

Tuesday - June 23, 1998 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding (left meeting at 7:20 p.m.); Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; Councilman Thomas G. Sellers; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING SATURDAY, JUNE 27, 1998, AS "RIDE FOR KIDS" DAY

Mayor Sitnick read the proclamation proclaiming Saturday, June 27, 1998, as "Ride for Kids" Day in the City of Asheville and presented a proclamation to Mr. Michael Traynor, President of Pediatric Brian Tumor Foundation, and Mr. Allen Hughes, leader of Asheville Task Force for the Foundation, who briefed the Council on the day's activities.

B. PROCLAMATION PROCLAIMING THE MONTH OF JULY, 1998, AS "NATIONAL RECREATION AND PARKS MONTH"

Mayor Sitnick read the proclamation proclaiming the month of July, 1998, as "National Recreation and Parks Month" in the City of Asheville and presented a proclamation to Parks & Recreation Director Irby Brinson who briefed the Council on some activities that would be taking place during the month.

II. CONSENT:

A. RESOLUTION NO. 98-83 - RESOLUTION AWARDDING BID TO APAC-CAROLINA INC., ASHEVILLE DIVISION, FOR ANNUAL CONTRACT FOR ASPHALT MATERIALS

Summary: Consideration of a resolution to award annual contract for asphalt materials to Asheville Division, APAC-Carolina Inc.

Pursuant N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish the City's estimated annual requirement of asphalt materials to be purchased as needed for force account re-surfacing and street repair. One (1) bid was received.

Since only one bid was received, a survey was conducted to identify other governmental agencies cost for asphalt. By comparison, the price bid to the City of Asheville appears to be consistent with other governmental agencies cost. This bid has been reviewed with Mark Combs and his concurrence received in this recommendation.

Subject to Council's approval, it is recommended the City enter into a contract with Asheville Division, APAC-Carolina, Inc., Asheville, North Carolina, for the purchase, on an "as- -2-

needed" basis only, the estimated annual requirement of 21,550 tons of assorted asphalt materials for a

grand total of \$581,850.00. The contract to become effective from the date of approval through June 30, 1999 with no guarantee of minimum purchase quantity.

RESOLUTION BOOK NO. 24 - PAGE 424

B. RESOLUTION NO. 98-84 - RESOLUTION AWARDING BID TO CAROLINA TRUCK CENTER FOR TRUCK WITH DETACHABLE LEAF AND DUMP BODIES

Summary: Consideration of a resolution to award contract to Carolina Truck Centers Inc. for the purchase of a crew cab truck with detachable leaf and dump bodies for the City of Asheville Public Works Department, Street Division.

Pursuant to N. C. Gen. Stat. sec. 143-129 and in compliance with the City's Minority Business Plan, sealed bids were invited to furnish a crew cab truck with hoist and detachable leaf and dump bodies for the Public Works Department, Street Division. The new vehicle will be a replacement for truck #323. Five (5) bids were received as follows:

Carolina Truck Center, Hickory, NC \$82,580.00

Volvo & GMC Truck, Hickory, NC \$82,629.17

Nu-Life Environmental, Easley, SC \$86,320.00

Carolina Truck & Body, Asheville, NC \$87,705.16

W. Carolina Freightliner, Asheville, NC \$88,977.00

Bids have been reviewed for technical compliance to specifications by the Public Works Department and the Fleet Management Division, and their concurrence received in the following recommendation.

Funds for this purchase are to be from the Street Division's appropriations, Account Code 20-430-15-427-00-5740.

Subject to Council's approval, it is recommended that the bid be awarded to the low bidder, Carolina Truck Centers Inc., Hickory, N. C., in the amount of \$82,580.00 for the purchase of a 1999 'International' model 4700 cab and chassis with a 'Swaploader' SL-225 hoist, a 'Baker' 14 foot leaf body and a 'Heil' LH-13 dump body.

RESOLUTION BOOK NO. 24 - PAGE 426

C. RESOLUTION NO. 98-85 - RESOLUTION DISSOLVING THE BELE CHERE COMMISSION AND DELEGATING ITS RESPONSIBILITIES TO THE RECREATION BOARD

Summary: The Parks and Recreation Department wishes to rescind Resolution No. 93-45, dated March 30, 1993, which established the Bele Chere Commission for the City of Asheville.

On March 30, 1993, the City Council established the Bele Chere Commission. This Commission was formed from Past Chairs of the Bele Chere Festival along with two appointees from City Council. Over the years, this Commission has served in an advisory capacity for the Bele Chere Board and staff. Responsibility for the Bele Chere Festival was transferred to the Parks and Recreation Department in 1995, and staff feels it is no longer necessary to have the Commission serve in an advisory function to Bele Chere since there currently exists a Parks and -3-

Recreation Advisory Board. It is staff's desire to have the Past Chairs of Bele Chere continue to serve as mentors for the Festival and to participate in various Bele Chere functions as they have in the past.

The Parks and Recreation Department recommends that City Council rescind Resolution No. 93-45 which established the Bele Chere Commission as an official City board or commission.

RESOLUTION BOOK NO. 24 - PAGE 428

D. RESOLUTION NO. 98-86 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE REGIONAL WATER AUTHORITY TO AWARD THE BID OF THE RED ROAD AND PATTON HILL ROAD WATER LINE PROJECT (PIPELINE REPLACEMENT PROGRAM 1998-98 PHASE I) TO COOPER CONSTRUCTION COMPANY INC.

Summary: The consideration of adopting a resolution awarding the contract to Cooper Construction Company Inc. for the Red Road and Patton Hill Road Water Line Project.

The Engineering Department has developed construction plans for the Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project. This project consists of the construction of a six-inch water line along Red Road and Patton Hill Road to replace the existing two-inch water line. The engineer's estimate for this project is in the amount \$193,193.00.

The project was advertised for one month. On Tuesday, May 26, 1998, the Engineering Department received 5 bids for the project as follows:

Cooper Construction, Hendersonville, NC \$169,174.95

Steppe Construction Co., Mill Spring, NC \$178,320.00

Hobson Construction Co., Arden, NC \$180,803.00

Buckeye Construction Co., Canton, NC \$197,855.45

Wheeler Construction Co., Weaverville, NC \$198,442.00

The construction time for this project is identified as 60 calendar days in the contract documents. The contract calls for liquidated damages in the amount of \$250 per calendar day beyond this contract time.

The budgeted amount for this project is \$293,000 and sufficient funds have been budgeted for the award of project.

Cooper Construction was the lowest responsible bidder in the amount of \$169,174.95.

Staff recommendations that City Council adopt a resolution awarding the bid for Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project - Contract E-438 to Cooper Construction Company Inc.

RESOLUTION BOOK NO. 24 - PAGE 430

E. RESOLUTION NO. 98-87 - RESOLUTION AUTHORIZING THE SALE OF A SURPLUS STREET SWEEPER TO THE TOWN OF HOT SPRINGS, NC

-4-

Summary: Consideration of a resolution authorizing the sale of a surplus street sweeper to the Town of Hot

Springs, N. C. pursuant to N. C. Gen. Stat. sec. 160A-274.

The Town of Hot Springs is offering \$6,500.00 to purchase a street sweeper that has been declared surplus and taken out of service by the Public Works Department. This offer is considered to be fair when compared to the market value and prior auction proceeds for this type of equipment.

Upon Council's approval, the City will accept the Town of Hot Springs offer in the amount of \$6,500.00 for the purchase of one (1) 1987 Athey model AHL Street Sweeper.

RESOLUTION BOOK NO. 24 - PAGE 437

F. ORDINANCE NO. 2492 - BUDGET AMENDMENT TO THE WATER BOND CAPITAL IMPROVEMENTS FUND (29 FUND) TO PROVIDE ADDITIONAL FUNDING FOR THE NORTH FORK/BEE TREE CHEMICAL IMPROVEMENTS PROJECT

Summary: The consideration of a budget amendment to amend Capital Project Ordinance 92-17 (29 Fund - Water Bond Capital Improvements Fund) to provide additional funding for the North Fork/Bee Tree Chemical Improvements Project.

By Resolution 92-17 dated May 19, 1992, the Authority authorized and budgeted for various capital projects to be funded by City Water Bond proceeds in the 29 Fund. The original budget for the North Fork/Bee Tree Chemical Improvements Project was \$1.5 million. This is a revenue bond project that was originally budgeted in the 35 Fund before revenue bond proceeds had been received. The expenses for this project were transferred to the 29 Fund at the end of FY 1997/1998. Following is a summary of the status of the budget for this project:

Original Contract \$1,367,000.00

C/O No. 1 -73,480.00

C/O No. 2 4,982.00

C/O No. 3 2,908.29

C/O No. 4 -5,000.00

Revised Construction Contract 1,296,410.29

CDM Engineering Contract 216,600.00

Additional Services Law Eng. 1,409.77

Advertising 213.90

Allocated 35 Fund Interest Exp. 75,856.95

Tax Refund -1,092.25

Total Estimated Cost 1,589,398.66

Amount Budgeted for Project 1,500,000.00

Need to Increase Appropriations 89,398.96

Since there is insufficient funding to close out the North Fork/Bee Tree Chemical Improvements Project, it is necessary to increase appropriations at this time. This project exceeded the budget of \$1.5 million for the following reasons:

-5-

- The bids for construction came in slightly higher than expected (\$13,541.71 over budget)
- A portion of the interest expense charged to the 35 Fund for insufficient funds in FY 1996/1997 was allocated to this project in the amount of \$75,856.95.

There is adequate funding in the Water Distribution Master Plan to offset the over-expenditure in the North Fork/Bee Tree Chemical Improvements Project. The bids for the West Asheville Reservoir Project budgeted in the Water Distribution Master Plan came in under budget; therefore staff is recommending decreasing the Water Distribution Master Plan by \$89,398.96 and increasing North Fork/Bee Tree Chemical Improvements by the same amount.

This budget amendment will provide adequate funding to close this project at the end of FY 1997/1998.

Staff recommends approval of the budget amendment to reprogram funds in the amount of \$89,398.96 from the Water Distribution Master Plan Downtown Project to the North Fork/Bee Tree Chemical Improvements.

ORDINANCE BOOK NO. 17 - PAGE 19

G. ORDINANCE NO. 2493 - BUDGET AMENDMENT TO THE WATER MAJOR CAPITAL PROJECT ORDINANCE (35 FUND) TO INCREASE FUNDING FOR THE GLENDALE BRIDGE WATER LINE PROJECT AND TO PROVIDE FUNDING FOR THE CARTER COVE/BLACKBERRY LANE ANNEXATION PROJECT

Summary: The consideration of adopting a resolution awarding the contract to Cooper Construction Company Inc. for the Red Road and Patton Hill Road Water Line Project.

The Engineering Department has developed construction plans for the Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project. This project consists of the construction of a six-inch water line along Red Road and Patton Hill Road to replace the existing two-inch water line. The engineer's estimate for this project is in the amount \$193,193.00.

The project was advertised for one month. On Tuesday, May 26, 1998, the Engineering Department received 5 bids for the project as follows:

Cooper Construction, Hendersonville, NC \$169,174.95

Steppe Construction Co., Mill Spring, NC \$178,320.00

Hobson Construction Co., Arden, NC \$180,803.00

Buckeye Construction Co., Canton, NC \$197,855.45

Wheeler Construction Co., Weaverville, NC \$198,442.00

The construction time for this project is identified as 60 calendar days in the contract documents. The contract calls for liquidated damages in the amount of \$250 per calendar day beyond this contract time.

The budgeted amount for this project is \$293,000 and sufficient funds have been budgeted for the award of

project.

Cooper Construction was the lowest responsible bidder in the amount of \$169,174.95.

-6-

Staff recommendations that City Council adopt a resolution awarding the bid for Pipeline Replacement Program 97-98 Phase I - Red Road and Patton Hill Road Water Line Project - Contract E-438 to Cooper Construction Company Inc.

ORDINANCE BOOK NO. 17 - PAGE 21

H. MOTION SETTING A PUBLIC HEARING ON JULY 14, 1998, TO REZONE EIGHT LOTS OFF SWEETEN CREEK ROAD FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON JULY 14, 1998, TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS REGARDING A FLAG LOT FOR PROPERTY ON OLD HAW CREEK ROAD

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

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Cloninger and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 11 OF BILTMORE PARK

ORDINANCE NO. 2494 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY EXTENDING A CONTIGUOUS AREA KNOWN AS SECTION 11 OF BILTMORE PARK

Mayor Sitnick opened the public hearing at 5:19 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 Biltmore Farms, Inc. (owner and applicant) has submitted an annexation petition for a 22.07 acre area identified as Biltmore Park annexation 11. This is the eleventh annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 8. The effective date of the ordinance is December 23, 1998.

Mayor Sitnick closed the public hearing at 5:24 p.m.

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

Councilman Tomes moved for the adoption of Ordinance No. 2494. This motion was seconded by Councilman Sellers and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 23

-7-

B. PUBLIC HEARING RELATIVE TO ANNEXING A CONTIGUOUS AREA KNOWN AS SECTION 12 OF BILTMORE PARK

ORDINANCE NO. 2495 - ORDINANCE TO EXTEND THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE, N.C., BY EXTENDING A CONTIGUOUS AREA KNOWN AS SECTION 12 OF BILTMORE PARK

Mayor Sitnick 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 Biltmore Farms Inc. (owner and applicant) has submitted an annexation petition for a 11.36 acre area identified as Biltmore Park annexation 12. This is the twelfth annexation petitioned by Biltmore Farms Inc. for property located west of Overlook Road. This area is contiguous to the existing corporate limits, specifically to Biltmore Park, Annex 9 and Annex 7. The effective date of the public hearing is December 23, 1998.

Upon inquiry of Ms. Hazel Fobes, City Manager Westbrook explained that this annexation is a voluntary annexation of raw land.

Mr. Ralph Bishop asked for a certified copy that he has been denied his constitutional right as set forth in the first amendment to the Constitution of the United States to seek redress at the last City Council meeting he attended.

City Attorney Oast said that if Mr. Bishop feels like he has been denied his constitutional rights, he may seek redress in a court of law. If he would like a certified copy of the minutes where he believes that to have occurred, the City Clerk will be happy to provide those to him at the appropriate cost.

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

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

Councilman Sellers moved for the adoption of Ordinance No. 2495. This motion was seconded by Councilman Cobb and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 25

C. PUBLIC HEARINGS RELATIVE TO CABLE TELEVISION FRANCHISE RENEWAL

Mayor Sitnick explained that while there is a connection between the following three items, City Council will address each item separately. The ordinance regulating cable service providers is a generic, general ordinance that the City would have to have for any cable company and for any franchise agreement. We do not currently have an ordinance regarding this in place. The next ordinance is granting a franchise specifically to Brenmor Cable Partners, d/b/a InterMedia. This ordinance requires two votes at two separate meetings. The last item is a resolution authorizing the City Manager to execute a settlement agreement of franchise fees. All three items will be heard separately and voted on separately.

-8-

Vice-Mayor Hay stated that the settlement of franchise fees is a different issue than the franchise renewal.

Many people think that they are inter-dependent and it's important to note that they are not necessarily inter-dependent. They have been negotiated at the same time and there is some cross-over, however, Council will vote separately on them and it is possible that one Council member might want to vote for the franchise renewal and against the settlement agreement.

Councilman Cloninger again noted that the ordinance regulating cable service providers does not have any impact on negotiations with InterMedia as to the franchise fees or the settlement. However, if a franchise is approved with InterMedia, they would be subject to that ordinance.

PUBLIC HEARING RELATIVE TO AN ORDINANCE REGULATING CABLE SERVICE PROVIDERS

ORDINANCE NO. 2496 - ORDINANCE REGULATING CABLE SERVICE PROVIDERS

Mayor Sitnick opened the public hearing at 5:35 p.m.

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

Assistant City Attorney Patsy Meldrum said that this ordinance would adopt regulations for cable service providers located in the City of Asheville. The ordinance would include provisions regarding the granting of franchises to cable service providers and regulations regarding their use of the public rights-of-way.

Mr. Ralph Bishop asked for the ordinance to be read. Mayor Sitnick said that the issue has been discussed for over two years, the ordinance is 48 pages long and has been available at worksessions and formal meetings in which he has attended. In addition, the ordinance is available at this meeting and she would be happy to furnish him a copy.

Mayor Sitnick closed the public hearing at 5:45.

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

Councilman Tomes moved for the adoption of Ordinance No. 2496. This motion was seconded by Councilman Cloninger and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 27

PUBLIC HEARING RELATIVE TO GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

ORDINANCE GRANTING A FRANCHISE TO BRENMOR CABLE PARTNERS, L.P. (D/B/A INTERMEDIA)

Mayor Sitnick opened the public hearing at 5:45 p.m.

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

-9-

Assistant City Attorney Patsy Meldrum said that this ordinance grants a cable television franchise to InterMedia.

At the work session held on March 3, 1998, the City Council instructed City staff and Rice, Williams Associates, consultant to the City of Asheville for cable television matters, to renegotiate certain terms and conditions of the franchise with InterMedia. The issues which were to be renegotiated are as follows:

1. The length of the term of the franchise.
2. The amount of funding for initial equipment and on-going support for public, educational and governmental ("PEG") access channels.
3. The amount passed through to subscribers for funding of the initial equipment and on-going support for PEG channels and the institutional network.
4. The inclusion of other school and library sites on the institutional network.
5. The provision of Internet access to schools and libraries.
6. The terms of the state-of-the-art clause.
7. Consideration of the use of binding arbitration for certain situations.
8. The amount of the civil penalty.
9. Discounts for senior citizens.
10. The mechanism for subscribers to request refunds.
11. The ability for area industries to request increased capacity (550 MHz versus 750 MHz system capacity).
12. The amount of the franchise fee settlement.

New terms and conditions have been negotiated.

She clarified a couple of misconceptions about some of the details. The \$340,000 funding for the initial equipment for PEG will be paid in three years and the on-going support begins in the fifth year for eight years.

She explained that the state-of-the-art clause presented in the January proposal has been broadened and then reviewed in detail the changes in the paragraph which reads "an average of at least three (3) other communities in North Carolina which have a cable system franchise with the same or a comparable term (within three years, more or less), up to 5,000 subscribers more or less than the existing number in Asheville, a similar number of cable plant miles, and similar or less stringent local laws, rules and regulations concerning the operating of a cable system."

Vice-Mayor Hay asked about the elimination of Nashville, Tennessee, and Gainesville, Georgia, from the group of comparison cities. Ms. Meldrum said that in Nashville and Gainesville they now have 750 MHz systems. If the other systems which meet the other criteria have those, they would be required to rebuild to a 750 MHz system during this franchise term. The City would not be restricted from requiring that. We would not be relegated to a 550 MHz system during the 12 year term.

Along those lines, Councilman Cloninger noted that one of the reasons why it was proposed to take out Nashville and Gainesville that have a 750 MHz system is that those systems were install four or more years ago and that the 550 MHz systems installed today have the same capabilities with the digital application that those 750 MHz systems had four or more years ago. It was also his understanding that the community would be able to have all the services they need with a 550 MHz system. There may be some unique situations in which a particular industry may require a 750 MHz system, but under the terms of this agreement, that unique industry could get that 750 MHz, but they would have to pay for it, rather than the people of Asheville.

Upon inquiry of Mayor Sitnick, InterMedia General Manager Joe Haight said that at present they are engineering at 750 MHz through about 55% of the plant in Asheville. The plant in Asheville is about 825 miles total. They are 96% finished with the rebuild at to 550 MHz.

When Councilman Tomes asked about what the 750 MHz would do for business, Mr. Haight said that the 200 MHz would be reserved for data which would be a commercial application, not a residential application. They will still be able to provide the residential application in the 550 MHz system. They can covert what is already 550 MHz to 750 MHz in the future in order to keep up with whatever the demand requires. He said that the fiber backbone is capable of 1,000 MHz signal and they do have plenty of spare that would cover any commercial application within the City.

When Mayor Sitnick hoped that this rebuild would never be required again, Mr. Haight said that he would be hesitant to say that, considering the changes he has seen over the last 25 years in this business.

Ms. Meldrum stated that a new sentence has been added since the January proposal in the system rebuild section. The sentence reads as follows: "In the event that businesses and industries located in Asheville seek additional capacity for their data communications needs, then whenever such capacity is available on the cable system, franchisee agrees to enter into negotiations for data transmission leases with such interested companies with the terms to be agreed upon by the applicable parties."

She cleared up some confusion about the Institutional Network sites. She said information was presented to the public that there are no recreation or community centers included in the list of sites for the Institutional Network. The confusion results from these sites being identified as fire stations. The City of Asheville has four facilities where there is a fire station, a community center and a branch library - West Asheville on Haywood Road, North Asheville on Larchmont, Murphy-Oakley on Fairview Road and East Asheville on Tunnel Road. In that the West Asheville branch library had moved to an adjacent building, and that site was added. There are some community centers and recreational facilities and all the branch libraries and the main library are included in the Institutional Network.

Another question arose about the use of the Institutional Network and the fact that it was relegated in the ordinance granting the franchise for educational and governmental use. The reason for that is the requirement of the federal statute. It is limited to governmental and educational use and the federal law does not include business use on the Institutional Network.

Ms. Meldrum said that that this is a non-exclusive grant, meaning the City could grant a similar franchise to other cable companies and we do grant non-exclusive use of the rights-of-way for other utilities as well.

Mr. Haight said that after further negotiation, InterMedia is willing to incorporate language into the franchise which does provide, if they are in the Internet business, a modem to each school and library in the service area. They hope that will be satisfactory to Council. The language to be inserted reads "In the event that franchisee elects to provide high-speed Internet access services by cable modems in the City, then at such time that franchisee begins to provide such Internet services to its subscribers on a commercial basis, franchisee shall provide free Internet access service and a free cable modem to each school and public library located within the franchise area and which are passed by the activated feeder cable for as long as franchisee decides, in its sole discretion, to continue to provide such Internet services to its subscribers in the franchise area. Such Internet access services and modems shall be provided when Internet -11-

service to franchisee's subscribers becomes available in the cable system node in which the school or public library is located and within thirty (30) days of a written request from the school or public library for such services and modem."

Ms. Meldrum said that with the addition of the above in the franchise, the June 1, 1998, side letter has been

revised and presented Council with the revised side letter dated June 23, 1998, from InterMedia setting forth certain other matters related to the franchise. She noted that the revised side letter also includes some clarification language about the pass through.

Councilman Cloninger appreciated InterMedia agreeing to include that language in the franchise document. This is a big step which will pay big dividends for the children in the schools.

Upon inquiry of Councilman Cobb, Ms. Meldrum said that the funds for the initial PEG equipment is for the first three years and then starting again in the fifth year. There will be no funds in the fourth year from the franchise agreement.

When Councilman Cobb asked about the pass through to subscribers, Ms. Meldrum explained that there will be a difference of \$168,116 which is a PEG grant by InterMedia to the City. After InterMedia has been fully reimbursed their \$970,200, the subscriber pass through amount will no longer be collected from their customers.

Upon inquiry of Mr. Ralph Bishop, Ms. Meldrum explained that there is a provision in the franchise for abandonment of the cable plant and a bond securing the removal of the cable plant. The City can either force removal or could remove it, take the funds from the bonds or take over the remaining plant.

Mr. Peter Reiser asked that the City request an all day classical music channel. Ms. Meldrum replied that federal law does not allow a city through a franchise to regulate the types of programming that must be required on cable television system.

Mr. Bill Wald felt that the City should consider the settlement agreement prior to granting the franchise to InterMedia because the negotiating power will be reduced.

A representative of the Western North Carolina American Civil Liberties Union said that they have a large concern about the public access channel. They asked that a public access channel will be funded and nurtured. They hoped that all the monies would not go to the government channel and nothing to the public access channel. He felt that the City needed to be careful in what InterMedia would provide as an "in-kind" payment. He personally felt that the agreement can be negotiated more strongly in favor of the City.

Upon inquiry of Mr. Jerry Rice, Ms. Meldrum said that the City is getting a fiber optic system which is now 96% in use.

Mr. Rusty Maynard expressed concern about the four access channels and the City's option to allow the franchisee to use such unused capacity for other programming services to subscribers and then it cannot revert back to no use by the franchisee unless there is 90 days notice given by the City. He felt that was unclear as to how much use is present and whether or not there is a priority system in effect so that the franchisee cannot just have free use to put its programming ahead of any remaining public access programming. His point was that public access programming may at times be insufficient or weak, but that should not mean that it should become a lower priority. He felt that there should still be a review process on whatever the franchisee wishes to put in the unused space because you should have a common theme of - 12-

quality and goals on that channel. He questioned if there was a clear blanket of liability coverage that extends from the insurance policy of the franchisee to this activity that is taking place on the public access channel.

While Ms. Meldrum responded to some of Mr. Maynard's questions, City Manager Westbrook said that if City Council approves the franchise, then staff will come back with a recommended plan of action for implementing the PEG channels and it would be the Council's choice on how they would want to govern

those channels. He said that the City would need a staff person to help regulate the new franchise as well.

Mr. Richard Mathews asked Council to take their time and use their patience in these times of rapidly moving technology. Council is now in a position to act in the long term interests of the citizens and not the short term constraints of the City's balance sheet. He urged Council to make sure that whatever system they agree to gives the City the greatest range of flexibility and upgradability. He hoped the City will not be constrained to a technology that goes out of date in a short period of time. He also suggested that Council take advantage of the educated citizenry in Asheville who want to participate in this process and asked Council to consider forming a commission that draws on their expertise to make sure that information is made available to improve the quality of citizenship in this community. He said that since the City has a poor record of enforcement of existing ordinances, the franchise should be framed in a way that automatically will lead to compliance with the goals of our community.

Councilman Tomes firmly believed that no one can envision what will happen in five years from now given the degree of technology that is going on today.

Ms. Meldrum responded to questions from Council relative to how the state of the art clause will be triggered.

Mayor Sitnick said that since the mid-80's there have been questions about the franchise fees, etc. and when the City gets a staff person on board to regulate this franchise, that person will keep a constant watch on franchise issues and will have the ability to be notified when things are changing so that we don't fall behind anymore and don't have to worry about back-tracking where these issues are concerned. Ms. Meldrum noted that our newly adopted cable service providers ordinance can require an annual performance evaluation at the option of City Council. Mayor Sitnick said that it was her personal hope that the City does schedule performance evaluation sessions open to the public annually.

Mr. Wally Bowen, representative of the Citizens for Media Literacy, passed out to Council a statement, which is attached hereto as Exhibit "A", and reviewed some of the points contained in that statement.

Mr. Rusty Sivils feels that it is inappropriate for television to be turned over to a corporation to be managed. He wanted the City to seriously consider operating the cable system as a public utility as other cities have done. He felt it was critical to the public welfare that we have a good well-funded staffed public access system that is truly accessible to everyone.

Mr. Scott Barber felt that several answers received so far have been along the lines of if we run into a problem, we will negotiate that at the time. He was concerned at we are currently at one of those windows of opportunity when the City has a little bit of negotiating room and a little bit of power with which to negotiate a stronger agreement. This is the only opportunity until the next franchise to really tell the cable company what the City wants. He urged City Council not to make an expeditious decision and noted that a lot of citizens would like to sit down and -13-

look at how we can create an agreement that would be satisfactory to the cable subscribers and to those who feel strongly that a well funded public access channel would be beneficial to this community in ways we can't quite imagine yet.

Mr. Wald questioned whether Asheville really needed three public access channels.

Mayor Sitnick closed the public hearing at 7:18 p.m.

Mayor Sitnick felt that the citizen input into this issue has been nothing short of amazing. Since February 1994 when she first asked that the franchise fee issue be looked into, the former Councils and this present Council have recognized that this is an issue of deep concern. This very long, drawn out, complex issue has

been on the table for several years. She said that there has been an inference that City Council had already decided certain things regarding the cable franchise and the franchise fee settlement. She assured the public that no decisions have been made prior to this meeting.

Councilman Cobb said that Asheville has been living with this agreement for 31 years and one option is to continue with the same agreement for another four years. However, Asheville is losing a lot of money a year if we continue on with the present franchise. He felt that most of the discussion surrounded the PEG channels which we have not formerly had. He felt that since technology is changing so quickly, this franchise agreement could be obsolete in five years, but Council must move on with what they know today. His biggest concern is the pass through to the subscribers.

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

Councilman Cobb moved for the adoption of the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system. This motion was seconded by Councilman Cloninger.

At 7:20 p.m., Vice-Mayor Hay announced a recess because Mayor Sitnick developed a nose-bleed.

At 7:40 p.m. the meeting resumed with Vice-Mayor Hay announcing that Mayor Sitnick has a nose-bleed and in caution, she has been transported to the hospital. He said that Mayor Sitnick did request that City Council postpone taking action on the cable issues until she can be present at the meeting. The next formal meeting would be July 14, 1998, however, Ms. Meldrum will be out of town during that time.

Councilwoman Field suggested that the June 30, 1998, Burton Street community meeting be rescheduled and City Council deal with the cable issues at that time. Councilman Cloninger stated that he would not be in town on June 30 and he would like to have an opportunity to vote on this issue.

City Attorney Oast said that if Council is going to continue their action on this matter, he would recommend Council continue their action until the July 28, 1998, meeting.

Because of Mayor Sitnick's request, Councilman Cobb moved to withdraw his motion to adopt the ordinance granting a franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) for the operation and maintenance of a cable system. Councilman Cloninger withdrew his second. -14-

Councilman Sellers moved to continue the discussion of granting the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) until July 28, 1998. Councilman Tomes said that he will have a conflict with the July 28, 1998, date. Said motion died for a lack of a second.

Councilman Cobb moved to continue the discussion of granting the franchise to Brenmor Cable Partners, L.P. (d/b/a InterMedia) until July 14, 1998. This motion was seconded by Councilman Cloninger and carried unanimously.

Councilman Sellers moved to continue the public hearing regarding a settlement agreement with InterMedia and TCI regarding franchise fees until July 14, 1998. This motion was seconded by Councilman Tomes and carried unanimously.

Mr. Haight said that he was deeply disappointed that Council did not get to vote tonight although he certainly understood why. He asked if the Mayor does return to the meeting, could the cable issues be brought back up for action. Vice-Mayor Hay said that City Council has decided not to consider the issues again tonight and the people in the room were told it would not be considered again until July 14. Mr. Haight said that he was absolutely committed to be out of town on July 14 and it will be extremely difficult for him to drive many

hours to get back, but he would if he needed to. He hoped Council would consider that, if the Mayor did return to the meeting, that this process be continued.

Councilwoman Field noted that City Council has had the public hearing on the ordinance granting the franchise and felt that if the Mayor did return, then Council may want to proceed with that particular issue. The public hearing on the settlement agreement regarding franchise fees issue could remain rescheduled on July 14, 1998.

Vice-Mayor Hay said that if the Mayor returns, then City Council could discuss this again.

D. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE AS IT RELATES TO THE DEFINITION OF ANTENNAS AND TELECOMMUNICATION TOWERS

At the request of City staff, Councilman Cloninger moved to continue this public hearing, without further advertisement, until August 11, 1998. This motion was seconded by Councilman Sellers and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2491 - ORDINANCE GRANTING A FRANCHISE TO OPERATE A TROLLEY WITHIN THE CITY OF ASHEVILLE

City Attorney Oast said that there is one modification in the agreement which was described on June 16, 1998, and that recommendation is by our Risk Manager. We have included a requirement for automobile liability insurance, in addition to the commercial general liability insurance that they are already required to get.

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

Councilwoman Field moved for second and final reading of Ordinance No. 2491, with the modification as described by the City Attorney. This motion was seconded by Councilman Tomes and carried unanimously.

-15-

ORDINANCE BOOK NO. 17 - PAGE 13

V. NEW BUSINESS:

A. MOTION AUTHORIZING CITY STAFF TO PROCEED IN DEVELOPING A TEMPORARY SKATEBOARD PARK ON TOP OF THE CIVIC CENTER PARKING DECK AS WELL AS CONTINUE TO EXPLORE THE LOCATION OF A PERMANENT SITE

Mr. Irby Brinson, Director of Parks & Recreation, said that the Skateboard Task Force was established by the Parks and Recreation Department over a year ago to investigate the possibility of constructing and operating a skateboard park downtown. He briefly explained why the top of the Civic Center Parking Deck (8th floor) has been determined as a possible temporary location for a temporary skateboard park.

The Parks and Recreation Department and the Skateboard Task Force is seeking City Council approval to proceed in developing a temporary park on top of the Civic Center Parking Deck as well as continue to explore the location of a permanent site.

Upon inquiry of Councilman Cobb, Mr. Brinson said that the area under the I-240 bridge is rather small and

there are quite a few people who park there. He also noted that it is the N.C. Dept. of Transportation right-of-way as well. He will, however, continue to explore that area as a possible permanent site.

When Councilman Tomes asked about the property on Cherry Street as a possible permanent site, Mr. Brinson said that he did look into that and it is N.C. Dept. of Transportation property. Ms. Susan Roderick, with Quality Forward, has offered to set up a meeting with Gordon Myers to explore that possibility.

Councilman Tomes moved to authorize City staff to proceed in developing a temporary park on top of the Civic Center Parking Deck as well as continue to explore the location of a permanent site. This motion was seconded by Councilman Sellers.

Councilman Cloninger felt that it was worth trying this on an experimental basis and then reevaluate it at the end of the year.

When Ms. Marilyn Muccio, resident who lives near the Civic Center Parking Garage, asked about how emergencies would be handled in the parking deck, Mr. Brinson said that they have talked to the emergency medical people and it would be handled as any other accident in the parking garage, they would use the elevator.

Mr. Wesley Sharp, who works with the Salvation Army Boys and Girls Club, spoke in support of this program.

Councilwoman Field felt the temporary park is a wonderful opportunity for the young people to come together and do something positive. She would be willing to meet with the appropriate people to try to find a permanent location in downtown.

City Attorney Oast said that he did not presume to speak for the Mayor, however, in a meeting with her earlier in the day, she did express a desire that the performance of this temporary skateboard park be reviewed after a period of about three months.

-16-

Councilman Cobb felt sure that the skateboarders will be well aware that the City is watching them and hoped that the City would be able to move these type parks into other areas in the City and develop other programs for our youth.

The motion made by Councilman Tomes and seconded by Councilman Sellers and carried unanimously.

At 7:54 p.m., Councilwoman Field moved to excuse Mayor Sitnick from the meeting. This motion was seconded by Councilman Tomes and carried unanimously.

At 7:54 p.m., Vice-Mayor Hay announced a 15-minute break.

B. RESOLUTION NO. 98-88 - RESOLUTION APPROVING STRATEGIES TO PROMOTE AFFORDABLE HOUSING

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of adopting a resolution approving strategies proposed in the Affordable Housing Study and instructing staff to prepare a first-year action plan. She reviewed the eight broad strategies. They are (with minor amendments proposed by the Housing and Community Development Committee):

1. Develop a strong leadership role for the City to promote housing production and affordability.
2. Use local zoning and regulatory policies to support affordable housing.

3. Increase production of rental and ownership housing
4. Promote in-fill housing, mixed-use development and adaptive re-use of existing buildings.
5. Expand housing rehabilitation
6. Encourage affordable housing development by both for-profit and non-profit developers.
7. Develop transitional housing for those with special needs.
8. Develop formal City-County collaboration on housing.

The Housing and Community Development Committee endorses these strategies and recommends their approval by Council.

City staff recommends that City Council accept the eight broad strategies set forth in the Resolution and instruct staff to prepare an initial action plan detailing implementing actions that have the highest priority and can reasonably be put into effect within the next twelve months.

Ms. Caplan suggested Council amend strategy no. 7 to read "Develop transitional and permanent housing for those with special needs." The suggestion was recommended by the Blue Ridge Center and staff supports the change because there is a clear need.

Councilman Tomes offered a footnote as it relates to strategy no. 6. He said that when the City deals with the overall concern of affordable housing, he would like the riverfront development group be allowed to make a presentation at a worksession and that the City make an effort to include them in this process.

When Councilman Cobb asked about a source of funding, Ms. Caplan said that one strategy that will be looked at is the development of a Housing Trust Fund.

Vice-Mayor Hay spoke in support of the affordable housing strategies and felt it was a major step in the City moving forward with affordable housing.

-17-

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

Councilwoman Field moved for the adoption of Resolution No. 98-88 with strategy no. 7 be amended to read "develop transitional and permanent housing for those with special needs." This motion was seconded by Councilman Sellers and carried unanimously.

Mr. Jim Barrett, resident on Cumberland Avenue, thanked Council for addressing the huge problem of affordable housing in Asheville.

Mr. Jerry Rice felt that the job market does not allow some people to afford more than a trailer and Council should review the Unified Development Ordinance and not put so many restrictions on what people can put on their land.

Vice-Mayor Hay felt that as tough policy decisions are made, for instance in zoning, we now have a strategy and a plan that gives Council a point of reference.

The motion made by Councilwoman Field and seconded by Councilman Sellers carried unanimously.

Vice-Mayor Hay made a personal challenge to the other City Council members to work on the strategy to develop formal City-County collaboration on housing. He felt that City Council can be working on that themselves above and beyond what staff can do.

RESOLUTION BOOK NO. 24 - PAGE 438

C. ORDINANCE NO. 2497 - BUDGET AMENDMENT FOR THE PAVING OF MCCORMICK FIELD PARKING LOT

Mr. Irby Brinson, Director of Parks & Recreation, said that this is the consideration of a budget amendment, in the amount of \$79,577, for the paving of the McCormick Field parking lot based upon prior commitment by former City Manager Doug Bean.

In 1992, former City Manager, Doug Bean, agreed that the City would pay for the paving of the McCormick Field parking lot as the City's commitment to the renovations of the minor league ballpark. Based upon review by both the City and County, payment has never been made by the City for this project. Buncombe County has now requested payment for the paving of the McCormick Field parking lot which was completed in 1992. The total cost for this project was \$81,577; however, due to the contractor failing to complete various requirements of the

contract, \$2,000 was deducted from the original total. Therefore, the amount the City has been requested to pay is \$79,577.

The Parks and Recreation Department is requesting City Council approval of the budget amendment to appropriate funds totaling \$79,577 to pay for the paving of McCormick Field parking lot.

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

Councilman Tomes moved for the adoption of Ordinance No. 2497. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 75 -18-

D. RESOLUTION NO. 98-89 - RESOLUTION ENDORSING APPOINTMENT OF MARSHALL LOGAN TO THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE

Vice-Mayor Hay said that the term of Phillip E. Crouch, as a member on the Housing Authority Board of Directors, expired on June 11, 1998. This resolution will endorse the appointment by Mayor Sitnick of Mr. Marshall Logan to serve a five year term, term to expire June 11, 2003, or until his successor has been appointed.

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

Councilman Tomes moved for the adoption of Resolution No. 98-89. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 23 - PAGE 439

E. ORDINANCE NO. 2498 - ADOPTION OF THE 1998-99 ANNUAL OPERATING BUDGET

Vice-Mayor Hay said that the public hearing on the budget was held on June 9, 1998.

City Manager Jim Westbrook said that this report presents the Fiscal Year 1998/99 Annual Operating Budget for the Mayor and Council's consideration before adoption.

The Fiscal 1998/99 Annual Operating Budget was presented to City Council on May 21, 1998. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the budget along with a notice of the public hearing was published on May 29 and June 5, 1998. The City Council conducted a public hearing on the budget at the June 9, 1998 Council meeting.

The Fiscal Year 1998/99 Annual Operating Budget is balanced with a revised net revenue-neutral tax rate of \$.51 per \$100 of assessed valuation. All essential City services are maintained.

The budget as presented to City Council includes a recommended General Fund appropriation of \$56,428,543. Key items for Council's review are summarized and discussed below:

- Fees for the recycling program have been revised and are included in this budget in accordance with the Fees and Charges Committee recommendations which will raise the per household recycling fee from \$.75 per month to \$1.54 per month.
- Outside Agency funding has been revised in accordance with the Outside Agency Committee recommendations to allow most agencies that currently receive City funding to receive the same appropriation for Fiscal Year 1998/99 as originally appropriated in Fiscal Year 1997/98.
- Additional funding for part-time staff in the City Development Office is provided.

The Fiscal Year 1998/99 budget currently does not include funding for certain mandated or desired programs discussed at Council's retreat. These programs cannot be funded unless new or enhanced revenue sources are identified or reductions to existing services are made. -19-

The following is a list of unfunded mandates and desired programs:

1. Federal mandate for expanded fire protection - \$462,359
2. Funding for a Storm Water Regulations Study - \$125,000
3. Downtown Development Plan - \$50,000
4. Traffic calming initiatives - \$50,000
5. River Development Plan - \$50,000
6. Study to update the 2010 plan - \$50,000

The total cost for the aforementioned programs is \$787,359. One cent on the tax rate will generate an additional \$434,000 in revenue. Council may consider setting the tax rate above the net revenue-neutral rate of \$.51 to fund some or all of the aforementioned programs.

During budget worksessions and the public hearing, the Mayor and Council requested the following additional information regarding the Fiscal Year 1998/99 budget.

Proposed YMI Funding Detail:

Recreation Center Director \$35,329
Part-time Recreation Center Assistant 10,426

Fringe Benefit Costs 11,160
 Travel & Training 1,200
 Rental Expense for Sound Equipment 1,000
 Copying & Duplicating 500
 Postage 200
 Departmental Supplies 1,885
 Professional Services 2,000
 Licenses & Taxes 100
 Car Allowance 200
 Total \$64,000

Advertising cost and circulation figures for Asheville Citizen-Times, Mountain XPress, and Asheville Advocate newspapers are as follows:

| News Paper | Distribution | Circulation | Advertising Rates (for ¼ of a page) | Unit Cost |
|--------------------|--------------|-------------|----------------------------------------|-----------|
| Citizen-Times | Daily | 35,000 | \$789.08/weekly | \$.02 |
| Mountain Xpress | Wednesday | 17,428 | \$138.32/weekly | \$.008 |
| Asheville Advocate | Friday | 5,000 | \$ 56.00/weekly | \$.01 |

A previous staff report dated June 5, 1998, and memorandum dated May 29, 1998, contain other requested information.

Revised Fees and Charges Committee recommendations:

The Fees and Charges Committee initially recommended a 50% reduction in building safety and engineering fees for new residential construction that qualifies as affordable housing. It was recommended that fees would also be waived for any new houses built in the following -20-

CDBG redevelopment target areas: Home Ownership Zone (West End/Clingman Area) and Montford Avenue/Hill Street Area.

Councilwoman Field reported that the Housing and Community Development Committee has proposed an alternative recommendation that would waive 50% of building inspection and engineering fees for new single family homes constructed within the City of Asheville that meet NC State Building Codes and sell at a price below \$100,000. The Housing and Community Development Committee further recommends 50% fee waivers for multi-family homes funded by CDBG, HOME grants funds or multi-family homes that are eligible for such funding.

City Manager Westbrook said that MSD has approved a similar proposal and staff is working with the Water Authority.

Vice-Mayor Hay said that the Housing & Community Development Committee really wanted to do as much for multi-family as we could, but administratively it was just much more difficult to know what an affordable rental unit was going to be, especially on an on-going basis. We wanted to ensure that we were truly encouraging affordable rental housing. He hoped that the day will come soon when we can find a way to bring this to other multi-family projects as well.

Upon inquiry of Councilman Cloninger about the river development plan, Planning & Development Director Julia Cogburn said that this was the City's portion, discussed with RiverLink, of a public/private partnership to actually do a concentrated plan for the core area of the River District. At the present time the City does not have any other sources for funding. RiverLink does have their portion which is \$75,000.

Councilman Cloninger reviewed the outside agency funding as follows:

97-98 98-99 98-99

Agency Approved Request Recommended

A-B Community Relations Council \$63,000 \$66,500 \$63,000

Arts Alliance 30,000 35,000 30,000

A-B CrimeStoppers* 21,667 0 0

A-B Vision Inc. 15,000 ` 20,000 15,000

Asheville Area Chamber of Commerce 100,000 100,000 100,000

Asheville Area Rescue Squad Inc. 12,000 15,000 6,000

Asheville Sister Cities Inc. 2,000 2,000 2,000

Buncombe County Drug Commission 30,000 45,000 30,000

Life on Life's Terms Inc. 0 27,000 0

One Youth at a Time Inc. 9,333 18,000 10,000

RiverLink Inc. 18,000 75,000 18,000

Smith-McDowell House Museum 0 15,000 0

Vanderbilt Apartments Inc. 0 75,000 0

YMI Cultural Center** 0 36,000 0

Totals \$301,000 \$529,500 \$274,000

* A-B CrimeStoppers will be funded through the City's operating budget in the same amount as the current year.

** Funding in the amount of \$64,000 is included in the Parks & Recreation budget for the YMI Cultural Center.

-21-

Councilman Tomes and Councilwoman Field recommended that in addition to the \$64,000 budgeted for the YMI Cultural Center that the City budget up to \$2,000 a month for the YMI Cultural Center utilities, with the YMI submitting the bills monthly for the City of Asheville to pay.

City Manager Westbrook said that if Council decides to increase the budget for the YMI, then he recommend

the \$24,000 be included in the Parks & Recreation budget, and not in the outside agency fundings.

Councilman Cloninger felt the YMI is doing a good job, but felt that since we are already budgeting \$64,000 to them, they should be asked to pay for their utility bills.

Councilman Tomes moved to amend the budget to include an additional \$24,000, to be distributed up to \$2,000 a month, to the Parks & Recreation budget for the YMI Cultural Center's utility bills. This motion was seconded by Councilwoman Field and carried on a 5-1 vote with Councilman Cloninger voting "no".

Mr. Gene Ellison thanked Council for their support and spoke in support of the budget City Council is proposing for the YMI Cultural Center.

Mr. Jerry Rice asked what effect will the Buncombe County Commissioners 3-2 denial of the Water Authority's budget earlier today have on the adoption of the City's budget (since the Water Authority's budget is adopted as part of the City's budget). City Manager Westbrook said that he was unaware of the County's vote and encouraged City Council to adopt the budget as presented. If there are some future negotiations that would change the budget, then Council can amend that portion of the budget.

Mr. Clarence Benton asked Council to include the Asheville Advocate in part of their advertising budget. City Manager Westbrook explained that the proposed budget has a sum of money in it for which we provide for CityWorks in the Asheville Citizen-Times and the Mountain Xpress. City Manager Westbrook said that Council can readjust the total for three newspapers or increase the budget to include the Asheville Advocate in their advertising.

Upon inquiry of Councilman Cloninger, Mr. Benton said that his newspaper comes out twice a month.

Councilwoman Field wondered if this was really a budget issue. She felt Council should just approve an amount of money for advertising CityWorks and then go back and look at how it might be split up. She said that the Asheville Advocate certainly reaches perhaps an audience that is different from the Mountain Xpress or the Citizen-Times, but the cost per subscribers is probably five times higher than the Citizens-Times and even more than that for the Mountain Xpress.

Councilwoman Field also said that another concern was that everything that comes out in CityWorks is very time oriented and it needs to get to people at a particular date and needs to come out on a regular basis. Her experience with the Asheville Advocate is that it is not a regular newspaper. Mr. Benson responded that most of the time it does come out on a regular basis, but being a small business it has struggles and sometimes it takes money that he doesn't have - last year being the worst but he is taking steps to correct that.

City Manager Westbrook said that the money is in the budget for advertising and staff will continue to split it up as they have been directed to in the past, unless Council directs staff to do otherwise. -22-

Upon inquiry of Councilman Cobb, City Attorney Oast said that the City has certain legal requirements within which to follow for their legal advertising. He said the Asheville Citizen-Times qualifies and that is where the City does its legal advertising.

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

Councilman Cloninger moved, in light of the fact that services will suffer if we were to meet our federal mandate without adjusting taxes accordingly, that Council reduce the tax rate to \$.52 per \$100 of assessed valuation. This motion was seconded by Councilman Cobb.

Councilman Tomes was concerned that since no one can dictate unfunded mandates, would Council be

better off with reducing the tax rate to \$.53 per \$100 of assessed valuation. He was not in favor of raising taxes, but somehow the community must understand that the City has no control over federal mandates and Council has to address the issues. He was especially concerned with the stormwater regulations mandate. City Manager Westbrook said that cities ordinarily know at least one fiscal year ahead of the mandate and the City is aware that the stormwater mandate becomes effective in 1999.

Councilman Cobb felt that federal mandates are something that City Council can't control but reducing the tax rate to \$.53 might jeopardize the parks and recreation bond.

Vice-Mayor Hay said that raising taxes is something that City Council has not planned to do and it has been their clear message to staff, and they have responded appropriately, to find other sources of revenue and make the City work on what the City's present tax rate is and concentrate on growth from the tax base. He doesn't want to lose site of the fact that they have otherwise been very successful in doing what people want them to do, is to keep taxes where they have been all along and to focus on building the City's revenues in other ways.

City Manager Westbrook said that if the Council is not able to fund all of the items talked about at the retreat, staff will continue to work on them. Staff will try to be innovative, but may have to come back and recommend using contingency or fund balance and ask for Council to look at those programs on an individual basis in the context of that particular problem. He said as Councilman Tomes points out, stormwater is important and the \$125,000 is for the study to tell us what we need to do to be in compliance with the new regulations when they come out in 1999.

Councilwoman Field said that in her seven years on Council she has never voted to raise taxes, however, this is a federal mandate she doesn't see how we can get out of. She felt that when the City didn't raise taxes and the County did raise taxes, it changed the relationship between the City and the County's proportion of sales tax revenues and other revenues that are proportional. She felt we needed to be more creative, more innovative, work smarter and harder in this community and particularly in the City. We do an excellent job of providing services and we want to continue to do that. We don't want to cut back any more than we have.

The motion made by Councilman Cloninger and seconded by Councilman Cobb carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 77

-23-

F. RESOLUTION NO. 98-90 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY, LTD., FOR INTERMITTENT USE OF A PORTION OF THE ASHEVILLE CIVIC CENTER

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to execute a lease agreement for the Asheville Civic Center.

The United Hockey League has approached The Asheville Civic Center about placing a team affiliated with their league at the facility. They have furthermore agreed to pay the facility a per game fee of \$750.00 up to \$1500.00 based on attendance. Additional consideration of up to \$250.00 per game is further agreed if Civic Center cost exceed the prior revenue. The Civic Center retains a minimum of \$150,000.00 in concession revenues before sharing additional revenues with the team. Based on attendance, The Civic Center could retain up to \$250,000.00 before any sharing took place. Any revenue split with the team is after taxes and food costs have been deducted. The Civic Center receives 10% of any merchandise sales after \$500,000.00. The team agrees to supply an ice floor and all related equipment necessary for the presentation of professional hockey. At the end of five (5) years, title to this equipment is transferred to the

city without any cost to the city. The city, however, has the option to acquire this equipment sooner if it chooses by assuming the lease of this equipment. The Civic Center further more has the use of the ice floor for other events to include public skating. The Civic Center has the first option to purchase skates for public use, and in so doing, would retain 80% of any revenues received from this venture. Since the city will ultimately come to own the ice floor and related equipment, the city has agreed to share maintenance cost on a 50/50 basis with the team when such upkeep costs exceed \$5,000.00. The Civic Center has further agreed to furnish locker room and office space to the team. Any advertising placed in the arena by the team must have prior approval from the Civic Center Director.

The Civic Center staff recommends City Council adopt the resolution.

City Attorney Oast said that in the franchise that was originally proposed, he had inserted the requirement that the team provide mortgage insurance on the ice so that if they walked away for any reason, the payment on the floor would continue to be made. The City's Risk Manager said that kind of insurance product does not exist. He still feels that the proposed agreement is risk free to the City in that we won't get stuck with an ice floor and the payment on it, unless we want to. What it does mean is that we won't get a windfall if the hockey team walks away from it. We will still have the floor at the end of five years and if, at any time in those five years the hockey team walks out, the only way we get the ice floor is if we buy it. Whereas originally, they would have posted a bond that would have paid off the floor.

Upon inquiry of Councilman Cloninger, City Attorney Oast explained how the lease is structured for the floor and any lease agreement will be reviewed and approved by him.

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

Councilman Cobb moved for the adoption of Resolution No. 98-90. This motion was seconded by Councilman Sellers and carried unanimously.

RESOLUTION BOOK NO. 24 - PAGE 440

-24-

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 9, 1998, AND THE WORKSESSION HELD ON JUNE 16, 1998

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on June 9, 1998, and the worksession held on June 16, 1998. This motion was seconded by Councilwoman Field and carried unanimously.

B. COMMENTS BY JERRY RICE

Upon inquiry of Mr. Jerry Rice, Councilwoman Field said that since Council has adopted the budget and the tax rate, if something changed, the Council can amend the budget but not change the tax rate.

C. BOARD OF ADJUSTMENT

Mr. Keith Thompson asked that the Board of Adjustment that is scheduled for June 24, 1995, be held in a larger room than the 1st Floor Conference Room in that a large crowd is expected for the meeting regarding variances on Merrimon Avenue.

D. COMMENTS BY JOE HAIGHT

Mr. Joe Haight, General Manager of InterMedia, appealed to Council to reconsider the ordinance granting the franchise to Brenmor Cable Partners L.P. (d/b/a InterMedia). The public hearing was held and a motion was made and seconded. If Council would reconsider this, it would put in place several things that have to happen in the very near future concerning the whole issue of franchise and going forward in business plans having to do with at home and other things. There has been a lot of planning and effort on their part leading up to tonight. He understands the situation with the Mayor and her request that the issues be postponed. He said that she will have the opportunity to vote on the second reading.

It was the consensus of Council to postpone both cable issues because City Council assured the Mayor they would honor her request that she be allowed to vote on the issues.

E. CLAIMS

The following claims were received by the City of Asheville during the week of June 5-11, 1998: Robert L. Stepp (Streets), Sandra Lively (Water), Robin Smith (Parks & Recreation) and Pat Pendorf (Sanitation).

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

VII. ADJOURNMENT:

Vice-Mayor Hay adjourned the meeting at 9:42 p.m.

CITY CLERK MAYOR
