to the definition of Assisted Living Facilities.

The Planning staff has encountered some confusion by users of the Unified Development Ordinance pertaining to the extent and density of development for Assisted Living Facilities. Several zoning districts have density limits that are expressed both in terms of dwelling units per acre for residential development, and in square feet for non-residential uses. In one case, fear that the project would be classified as residential and thus subject to that standard very nearly -11-

caused a land sale contract to not be signed. This could have cost the city an assisted living facility development serving citizens and creating jobs.

In another case, a Realtor sought to have Assisted Living Facilities judged to be a residential use, in order to have it as a possible use for some land he was trying to sell that was zoned as Residential Single Family.

The proposed amendment more carefully defines the use, and places it in a non-residential category, which is commensurate with the zoning districts within which it is currently allowed.

The Planning and Zoning Commission unanimously recommended an amendment to Chapter 7 -Unified Development Ordinance- as it relates to the definition of Assisted Living Facilities.

Mayor Martin closed the public hearing at 5:27 p.m.

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

Councilman Cloninger moved for the adoption of Ordinance No. 2436. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 263

E. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

ORDINANCE NO. 2437 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING THE RIVERFRONT DISTRICT DESIGN COMMITTEE AND RIVERFRONT DESIGN GUIDELINES

Mayor Martin opened the public hearing at 5:27 p.m.

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

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment which deals with the Riverfront District Design Committee and the Riverfront Design Guidelines.

This ordinance amends Chapter 7 -Unified Development Ordinance- as it relates to the basis of the design review and composition of the River District Design Committee.

1. River District Review Guidelines: The Unified Development Ordinance (UDO) calls for mandatory review and voluntary compliance with design guidelines in the River District. This review is to be based upon the "River District Design Review Guidelines". These have been drafted by planning staff, and eventually need to be considered and enacted. There is no provision in the UDO for approval of these guidelines. This amendment makes it clear that the design guidelines for the River District will be considered and approved by City Council.

2. Composition of the River District Design Review Committee: There is a detailed provision in the UDO for the composition of the River District Design Review Committee. It was felt by staff that the scope of the -12-

requirement that two members be "design professionals" could be defined to include, for the purposes of the River District Design Review Committee, artists (a predominate sector of the commercial business community presently occupying sections of the river), architects, and engineers. Although it would not be necessary for an artist to be appointed under this category, it may serve to create more flexibility for the council in the use of the one free category of person to be selected at councils discretion.

3. Rules and Records: The UDO clearly spells out the procedures the River District Design Review Committee should follow in its review of a submitted project. However, it makes no provision for other rules of procedure which would delineate such things as policy on absences, what constitutes a quorum, etc. This amendment to the UDO would grant the River District Design Review

Committee the right to promulgate rules necessary for its smooth functioning.

4. The Riverfront Plan does not contain actual architectural guidelines. It is a plan for the type and extent of development in the area.

The Riverfront Open Space Design Guidelines contain guidelines which are appropriate in style and scale for the area immediately adjacent to the French Broad River, the development of which is contemplated as recreational. They do not contain guidelines that are appropriate for the redevelopment of the blighted areas of the river core area not immediately adjacent to the French Broad River, nor, for the rest of the already developed areas of the river district.

Although respecting the spirit and direction of the Riverfront Plan, and the Open Space Design Guidelines is a primary objective of staff in creating the River District Design Guidelines, it was found that these guidelines needed to encompass many issues and problems of redevelopment and existing development which are not included in either document.

For these reasons, references to the Riverfront Plan and the Riverfront Open Space Design Guidelines as containing the Architectural Guidelines which create the standard for the Riverfront Design Review Guidelines against which the Riverfront Design Review Committee must compare plans are proposed to be removed from the UDO. This will allow a broader approach in constructing the Riverfront Design Guidelines. Planning staff recommends that the City hold a public meeting and seek public input concerning the Guidelines. It is further believed that requiring Council approval of the Guidelines (see above) would be an adequate safeguard for the interests of all involved.

The Planning & Development staff recommends approval of this amendment. The Planning & Zoning Commission unanimously recommended City Council amend Chapter 7 -Unified Development Ordinance- as it relates to the Riverfront District design committee and the Riverfront Design Guidelines.

Vice-Mayor Field suggested that the Riverfront District Design Review Committee include a landscape architect as well.

Mayor Martin closed the public hearing at 5:32 p.m.

Mayor Martin said that members of Council have previously received a copy of the ordinance and it would not be read. -13-

Vice-Mayor Field moved for the adoption of Ordinance No. 2437, with the inclusion of a landscape architect on the Riverfront District Design Review Committee. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 364

F. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

ORDINANCE NO. 2438 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) TO ESTABLISH A DEFINITION FOR GRADING IN THE HILLSIDE AREA DEVELOPMENT STANDARDS

Mayor Martin opened the public hearing at 5:34 p.m.

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

Mr. Bruce Black, Urban Planner, said that this is consideration of an amendment to the Unified Development Ordinance to establish a definition for grading in the Hillside Area Development Standards.

During the review of a project subject to the provisions of the Hillside Area Development Standards, several questions arose related to the definition of grading. Due to the limitations of the current definition of grading, many of these questions could not be answered immediately. The proposed revision provides a comprehensive definition of grading, as it is applied with the Hillside Area Development Standards. Those questions regarding what constitutes grading which were raised during application of the Hillside Area Development Standards are addressed in the revised definition of grading. Issues addressed in the revised definition include the removal of trees, the installation of underground utilities, and the creation of stormwater drainage and erosion control ditches. The revised definition of grading will improve administration and enforcement of the Hillside Area Development Standards.

The Planning and Zoning Commission unanimously recommended adoption of the revision to the Unified Development Ordinance to provide an improved definition of grading in the Hillside Area Development standards. The staff of the Planning and Development Department have also recommended approval of the revision.

Mayor Martin closed the public hearing at 5:36 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. 2438. This motion was seconded by Vice-Mayor Field and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE 369

G. PUBLIC HEARING TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS -14-

ORDINANCE NO. 2439 - ORDINANCE TO AMEND CHAPTER 7 (UNIFIED DEVELOPMENT ORDINANCE) REGARDING LEVEL I SITE PLAN REVIEW PROCESS

Mayor Martin opened the public hearing at 5:36 p.m.

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

Mr. Bruce Black, Urban Planner, said that the Planning and Zoning Commission has recommended an ordinance amendment which deals with the Level I Review process.

The proposed amendments extend the ten working day review requirement to all reviewing city departments, and define the forwarding of information required of the city by outside permitting agencies upon which the issuance of city permits depends, as an action which satisfies the ten working day requirement.

This amendment would not affect Level II or Level III site project reviews in any fashion.

The amendment also allows reviewing personnel to notify applicants by many different means as to the status of their project, including its approval. If a project were to be denied, the applicant would be informed in writing as to why the project was denied, and this notice could be delivered by either

Certified Mail, or by Hand Delivery.

The Planning & Development staff recommends approval of this amendment. The Planning & Zoning Commission voted unanimously to recommend City Council amend Chapter 7 -Unified Development Ordinance- as it relates to the Level I Review process.

Mayor Martin closed the public hearing at 5:40 p.m.

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. 2439. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 16 - PAGE

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2427 - SECOND READING OF ORDINANCE NO. 2427 TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES REQUIRING ALL-OFF PREMISES SIGNS NOT COMPLYING WITH THE NEW STANDARDS TO COME INTO COMPLIANCE WITHIN SEVEN YEARS

Mayor Martin said that the public hearing and first reading of this ordinance took place on November 11, 1997.

City Attorney Oast said that he received a letter today from Robert B. Long Jr., attorney representing Outdoor Communications Inc., for himself and for Albert L. Sneed Jr., attorney representing Fairway Outdoor Advertising Inc., in which they object to the ruling regarding the protest petition that was issued last week. There was no new information presented and his opinion on that issue has not changed. He will submit a copy of the letter to the City Clerk.

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Vice-Mayor Field said that "several people have written to me and asked me about my position. And I believe I was fairly clear at the last meeting, but I'd just like to, one more time, make it very clear that I did vote for the elimination of billboards in the future, and had we had the opportunity, I would have voted for reversing the grandfathering which I had not voted for when we did that in 1993. However, I worked very hard on the sign ordinance with a lot of folks and we came to a consensus in the community, and I feel strongly that those signs that comply with the latest sign ordinance, which I believe is the 1990 or 1991 sign ordinance, should be allowed to remain. I do not think that it's fair for us to do as much in the community, to bring everybody together to come to some kind of consensus, to say this particular issue is okay and then a couple of years later, change our minds. It has nothing to do with billboards. I don't like billboards. I don't particularly think that Asheville should have billboards, but I do feel strongly that people should be able to depend on government, that we should be consistent and that I should be consistent. The other thing that concerns me is that a seven year amortization period means that the next Council election, if there is a will by the other side of this issue, then there may well be three new council members and a couple years later one more council member and the whole thing is reversed again, throwing the whole community back into turmoil again. I just don't want to do that. So, I am going to continue to vote against the ordinance to eliminate all billboards and amortize all existing billboards. We are talking about 22 billboards that are legal based on our 1990 sign ordinance. I think for 22 signs I don't want to tear this community in half again."

Mayor Martin said that he "feels very similarly to Vice-Mayor Field on this. I don't think this is a situation where we are talking about what you do with a end product, but how you go about it. I would really hate to subject the community, once again, to trouble and strife that we have gone through already. My vote will be against the ordinance once again, but it's not that I like billboards, it's just that I think this is not the right way to do it."

Councilman Worley said that he "voted against the ordinance and I intend to vote against it again today. I agree with what Vice-Mayor Field and Mayor Martin have said. I think in addition to that, I feel that it is inappropriate for someone to construct something, which has been done in a proper manner, to remove that without compensation. I understand that we are allowed to amortize so that they can recoup their investment but I'm not sure altogether that that is true. So I intend to continue to vote against the ordinance."

Councilman Cloninger said that he continues "to believe that eliminating all existing billboards within our jurisdiction is the right thing to do. It's a move that is supported by the overwhelming majority of the citizens of Asheville, I believe. I would just again Mayor, make the point that the divisiveness that's been created in this community in the past has been largely due to the issue of on-premises signs, not billboards."

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

Councilman Cloninger moved for the second and final reading of Ordinance No. 2427. This motion was seconded by Councilman Sellers and carried on a 4-3 vote, with Councilmen Cloninger, Hay, Sellers and Skalski voting "yes" and Mayor Martin, Vice-Mayor Field and Councilman Worley voting "no".

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ORDINANCE BOOK NO. 16 - PAGE 334

#### V. NEW BUSINESS:

A. RESOLUTION NO. 97-227 - RESOLUTION ENTERING INTO A CONTRACT WITH MIDWEST MAINTENANCE INC. FOR THE CITY BUILDING EXTERIOR RENOVATIONS

Mr. Lyle Willis, Contract Administrator, said that in August, 1997, City staff solicited bids from twelve contractors for the City Building Exterior Renovation. Three sealed bids from single prime contractors were received on October 8, 1997, at 3:00 p.m. based on design plans and specifications by Westcott & Harris Architects. An estimate for construction cost was prepared by Westcott & Harris Architects in the amount of \$1,081,022.00. The total time it will take to complete this project will be 300 consecutive calendar days. The City staff agreed that liquidated damages were not needed as an incentive to complete this project.

The bid process resulted in the following three single prime bids:

Midwest Maintenance, Inc. \$ 1,194,892.00

Western Waterproofing Company of America \$ 1,334,090.00

Service One, Inc. \$ 2,147,846.00

City staff has researched references given by the lowest bidder and concluded that they are a competent General Contractors. Sufficient funds are appropriated through the approved financing for this project.

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

Councilman Skalski moved for the adoption of Resolution No. 97-227. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 294

B. RESOLUTION NO. 97-228 - RESOLUTION ENTERING INTO A CONTRACT WITH RETENBACH CONSTRUCTOR INC., ABL PLUMBING AND HEATING CORP., AND TRANGLE CONTRACTORS INC. FOR THE RENOVATION OF THE MUNICIPAL BUILDING

RESOLUTION NO. 97-229 - RESOLUTION ENTERING INTO A CONTRACT WITH HAYES AND LUNSFORD ELECTRICAL CONTRACTORS INC. FOR THE RENOVATION OF THE MUNICIPAL BUILDING

Councilman Cloninger said that Hayes and Lunsford Electrical Contractors Inc. is an on-going client of his firm and asked that he be excused from voting on that portion. City Attorney Oast said that City Council could vote on three contracts and then take a separate vote on the electrical contract. Therefore, Councilman Worley moved to excuse Councilman Cloninger from voting on the electrical contract due to a conflict of interest. This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Lyle Willis, Contract Administrator, said that in September, 1997, City staff solicited bids from 41 contractors to renovate the Municipal Building, 21 of which were certified minority contractors. Fifteen sealed bids as both single prime and separate prime contractors were received on November 3, 1997, at 3:00 p.m. based on design plans and specifications by ENG\6A Architects. An estimate for construction -17-

cost was prepared by ENG\6A Architects in the amount of \$12,520,000.00 including site work and landscaping. The project specifications require the project to be completed with 26 months from the notice to proceed issued to the Contractor and the Contractor will be assessed \$500.00 per day everyday thereafter as liquidated damages. The formal bid process resulted in the following separate prime low bidders:

General Separate Prime

Rentenbach Constructor, Inc. \$ 5,316,500.00

Plumbing Separate Prime

ABL Plumbing and Heating Corp. \$ 749,495.00

Electrical Separate Prime

Hayes & Lunsford Electrical Contractors, Inc. \$ 1,150,600.00

Mechanical Separate Prime

Triangle Contractors, Inc. \$ 1,320,000.00

Total Project Cost: \$ 8,536,595.00

City staff and ENG/6A Architects have researched references given by the apparent lowest bidders and concluded that they are well qualified to compete this project. Sufficient funds are appropriated through the approved financing for this project.



The Parks and Recreation Department requests City Council to direct the City Manager to enter into multiple contracts for \$8,536,595 with the listed above contracts.

Upon inquiry of Councilman Hay, Mr. Willis outlined what is done to investigate a contractor, noting that the general prime is the contract expediter.

Councilman Worley was pleased to have award a bid that is \$4 million less than the estimate.

At the request of Councilman Cloninger, Mr. Willis explained the track record of Rentenbach Constructor, Inc.

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

Councilman Worley moved to adopt Resolution No. 97-228. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 295

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

Councilman Skalski moved for the adoption of Resolution No. 97-229. This motion was seconded by Councilman Hay and carried unanimously (Councilman Cloninger was excused from voting).

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#### C. ORDINANCE REGULATING CABLE SERVICE PROVIDERS

ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA) FOR THE OPERATION AND MAINTENANCE OF A CABLE SYSTEM

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RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT WITH BRENMOR CABLE PARTNERS, L.P. (d/b/a INTERMEDIA) AND TELE-COMMUNICATIONS INC. (UACC MIDWEST, INC., d/b/a TCI) REGARDING FRANCHISE FEES

ORDINANCE NO. 2440 - BUDGET AMENDMENT, IN THE AMOUNT OF \$30,000, FOR CABLE CONSULTANT SERVICES

Summary of ordinance adopting regulations for cable service providers located in the City of Asheville:

The City of Asheville does not now have an ordinance regulating cable service providers. Article 8 of Chapter 160A of the North Carolina General Statutes authorizes North Carolina cities to adopt ordinances in the exercise of police power delegated to them. N. C. Gen. Stat. sec. 160A-319 authorizes North Carolina cities to grant franchises to public enterprises, including, but not limited to, cable television systems. Federal and State law authorize cities to regulate cable service providers in other ways. This ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public- rights-of-way.

The City Manager and the City Attorney's Office recommend adoption of the ordinance regulating cable service providers.

Summary regarding granting a cable television franchise to Brenmor Cable Partners (d/b/a Intermedia):

At an election held on July 28, 1967, the citizens of the City of Asheville approved, by referendum, the granting of a franchise to Thoms Broadcasting Companies, Inc., for the construction and operation of a community antenna television system in the City of Asheville. The cable television franchise granted to Thoms Broadcasting Companies, Inc., has been transferred to successive franchisees and Brenmor Cable Partners, L.P. (d/b/a InterMedia) is the current franchise holder.

That franchise was granted for thirty five (35) years, which time period would end in the year 2002. Many technological advances have occurred and various regulatory laws have changed since 1967. As part of those technological advances, InterMedia is in the process of completing a rebuild of the cable system within its franchise areas in the City of Asheville and in Buncombe County.

As a result of the rebuild of the cable system, InterMedia requested that the City of Asheville enter into renewal negotiations. Based upon technological and regulatory changes since 1967, the City of Asheville was also interested in negotiating a renewal of the franchise terms and conditions. The City of Asheville and Brenmor have completed negotiations and have agreed to proposed terms and conditions for a franchise renewal to present to the City Council of the City of Asheville for receipt of public comments on the proposed franchise renewal and consideration by the City Council of an ordinance granting the franchise renewal to InterMedia.

The proposed franchise renewal includes, among other provisions, major terms and conditions as follows:

1. The rebuild of the cable system will increase capacity from 350 Megahertz to 550 Megahertz. This capacity will allow up to 80 analog channels, with 57 channels being activated upon -19-

completion of the rebuild, and potentially hundreds more channels as digital technology becomes available.

2. The rebuilt system will use fiber optics which will ensure excellent picture quality.

3. Activation of the upstream capacity of the cable system during the rebuild will enable the cable company to provide Internet access and a wide range of future services to subscribers.

4. Four channels will be dedicated solely for governmental, educational and/or public access programs as designed by the City of Asheville. InterMedia will provide \$200,000 for equipment and facilities for the access channels. In addition, InterMedia will provide on-going support for the access channels in the amount of about \$36,000 per year, beginning in the eighth year of the franchise term.

5. A-state-of-the-art fiber optic institutional network is included which can provide voice, data and video transmission to multiple public buildings for use by the City of Asheville and Asheville City Board of Education.

6. The franchise term includes the next four years and eight months of the 1967 franchise and a new term of twelve years and four months, for a total of seventeen years.

7. Franchise fees will be paid to the City of Asheville by InterMedia in the amount of 5% of the gross annual revenues from the cable system in Asheville.

8. A requirement is included that InterMedia make state-of-the-art improvements as new technologies become available and are implemented in areas served by InterMedia which are comparable to the cable system in the City of Asheville.

9. Other terms include regulatory oversight, bonds and insurance provisions, transfer approval requirements, revocation procedures, management of the public rights-of-way and customer service standards.

The City Manager and the City Attorney's Office recommend consideration and approval of the ordinance granting the franchise to InterMedia.

City Manager Westbrook introduced Ms. Jean Rice, partner of Rice, Williams & Associates, the firm which provided consulting services in the negotiations of a franchise renewal with Brenmor Cable Partners, L.P. (d/b/a Intermedia).

Ms. Rice gave City Council a brief overview of proposed cable television ordinance and franchise and the highlights of the entire package. She reviewed the changes in the cable television industry and industry factors. She reviewed the renewal process which involved a community needs assessment, request for proposal and renewal proposal. It has taken about 2 years to work through the details of the proposal and their main concern was to keep the subscriber cost low.

She then outlined the major key elements:

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(1) Rebuild - 80 channels (550 Mhz); fiber to the feeder design; 1,000 homes per node design; upstream capacity from nodes to be activated at completion of the rebuilt; standards for supervision of construction and cut over plan to minimize disruption; subscriber notification of construction schedule; rebuilt construction completion in one year; stereo signals; service to all residences meeting a density of 20 homes per mile or proportionate distance; back-up power at the headend and at every fiber node; ongoing technical standards; detailed construction standards; emergency alert continuation and upgrade; and a state of the art clause that will keep Asheville current with similar size cities.

(2) Access - three access channels to be provided after rebuild and one for expansion; prior to rebuild, Channel 10 to be made available for access; access equipment - \$200,000 for initial equipment; ongoing support and replacement for equipment of 15 cents per month per subscriber starting in year 8 (minimum of \$360,000); company to provide free drops to public buildings; and closed circuit programming to be available to non-I-net sites.

(3) Institutional Network - company to install and maintain fiber I-net to 21 city and educational sites; 4 fibers to each location; I-net to support video, voice, and data applications for governmental and educational purposes; capability to add to the network in the future for the cost of construction to any new sites; estimated incremental cost of \$380,000; and company to maintain the I-net.

(4) Consumer Practices - 57 active channels after the rebuild; City right to regulate rates retained; FCC standards to be complied with; outage rebate for outages of 6 hours or more; company will respond to repair calls with 24 hours; parental control; and business office in the City.

(5) Term - 5 years of existing term; and 12 years thereafter.

(6) Franchise Fee - 5% of gross revenues; and \$150,000 plus over \$200,000 over next five years.

(7) Regulatory Provisions - transfer and revocation provisions; insurance and bond requirement; indemnification provision; and City's rights reserved.

Ms. Rice then answered various questions and comments from Council, some of which were the definition of gross revenue, competition by other companies, the difference of between 550 digital and 750 analog; what the contract offers the City; state of the art clause; what is the fiber to feeder design; the uniqueness of the Institutional Network; the reason why the City would want to enter into the franchise agreement with one company for 17 years; would a subscriber have to have a digital television set to get digital channels; the reasoning behind a 17 year franchise agreement; what the \$200,000 for initial equipment might consist of; the cost to equip the 21 sites and will the equipment last through the term of the franchise agreement; what the value is to the City with this franchise agreement; what type of increases could be passed onto the subscriber; and how the franchise agreement can be reviewed.

When Ms. Rice was asked about the state of the art clause, she said that it would be maintained equivalent to other Intermedia systems in communities of similar size in the three-state area of the Carolinas and Georgia - not the whole country.

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When Ms. Rice was asked what would be the cost to equip the 21 sites with the initial equipment for I-net, her response was inconclusive.

Upon inquiry of Councilman Skalski about what the typical cable rate if increase over the next 10 years would be, Ms. Rice said that it was estimated that it might go up about 105%. That would mean a typical current monthly rate of \$30 would increase to about \$60. Councilman Skalski stated that he had a real problem with negotiating a 17 year long contract with so many variables and having little control over the rates.

Councilmen Hay and Skalski asked if other cable companies could have been approached for competitive quotes - either now or later. Ms. Rice said that no one else would be interested at this time. Both Ms. Rice and City Manager Westbrook stated that it would be unlikely that any other company would come into the Asheville market within the 17-year life of this proposed contract currently being negotiated with Intermedia. One of the reasons, continued City Manager Westbrook, was that a new company would have to negotiate with Intermedia to purchase the cable, in the ground, from Intermedia.

City Manager Westbrook said that the I-net did not include the City's elementary schools, only the middle and high school.

When Councilman Hay asked how important was it to the cable company to renegotiate the franchise now, Ms. Rice said to some extent they have started their rebuild and it is somewhat more to our benefit given the franchise fees at this point in time and the I-net construction.

Upon inquiry of Councilman Cloninger, Ms. Rice said that cable digital will not require more transmission towers.

Councilman Skalski felt City Council needed more time within which to review this contract.

Upon inquiry of Mayor Martin, Ms. Rice said that given the market here and what

impact you wanted on the rate, which was low, she felt this was a good contract.

Assistant City Attorney Patsy Meldrum read the revised definition of "gross annual revenues" noting that another revision to the ordinance is language on how transfers are to occur.

Ms. Meldrum then reviewed with Council the resolution which would authorize the Mayor to execute a settlement agreement with InterMedia and TCI regarding franchise fees.

The 1967 franchise requires that the franchise holder pay to the City of Asheville 6% of the gross monthly service charges collected annually for providing the radio and television signals over the cable system within the corporate limits of the City of Asheville. Under the 1967 franchise, that payment was deemed to be full compensation for use of the City's property rights, services rendered, supervision and inspection of equipment and facilities.

Concerns had been raised by the City of Asheville regarding whether or not the City had been paid all of the fees due under the 1967 franchise. The City of Asheville, Tele-Communications, Inc. (UACC Midwest, Inc., d/b/a TCI), and the current franchise holder, Brenmor Cable Partners, L.P. (d/b/a InterMedia) have reviewed the language of -22-

the 1967 franchise and franchise fee payments made to the City of Asheville during the last few years. As a result of discussions by the parties regarding this issue, the City of Asheville, InterMedia and TCI have reached an agreement to settle any concerns regarding prior payments of franchise fees under the terms of the 1967 franchise.

The agreement would result in a total cash payment to the City of Asheville of \$150,000, payable in three installments of \$50,000 over the next three years. In addition, the City and InterMedia have negotiated terms and conditions of a franchise renewal which include more specific language regarding the payment of franchise fees from the gross annual revenues of the cable system in the City of Asheville. Those new terms and conditions will result in the City of Asheville receiving approximately \$260,000 in additional franchise fees over what would have been the remaining term of the 1967 franchise.

A settlement agreement has been prepared to reflect the understanding of the parties.

The City Manager and the City Attorney's Office recommend approval of the settlement and of the resolution.

When asked how the proposed settlement amount was arrived at, Ms. Meldrum said that it was based on an audit done by the Consultants Rice & Williams. Ms. Meldrum said that the audit only reached back over the past three years.

Ms. Meldrum then summarized the budget ordinance amendment would transfer \$30,000 to the account for payment of services to the cable television consultant.

The City of Asheville has previously entered into an agreement with Rice, Williams Associates for the provision of consulting services in the negotiations of a franchise renewal with Brenmor Cable Partners, L.P. (d/b/a InterMedia). In addition, Rice, Williams Associates has

furnished other services regarding franchise fee payment review and rate review

for the cable television franchise with InterMedia.

Due to the length of the negotiation process with InterMedia for the franchise renewal and other review matters which are ongoing, additional funds are needed to pay for those services. This budget ordinance amendment would authorize an increase of \$30,000 for the budget for these services during the next several months.

Staff recommends adoption of the budget ordinance amendment.

Upon inquiry of Councilman Hay about the urgency of adopting these items, Ms. Meldrum said that the reason is that it has taken a couple of years to get to this point. Basically this process started with this City Council two years ago. During those two years Council has been kept informed of the different steps which started with the community needs assessment, compliance audit, the audit of the franchise fees, putting together the request for proposal, and their response. All through that two year process Council has been tracking the progress. Staff is trying not to lose the memory bank process that might occur and that is the reason why the timing is so important.

Councilman Hay asked if it would be any harm to the negotiating process if Council needed a couple more months to educate the new Council members about this issue. Ms. Meldrum said there could be some impact on that because things change over time, like a change in their

corporate structure or changes in technology. She felt that was difficult to forecast.

At 7:35 p.m., Vice-Mayor Field asked to be excused for a prior commitment regarding her job. Therefore, Councilman Hay moved to excuse Vice-Mayor Field. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Cloninger felt that City Council needed to postpone voting on these matters until they have had ample opportunity to review the documents which City Council has recently received. He complimented Mr. Haight, staff and the consultant for the hard work and time that they put into the documents. He felt that if this is a good agreement then it will stand the test of public scrutiny and if the agreement needs improvement then that public scrutiny will help Council improve it.

Councilman Skalski agreed that these matters should be postponed until Council, as well as the public, has had an opportunity to review the documents. He further stated that he had only received the draft of the proposed franchise agreement 2-1/2 days ago, late Saturday morning. He said that he had a great many questions himself and from the public which he could not answer. One week was not enough time to negotiate a contract this large. The new Council would take office in one week and he could see no reason why the new Council couldn't continue on with this matter, noting that surely it would be at least \$200 million over 17 years.

Councilman Worley stated pros and cons relative to continuing these matters. He noted this Council has been very involved with the negotiations over the past two years. He offered a proposal to go forward and vote on these matters today recognizing that it is not the final vote. The final vote will be taken in one weeks and if Council's questions and concerns are not answered within the week, then Council can postpone action at that time. If the questions and concerns are answered, Council can then take a final vote.

Councilman Cloninger felt City Council should have an opportunity to discuss these matters at a worksession along with a public hearing at a regular Council

meeting. Therefore, Councilman Cloninger moved to table these matters until such time as the new Council members take office and discuss scheduling dates. This motion was seconded by Councilman Skalski and failed on a 3-3 vote, with Councilmen Cloninger,

Hay and Skalski voting "yes" and Mayor Martin and Councilmen Sellers and Worley voting "no".

Mr. Joe Haight, General Manager of Intermedia, spoke at length about the system they are installing along with the benefits to both the cable company and the City if they enter this franchise agreement. He then outlined some statistics regarding the cable system.

At 8:00 a.m., Mayor Martin announced a 10 minute break.

Upon inquiry of Councilman Hay, Mr. Haight said that if Council postponed action on these matters for a couple of months, it would change his schedule. He would have to know that there was a contract in place before he could proceed. He noted they proceeded in a good faith. He hoped that if the agreement was not signed, that his company would go forward with the rebuild, but it would probably not have some of the benefits to the City.

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Mr. Haight then responded to several questions and comments from Council and the public. He defended his company's decision to limit the system band width to 550 Mhz rather than the 750 Mhz being built by many other cable systems around the country. He acknowledged that the additional 200 Mhz in other systems is reserved for advanced digital services. He said that Intermedia's proposed system for Asheville would concentrate on delivering conventional analog TV programming only. He said, repeatedly, that the 550 Mhz system could employ digital compression to squeeze more channels out of the 550 band width. He said that the cost of going digital over the I-net would be born by the City.

When Councilman Skalski inquired as to what the current yearly gross sales were, Mr. Haight responded that in the Asheville market, Intermedia currently has 31,000 subscribers, with an average monthly bill of \$31. Mr. Haight said that Intermedia's gross revenues for 1997 would be approximately \$7.8 million.

Mr. Chris Peterson spoke in opposition of the franchise agreement and expressed why he felt the agreement was not a good deal for the City of Asheville.

Mr. Wally Bowen asked, and Mr. Haight responded, to several questions relative to the franchise agreement. Mr. Bowen urged Council not to vote on these matters until more public input could be obtained. He felt this is a very complex issue and it requires time to study. He also felt the longer Council waits to review the agreement, the stronger the City's position is for possible other competitors to come in.

Mr. Charlie Patton, subscriber, felt that City Council should depend on City staff and the consultants who are technically informed. He thought Council should vote on the matter.

Mr. Mark Rosenstein, volunteer of Mountain Area Network, suggested City Council delay any decision on this matter that will affect the community for more than the 17 years of the franchise agreement. He felt the public has not had an opportunity to review the agreement and comment accordingly.

Mr. Steve Curtis, Contractor for the current cable operator and other cable

operators in Western North Carolina, urged City Council to proceed with voting on these matters so the City won't be left behind and not get some of the benefits of the franchise agreement.

Mayor Martin said that the City has a professional staff and a qualified consultant hired to negotiate these documents. If they feel the contract is the best contract the City can obtain, then he felt we should listen to them.

Councilman Sellers said that he would have to rely on staff's recommendation on this complex contract.

Mr. Phil Davis urged City Council not to vote on these matters tonight.

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

Councilman Worley moved to adopt the ordinance regulating cable service providers. This motion was seconded by Councilman Sellers and -25-

failed on a 3-3 vote, with Mayor Martin and Councilmen Sellers and Worley voting "yes" and Councilmen Cloninger, Hay and Skalski voting "no".

City Attorney Oast informed City Council that since the ordinance failed, proceeding with the ordinance granting a franchise and the resolution authorizing the Mayor to execute a settlement agreement would not be necessary.

Councilman Hay suggested that the first order of business when the new Council takes office should be this matter.

Mayor Martin said that members of Council have been previously furnished with a copy of the budget amendment ordinance for the cable consultant services and it would not be read.

Councilman Hay then moved to adopt Ordinance No. 2440. This motion was seconded by Councilman Skalski and carried unanimously.

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D. RESOLUTION NO. 97-230 - RESOLUTION APPOINTING A MEMBER TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Summary: The term of Osborne Hart expired on November 13, 1997. This resolution will appoint Charles R. Worley to serve a three year term, term to expire November 13, 2000, or until his successor is appointed.

Mr. Everett Parrish voiced opposition to the appointment of Councilman Worley to the ABC Board because of the appearance of impropriety arising out of his membership in a club which met on City property in which alcohol reportedly was consumed. He also felt that the stipend and per diem for meetings may be looked upon as a reward for past civil service duties.

At the request of Councilman Worley, Councilman Sellers moved to excuse Councilman Worley from voting due to a question regarding his official conduct. This motion was seconded by Councilman Hay and carried on a 5-1 vote, with Councilman Skalski voting "no".

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



Councilman Sellers moved for the adoption of Resolution No. 97-230. This motion was seconded by Councilman Hay and carried on a 5-1 vote, with Councilman Skalski voting "no".

City Clerk Burleson informed City Council that a new Chair for the ABC Board would need to be appointed.

Councilman Cloninger moved to appoint Ralph Morris as Chair of the ABC Board. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 297

E. RESOLUTION NO. 97-231 - RESOLUTION REAPPOINTING ALTERNATE MEMBERS TO THE BOARD OF ADJUSTMENT

Summary: The terms of Rose Rose and Allen Roderick as alternates on the Board of Adjustment expire on January 21, 1998. This resolution -26-

will reappoint Mrs. Rose and Mr. Roderick to each serve a three year term as Alternates to the Board of Adjustment. Their terms will expire

January 21, 2001, or until their successors have been appointed and qualified.

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

Councilman Skalski moved for the adoption of Resolution No. 97-231. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 298

F. RESOLUTION NO. 97-232 - RESOLUTION CONFIRMING CAROL KING AS THE ASHEVILLE DOWNTOWN COMMISSION REPRESENTATIVE ON THE CITY BUSINESS AND DEVELOPMENT COMMISSION

Summary: Ord. 2309 established the City Business and Development Commission. Said ordinance authorized various agencies to appoint members to the Commission.

The term of Scott Jarvis, the Asheville Downtown Commission representative, has expired and the Downtown Commission has requested that Ms. Carol King be appointed as their representative for a three year term. Her term will expire on October 1, 2000, or until her successor is appointed.

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

Councilman Hay moved for the adoption of Resolution No. 97-232. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 299

G. RESOLUTION NO. 97-233 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL

Summary: The term of Leslie Daugherty expires on December 31, 1997.

Councilman Cloninger moved to (1) appoint Martha Fawbush to the Community Relations Council to serve a three year term, term to expire December 31, 2000, or until her successor is appointed; and (2) to forward to the Community

Relations Council the applications of Mr. Robert Campbell and Mr. William Bailey who they felt were also exceptionally well qualified. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 300

H. RESOLUTION NO. 97-234 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Summary: The terms of Alan Levy, Carol King, Beth Lazer and Tim Fierle expire on December 31, 1997. This resolution will appoint Karen Tessier and reappoint Carol King, Beth Lazer and Tim Fierle to each serve a three year term. All terms will expire on December 31, 2000, or until their successors are appointed.

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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. 97-234. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 301

I. RESOLUTION NO. 97-235 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Mitch McEntire, as a member of the Firemen's Relief Fund Board of Trustees expires on January , 1998. This resolution will appoint William L. Schaefer Jr. to serve a two year term, term to expire January 1, 2000, or until their successor has been appointed and qualified.

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

Councilman Worley moved for the adoption of Resolution No. 97-235. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 302

J. RESOLUTION NO. 97-236 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Ben Slosman expires on January 19, 1998. This resolution will appoint Barbara Field to serve a three year term. Her term will begin on January 20, 1998, and expire on January 19, 2001, or until her successor is appointed.

Councilman Skalski felt it was not a good idea for a citizen board to have a City Council member on it.

Mr. Everett Parrish voiced opposition to the appointment of Vice-Mayor Field to the MSD Board because he felt that due to her employment with an architectural firm, there was an implied conflict of interest.

City Attorney Oast said that Vice-Mayor Field would be subject to the same conflict of interest rules on the MSD Board that she is subject to on City Council.

Councilman Hay said he spoke with Vice-Mayor Field concerning Mr. Parrish's concern. He said Vice-Mayor Field is simply not involved in projects at her architectural firm at the stage when infrastructure is being considered, in particular where her vote on the MSD Board would have any connection with any job they may later receive in the future. If her firm does eventually work on projects, that work would come long after the infrastructure decisions have been made.

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. 97-236. This motion was seconded by Councilman Sellers and carried on a 5-1 vote with Councilman Skalski voting "no".

RESOLUTION BOOK NO. 24 - PAGE 303

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K. RESOLUTION NO. 97-237 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT AUTHORITY

Summary: The terms of Ron Lambe, Althea Goode and David Fort expire on December 31, 1997.

Councilman Cloninger moved to (1) reappoint Ron Lambe and Althea Goode to each serve a four year term, terms to expire December 31, 2001, or until their successors have been appointed; and (2) to appoint Willie McDaniel to serve a four year term. His term will also expire on December 31, 2001, or until his successor has been appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 304

L. RESOLUTION NO. 97-238 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TREE/GREENWAY COMMISSION

Summary: The term of Leni Sitnick, as a member of the Asheville Tree/Greenway Commission, expired on August 1, 1997, and Joey Moore has resigned leaving an unexpired term. This resolution will appoint Dr. Peter Gentling to serve a three year term, term to expire July 1, 2000, or until his successor has been appointed. This resolution will also appoint Mr. Jerry Bailey to serve the unexpired term of Mr. Moore, term to expire July 1, 1999, or until his successor has been appointed.

City Council will also need to appoint, at the request of the Asheville Tree/Greenway Commission, the non-voting ex-officio members. Those members are: a representative from the N.C. Arboretum, a representative from the N.C. Agricultural Extension Service, a representative of BellSouth, and Dr. Lowell Orbison, 60 Brookwood Road, Asheville, N.C.

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. 97-238. This motion was seconded by Councilman Skalski and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 305

M. RESOLUTION NO. 97-239 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF

DIRECTORS OF VICTORIA OF ASHEVILLE INC.

Summary: The terms of William L. Schaefer, S. Douglas Spell and Robert G. Wurst, as members of the Board of Directors of Victoria of Asheville Inc., expire on November 29, 1997. This resolution will reappoint Mr. Schaefer and Mr. Spell to each serve a three year term, terms to expire on November 29, 2000, or until their successors have been appointed.

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. 97-239. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 306

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 11, 1997, AND THE WORKSESSION HELD ON NOVEMBER 19, 1997

Councilman Worley moved for adoption of the minutes of the regular meeting held on November 11, 1997, and the worksession held on November 19, 1997. This motion was seconded by Councilman Skalski and carried unanimously.

B. ORGANIZATION MEETING OF CITY COUNCIL

City Manager Westbrook said that at the recent organization meeting of the Mayor-Elect and two Councilmembers-Elect, it was suggested that the organization meeting be held at 4:00 p.m. on December 2, 1997, in the Public Works Facility at 161 South Charlotte Street. He noted that the Civic Center Banquet Room was not available.

It was the consensus of City Council that the organization meeting be held at 4:00 p.m. on Tuesday, December 2, 1997, in the Council Chamber of the City Hall Building due to the historical nature of the Council Chamber.

Because the cable television issue will not require a second vote on Tuesday, December 2, City Manager Westbrook suggested Council cancel their 3:00 p.m. meeting time on that date. Therefore, Councilman Skalski moved to reschedule the beginning of their December 2, 1997, meeting from 3:00 p.m. until 4:00 p.m. in the Council Chamber on the Second Floor of the City Hall Building. This motion was seconded by Councilman Worley and carried unanimously.

C. REQUEST OF BRIAN FELDSTEIN

After hearing a complaint from Mr. Brian Feldstein, Mayor Martin suggested Mr. Feldstein meet with the City Manager to see if his concerns could be addressed.

D. REQUEST OF WILLIAM IRBY

After hearing a concern of Mr. William Irby about parking in an alley, City Attorney Oast said that he would need to investigate whether the alley in question is a public or private alley. He said that he would investigate the matter and contact Mr. Irby with his findings.

E. CLAIMS

The following claims were received by the City of Asheville during the week of October 31 - November 13, 1997: Gwendolyn Thrasher (Streets), Betty Allen (Water), Bob Scroggs (Water) and Dan Pisano (Water).

The following claims have been received by the City of Asheville during the week of November 14-20, 1997: Julia Curry (Water), Karen Kalka (Civic Center) and Joe Eckert (Inspections).

These claims have been referred to Asheville Claims Corporation for investigation.

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VII. ADJOURNMENT:

Mayor Martin adjourned the meeting at 9:56 p.m.

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CITY CLERK MAYOR

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