

Tuesday - April 27, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; 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: Vice-Mayor Edward C. Hay Jr.

INVOCATION

Councilman Sellers gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY ASHEVILLE SISTER CITIES

Ms. Mary Lasher, President of Asheville Sister Cities Inc., presented City Council with the new Asheville Sister Cities thank-you note cards. On behalf of City Council, Mayor Sitnick thanked Ms. Lasher for the cards.

B. PROCLAMATION PROCLAIMING MAY 6, 1999, AS "PARKS AND RECREATION VOLUNTEER RECOGNITION DAY"

Councilman Cloninger read the proclamation proclaiming May 6, 1999, as "Parks and Recreation Volunteer Recognition Day" in the City of Asheville. He presented the proclamation to Ms. Joyce Harrison, recipient of the Bill Fulp Community Service Award, and Director of Parks & Recreation Irby Brinson.

C. PROCLAMATION PROCLAIMING MAY 8, 1999, AS "HIT THE PAVEMENT, NOT YOUR PETS" DAY

Councilman Cobb read the proclamation proclaiming May 8, 1999, as "Hit the Pavement, Not Your Pets" Day in the City of Asheville. He presented the proclamation to Mr. Mark Paulhus, Executive Director of Buncombe County Friends for Animals, and Ms. Marilyn Walker, Chair for the Anti-Cruelty Walk, who urged City Council to participate in the Walk.

II. CONSENT:

At the request of Mr. Mel Thomason, Item E. on the Consent Agenda was removed for further discussion.

A. RESOLUTION NO. 99-60 - RESOLUTION AUTHORIZING CITY STAFF TO CONTINUE THE INVESTIGATION OF ACCEPTANCE OF DONATED PROPERTY LOCATED IN MONTFORD HILLS COMMUNITY FROM THE NEIGHBORHOOD HOUSING SERVICES AND AUTHORIZING THE CITY MANAGER TO ENTER INTO ANY NECESSARY AGREEMENTS

Summary: The Parks and Recreation Advisory Board and staff are recommending that the City proceed with accepting the donation of property located in Montford Hills Community from the Neighborhood Housing Services.

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The Parks and Recreation Advisory Board, at its February meeting, unanimously approved accepting the

donation of property from the Neighborhood Housing Services. Several months ago, Neighborhood Housing Services approached the City of Asheville in regard to accepting eight parcels of property located near Westover Drive and Tacoma Lane in the Montford section. Staff has reviewed the potential use of this property and has determined that it could serve as a possible greenway connection in the future or as protection of open space land. Staff will continue working with the Legal Division in regard to the acceptance of this property contingent on securing a proper boundary survey, conducting a Phase I environmental assessment, and review of any deed restrictions. If, after this review, it still seems in the City's best interest to continue toward acceptance of this property, staff will proceed with securing the title.

The Parks and Recreation Advisory Board and staff are seeking City Council approval to continue the investigation of acceptance of donated property and to authorize the City Manager to enter into any agreements necessary for this transaction.

RESOLUTION BOOK NO. 25 - PAGE 190

B. RESOLUTION NO. 99-61 - RESOLUTION REJECTING ON BIDS ON TWO VACANT LOTS ON SARA STREET AND REMOVING SAID LOTS FROM THE SURPLUS PROPERTY LIST

Summary: The consideration of a resolution rejecting bids on two vacant lots on Sara Street and removing said lots from the surplus properties list.

On March 9, 1999, the City Council directed the City Clerk to advertise for upset bids on two vacant lots on Sara Street. The offer to purchase was from MGS, LLC, in the amount of \$10,700. The advertisement ran in the Asheville Citizen-Times on March 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. Upset bids were received and the property was re-advertised.

Subsequent to the advertisement for upset bids, the Parks and Recreation Department staff identified a need to retain the property as a part of Riverside Cemetery for greenway access. The Parks and Recreation Department staff have requested that all bids be rejected and the properties be removed from the surplus properties list.

Community Development staff recommends adoption of the resolution

RESOLUTION BOOK NO. 25 - PAGE 191

C. RESOLUTION NO. 99-62 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY LAND ON PARK AVENUE TO DAVID J. HEETDERKS

Summary: The consideration of a resolution authorizing the Mayor to convey a vacant lot on Park Avenue to David J. Heetderks in the amount of \$10,800.

On February 9, 1999, the City Council directed the City Clerk to advertise for upset bids on certain property located on Park Avenue (PIN 9638.08-97-8805) in the West End Community. The advertisement ran in the Asheville Citizen-Times in -3-

February 12, 1999, as provided in N. C. Gen. Stat. sec. 160A-269. An upset bid was received by MGS, LLC, in the amount of \$9,185 and the sale again was advertised on February 26, 1999. An upset bid was received from David J. Heetderks in the amount of \$9,700 and an additional advertisement ran in the Asheville Citizen-Times on March 12, 1999. An upset bid was received by MGS, LLC, in the amount of \$10,235 and the sale again was advertised on March 26, 1999. An upset bid was received from David J. Heetderks in the amount of \$10,800 and the sale was again advertised on April 9, 1999. There being no upset bid received from the offer to purchase from David J. Heetderks in the amount of \$10,800, the sale to David J. Heetderks should be approved.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 192

D. ORDINANCE NO. 2562 - BUDGET AMENDMENT TO APPROPRIATE GRANT FUNDS FOR THE CONSTRUCTION OF A GREENWAY TRAILHEAD AND RAMP SEGMENT ON THE REED CREEK/BROADWAY GREENWAY

Summary: The consideration of a budget amendment, in the amount of \$130,000, to appropriate grant funds from the State of North Carolina, Department of Environment and Natural Resources in the National Recreational Trails Fund Program to construct a greenway trailhead and ramp segment on the Reed Creek/Broadway Greenway.

The Broadway Greenway represents the next section in the City of Asheville's urban trail corridor linking the UNC-Asheville to the downtown business district. Phase I of the corridor was completed in 1997 with the first section of the Weaver Blvd. Greenway. The next section of Weaver Blvd. will be complete in 1998/1999. The City has been working for some time to develop the Reed Creek/Broadway Greenway along Reed Creek on the west side of Broadway. Eventually the corridor will link downtown neighborhoods to the Weaver Blvd./Glenn's Creek Greenway.

The focus of this grant will be the segment of greenway between Chestnut and Magnolia Streets. The greenway begins at Chestnut Street where a large, five points intersection is located. The grade change from Chestnut to Reed Creek is very steep. A ramp will be needed to provide wheelchair and bicycle accessibility to the greenway. Since it is a large, busy area, the entrance will need a strong visual statement which will accentuate where the greenway begins. The entrance is proposed to include signage, map, and benches.

The Parks and Recreation Department recommends the City of Asheville accept the grant funds on behalf of the Parks and Recreation Department into the Parks capital improvement budget for construction of the trailhead of the Reed Creek/Broadway Greenway.

ORDINANCE BOOK NO. 17 - PAGE 301

E. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

This item was pulled from the Consent Agenda for discussion.

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F. ORDINANCE NO. 2563 - BUDGET AMENDMENT TO APPROPRIATE \$75,000 THAT WAS RECEIVED FROM HMS, LLC, INTO A CAPITAL PROJECT IN THE PARKS & RECREATION DEPARTMENT FOR THE LEASE OF THE ASHEVILLE SPEEDWAY FOR THE 1999 SEASON

Summary: The consideration of a budget amendment to appropriate \$75,000 that was received from HMS, LLC, into a capital project in the Parks and Recreation Department for the lease of the Asheville Speedway for the 1999 season.

In January of 1999, the City of Asheville entered into an agreement with HMS, LLC to allow racing at the Asheville Motor Speedway for one more season. This agreement called for a lease payment of \$75,000 to be incorporated into a capital fund in Parks and Recreation that would go to the development of a master plan for the Speedway property. The purpose of this amendment is to appropriate these funds into the budget

ordinance.

The Parks and Recreation Department staff recommends City Council approval of the budget ordinance amendment for \$75,000.

ORDINANCE BOOK NO. 17 - PAGE 303

G. RESOLUTION NO. 99-63 - RESOLUTION MODIFYING THE SCHEDULE OF CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 6, 1999, CITY COUNCIL WORKSESSION

RESOLUTION BOOK NO. 25 - PAGE 193

H. MOTION SETTING A PUBLIC HEARING ON MAY 11, 1999, TO CONSIDER THE REZONING OF THREE LOTS LOCATED ON MONTFORD AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE DISTRICT

I. MOTION SETTING A PUBLIC HEARING ON MAY 11, 1999, TO CONSIDER THE SUBMISSION OF THE CONSOLIDATED PLAN TO THE U.S. DEPT. OF HOUSING AND URBAN DEVELOPMENT FOR COMMUNITY DEVELOPMENT BLOCK GRANT ENTITLEMENT AND HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR 1999-2000

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

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

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 59X LOCATED NEAR THE CORNER OF ASHELAND AVENUE AND PHIFER STREET

Summary: The consideration of a resolution directing the City Clerk to advertise an offer to purchase for upset bids regarding Disposal Parcel 59X near the corner of Asheland Avenue and Phifer Street. -5-

The bid of Rex Ballard in the amount of \$139,000 for the purchase of Disposal Parcel 59X in the East Riverside Redevelopment Project is not less than the established minimum price of \$139,000.

Disposal Parcel 59X is an Office zoned lot near the corner of Asheland Avenue and Phifer Street comprising 0.639 acres. The bid from Rex Ballard for Disposal Parcel 59X includes the proposal to incorporate the lot into the adjacent property currently owned by Rex Ballard. The development proposal consists of landscaping and parking consistent with the Unified Development Ordinance, which will require a buffer adjoining the residential property.

Approval of the resolution will initiate the sale of the property through the upset bid process as provided in N. C. Gen. Stat. sec. 160A-269.

Community Development staff recommends adoption of the resolution.

Mr. Mel Thomason urged the City Council to reject the bid submitted and retain the property for a greenway corridor. He noted that the property is zoned business which would permit a structure of 30,000 square feet to be built in an area of single-family homes.

City Manager Westbrook said that it was his understanding that the property has utilities under it and you really can't construct anything on it. He also noted that this is redevelopment property and that money will go back into the redevelopment fund.

Upon inquiry of Councilwoman Field about retaining an easement for a greenway, Mr. Ed Vess, Field Services Coordinator, said that the right-of-way in that area is 100 feet.

Councilman Tomes spoke in support of keeping the area as it is, especially since our Parks & Recreation Master Plan consultant said we should conserve all our land.

Upon inquiry of Councilman Cobb, Parks & Recreation Director Irby Brinson said that the actual greenway connection would be in the 100 foot right-of-way. If the area is not sold, it would be just maintained as an open space area.

Councilman Tomes moved to continue this matter until May 11, 1999, in order to give City Council an opportunity to visit the property in question. This motion was seconded by Councilman Cobb and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO REZONING ALL OF EIGHT LOTS LOCATED ON ASHELAND AVENUE AND SOUTH GROVE STREET FROM OFFICE BUSINESS DISTRICT TO OFFICE II DISTRICT, EXCEPT FOR A PORTION OF ONE LOT BEING REZONED FROM REGIONAL BUSINESS DISTRICT TO OFFICE II DISTRICT AND A ONE FOOT STRIP ALONG FOUR LOTS ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

See discussion under Item B.

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B. PUBLIC HEARING RELATIVE TO REZONING A PORTION OF ONE LOT LOCATED ON ASHELAND AVENUE FROM OFFICE BUSINESS DISTRICT TO REGIONAL BUSINESS DISTRICT, EXCEPT FOR A ONE FOOT STRIP ALONG THE LOT BOUNDARY ON SOUTH GROVE STREET BEING REZONED FROM OFFICE BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick said that on April 26, 1999, City Clerk Burleson received a letter from Attorney Scott Carter on behalf of his client, Oak Valley Partners, property owner in this area. Said letter requested City Council postpone this public hearing at least one session to allow them the necessary time to research the matter thoroughly in order to make a more concise and erudite presentation to City Council. They believe that the proposed rezoning is neither legal nor desirable and they need a little time to make the quality case to Council.

After discussion about the need for a policy regarding a deadline within which to request a continuance of a matter previously scheduled on the City Council agenda, City Council directed the City Attorney to draft such a policy and bring it back for City Council review at a worksession. With this policy, the City can notify the affected people in a timely manner to avoid the inconvenience of coming to a City Council meeting and then having the matter continued without being given the opportunity to be heard.

Councilman Cloninger moved to continue the two public hearings to rezone properties on Asheland Avenue until May 11, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

C. PUBLIC HEARING RELATIVE TO AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED

ORDINANCE NO. 2564 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO CHANGE THE METHOD FOR DETERMINING WHEN SIGNIFICANT CHANGES HAVE BEEN MADE TO PRELIMINARY PLATS SO THAT FURTHER REVIEW BY THE TECHNICAL REVIEW COMMITTEE AND/OR THE PLANNING AND ZONING COMMISSION IS REQUIRED

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.

Mr. Gerald Green, Senior Planner, said that this is the consideration of a wording amendment pertaining to "substantial changes" for final subdivision plats.

At their meeting on April 7, 1999, the Planning & Zoning Commission voted 7-0 in support of an ordinance amendment pertaining to "substantial changes to final subdivision plats". Section 7-5-8 (a) (4) d. includes requirements for final plats as a part of subdivision plat approvals. The specific exert which staff proposes to revise currently reads as follows:

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Substantial changes from the preliminary plat shall require an additional review by the Technical Review Committee and the Planning & Zoning Commission to ensure compliance with the existing regulations. Substantial improvements shall include, but not be limited to, redesign of streets, increasing the number of lots, altering the size and/or design of more than 20 percent of the lots, and/or reducing the number of lots by more than 20 percent.

It is the recommendation of staff that the items listed as "substantial changes" be deleted. The basis for this recommendation is that professional staff can review the plan and determine the significance of the revisions by looking at such items as the impact on adjacent properties, impact on traffic volumes, or significance of the revisions from the original plan. It should be incumbent on City staff to make this determination and if the changes are significant to ensure the necessary level(s) of review. The plans are being prepared and reviewed by professionals and this portion of the Unified Development Ordinance ("UDO") appears to be overly restrictive in detailing the process of review by Technical Review Committee and Planning & Zoning Commission. Therefore, staff would propose to revise this section to read as follows:

Substantial changes from the preliminary plat as determined by the Planning and Development Director shall require an additional review by the Technical Review Committee and/or the Planning & Zoning Commission to ensure compliance with the existing regulations. ~~Substantial improvements shall include, but not be limited to, redesign of streets, increasing the number of lots, altering the size and/or design of more than 20 percent of the lots, and/or reducing the number of lots by more than 20 percent.~~

Staff recommends that City Council review the proposed wording amendment of the UDO to remove specificity of "significant changes" and to allow staff latitude to make this determination without all cases requiring review by the Technical Review Committee and/or the Planning & Zoning Commission.

When Mayor Sitnick expressed concern about changes being made and no notification being given to the

public, Mr. Green said that even though there will not be notification to the neighborhood, staff will take into consideration the comments made by the public when the plat was brought before the Technical Review Committee and the Planning & Zoning Commission. Mr. Green said that Planning staff will do their best to take into account the comments made by the public and keeping them informed of what is going on, even when there are changes not determined to be substantial.

Mayor Sitnick suggested there be an amendment to this ordinance for some kind of public notice to anyone who participated at the Technical Review Committee review. Mr. Green said that notification could be given, but they would not have an opportunity for input. City Manager Westbrook also pointed out that the Technical Review Committee deals with the technical issues and in most cases, there is not a lot of debate about the facts.

Mayor Sitnick closed the public hearing at 5:55 p.m.

Mayor Sitnick 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. 2564. This motion was seconded by Councilman Cobb and carried unanimously.

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ORDINANCE BOOK NO. 17 - PAGE 305

D. PUBLIC HEARING RELATIVE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES (UNIFIED DEVELOPMENT ORDINANCE) TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT

ORDINANCE NO. 2565 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO PROVIDE REGULATIONS FOR SIGNS FOR SECOND TIER DEVELOPMENT

Mayor Sitnick opened the public hearing at 5:56 p.m.

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

Mr. Gerald Green, Senior Planner, said that the Planning and Zoning Commission, at their April 7, 1999, meeting, reviewed and recommended approval of an amendment to the Unified Development Ordinance ("UDO") which would define second tier development, identify permitted signage for such development, and establish standards for the signage. Second tier development, briefly described as that development which occurs behind the lots fronting major thoroughfares, is viewed as a critical link in the effort to reduce the strip development along Asheville's thoroughfares. The signage needs for these developments are anticipated to be different than most other developments in the City, as the second tier developments typically will not have street frontage. The proposed ordinance would permit one off-premise development identification sign per second tier development, as well as on-site tenant identification signs. The off-premise sign may be a maximum of 90 square and may be located up to 1000 feet from the second tier development. The size, height, and location of all signs would be established by the proposed ordinance. If a development qualifies as a second tier development and takes advantage of the signage package for second tier developments, it may not apply for the standard signage permitted under the sign ordinance. This restriction is designed to prevent sign clutter within the second tier development.

The Planning and Zoning Commission voted 6 to 1 to recommend approval of the wording amendment. The Planning and Development staff recommends approval of the amendment.

Mr. Green said that he received one comment to amend Section 7-13-5 (c) (2) (b) to read "the off-premises development identification sign must be located (1) within 1000 feet of the closest point of the second tier development it identifies; or (2) at the closest point of the second tier development it identifies, whichever is the least." Their concern was that the location along a major thoroughfare may be more than 1,000 from the second tier development. He felt this amendment would be reasonable and recommended it be incorporated into the proposed ordinance.

City Attorney Oast suggested a different amendment to the ordinance to address the comment. Since Mr. Green was not aware of any proposed or potential locations where the second tier development would be more than 1000 feet away from the traveled thoroughfare, City Attorney Oast suggested incorporating that amendment as something for which the Board of Adjustment may grant a variance.

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Councilman Cobb hoped that in the future the City of Asheville would post logo signs that direct people in the City. Mr. Green said that Planning staff is working on an ordinance amendment for signage in the right-of-way and they will try to incorporate this request into that amendment.

City Attorney Oast suggested Council amend Section 7-13-5 (c) (5) be amended to read "Variances from the standards set forth herein shall be limited to the following: (a) a 10% increase in the dimensional standards (size, height, and setback); and (b) to allow placement of a sign at a distance greater than 1000 feet from the closest point of the second tier development, if the closest point of the second tier development is more than 1000 feet away from the thoroughfare."

Mayor Sitnick closed the public hearing at 6:09 p.m.

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

Councilwoman Field moved for the adoption of Ordinance No. 2565 with the amendment suggested by City Attorney Oast to Section 7-13-5 (c) (5). This motion was seconded by Councilman Tomes and carried unanimously.

ORDINANCE BOOK NO. 17 - PAGE 307

E. PUBLIC HEARING TO AMEND THE CIVIL SERVICE RELATING TO THE RECRUITMENT AND SELECTION PROCESS

Mayor Sitnick opened the public hearing at 6:12 p.m.

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

Councilman Tomes asked for City Council's support of amending the recruitment and selection process in the Civil Service Law so that we will not continue to hinder the work force in our community.

Mr. Kevin Wilson, Assistant Human Resources Director, reported to City Council of the status to date and the recommended future action regarding changes in the Civil Service Law relating to recruitment and selection. He said that 46 years after the Civil Service Law was enacted, out of 100 counties in North Carolina, all of them have moved away from this kind of process. Out of 512 cities in North Carolina, Asheville is the only one with this kind of process. There are staggering statistics which show that there is an apparent disparate impact.

City Council directed staff at its January 1999 Council Retreat to form a Task Force to examine elements of

Civil Service Law to ensure that it continued to meet the needs of the City of Asheville. The Recruitment & Selection Task Force included members of City departmental management, City Council (Rev. O.T. Tomes), Civil Service Board, the Firefighter's Association (president), line-level city staff, local NAACP (president), and Police Benevolent Association (president).

Different interests were expressed from the onset of the meetings. The main points that continued to surface were (1) lack of minority employee representation in various departments/ divisions across City government, and (2) review of the Civil Service Law specific to Recruitment and Selection process. There was much attention placed on the language in the law relating to -10-

the "Rule of Three", specifically the past history and perception of citizens that elements of the law could create a disparate impact on certain protected groups. The task force was not able to reach consensus on its recommendation with respect to this part of the law. The employee and Civil Service Board representatives support retention of the Board's role in the recruitment and selection process; the department managers wish to have more autonomy in recruitment and selection, and the representatives of the minority community desire such modifications as will help increase minority representation in the workforce.

There was general agreement with respect to deleting the provisions that are squarely inconsistent with State law: Section 8 requiring disclosure of eligibility lists, and Section 21 regarding political activity.

Staff recommends that the City Council seek amendment to the Civil Service Law to remove those provisions regarding Civil Service Board oversight of the recruitment and selection process. This oversight function will essentially be transferred to the City's staff by way of an administrative policy containing modern operational recruitment procedures to insure a systematic, consistent recruitment program, promote equal opportunity, identify and attract the most qualified applicants for all vacancies, and streamline and shorten the hiring process.

This will require a fairly substantial revision of the Civil Service Law. Other changes are included to conform the law with current practice.

It is important to note that the Civil Service Board's role in hearing and reviewing employee disciplinary matters is being retained.

Assuming that these changes become law, staff is prepared to move ahead with appropriate modifications to the City's Personnel Policy and Affirmative Action Plan to insure that professional recruitment and selection processes are immediately implemented.

The proposed changes are as follows:

- Section 1. Amended to reflect that the Civil Service Board is part of the government of the City, rather than a separate municipal corporation. To whatever extent it was legally necessary that the Civil Service Board be constituted as a separate corporation, there is no identifiable reason for that arrangement to continue. This has the effect of bringing the Civil Service Board under the umbrella of the City for legal processes. In this respect, the Board is an independent board, like the Board of Adjustment, with statutory duties only exercisable by it, but part of the City.

The Section 1 amendment also provides that the Civil Service Board's operational costs be part of the City's budget.

The Section 1 amendment also deletes the reference to a Director of Civil Service, whose functions are now performed by the Human Resources Director.

- Section 2. This Section has been rewritten to delete the reference to the Director of Civil Service, but to

retain the method for selection of the Civil Service Board's membership, essentially continuing the current board in operation, with no interruption in their terms. The City Council appoints the Chair, as it previously appointed the Director of Civil Service. This amendment also addresses such things as eligibility for successive terms, and specifies that members of Council may not also be Civil Service Board members.

- Section 3. Amended to delete outdated referenced to "Clerk of Police Court."

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- Section 4. Amended to refer to Section 5 for specification of the Civil Service Board's powers. The reference to employee discipline in this Section was repetitive of language in Section 5.
- Section 5. Amended to delete provisions for Civil Service Board involvement in the recruitment and selection process. These deletions are the primary means of implementing staff's recommendations, pursuant to Council's direction.

The proposed amendment also clarifies that the Civil Service Board may make regulations for temporary, part-time and probationary employees. The sections dealing with the Civil Service Board's ability to review disciplinary matters have been retained.

- Sections 6, 7, 8, 9, 10, 11 and 12 are recommended for deletion. These sections relate to the recruitment and selection process, which is being transferred to the City's staff. Section 8 contains the provision requiring disclosure of eligibility lists, which is inconsistent with State law.
- Section 13. Amended to delete power to investigate citizen complaints against employees; this function has for a long time been performed by the department directors or City Manager. The Civil Service Board's function as an agency to which such complaints may be referred for investigation is retained. Any reports generated by an investigation are subject to the general laws regarding disclosure of records.
- Section 14. This is the section requiring the Civil Service Board's hearings on employee appeals from disciplinary actions. This provision is retained in its current form as to substance. Some technical changes are recommended to conform the law to the Civil Service Board's practice.
- Sections 15, 16, 17 and 18 are deleted because those provisions relate to recruitment and selection. Section 15 requires City Council to establish a pay plan, which is required by statute, G.S. 160A-162.
- Sections 19 and 21, prohibiting political activity by employees, are deleted because they conflict directly with G.S. 160-169 which allows it (within limitations).
- Section 20, prohibiting the requirement of a signed resignation letter as a condition of employment, is retained. The part dealing with political activity is deleted.
- Section 22 provides that it is the Civil Service Board's duty to administer the Act. The provision making a violation of the Act a criminal offense is deleted. Most of the deleted provisions related to fraud or cheating on the recruitment and selection process.
- Section 23, which gives citizens the right to maintain civil actions against the City for money paid in violation of the Civil Service Law, is deleted.
- Section 24 is rewritten to continue the classified service designation of affected employees.
- Section 25, which authorized the City to hire outside of the Civil Service process in the event of an

emergency, is deleted.

- Sections 26, 27 and 28, dealing with the constitutionality and effective date of the Act, and repealing conflicting provisions, are retained with minor revisions.

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Mayor Sitnick said that one of our goals in our first retreat was to encourage and support the cultural diversity that exists in our community.

City Attorney Oast said that in Section 2 the terms for the Civil Service Board members was inadvertently left out. Therefore, he asked that that a sentence in Section 2 of the Civil Service Law that City Council has before them be amended to read "All members of the Board shall serve two year terms and shall be eligible for successive terms, by whatever means selected, and may serve beyond the end of their respective terms until their successor takes office."

City Attorney Oast also clarified in Section 24 where it speaks to the employees who are members of the classified service. It is the intention of that provision to include everyone who is currently a member of the classified service and anyone who is subsequently hired by the City of Asheville.

Mr. Mike Knisely, President of the Asheville Firefighters Association ("AFA"), said that Council was told that the AFA was not interested in any changes in our Civil Service Law regarding the Rule of 3. He said that Council was misinformed. The AFA came up with constructive changes to the law which would accommodate the request, goals and desires of the new millennium of inclusion and diversity. In fact, some changes they propose do change that Civil Service Law, but not to the sweeping changes espoused by staff. They believe the Civil Service Law has served the employees well. He didn't disagree that the Civil Service Law should have been amended over the years. He also said the Civil Service Law is always given the blame for bad hiring and bad promotion decisions, illegal hiring and promotion decisions and lengthy hiring processes. He said that it is not the law that does the hiring or the testing, it's human beings. The Civil Service Board was established in 1953 as oversight on a process that prior to that had been cronyism. It was an oversight board of non-compensated, independent citizens, not employees of the City, who sat down and reviewed the process. The Board that we have today is one of the most diverse boards that we have in the City. It is composed of five individuals - two females, two African Americans and one white male. The Civil Service Board as it exists today does not concur with the changes being espoused by staff to Council for consideration today. The AFA agree that the law needs changing and they have advocated for change. The days of the strict reading of the Rule of 3 are long gone. In 1995 he advanced the idea of targeted recruiting - looking at individuals, talking to churches, civic groups, national guard groups and people coming out of the military. He restricted his argument quite often to the Fire Department and police issues but for the most part it was looking for individuals that are qualified that would be a benefit to our City and to our system. The AFA doesn't agree with the process now. It's throwing the baby out with the bath water philosophy. It's too wide spread of a change in the Law. The recruiting and hiring process ties directly into the grievance process. Seeking diversity should be a number one goal of the City and putting together a staff, either line level, management, etc., should be the primary goal of the City. His personal and professional position is that we're here to serve the citizens of the City of Asheville and we should reflect the make-up and diversity of the City, without question. They do agree with the goals expressed by Councilman Tomes, Mr. Richardson and Mr. Wilson without reservation. We know that cities outside North Carolina meet and have met those goals within the framework of civil service laws, opposed to the argument by Mr. Wilson that we are the only city with a Civil Service Law. They don't agree with gutting this Law as a means to those goals. However, they do say that if it is indeed the feeling of the Council that the protections and the oversight of our Civil Service Law need to be changed in such a large sweeping matter to accommodate the goals of diversity, and those sentiments are echoed and advanced to our legislative contingent in Raleigh, the firefighters will be there in support as they have always been. We wish it were different. We've placed before you today a position paper

with a general commentary and a point by point analysis with specific reference to how it would affect the minority community in the positions. We express and say again, we share the concern for diversity, but we don't want the rule taken -13-

away. We want the rule modified. We would like to see those two positions put together and come up with a third position. We would like to see language advanced to the legislature that indeed becomes a Civil Service Law for the new millennium. He was proud of the progressive Civil Service Law that Asheville has. He thinks that there is room for improvement, but until the time comes that they can put together language that will be satisfactory, not only to members of the community, to Council, to the current employees, and future and potential employees of the City of Asheville, we have to look and see just exactly how this is going to work and how this is going to put together a position that is going to be fair to all concerned and meet the goals, directions and desires of everyone.

Councilman Tomes asked if the Civil Service Law has served the City well since 1953, then why is the Fire Department 98% white male. Mr. Knisely responded that the Civil Service Board and City management in the past has side-stepped the spirit and fundamental attitude that is personified in the law. He stressed, however, that we have never been precluded in the past from targeted recruiting or from advancing qualified candidates from the minority community. He said a lot of times we don't get qualified applicants and we could use more. He felt that if we were to enforce the law with the righteous attitude from the Civil Service Board, coupled with a righteous attitude on the part of staff, he felt the numbers would be different.

Councilman Tomes stated that the City of Asheville needs to be intentional about being fair.

Mr. Knisely said that the Rule of 3 is necessary, not to say that modifications shouldn't be considered with an emphasis on minority hiring, retention and promotion.

Councilman Cobb questioned what the benefit is for the Civil Service Board to be involved in the recruitment and selection process. Mr. Knisely felt that the Board is an independent oversight organization which has a different attitude than staff has in terms of judging and analyzing people.

Mr. John Hayes, President of the NAACP, spoke in support of the proposed changes in the Civil Service Law relating to recruitment and selection.

Mr. Samuel Camp supported the proposed change to the Civil Service Law noting the under-representation of minorities in City departments.

Mr. Glenn Holbert, Secretary Treasure of the Asheville Firefighters Association, read the following excerpts from a letter from Attorney Travis Payne sent to Mr. Knisely: "If there is a real concern for under-representation of minorities in the work force of the City of Asheville, rescinding the Rule of 3 is exactly the wrong thing to do." If the Rule of 3 actually operates to exclude qualified and competent minorities from hiring and promotions, that would be because of the selection process itself, consisting of testing and other procedures used to score the applicants for jobs is actually biased against minorities." He said that changing the Civil Service Law is not the problem. He said that if minorities are recruited and tested properly they will be employees of the City. Changing this will only hurt them because if they are lucky enough to make it through this process, Council will have destroyed part of the things that will protect them as City employees.

City Manager Westbrook said that Council has given instruction to change the work force to reflect the community and staff has accepted that accountability. However, Council has not passed along the responsibility for that because that rests with the Civil Service Board and that is why we are asking for the Law change. When you manage something it's essential that you have both accountability and responsibility. Again, this is a staff driven effort based on Council's original direction and all department directors support this Law change. -14-

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

Councilman Cobb felt that we have adequate laws in place to protect our citizens in reference to fair hiring practices. He felt we have qualified staff to carry out this mission and the responsibility that goes along with it. He felt the recruitment and selection process is no longer needed. He supports the Civil Service Board's role in reviewing disciplinary matters and that will not change.

Councilwoman Field said that the last time a change to the Civil Service Law was discussed by City Council there was a room full of employees (and many, many phone calls from employees) who were opposed to Council making any changes to the Law. However, this change has not brought about that kind of response from our employees, and she feels that there may have been some changes in our employee community that indicate to her that they are not opposed to Council making these changes.

Mayor Sitnick said that she is a long time supporter of labor, the rights of workers and the protection of workers. Despite the fact that the Civil Service Board seems to be a government unto itself and does a worthy job, she believes that the composition of this City, as mandated by this City Council to reflect the look of the community, should rest with City Council. Everyone on City Council is interested in having the best qualified candidates perform the best service for the citizens of Asheville. Our mandate to staff is that we want some real equal opportunity employment in this City of Asheville. If this administration should change in the future, she will lead the charge to remedy the situation. We have had a law in place for many years that does not seem to be producing the results that everyone says they want to see. If we have something that is not working, let's get it out and try something else and keep trying until we find out what does work. She supported this change with great respect to the firefighters and their efforts and input.

At the request of Mayor Sitnick, Human Resources Director Jeff Richardson said that he would amend Section 1 of the draft Administrative Policy regarding recruitment and selection which he presented to City Council, to include language consistent with the nondiscrimination policy that City Council adopted.

Councilman Tomes moved to seek amendment to the Civil Service Law as outlined above, with the amendment to Section 2 as recommended by the City Attorney. This motion was seconded by Councilwoman Field and carried unanimously.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 2566 - ORDINANCE EXTENDING A TEMPORARY MORATORIUM ON SEXUALLY ORIENTED BUSINESSES IN THE CITY OF ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance extending the temporary moratorium on sexually-oriented businesses through June 30, 1999.

In August of 1998, pursuant to then recently-enacted legislation, Council adopted a temporary moratorium for the location of new sexually-oriented businesses, or the expansion of existing ones, within the City's zoning jurisdiction. This moratorium is effective until May 11, -15-

1999. The purposes of the moratorium are to allow for the investigation of measures that the new law allows for the control of sexually-oriented businesses, and formulation of appropriate recommendations.

As reported to Council last week, the primary recommendation is that sexually-oriented businesses be allowed as conditional uses. Currently, they are allowed as uses by right, subject to special requirements. Until recently, the constitutional validity of the conditional use permit as a mechanism for regulating sexually-

oriented businesses in North Carolina was unsettled. A recent Fourth Circuit Court of Appeals opinion upheld such a scheme in Raleigh's ordinance against a constitutional challenge.

Because this would be a change to the Unified Development Ordinance (UDO), consideration and recommendation of the Planning & Zoning Commission is required, which could take into the month of June. The moratorium ordinance contemplates that it may be extended by Council. Staff is seeking an extension through the month of June to allow for the proposed UDO amendment to be processed in the usual way.

Adoption of the proposed ordinance is recommended.

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

Councilman Sellers moved for the adoption of Ordinance No. 2566. This motion was seconded by Councilman Cobb and carried unanimously.

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VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 13, 1999, AND THE WORKSESSION HELD ON APRIL 20 1999

Councilman Tomes moved for the adoption of the minutes of the regular meeting held on April 13, 1999, and the worksession held on April 20, 1999. This motion was seconded by Councilwoman Field and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the week of April 9-15, 1999: Betty M. Duck (Water), Glenn M. Carniol (Civic Center), Steve Brooks (Streets) and Beaverdam Condo Association (Sanitation).

The following claims were received during the week of April 16-22, 1999: Suzy Laibson (Streets), Urban Trail (Parks & Recreation) and Geraldine Danch (Civic Center).

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

C. LAWSUITS

On April 12, 1999, the City of Asheville was served with the following lawsuit: Trinity Baptist Church Inc. v. City of Asheville and Carrier Heights Neighborhood Association. The complaint alleges that Section 7-2-5 of the Unified Development Ordinance which prohibits the -16-

Plaintiff from completion of its construction and the development of its property, be declared invalid, void and/or unconstitutional. This matter will be handled in-house.

On April 12, 1999, the City of Asheville was served with the following lawsuit: Michael T. Dixon and wife, Rose M. Dixon v. the City of Asheville. The complaint alleges denial of building and zoning permits for quadraplex at Morningside Park pursuant to approved site plan prior to property rezoning from R-3 to R1-A. This matter will be handled in-house.

On January 25 , 1999, the City of Asheville was served with the following lawsuit: Yiannis Diamadopoulos,

Owner of Washboard Launderette of Black Mountain v. Water Commission and City of Asheville. The complaint is a small claims action for damages to customers' property and loss of business sustained when dirty, rusty water entered the premises on August 12, 1998. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Use of Cannabis - Referendum Petition

Mr. Dave Mitler, representative of Community of Compassion, presented City Council with a blank referendum petition which they submitted to the Board of Election which requests that "an ordinance to direct City Manager and Police that laws criminalizing the possession, cultivation, and use of cannabis be given lowest priority status of enforcement" be placed on the ballot of a special or general election for fair consideration by the citizens of Asheville, North Carolina.

Mr. Steve Rasmussen said that they are still willing to work with City Council but failing to hear from Council, they will proceed forward with the referendum petition.

Mr. Mickey MaHaffey felt that there is unrest on the streets of downtown and he has committed his time and efforts to keep peace in the streets downtown. He said there is a growing number of people who are attempting to focus on that and try to defuse some of the energy downtown.

Mayor Sitnick and Councilwoman Field updated Mr. MaHaffey on the efforts that are taking place in downtown and also on the public restroom issue in downtown.

Mayor Sitnick also commended Mr. MaHaffey on the award he received by the Asheville Police Department which recognized his qualities and productiveness in our community.

Sign at Pack Place

Councilwoman Field stated that she has nothing to do with the sign being placed in front of the Pack Place Education, Arts and Science Center. However, Pack Place has hired her office to help install the sign since they know where all the mechanical, electrical and plumbing is under that plaza.

Escort Services

Mayor Sitnick announced that an anonymous fax was received about escort services which were advertised in the Mountain Xpress. The fax accused the Mayor and Council not caring about our children. She said that both establishments are in Buncombe County and are not located within the City of Asheville.

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Mayor Sitnick said that often times there are good ideas lost because City Council cannot contact the people sending anonymous information. She said that if the public wants to communicate with Council to please let them know who you are so they can communicate back.

Citizens/Police Advisory Committee

Councilman Sellers said that the Citizens/Police Advisory Committee will be requesting to be placed on an upcoming worksession to update City Council on their efforts being made in the downtown area.

Closed Session

At 7:38 p.m., Councilman Cloninger moved to go into closed session to consider the qualifications,

competence, performance, character, fitness, conditions of appointment or conditions of initial employment of an individual public officer or employee or prospective public officer or employee - G.S. 143-318.11 (a) (6). This motion was seconded by Councilman Sellers and carried unanimously.

At 8:00 p.m., Councilman Sellers moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 8:00 p.m.

CITY CLERK MAYOR
