

Tuesday - June 8, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; 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 Cobb gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

A. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER THE INITIAL ZONING OF CITY-OWNED PROPERTY LOCATED OFF OF FERRY ROAD (BENT CREEK AREA) TO RS-2 RESIDENTIAL SINGLE FAMILY LOW DENSITY DISTRICT

B. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER A MODIFICATION FROM THE SUBDIVISION STANDARDS FOR PROPERTY LOCATED OFF OF SAND HILL SCHOOL ROAD

C. MOTION SETTING A PUBLIC HEARING ON JUNE 22, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ELIMINATE ACCESSORY STRUCTURES AS A PERMITTED USE IN ALL RESIDENTIAL DISTRICTS

D. RESOLUTION NO. 99-84 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH HOBSON CONSTRUCTION CO. FOR THE BREVARD ROAD ANNEXATION AREA EAST OAKVIEW ROAD SANITARY SEWER IMPROVEMENTS

Summary: The consideration of a resolution awarding the contract for the Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to the lowest responsible bidder, Hobson Construction Company Inc. in the amount of \$67,075.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer Improvements. The project consists of installing approximately 1200 linear feet of eight inch sanitary sewer line to serve existing residences on East Oak View Road.

On Friday, May 7, 1999, at 5:00 p.m., the Engineering Department received three bids for the project as follows:

Hobson Construction Co., Arden, N.C. \$67,075

Tennoca Construction Co., Candler, N.C. \$85,119

Steppe Construction Co., Mills Spring, N.C. \$95,472

The lowest responsible bidder for this project was Hobson Construction Company Inc. with a bid of \$67,075.

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Hobson Construction Company has performed several projects of this nature for the City of Asheville in the past without any major problems.

The construction time for this project is 30 calendar days listed in the contract documents. The contract documents stipulate liquidated damages in the amount of \$250 per calendar day if the contractor shall neglect, fail or refuse to complete the work within the time herein specified.

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area East Oakview Road Sanitary Sewer Improvements to Hobson Construction Company Inc., the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 25 - PAGE 221

E. MOTION APPROVING THE COMPREHENSIVE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION PROCESS

Summary: The consideration of (1) approving appointment of a specialized task force to oversee implementation of the Comprehensive Sustainable Economic Development Strategic Plan, and (2) authorize staff to develop a list of candidates for the task force and to present that list to City Council for approval.

Dr. David Kolzow, Consultant with Lockwood Greene Consulting, and an associate have met with numerous individuals throughout the community, as well as with a number of boards and commissions. The next step in the strategic plan is the worksession to be held on June 11, 1999. The purpose of the worksession is to review the results of the leadership survey, the citizen survey and the Lockwood Greene Consulting assessment of the local strengths and weaknesses. From this discussion, we will develop a list of issues that need to be resolved and the groups will set priorities. This group of issues then needs to be evaluated by a citizens' group who would recommend how to achieve the results noted in the issues, where the funding if needed will come from, and who would be responsible in the final priorities.

Dr. Kolzow suggests there is a need for a specialized economic development strategy group of no more than ten (i.e. principal owners/executives within the business community) to work with him and staff over a period of months. The results of their work would be brought to City Council for review and approval.

Staff and Dr. Kolzow recommend that City Council authorize staff to develop a list of candidates to work with Dr. Kolzow on the last step of the Comprehensive Sustainable Economic Development Strategic Plan and to present that list back to City Council for approval.

F. RESOLUTION NO. 99-85 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO DEVELOP PHASE II OF THE MASTER STREET TREE PLAN

Summary: The consideration of a resolution to apply for grant funds available with the N.C. Dept. of Environment and Natural Resources to develop the second phase of the Master Street Tree Plan.

Funds are available through the State of N.C. Dept. of Environment and Natural Resources, Division of Forest Resources in the Urban and Community Forestry Grants Program, to improve urban forest resources.

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The Parks and Recreation Department is responsible for developing a Master Street Tree Plan (MSTP) for street trees on City right-of-ways located within the city limits of Asheville. The existing inventory is almost fifteen years old and no longer accurately reflects the trees of the City. Phase II of the process will

specifically identify the location, size, condition, and site conditions of trees located in the south district of Asheville. The MSTP will help serve as a critical link in developing a long term management plan for Asheville's urban trees, provide information for future tree planting and forestry planning, and provide educational and volunteer opportunities for community organizations.

The Parks and Recreation Department is requesting \$10,000 in grant funds which requires a 100% match. The in-kind match is located in the Parks Division budget and will include supplies, transportation, volunteer hours, and project management.

The Parks and Recreation Department recommends City Council authorize the City Manager to apply for and enter into this agreement if the City receives the grant award.

RESOLUTION BOOK NO. 25 - PAGE 223

G. ORDINANCE NO. 2578 - BUDGET AMENDMENT TO PURCHASE EQUIPMENT TO BE USED IN THE ALUMNI ROOM AT STEPHENS-LEE CENTER

Summary: The consideration of a budget amendment, in the amount of \$5,000, to purchase equipment to be used in the Alumni Room at Stephens-Lee Center.

The Stephens-Lee Alumni Association has raised \$5,000 through donations to be used specifically in the construction of the Alumni Room at Stephens-Lee Center. This Alumni Room will serve as a meeting room for the association and a display area for the archives from the old Stephens-Lee High School. Through numerous donations the Stephens-Lee Alumni has collected funds for this purpose. The \$5,000 will be added to the current project fund and equipment will be purchased through the City of Asheville purchasing procedures. The equipment to be purchased consists of office furniture including desk, chairs, credenza, computer stand, conference table and chairs, display cabinets and computer hardware and software consistent with equipment approved by the City's Division of Information Services.

The Parks and Recreation staff recommends Council approval of the budget amendment to appropriate \$5,000 to the Stephens-Lee Renovation Project to be used to purchase equipment for the Alumni Room.

ORDINANCE BOOK NO. 17 - PAGE 344

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 Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO THE 1999-2000 ANNUAL OPERATING BUDGET

Mayor Sitnick opened the public hearing at 5:12 p.m.

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

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Budget Director Ben Durant said that this is the public hearing that City Council holds each year to receive public input on budget issues before the Annual Operating Budget is adopted.

The Fiscal Year 1999/2000 Annual Operating Budget was presented to City Council on May 13, 1999. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of this Public Hearing was published on May 28 and June 4, 1999. The adoption of the Budget ordinance is scheduled on June 22, 1999, at the City Council meeting.

The Fiscal Year 1999/2000 Annual Operating Budget was balanced with an ad valorem tax rate of \$.52 per \$100 of assessed value; however, several important priorities, including funding for new parking decks, are not included in this budget. It is recommended that Council consider strategies presented during Council worksessions to increase revenues to fund additional priorities.

A copy of the budget is available for public inspection in the City Clerk's Office. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, the budget may be changed by City Council in any way before adoption. It may also be changed by budget amendment after adoption with the only exception being the ad valorem tax rate, which cannot be changed once adopted.

Mr. Brian Peterson, Vice-President of the Coalition of Asheville Neighborhoods, hoped that City Council would increase the traffic calming budget. To that end, he suggested (1) not hiring a City Center Director; (2) investigate duplication of services in the economic development office and the Chamber of Commerce; and (3) not hire a Public Information Officer. He was pleased with the raise of starting salaries for Police Officers and not raising property taxes. He suggested City Council consider a modest bond proposal for streets and sidewalks.

Mr. Peter Levnick, friend of the West Asheville Library, was concerned about the loss of the library meeting room. He urged City Council consider appropriating money to join the funds that have been offered by Buncombe County and the Library Trust Fund to help them build a new meeting room on the site of the library. He also hoped that City Council would consider deeding the property that the new facility would be built on to the library. He said that it was his understanding that Buncombe County has offered \$100,000, the Trust Fund has offered \$50,000 and he hoped the City would consider \$50,000 as well, in addition to deeding the property to the library.

City Manager Westbrook said that a meeting was held within the last six weeks on this issue. The City did not agree at that time to do any funding but they would at least consider deeding the land over at the appropriate time. He also said a point was also brought up about rezoning. He said that the City could not make any commitments, but that it would have to be treated like any other land use issue and brought to Council at the appropriate time.

When Councilman Cobb asked that the Library issue be on the next worksession agenda, Councilwoman Field said that at that meeting, she felt the City was very clear that this was something that City Council would not consider in this year's budget because it was too far along and this would be a major impact on the budget. She agreed that Council needs to discuss this issue, but the City needed to see how much money they would need to put into the existing building to deal with Building Code and ADA issues. She noted that it is much more complicated than just deeding the land over. She suggested City Council deal with this in the next budget. City Manager Westbrook said that staff will gather the information requested and schedule it on a worksession agenda.

Mr. Tony Gilbert, Deputy Chief of the Asheville Area Rescue Squad, asked City Council to re-consider funding the Rescue Squad. He passed out to Council a list of things that the Rescue Squad does for the City of Asheville. He said they are all volunteers and do not get paid for their services, for their training or for their equipment. The funding will help maintain the vehicles they have and to pay for gas for the vehicles to get to the calls to help the citizens of Asheville. He said that they provide services -5-

at Bele Chere, the Martin Luther King March and Prayer Breakfast, Walk America and Hay Day at the

Nature Center. If the City takes over just the services they provide at Bele Chere, it will cost approximately \$10,000. Also, the City will have to replace a Herst Tool at a cost of \$14,500 which is on loan from the Rescue Squad.

Ms. Carol King, Chair of the Asheville Downtown Commission, asked City Council support the funding of the line items in the proposed budget to pay for the technical assistance for the Asheville Center City Plan and for the new position of the new Center City Director to be involved in the planning initiative and to assist with implementation strategies. The Plan is proposed to be a joint venture of the public and private sector and several local community leaders have committed to be a member of this public/private initiative.

Ms. June Lamb, resident on Carrier Street, recommended (1) no money for annexation be considered, (2) no money for a Center City Director; (3) no money for a Public Information Officer; and (4) no budget for marketing of the City. She felt the City should not hire out of state consultants, unless none exist in Asheville or Buncombe County. She suggested the Mayor appoint a Study Commission with representatives from all parts of the Asheville area and report back to Council in terms of a better method of preparing and reviewing the budget. She felt that many people are feeling that we do have taxation with representation and that a new mission statement for the City needs to be developed.

Mr. Don Yelton said that regarding the water rate increase, 2-1/2 percent of what the water bills collect go to the County and is used to pay on the Airport Authority Bond. The Airport Authority has a \$12 million surplus as they did not build the garage. At the County Commissioners meeting, he suggested that the County possibly take that 2-1/2 percent and let the Airport pay their own bond indebtedness out of their \$12 million Airport surplus (around \$500,000). This would reduce the water bills by 2-1/2 percent. The County Commissioners said that if the City would do the same thing, the County would consider it.

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

Mr. Durant said that the following are some additional issues regarding the budget that need further deliberation: (1) parking fees; (2) outside agency recommendations; (3) funding for renovation of the Institute of Government; (4) funding for the West Asheville Library; and (5) funding of the Council Chamber video equipment.

Using slides, Finance Director Bill Schaefer explained the past performance of the parking decks, debt service for existing decks, and past rate adjustments. He then reviewed the proposed parking fees and charges:

Fees & Charges Manual:

- On Street Parking \$0.75/hour
- Parking in Decks \$0.50/hour
- Monthly \$50.00/month
- Vanderbilt Apt Residents \$20.00/month
- Surface Parking Lots \$30.00/month
- "Bag" Meter \$10.00/day

Changes in the Code of Ordinances:

- Overtime Parking \$10.00

- Subsequent within 24 Hours \$20.00

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Mr. Schaefer then answered various questions from Council, some being, but are not limited to: how much revenue would be realized if we raised on-street parking to \$0.50 instead of \$0.75; when estimating parking revenues, was growth estimated; how much revenue was received last year from on-street parking; how will the increase of revenue be used; what is the Local Government Commission's position on breaking even for an enterprise fund; how much money specifically goes into maintenance of the parking decks; has anyone looked into raising the \$0.50/hour in the parking decks and how much money does that generate; and what is the condition of our existing decks.

Vice-Mayor Hay noted that City Council is not talking about the Grove Arcade Parking Deck at all and that Council is talking about increasing the fees so that the existing parking decks come closer to breaking even.

Councilman Cloninger agreed with Vice-Mayor Hay and noted that this is not only an effort to get the revenues closer to what the debt service is, but also we are trying to get employees who work downtown and who feed the meters all day to park in the parking decks.

Mr. Schaefer said that when the parking study was brought to Council, some of the downtown merchants came to City Council with a proposal of increasing the parking meters, at least in the Central Business District (which make up better than 50% of our parking meters) to \$1.00 an hour.

Vice-Mayor Hay said that it is his understanding that the increase in the on-street parking comes out of the parking study, but it also has the support of the Merchants Action Coalition, the Downtown Commission, and the Asheville Downtown Association in order to get the employees off the street and into the parking garages.

Councilwoman Field said that since there is a waiting list for the Wall Street and Rankin Street decks, where do all the employees park? Mr. Schaefer said that there is several hundred spaces in the Civic Center deck.

Councilwoman Field said that she can understand why people don't want to park in the Civic Center deck because every time there is a special event, they cannot park in there. Mr. Schaefer said that when that occurs, which happens probably less than five times a year, they have provided them other parking or compensation.

Councilman Cloninger said that when you look at the impact of parking decks downtown, you can't simply look at what the revenues of them are versus what the debt service on them is. The decks have had a tremendous role in economic development for downtown and that of course has resulted in tax revenues that have come to the City in other ways in the form of appreciated property values, in sales taxes, etc. They have been major tools in the revitalization of downtown.

City Manager Westbrook said that either tonight or at a subsequent worksession, prior to June 22, 1999, staff will need guidance from Council about the additional issues outlined earlier by Mr. Durant.

Mayor Sitnick said that the City is not building a deck for the Grove Arcade Public Market. She explained just as we've named decks according to the area of downtown that they exist in, the deck was named the Grove Arcade deck. She said that it was interesting to note that the City has not raised the parking meter fees in nine years given the fact that downtown Asheville has been revitalized. She said that when we compare ourselves to other cities, we are not out of line in raising our rates to \$0.75/hour.

Councilwoman Field said that when the monthly rates in the decks where increased about four years ago,

she thought the direction to staff was that we have more regular rate increases so that we wouldn't have to be in the same position that we are in right now - hurting the smaller businesses that just -7-

barely afford to work downtown and park in the decks. Mr. Schaefer responded that this was put off for two years in order to wait for the results of the parking study to see what their recommendations would be and then go out to the public.

Upon inquiry of Councilman Cloninger about the possibility of having some policy that for those employers who buy major blocks of spaces for their employees, whether we can give them some sort of group rate, Mr. Schaefer said that the City is precluded from doing that on the Wall Street and Rankin Street decks, as long as they are funded by tax exempt monies. The only place we have that discretion is the Civic Center deck.

Councilman Tomes felt it might be more appropriate to increase the rates on a year by year basis rather than waiting for years and then increasing them.

Mayor Sitnick said that she has received comments about the need of additional parking on Biltmore Avenue, the Grove Arcade area, and surface lots. Her concern is leaving the kind of legacy that was left to this Council when it inherited the water system, the sewer system, and streets and sidewalks. The money wasn't put aside each year for maintenance, up-keep, expansion or replacement. Her concern is being timid now in spite of the fact that it will be somewhat of a hardship on some folks and not having enough for future needs.

Councilman Cobb was concerned about the adverse impact of the economy of downtown to raise the rates from \$0.25 to \$0.75. He felt we should increase the rates in stages, like \$0.50 this year and then in \$0.10 increments.

City Attorney Oast said that the law specifically provides that ordinance procedures are not applicable to budget so the procedures for giving staff direction on budgetary matters are much more lax. He said Council can take those kinds of votes at the next worksession if those votes are the kinds of things that give staff direction on certain items.

Councilman Cloninger updated City Council briefly on the results of the Outside Agency Committee meeting. He said that after looking at the additional information requested, the Committee's recommendations are basically the same in that they unanimously agreed to support it's original funding recommendations that were presented to City Council at the May 18, 1999, budget worksession.

Upon inquiry of Councilwoman Field, Fire Chief John Rukavina stated that the Rescue Squad has done a very good job in the past. He said that the Asheville Fire Department has developed a contingency plan and they believe that they can deliver the same level of service without any additional costs to the City. With regard to the Herst tool the Rescue Squad has graciously loaned to Fire Station 8, over the years the Fire Department has developed a rescue capability and they now have three Herst tools.

When Councilman Sellers asked if the City was required to fund the Rescue Squad as part of the Water Agreement, City Manager Westbrook said it was his recollection that it did not require the City to fund that each year in the budget. He recalled that it basically said that it was an annual budget decision.

Mr. Durant reviewed with City Council the two phases of the Council Chamber video equipment renovation project. Approximately \$50,000 for Phase I will provide improved audio quality in the Council Chamber as well as the transmission and support equipment necessary to establish a connection between the City's system and the InterMedia system. When the transmission is complete, staff can begin airing live telecasts of Council meetings. The \$50,000 in Phase I will not be sufficient, however, to allow for the purchase and installation of the camera, recording and support equipment necessary for City staff to record Council meetings or begin developing in-house production capabilities. Approximately \$58,000 for Phase II will allow

the City to complete the video equipment installation -8-

project and bring the full system on-line. The necessary cameras, recording and playback equipment will be provided during Phase II to provide staff with in-house recording and programming capabilities.

City Manager Westbrook said that other meetings will be able to use the Council Chamber, however, Council must consider the wear and tear on the equipment, the extra cost of producing additional meetings, the expense of staff who have the knowledge of the equipment or the expense of hiring InterMedia on a case by case basis.

City Manager Westbrook and Mr. Durant responded to various questions and comments from City Council, some being, but are not limited to: what did the garage signage line item in the Capital Improvement Project consist of; the need to add to the streets and sidewalks improvements list; when will the Grove Arcade be in operation; what additional information will be provided for the \$50,000 for the annexation study; and how far along is the City in hiring a Public Information Officer and what are the legal ramifications if the City decides not to fund that position.

Councilman Cloninger felt that the City should still come in with a budget that only takes \$100,000 from Fund Balance.

Mr. Durant said that he needs direction from City Council on the request for the renovations of the Institute of Government. The request is that the City pledge an amount equal to its one year membership to the Institute of Government which could be paid over a three year period. That amounts to \$6,709 per year for three years, or \$20,127 in total.

At 7:16 p.m., Mayor Sitnick announced a short break.

Vice-Mayor Hay questioned the timing of the Center City Director and the Center City Plan. He said that he would like to discuss this further at the worksession of whether it had to be done this year or next year and how that all fits together, and whether they both needed to be done at the same time. He also wanted to discuss further the hiring of the Public Information Officer.

Mayor Sitnick wanted to find more money for traffic calming. She was concerned that if the N.C. Dept. of Transportation doesn't agree to the non-betterment costs, whether or not we need to find money elsewhere to pay for those enormous amounts. She wanted to discuss (1) hiring more people in Code enforcement, (2) hiring a full-time grants officer for the City, (3) and the Chamber of Commerce outside agency funding (not cutting it out entirely, but to phase it back a little bit).

Councilman Cobb said that what he's hearing from the community is that if there is extra money, we should put it into streets and sidewalks and take care of the basic services first.

Councilwoman Field moved to continue the Council's consideration of the budget at the June 15, 1999, worksession. This motion was seconded by Councilman Sellers and carried unanimously.

At the direction of City Council, City Manager Westbrook said that he would prepare a short report on each of the addition items reviewed by City Council today and have it available for City Council at their June 15 worksession.

IV. UNFINISHED BUSINESS:

A. ORDINANCE REQUIRING THE POSTING OF PRIVATE PARKING LOTS IN DOWNTOWN ASHEVILLE

City Attorney Oast said that this is the consideration of an ordinance requiring that private parking lots in the

downtown area be designated as private. This proposal has been before Council on several previous occasions. -9-

Council and staff have received complaints about enforcement of parking restrictions on private parking lots, primarily related to the towing of vehicles from those lots. Research indicates that local regulation of "motor private carriers with respect to the transportation of property" is pre-empted by federal law. This preemption has been held to apply to non-consensual towing of vehicles from private lots. The effect of the federal law is that cities may not adopt regulations affecting the manner in which privately initiated towing is carried out. To the extent that the federal government does not prohibit local regulation of towing, it appears that, in order for the City to do so, specific authorization would have to be found in State law.

Some North Carolina counties are subject to a law that requires posting of lots as a pre-condition for towing from those lots. Buncombe is not one of those counties. However, there appears to be general authority by which the City can require that private lots be so designated, and to provide that failure to comply subjects the offender (the owner or operator of the lot) to a civil fine. This does not mean that unauthorized vehicles parking in private lots may not be towed or that vehicles must be towed from lots that have signs. However, it may reduce the level of inadvertent unauthorized parking, and thus reduce the number of non-consensual tows.

This application of this ordinance is limited to the Central Business District zone east of the French Broad River; we have had very few complaints from other areas of town. At your meeting in March, some concern was expressed over the "all or nothing" approach that the original proposed ordinance appeared to take. Accordingly, revisions have been made to require the designation of all private parking lots in the CBD, and the hours during which towing is or may be enforced.

At a meeting of the Downtown Commission, it was suggested that uniform signs might aid in further reducing unauthorized use of private lots. Language has been included to permit the City to produce and provide such uniform signs.

At Council's meeting on May 11, 1999, concern was expressed about requiring the posting of private lots when the owners do not routinely tow unauthorized vehicles and do not wish to post signs. Concern was also expressed about specifying the size and content of such signs. In response to those concerns, the ordinance has been revised to require only that private parking lots be posted. The limitation to six square feet is consistent with the sign ordinance. If a private lot is not so posted, and the owner or operator wishes to remove a vehicle, the ordinance provides that the procedures specified in Article II of Chapter 10 of the City Code (Abandoned and Junked Motor Vehicles) must be followed. The amount of the civil penalty for non-compliance is reduced from \$50.00 to \$10.00 and is not subject to criminal penalties or injunctive remedies.

The ordinance will become effective sixty days after adoption.

To the extent that this ordinance may help reduce the number of situations where non-consensual tows can occur, its adoption is recommended.

Considerable discussion surrounded this issue.

At the suggestion of Councilwoman Field, City Attorney Oast said that he would investigate the possibility of drafting special legislation that will allow the City to do what they want to do with regard to requiring the posting of towing signs in private parking lots.

With regard to complaints of towing rates, etc., City Manager Oast said that those complaints should be sent onto the Attorney General's Office.

Mayor Sitnick wanted to make sure that Sonny's Towing is not on the rotation list of towing companies that

the City uses. -10-

City Attorney Oast said that he has heard that the Attorney General's Office had filed a complaint against an organization somewhere else in the State that was towing in situations very similar to what we have in Asheville. He will follow-up with them and report back to Council.

City Attorney Oast also said that he would write a letter for the Mayor's signature to the Asheville Merchants Coalition, the Asheville Downtown Association, and property owners in downtown, that the City would appreciate their posting their lots in a consistent manner.

V. NEW BUSINESS:

A. RESOLUTION NO. 99-86 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL FOR PARKING GARAGES AND PARKING METERS

B. ORDINANCE NO. 2579 - ORDINANCE AMENDMENT REGARDING PARKING METER FEES FOR LIMITED EVENTS FOR MOTOR VEHICLES

C. RESOLUTION NO. 99-87 - RESOLUTION SETTING THE SPECIFIC LIMITED EVENT FEES FOR HONDA HOOT 1999

Finance Director Bill Schaefer said that this is the consideration of: (1) a resolution amending the Fees and Charges Manual for Parking Garages and Parking Meters; (2) an ordinance amending the Code of Ordinances regarding parking meter fees for limited events for motor vehicles; and (3) a resolution setting the specific limited event fees for Honda Hoot 1999.

The Honda Rider's Club of America has sponsored the Honda Hoot Rally in Asheville, North Carolina, for the past five years, and desires to bring the rally to Asheville again in 1999. In prior years, the rally organizers have worked with City Finance Department staff to utilize the Civic Center parking garage and on-street metered spaces for rally registrants. Honda pays the City for an agreed upon number of spaces and offers those spaces free of charge to rally registrants as part of their registration package. Because the rally has grown so much in the past few years, Honda and City Finance Department staff desire a more manageable method of parking motorcycles while offering the same convenience to rally registrants as in years past.

The following are the specific "limited event" fee arrangements proposed by Honda Riders of America, previously endorsed by the Fees and Charges Committee of City Council for Honda Hoot 1999 and included in the proposed resolution:

- Honda will produce and provide a sticker, suitable for affixing to motorcycle headlamp, indicating payment of a parking fee.
- For each advance registration (estimated to be 3,000), the fee will be \$0.50.
- Honda will produce and provide additional stickers to be sold by City of Asheville staff to on site registrants (estimated to be 1,000) for a fee of \$3.00 each, all of which will be revenue to the City.
- Motorcycles bearing headlamp stickers will be allowed to park in a designated area of the Civic Center parking garage, and at metered spaces throughout the downtown area for the duration of the rally.

City staff recommends City Council adopt the enabling resolutions and ordinance.

Mr. Schaefer said that the proposal under consideration from the Honda Hoot is that the City arrange the special limited event fee for them for this year for the period of June 22-26, 1999, of 50 cents remitted to the

City for advance sales and \$3.00 for on-site sales. Last week City Council -11-

instructed him to talk to Honda Hoot in an attempt to increase the mutually agreed parking payments to \$3.00 for advance and \$5.00 on site. He was unable to obtain Honda Hoot's consent to that and dialog continued throughout the week on various alternatives.

He reviewed the following:

Individuals Honda

Actual Feed Meters "Bag" Meters Riders'

1998 Plus Deck Plus Deck Proposal

4,750 6,000

Participants Participants

On-Street Meters \$1,300 \$1,150 \$2,300

Deck Rental \$1,800 \$3,375 \$3,375

Advance Sales @ \$.050 \$1,875 \$2,000

On-Site Sales @ \$3.00 \$3,000 \$6,000

Total Revenues \$3,100 \$4,525 \$5,675 \$4,875 \$8,000

Since the time this chart was prepared, Honda Hoot has already arranged to have some of the streets in the vicinity of the Civic Center barricaded and closed to traffic, so they already have those streets available for parking. Therefore, the estimated figures for on-street meters is grossly highly of what the maximum revenue from that area could be generated. Again, if everyone fed their own meters, with no advanced sales, and with renting the deck for full special event prices for the entire event time, the maximum revenue would be \$4,525. Their proposal actually brings in more money than we would get from charging the full fees. He, therefore, recommended City Council adopt the resolution setting the specific limited event fees for Honda Hoot 1999 at \$0.50 for advance sales and \$3.00 for on-site sales.

Upon inquiry of Councilman Cloninger, Mr. Schaefer said that Items A & B do not specifically talk about the amount that will be charged for the Honda Hoot parking. Currently, the City's Fees and Charges Manual has no provisions for non-standard parking fees in the garages or on-street and the Code of Ordinances does not allow parking at meters during hours of enforcement without depositing a coin. As a result, in order to provide a non-standard fee during Honda Hoot, it is necessary to amend the Fees and Charges Manual and the Code of Ordinances. These amendments will enable the future use of "limited event" fees not only for Honda Hoot; but also, any other limited events involving motor vehicle parking in garages and at meters. A resolution of City Council will be required to set the specific cost of the fee for each "limited event".

Councilman Tomes said that last week he had said that since the mailing had already gone out to the participants, the City should let the Rally proceed this year with the proposal by Honda Hoot. After seeing the chart presented by Mr. Schaefer, he is more inclined to proceed with the Rally proceeding with their \$0.50/\$3.00 proposal.

Mayor Sitnick 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. 99-86. This motion was seconded by Councilman Tomes and carried unanimously.

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Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read. -12-

Councilman Cloninger moved for the adoption of Ordinance No. 2579. This motion was seconded by Councilman Sellers and carried unanimously.

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Mr. Charles Keller, with the American Honda Motor Company representing the Honda Hoot, "thanked those of you who I was able to get in touch with and try to clear up what our proposal was for trying to remunerate the City for the parking spaces that were utilized. We enjoy coming here a lot but we also enjoy having some parking places there. The outline that Mr. Schaefer put out was very accurate and I went ahead and put together some documents to reinforce those also. The point that I would wind up making is that in early September following last year's Honda Hoot, we made contact with the City because we were concerned that perhaps we hadn't done our diligence in keeping communication going freely between us. At that time, met with the Mayor and City Manager and wound up pointing out some areas that we felt needed to be worked on and an agreement was arrived at. On the 29th of September a document was sent to the City which outlined our proposal and that is the proposal that said \$.050 per pre-registrant and \$3.00 for on-site registrant. Honda would absorb the cost of printing decals - these would be ones that couldn't be peeled off the motorcycle without damaging them, so they couldn't be transferred. On the second page of that document, we actually go through our figures which show our rationale in offering this up and we had all intents of meeting or exceeding what the maximum occupancy would have been if all of the places were filled in the Civic Center as well as three floors on the Civic Center parking lot. If you take a look at the numbers, we propose to bring \$500 more, at least, into the City coffers. So what I'm saying here is we were trying to due diligence and hopefully it's not misunderstood that we were trying to get something for nothing from the City."

Mayor Sitnick said that she had "a problem with the Honda Hoot proposal recognizing that you have done due diligence, recognizing that the numbers compute as has been presented by staff and by our proposal. Earlier this evening we had a lengthy discussion about parking meter rates and deck rates and what we're going to be charging the employers, the employees, and the taxpayers in this City to park and I just think that \$0.10 a day creates too much of a gap between what we are going to be asking our local citizens to pay, or tourists to pay, our downtown store owners and merchants and employees. And when we are asking them to put \$0.75 an hour into a parking meter and \$0.50 an hour into a deck space, I can't feel comfortable with charging \$0.10 a day to someone coming in with the Honda Hoot. Now I welcome the Honda Hoot and I think the City makes great effort to accommodate all of the folks who participate in it. We look forward to it, but I don't know how I would ever explain to a local taxpayer why they are being asked to pay \$0.75 an hour and a visitor to the City being asked to pay \$0.10 a day. I would like to propose something that I think is accommodating to the Honda Hoot and yet a little more fair for our local citizenry, our local taxpayers. And I believe last week we talked about the possibility of asking if you would agree to" \$3.00 for advance registration and \$5.00 on-site registration for the entire period, not a daily fee.

Councilman Cloninger said that Councilman Cobb proposed the \$3.00/\$5.00 fees and he agreed with the Mayor's comments. He felt it would send a terrible message to agree to this and have people park for \$0.10 a day at a time that we are otherwise going up on our rates. He said that "\$3.00 for a five day period - if any of us could go to any city in the country and be told that we could stay for five days and only spend \$3.00 to park there for the entire time, we'd jump on it. I think Earl had a good idea last week and I think it's still a good idea."

Mayor Sitnick said that "just for those of you who weren't here at the worksession, we talked about \$3.00 for pre-registrants and \$5.00 to the latecomers. We also talked about \$5.00 to the pre-registrants and \$10.00 to the latecomers. I don't want to make the Honda Hoot folks uncomfortable, like I said we want you to feel comfortable here. But, again, I don't think this is an unreasonable request on our part. I feel badly that you have already sent our literature stating that it would be \$0.50 for the five day period, but I believe that it was

clear from the beginning that this required Council's approval and we had not approved it yet." -13-

Mr. Keller said "a couple of items that I would like to bring up and reiterate. In September when we were here for our preliminary meeting with the City and we met with you, at that time you told me that I needed to deal with the City Manager - that he would be making the decision on what the rates would be. Within a week of that meeting, the letter was sent to him and the proposal of which I have included a copy for you in which the City Manager says to work this agreement out with Bill Schaefer who's the Finance Director - as we have done for the past five years that we have been coming to this area, So we had no idea that this goes before Council. We asked, no fewer than five times, if we had to bring this to Council - we were told 'no' this was an internal affair and that it did not have to go before Council."

Councilman Cloninger asked "who on behalf of the City told you each of those five times?"

Mr. Keller said "we have two letters from the City Manager. I have twice that we've talked with Bill Schaefer and once that we've talked with Deborah Crowder."

Mayor Sitnick said "in none of those letters are there any numbers."

Councilman Cloninger said "you said five different times you were told by the City that it didn't require Council approval. Who did you talk to?"

Mr. Keller said "as I said, Bill Schaefer, talked with Deborah Crowder and as the letter points out, we were told that the point person would be Bill Schaefer as he has been for the past five years. So we had no idea there had been a change."

Mayor Sitnick said "let me stop you right there, Charlie. I took the liberty of getting the verbatim minutes from that meeting and I'd like to quote Councilman Cloninger whose wisdom early on in this is reflected in what we're trying to do tonight. 'Councilman Cloninger said that it sounds like, rather than considering at this point what we would be willing to do for Honda, if anything, we need to develop an overall policy that is fair, consistent, also has enough flexibility to take into consideration what the economic impact of a particular convention might bring. He said he would like to explore the idea of what some of the other communities are doing and also what City staff may be able to think of that might help the City develop a policy that looks at some of the larger conventions that come to the area.' Now, one of the main jobs city councils are mandated to do is to develop policy. There's only one way to do that. We have to vote on it and anything that gets four or more votes becomes policy. So, it was clear during that meeting that we were really interested in looking at developing a policy and that's what we did. We went further and then put it before staff. But staff doesn't make policy - City Council does."

Mr. Keller said "as I said, we went ahead and made this proposal early last year. One of the things that comes up, I think, that brings this to a head, is that you're having to deal with a very tough task right now and that's to raise the rates for the local residents. I did the math on raising those rates and you know, next year I have no trouble in paying those rates. The problem that I have this year is that prior to our sending our publication out saying what parking would be, we felt we had an agreement with the City. Just as you had some disdain for the towing company, Sonny's, I kinda feel I'm getting a Sonny's tow job here tonight."

Councilman Cloninger asked Mr. Schaefer "if at any point did you tell anyone with the Honda Hoot that this would not require City Council approval?"

Mr. Schaefer said "no sir. It's been obvious from the entire time that it requires Council action. What I told Mr. Keller was that he, nor Honda Rider's Club representatives, need to be here for the presentation to Council, but, as shall we say some sort of a documentation of that, it should go all the way back to we first attempted to put this on your agenda as a resolution only, back in I believe was February or March. It was pulled in that

it needed to go to the Fees and Charges. Right out of the Fees and Charges we had it back on your agenda at the beginning of May and it was pulled because we needed the ordinance change and such. So it was never any understanding on my part that there would -14-

be anything other than your approval. And I think if you go back to your draft agendas, you'll see those sitting on there - all the way back then. But I must say Council, that when the instructions were provided that Mr. Keller was to deal with me and we worked out an agreement, a tentative agreement, based on their proposal that has the potential to pay the City more than if they walked in the door and paid full existing rates, I have a problem with understanding where you're coming from on this one. I very much understand the temporal situation of the increasing rates for the residents in the long-term. I fail to understand the direction that I have received."

Councilman Cobb said last week when he made the proposal, he was not aware that they were only talking about 93-95 parking meters, not the 750 meters in the entire City, and 225 spaces in the parking deck. The formula they have worked out will generate more money than we would get at full prices.

Mr. Schaefer said that "the numbers I had there last year of the meter rates (\$1,300 that I said were extremely generous) - that's the entire City's meters and the difference between the average for the three week period and the Honda Hoot period. So I have a difficult time understanding how we can go back and charge these people more than the full-paying published rate."

Councilman Cloninger said that he respected that position and he "thinks that's one of the considerations that we should think about when deciding what to do. But I respectfully disagree that as long as you just slightly get us over what our normal projections are, we ought to jump on that. Because I think there are other considerations. I think you have to consider this in the overall context of what we are doing with parking in general, what we're doing with rates. We can't consider this in a vacuum, Bill and with all due respect, I think that's what you are asking us to do. We need to consider it in a broader context. And I personally am sorry if you represented to the Honda Hoot people that you had reached an agreement with them. I don't recall us asking you to go and reach an agreement with them. What I recall asking you to do is to come back with a proposal to us. I do want to emphasize that if it was represented to Honda Hoot in anyway that we had an agreement, I'll vote for it - because we ought to stand by our word."

Mr. Schaefer said "no sir, we had no agreement - we had a proposal. And we had a proposal that I, as the staff representative, found to be a good proposal based on past history. So if that be the case, that was my mistake absolutely. However, this has also gone to Fees and Charges and Fees and Charges had the opportunity to review it and provided no additional guidance to staff."

Upon inquiry of Mayor Sitnick, Mr. Schaefer said that we have 735 meters in the entire City.

Vice-Mayor Hay said that he disagreed. "I think we're missing a big point here and that is the Honda Hoot brings in \$7 million to this community and we need to take - we're not operating in a vacuum, and that is maybe the primary reason why we give them special consideration in this case. They came back to us last year and I know that the Honda Hoot can be difficult to deal with, because I've tried to talk to them myself. But, the truth of the matter is that this is the biggest convention that we have in town and it's unique because it brings the motor vehicles to town. Ten thousand Amway conventioners wouldn't have the same problem that the Honda Hoot does. But for us to be willing to accommodate an event like the Honda Hoot in order to get those people into town to spend money and to make this a healthier economy, I think is something that this City Council ought to be willing to do. And you know there's more to it than just bringing in the money. The Civic Center gets revenue from being filled up with people buying Coca-Colas and all that kind of thing, and spending money at the Civic Center. We have the parking revenues and we've demonstrated here that this is not an issue of costing the City money in parking revenues. We have all the taxes that come back to us whether it be sales taxes, or the other benefits that we get from people coming to town and spending

money. Hotels are healthier and restaurants are healthier from all the folks that benefit from the Honda Hoot being here. Also it shows off the City to 10,000 people who come here and have a good time. I think that we're missing the point if we don't take that as being one of the primary reasons why we ought to give this - 15-

serious consideration. Now whether the deal is a good one or not for the City at this point, it looks like it doesn't cost us money. What I would say to our \$0.75 folks is, we think this is good for the City, we think this keeps your taxes low, this is one thing we're doing trying to make this a better place for you to live and it's not really going to cost you anything in terms of parking. We're trying to accommodate these people because we want them here and we want them to come back."

Councilwoman Field agreed with Vice-Mayor Hay's comments.

Mayor Sitnick said that "nobody said that we don't want to accommodate the Honda Hoot. I think that's been clear from the beginning, but I think that \$0.10 a day to park a vehicle in a parking space is not commensurate with the 1990's. You can't step on a scale to weigh yourself for \$0.10 anymore. I would like to ask you - you say that \$7 million is brought into the economy. I haven't seen those numbers."

Vice-Mayor Hay said that the Honda Hoot is a \$7 million event, according to the Convention & Visitors Bureau - in terms of dollars that are spent.

Mayor Sitnick questioned "in Asheville? Not travelling around anywhere?"

Vice-Mayor Hay said "some of it's spent like in Chimney Rock Park."

Mayor Sitnick said "out on the parkway? Let me tell you some of the feedback I've gotten from folks since this came up. And again, we're not saying we don't want to accommodate the Honda Hoot, but not everybody feels that it benefits them. I've had calls from folks who asked about the fact that all these motorcycles are coming into town, they've asked about the noise, they've asked about streets being barricaded and the inconvenience to folks who live here, they've asked about air pollution which is a big issue in our newspaper lately. I have downtown merchants who have called me - many of them who say that the folks who attend the Honda Hoot never come into their store, the spaces are all taken up by the Honda Hoot folks and they lose business during the Honda Hoot. So all I'm saying is, as representatives of all the people, we have to consider those concerns that have been raised by citizens in this community as well. In addition to that, we appreciate the Honda Hoot wanting to come here and advertising Asheville with beautiful ads and enjoying this region and all of that. My brother has a Honda. I ride the Honda with him. I rode in the Toys for Tots on his Honda. I have nothing against Hondas or the Honda Hoot or the Ride for Kids. It's all wonderful. It's fun, it's exciting. That's not the point. But we have to represent all of the people and we can't set precedence. I mean tomorrow, every convention that comes in here is going to want the same deal. And so, in considering all of those issues, I hope Charlie that you can understand my position in this. It's not that we don't appreciate you. It's just that we have to look at the big picture and decide whether or not this is fair across the board, fair to others and whether or not we want to extend this same policy to other conventions that come in."

Councilman Sellers asked what has the Honda Hoot brought in the last four years. Mr. Schaefer said that he didn't have that information.

Councilman Sellers said that he agreed with Vice-Mayor Hay's comments. He said he's "heard it mentioned a couple of times comparing \$0.10 to \$0.75. We haven't gotten the \$0.75 yet. It hadn't been voted in. We need to be looking at \$0.10 to \$0.25."

Ms. Angie Briggs, with the Convention & Visitors Bureau at the Chamber of Commerce, pointed out that you

can park four motorcycles per parking space. Also, the motorcycles are not downtown the entire time they are here - it's just during the time they have events downtown or they are registering at the Civic Center or shopping or spending money downtown.

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Mr. Don Yelton suggested that Council consider, if this is a \$7 million event for this area, that you develop a policy that has a package on the number of spaces based upon the revenue that the event brings in. This then helps explain why you're reducing the rate to the citizen.

Upon inquiry of Ms. Hazel Fobes, Vice-Mayor Hay explained that there will not be specific spaces reserved for the Honda Hoot.

Mr. Keller said that "the City Manager asked specifically that we not bag meters because that would preclude you from going down there to park."

Councilman Cloninger said that even though the literature has been sent out, the Honda Hoot

"should have known that it had to come to City Council ultimately, but the other thing they can do is

as a result of what they did, they can still give us the money that would be the equivalent of the \$3.00 for five days or the \$5.00 - regardless of what they charge the people who attend the Honda Hoot."

Mayor Sitnick said that "how wrong is to charge \$3.00 for an entire week of parking? In addition to that, we can talk about \$7 million into the economy. I wish Ben Durant was still here. When you consider that there is six cents sales tax, help me out here Jim. Four cents goes back to the State. Of the two cents that's left - one penny goes into a pool. Of the other penny that's left, half a cent goes to the County and the other half is distributed according to point of purchase - and that's all that comes back to the City government. Now, I love the fact that \$7 million goes into the economy for our merchants, for our restaurateurs, for our hotel and motel owners - that's wonderful. I want them to make all the money in the world they can. But when we're talking about what goes into the economy, as it pertains to the City, and the City is already giving the Honda Hoot much money in in-kind services, then we have to consider the fact that of those sale tax monies, not a whole lot comes back to the City government."

Mayor Sitnick 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. 99-87, in that the limited event fee for parking during the entire time of Honda Hoot 1999 (from June 22-26, 1999) is \$0.50 for purchase of a limited event fee sticker prior to June 22, 1999, and \$3.00 for purchase of a limited event fee sticker during the Honda Hoot 1999 from June 22-26, 1999. This motion was seconded by Councilman Sellers and carried on a 5-2 vote, with Mayor Sitnick and Councilman Cloninger voting "no".

RESOLUTION BOOK NO. 25 - PAGE 229

D. RESOLUTION NO. 99-88 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO A CONTRACT WITH GENESIS GROUP FOR A DOWNTOWN TRAFFIC EVALUATION AS A RESULT OF THE CONCEPTUAL PLAN FOR PRITCHARD PARK

Mr. Alan Glines, Assistant Landscape Architect, said that this is the consideration of a resolution authorizing the City Manager to enter into an amendment to a contract with Genesis Group for a Downtown Traffic Evaluation as a result of the Conceptual Plan for Pritchard Park.

Since the February 1999 review to City Council and the subsequent meeting with the Council appointed committee, staff has revised and developed the proposed Scope of Work for the Downtown Traffic Evaluation and developed a Phasing Proposal for Pritchard Park. In association with the Engineering Department and the Parks and Recreation Department, Genesis has developed a Scope of Work for the Downtown Traffic Evaluation.

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The Downtown Traffic Evaluation Proposal will include conducting traffic counts for the central corridor from College Street at Charlotte Street, westbound to Patton Avenue at South French Broad Avenue. In addition to traffic counts the study will review turning movements, traffic flow capacity and fire response timing as it evaluates the proposal of returning the downtown east-west traffic to a two-way system. The study will include a report that will outline design recommendations to implement changes at specified intersections, opportunities for on-street parking and loading zones and opinion of costs. The cost for the proposal is \$37,149.

The proposal is subject to the review and approval by the Transportation Advisory Committee (TAC) which would amend the MPO Transportation Planning Work Program Budget for Fiscal Year 1999-2000. The City's share will be 20% and if approved by the TAC, the TAC will reimburse the City 80% of the cost of the Downtown Traffic Evaluation. The City currently has budgeted their 20% share and when they are reimbursed by the TAC for the 80%, an appropriate budget amendment will be presented to Council.

City staff recommends that Council give the City Manager authorization to enter into an amendment to a contract with Genesis Group for the Downtown Traffic Evaluation.

Mayor Sitnick 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. 99-88. This motion was seconded by Councilman Tomes and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 230

E. RESOLUTION NO. 99-89 - RESOLUTION APPOINTING A MEMBER TO THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON

Vice-Mayor Hay said that it was the consensus of City Council at the 6-1-99 worksession that City Council wanted to fill the vacancy left by Kevin Green on the Regional Water Authority of Asheville, Buncombe and Henderson County, with a City Council member. Councilman Sellers expressed an interest in serving on the Authority.

Ms. Hazel Fobes, Chair of the Citizens for Safe Drinking Water and Air (CSDWA), urged City Council to review the list of candidates (some who are fully qualified) who have submitted applications for the vacancy on the Water Authority. She stressed City Council is not obligated to have a member of Council on the Water Authority. She felt that before City Council makes a final decision, they need to interview the qualified candidates. She said she is not speaking against Councilman Sellers, however, she simply wants Council to know the other candidates out there. She said the aging water distribution system should be a major concern to City Council. Therefore, the Water Authority will need the advice of its member who should have expertise in water quality, water systems, in gravity flow, in mapping, in conservation, in water rates, in budgets and in bond issues. Their knowledge would help the Water Authority and the Director of Water Resources come to better conclusions.

Ms. Abby Gage, Environmental Chair of the Buncombe County League of Women Voters and employee of

the Western North Carolina Alliance, suggested Councilman Sellers be appointed to the Water Authority in an advisory capacity. She agreed with Ms. Fobes in that the appointment should be someone who is selected for the skills and knowledge of water quality.

Upon inquiry of Ms. June Lamb, Councilman Sellers said that his term on City Council expires on December 7, 1999. Ms. Lamb felt that people with expertise should be appointed to the various boards.

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Mayor Sitnick submitted a letter dated June 8, 1999, from Michael N. Lewis (Coalition of Asheville Neighborhoods), in which he does not feel "that a member of City Council (nor the Commissioners) should also be a member of the Water Authority. The ugly spectre of conflict of interest keeps raising its head in our community, and due to the technical aspects of the Water Authority's tasks, it makes sense to appoint people with technical expertise." She also submitted the fax memorandum dated June 8, 1999, from Vera Holland Guise (American Grassroots Unlimited) in that Ms. Guide urged City Council to "fill this and all board and commission positions with individuals selected expressly for their specific knowledge and skills pertinent to the position, and their records of demonstrated civic service."

Vice-Mayor Hay said that it is the usual trend to have a member of City Council on the Water Authority and this is the first time since Mr. Worley came off of City Council where there was an appropriate opening to appoint a member of Council.

Councilwoman Field noted that both Buncombe County and Henderson County have board representation on the Water Authority. She felt that the boards are policy setting bodies and staff are the professionals who have the expertise that City Council depends on. It is good to have a balanced representation on our boards. She spoke highly of Councilman Sellers and felt he would do a good job in representing City Council.

Councilman Cobb and Cloninger both agreed that the City Council needed to have representation on the Water Authority.

Mayor Sitnick said that when this vacancy came to the attention of City Council, they did review the list of candidates as thoroughly and as sensitively as they examine all applications for all boards and commissions. She felt that at this time City Council had equally two important considerations for the Water Authority vacancy: (1) someone who could represent the science and academic aspect of what is going on with water issues today (like Dr. Rick Maas); and (2) for the community to understand that the Water Authority is the body of government separate from City Council that sets the policy regarding the water system. We do not have a representative from City Council on the Water Authority. City Council can't set the policy, however, Council gets 95% of the complaint calls about the water system, water rates and water leaks. Having a member of City Council on the board will be of great benefit to City Council as those policies within the Authority are developed.

Vice-Mayor Hay moved to appoint Councilman Tommy Sellers to serve the unexpired term of Mr. Green, term to expire September 30, 2001, or until his successor has been appointed. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 231

F. ORDINANCE NO. 2580 - ORDINANCE REGULATING SEXUALLY ORIENTED

BUSINESSES

G. ORDINANCE NO. 2581 - ORDINANCE EXTENDING TEMPORARY MORATORIUM ON SEXUALLY ORIENTED BUSINESSES

City Attorney Oast said that this is the consideration of ordinances establishing additional restrictions on adult establishments, and extending the temporary moratorium by two weeks.

Senate Bill 452 (1997), ratified in 1998 and now codified at G.S. 160A-181.1, and elsewhere, permits municipalities to exercise a greater degree of control over sexually-oriented businesses within their jurisdictions. These regulations fall into two categories: zoning and general police power regulations. -19-

Under the Unified Development Ordinance ("UDO") as originally adopted, adult establishments were uses by right, subject to special requirements. When it became apparent that Senate Bill 452 might become law, City Council took steps to preserve the status quo of the City with respect to adult establishments. In April of 1998, adult establishments were moved from uses by right subject to special requirements, to uses for which Conditional Use Permits were required. When Senate Bill 452 became law in August of 1998, Council adopted a temporary moratorium prohibiting new adult establishments or the expansion of existing ones, as the law allowed, to consider additional regulations.

Zoning: Asheville already has an effective dispersal ordinance in the UDO. This ordinance contains certain locational and separation requirements for adult establishments. These ordinances have been upheld on many occasions. In 1995, the City performed the study that the courts have held is necessary to provide a foundation for a dispersal ordinance, and the ordinance was adopted and incorporated into the UDO in 1997.

While dispersal ordinances have been upheld by the U. S. Supreme Court, there was less certainty about whether conditional use permits could be used to regulate adult establishments; the courts were divided. Earlier this year, in the case of Steakhouse v. Raleigh, the 4th Circuit Court of Appeals upheld a regulatory scheme in Raleigh that involved a dispersal ordinance implemented through a conditional use permit process. This is the same regulatory scheme currently reflected in the UDO. It is recommended that this regulatory scheme be made permanent with respect to adult establishments.

General Police Power: These are regulations that affect the operational characteristics of adult establishments. They are not zoning regulations and, as long as they are reasonable, can be made to apply to existing establishments.

The City already had some regulations on the operation of adult establishments, such as minimum age for patrons and performers, licensing, touching or fondling, etc. The new law provides clear enabling authority for these existing regulations, and permits other regulations as well.

The proposed ordinance establishes additional regulations for the following:

- Open booths for establishments that have booths.
- Requirement that genital areas of performers remain covered.
- Requirement that buttocks, privates and genitals of non-performers be covered.
- Requirement that clarifies that adult entertainers may not touch patrons (existing ordinance prohibiting touching of specified anatomic areas).
- Prohibition on peripheral activities on the same premises. This is intended to prohibit such activities as car washes, unless enclosed within the same building as the adult establishment.

The law permits regulation of other aspects of the business such as hours of operation, additional clothing restrictions, and possibly even alcohol sales. These regulations must be consistent with constitutional limitations, which essentially means that there must be an identified "secondary impact" that the regulation is

intended to address, beyond morality-based objections.

The proposed regulations do not go as far as the law appears to allow. However, the constitutionally-required justification for such regulations does not clearly exist. To the extent that the current situation deteriorates, the law specifically permits additional regulations to apply to existing businesses (an "anti-grandfather" provision). It may be possible, therefore, to impose stricter regulations as the need arises. -20-

Extension of Moratorium: As explained at last week's work session, due to a misunderstanding about the duration of City Council's action last year requiring Conditional Use Permits for adult establishments, it is recommended that the moratorium be extended by an additional two weeks. The City's ability to regulate by Conditional Use Permit was clarified in a recent Fourth Circuit Court of Appeals opinion involving the City of Raleigh's adult business ordinance, and part of the recommendation is that the City of Asheville implement a similar process. Because that part of the recommended change is a zoning ordinance, consideration of the proposed amendment by the Planning and Zoning Commission is necessary. This cannot occur until June 24, 1999, and the Council could not consider it until July 13. As proposed, the extension of moratoria would be until July 14. It is currently set to expire on June 30, 1999.

Adoption of the proposed regulatory ordinance is recommended. Adoption of the proposed ordinance extending the moratorium is also recommended.

Councilman Cobb favored more regulation of additional clothing restrictions. City Attorney Oast noted that the regulations must be consistent with constitutional limitations, and that we would have to be able to demonstrate that there are sufficient secondary adverse effects from the existence of the establishments to require those kinds of additional restrictions.

When Mayor Sitnick asked how is it that we can require that buttocks of non-performers be covered within an adult establishment, but we can't require someone walking around the streets to cover their buttocks, City Attorney Oast said that this is a regulation of an adult establishment and not a regulation of conduct that is controlled by criminal statutes. He said that we can regulate adult establishments in ways that we can't regulate other types of conduct because of the kind of establishment that it is.

Ms. Gail Harding urged City Council to give thought to the kind of influence that is being made by adult establishments and encouraged Council to regulate and restrict to the limit of the law adult businesses in our area.

Ms. Sylvia Hitchcock, representing a major Christian women's organization in the Asheville area, spoke out against the City of Asheville allowing sexually oriented businesses to exist. They appealed to City Council to hold to family values and keep Asheville from becoming a City noted for such establishments. They encouraged City Council to continue the moratorium and to restrict as much as possible those businesses that already exist in the Asheville area.

Ms. Mary Ray felt that adult establishments are not conducive with happy, productive families. She felt that if City Council shut down all adult establishments, the crime rate would be reduced dramatically.

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. 2580. This motion was seconded by Councilman Cobb and carried unanimously.

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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. 2581. This motion was seconded by Councilman Tomes and carried unanimously.

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Mayor Sitnick asked what can City Council can do to address the situation of a man who is walking around Asheville in a thong and whether or not we can appeal to the District Attorney to help us in regard to whatever laws apply to what he is doing. City Attorney Oast said that he has already requested the District Attorney's advice on this because the indecent exposure statute is a criminal statute and it would be up to the District Attorney's Office to prosecute that if charges were brought. The

District Attorney agrees with his opinion that because of an opinion that the Supreme Court issued last year, there is little that can be done in the way of enforcing the indecent exposure statute, with respect to the exposure of a person's buttocks. The Supreme Court has construed the law to say that buttocks are not private parts for the purpose of indecent exposure statutes. That is something that will have to be addressed by the legislature. There are some regulations that he may be able to suggest to City Council regarding conduct on City-owned property, such as City parks and in City buildings. He is investigating that and will report back to City Council as soon as possible.

Mayor Sitnick felt that City Council needed to appeal to our legislators.

Councilman Cobb wanted to see an ordinance adopted outlawing topless or bottomless men or women on our City streets.

VI. OTHER BUSINESS:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 25, 1999, AND THE WORKSESSION HELD ON JUNE 1, 1999

Councilman Cloninger moved for the adoption of the minutes of the regular meeting held on May 25, 1999, and the worksession held on June 1, 1999. This motion was seconded by Councilman Sellers and carried unanimously.

B. CLAIMS

The following claims were received by the City of Asheville during the weeks of May 4-27, 1999: Frank White (Sanitation), Theodore Crump (Sanitation), Mary Daniels (Streets), Jackie Scott (Water), Seth Allcorn (Water), Jeanne Sheller (Sanitation) and Chris Parsons (Parks & Recreation).

The following claims were received by the City during the week of May 28-June 3, 1999: BellSouth (Water), BellSouth (Water), BellSouth (Water), Debbie Yanik (Water), Barbara King (Parks & Recreation), Ron Dula (Water), Sean Divine (Water), Keith Jackson (Water) and Lona Taylor (Water).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:32 p.m.

CITY CLERK MAYOR
