

Tuesday – January 9, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burlison

Absent: None

### **INVOCATION**

Mayor Sitnick gave the invocation.

### **ADDITIONS TO THE AGENDA**

City Manager Westbrook requested to be added under "Other Business" two meetings requests from the Buncombe County Board of Commissioners.

Mayor Sitnick proudly recognized Community Development Director Charlotte Caplan for receiving the Best Practices Award for the Consolidated Strategic Housing and Community Development Plan.

### **I. PROCLAMATIONS:**

### **II. CONSENT:**

City Attorney Oast passed out a revised version of Consent Agenda Items F and G. He said the revised versions contain some minor clarifying changes made at the suggestion of the City's bond counsel. Approval of the Consent Agenda should include the revised documents.

#### **A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 19, 2000**

**B. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 15 LOTS KNOWN AS BURNSIDE, PHASE 3 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

**C. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 5 LOTS KNOWN AS BRAESIDE, SECTION 5 OF BILTMORE PARK TO RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT**

**D. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 24 LOTS KNOWN AS OAKBROOK, PHASE 1 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**E. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO REZONE A PORTION OF PROPERTY LOCATED ON LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT SO THAT ALL OF THAT LOT IS ZONED COMMUNITY BUSINESS II DISTRICT**

**F. RESOLUTION NO. 01-01 – RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REVENUE BONDS, SERIES 2001; PROVIDING FOR THE SALE OF THE BONDS; SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE TO BE ISSUED; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BONDS**

Summary: The consideration of a resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville Water Revenue Bonds, Series 2001; providing for sale of the bonds and setting the terms and conditions upon which the bonds are to be issued.

City Council has previously adopted a resolution directing that actions be initiated to enable the issuance of Water Revenue Bonds; to include making application to the Local Government Commission for approval to issue bonds, retaining Bond Counsel, underwriters, feasibility consultants; etc.

The resolution provides the following: (1) Approves the issuance of bonds in a principal amount not to exceed \$13,400,000; (2) Approves, confirms and incorporates by reference the provisions of the General Indenture and Series Indenture; (3) Stipulates that the bonds shall be special obligations of the City and that principal and interest shall NOT be payable from the general funds of the City; (4) Authorizes and directs the Mayor, City Manager, City Clerk and Finance Director to execute and deliver the Series Indenture and do all things necessary to issuance of the bonds and to carry out and comply with the Series Indenture; (5) Approves the form and content of the Purchase Contract and stipulates that the bonds will be sold to the underwriters pursuant to the terms of the Purchase Contract; and (6) Authorizes and approves the form and content of the Preliminary Official Statement and Official Statement (to be dated on or about February 1, 2001) and their use by the underwriters in the sale of the bonds.

City staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 26 – PAGE 251**

**G. RESOLUTION NO. 01-02 – RESOLUTION ADOPTING BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$13,400,000 WATER SYSTEM REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.**

Summary: The consideration of a resolution adopting the Bond Order Authorizing the Issuance of Not to Exceed \$13,400,000 Water System Revenue Bonds of the City of Asheville, North Carolina.

City Council has previously adopted a resolution directing that actions be initiated to enable the issuance of Water Revenue Bonds.

The Bond Order provides for the following: (1) In order to finance improvements to the water system, the bonds are authorized by City Council and shall be issued pursuant to North Carolina General Statutes, Section 159-80, "The State and Local Government Revenue Bond Act; (2) The principal amount shall not exceed \$13,400,000; (3) The bonds shall be special obligations of the City secured and paid solely from the revenues from the operation of the water system; NOT from the general funds, credit or taxing powers of the City; (4) Deposit of the proceeds from the sale of the bonds in accordance with the Series Indenture; and (5) The Bond Order will be effective upon adoption.

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City staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 26 – PAGE 255**

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.

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

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING TO REZONE ONE LOT ON FAIRFAX AVENUE AND WELLS AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT**

##### **ORDINANCE NO. 2779 - ORDINANCE TO REZONE ONE LOT ON FAIRFAX AVENUE AND WELLS AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT**

Mayor Sitnick opened the public hearing at 5:08 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone property at the corner of Wells Avenue and Fairfax Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owners of property, Grace Baptist Church, are requesting the rezoning of the property (remaining portion of lot 9638.13-14-9292) from RM-8 Residential Multi-Family Medium Density District to Central Business District.

The church is requesting that their split-zoned lot on Haywood Road be zoned the same classification to permit them the opportunity to expand their facility. While the RM-8 zoning has setback and parking requirements that would require any expansion to be out of character with adjacent development, the Central Business District zoning preserves the intent to build structures close to the street without imposing off-street parking requirements. The rezoning will be consistent with the recommendations in the Haywood Road Plan in preserving the historic character of the surrounding area.

At the Planning and Zoning Commission meeting, there were no objections from the public to permit the rezoning of the church property north of Wells Avenue.

The Planning and Zoning Department staff recommends approval of the rezoning request. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval of the rezoning of property at the corner of Wells Avenue and Fairfax Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District.

Mayor Sitnick closed the public hearing at 5:11 p.m.

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

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Councilman Worley moved for the adoption of Ordinance No. 2779. This motion was seconded by Councilwoman Field and carried unanimously.

#### **ORDINANCE BOOK NO. 19 - PAGE**

#### **B. PUBLIC HEARING TO REZONE ONE LOT ON HILLSIDE AND SEMINOLE STREET FROM RM-8**

## **RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT**

### **ORDINANCE NO. 2780 - ORDINANCE TO REZONE ONE LOT ON HILLSIDE AND SEMINOLE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT**

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

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone one lot on Seminole Street from RM-8 Residential Multi-Family Medium Density District to Office Business District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owner of property, George Morasani, is requesting the rezoning of the property located on Seminole Street (PIN No. 9657.17-00-0184) from RM-8 Residential Multi-Family Medium Density District to Office Business District.

The owner of the property wishes to expand his commercial / office facility further into the adjacent neighborhood. This one lot is part of a transition area between residential, commercial and institutional uses. The lot across the street is commercially zoned but contains an office building. This area should remain an office transition area to prohibit higher impact uses on this dead end street.

At the Planning and Zoning Commission meeting, there were no public comments to this rezoning request.

The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval to rezone the one lot on Seminole Street from RM-8 Residential Multi-Family Medium Density District to Office Business District. The petitioner stated that he was in agreement with the Planning & Zoning Commission recommendation.

Upon inquiry of Mayor Sitnick, Mr. Morasani said that he would be willing to circulate a petition to change the name of Hillside to avoid confusion with the other Hillside Street in Asheville.

Mayor Sitnick closed the public hearing at 5:16 p.m.

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

Vice-Mayor Clonger moved for the adoption of Ordinance No. 2780. This motion was seconded by Councilman Worley and carried unanimously.

## **ORDINANCE BOOK NO. 19 - PAGE**

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### **C. PUBLIC HEARING TO REZONE 475 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

### **ORDINANCE NO. 2781 - ORDINANCE TO REZONE 475 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

Mayor Sitnick opened the public hearing at 5:16 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone two lots at 475 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business I

District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owners of property, Wachovia Bank -Trustee for Verne & William Rhoades, are requesting the rezoning of the property (PIN No. 9649.06-37-6455 and 6547) from RS-8 Residential Single-Family High Density District to Community Business I District.

Prior to the adoption of the Unified Development Ordinance, these two parcels of land

were zoned commercial. The property owners are requesting this rezoning to permit

the land to be developed for its highest and best use. The owners of these properties that front on Merrimon Avenue also wish to donate the lots to the City of Asheville.

At the Planning and Zoning Commission meeting, there were several public comments concerning additional traffic impacts on the already busy intersection at WT Weaver Boulevard.

The Planning and Development staff recommends approval of the rezoning request. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval of the rezoning of property at 475 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business I District.

Mayor Sitnick said that this now City-owned property will be used as an extension to Weaver Park.

Mr. David Gory expressed his displeasure with the whole concept of zoning.

Mayor Sitnick closed the public hearing at 5:21 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. 2781. This motion was seconded by Councilwoman Bellamy and carried unanimously.

## **ORDINANCE BOOK NO. 19 - PAGE**

### **D. PUBLIC HEARING TO APPLY THE MANUFACTURED HOME OVERLAY ZONING CLASSIFICATION ON TWO LOTS ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT LOCATED ON POWERS ROAD**

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### **ORDINANCE NO. 2782 - ORDINANCE TO APPLY THE MANUFACTURED HOME OVERLAY ZONING CLASSIFICATION ON TWO LOTS ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT LOCATED ON POWERS ROAD**

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

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to apply the Manufactured Home Overlay zoning classification to two lots zoned RM-6 Residential Multi-Family Low Density District located on Powers Road. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owner of property, Jeff Bowlin, is requesting the application of the Manufactured Home Overlay zoning classification to two lots currently zoned RM-6 Residential Multi-Family Low Density District (PIN Nos. 9629.08-99-8371 and 9639.05-09-0659) located on Powers Road.

These two lots are adjacent to the existing Manufactured Housing Overlay District along Gorman Bridge Road and Riverview Church Road (Adams Hill Road). The 2010 Plan shows the majority of this area to be low density residential. One of the two lots currently has manufactured homes. The other will be subdivided and developed for manufactured homes. These lots are at the end of the City's jurisdiction and surrounded by a number of manufactured homes both within and outside of the City's zoning jurisdiction.

The petitioner has been made aware that there are development standards in the Unified Development Ordinance for the placement of manufactured homes on individual lots and also has been informed of the subdivision regulations.

At the Planning and Zoning Commission meeting, there were no public comments to this rezoning request.

The Planning and Development staff recommend approval of this application. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to apply the Manufactured Home Overlay zoning classification to two lots on Powers Road currently zoned RM-6 Residential Multi-Family Low Density District.

Mayor Sitnick closed the public hearing at 5:25 p.m.

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

Councilman Worley moved for the adoption of Ordinance No. 2782. This motion was seconded by Councilwoman Bellamy and carried unanimously.

#### **ORDINANCE BOOK NO. 19 – PAGE**

#### **E. PUBLIC HEARING TO AMEND THE FISCAL YEAR 2000 CONSOLIDATED ACTION PLAN TO REALLOCATE \$125,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM NEIGHBORHOOD HOUSING SERVICES PROPOSED SYCAMORE HOLLOW HOUSING DEVELOPMENT ON BRADLEY ROAD IN WEST ASHEVILLE TO NEIGHBORHOOD HOUSING SERVICES NEW APARTMENTS DEVELOPMENT IN MONTFORD AND MIDTOWN**

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#### **RESOLUTION NO. 01-03 - RESOLUTION TO AMEND THE FISCAL YEAR 2000 CONSOLIDATED ACTION PLAN**

Due to a conflict of interest, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

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

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving amendments to the Consolidated Action Plans for the HOME and Community Development Block Grant programs for Fiscal Year 2000. This public hearing was advertised on December 29, 2000.

The City's Consolidated Annual Action Plan allocates our entitlement of Community Development Block Grant (CDBG) and HOME funds to specific projects. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income. Council recently approved such amendments on November 28, 2000, (various CDBG and HOME re-allocations) and December 12, 2000, (CDBG emergency relocation funding).

Neighborhood Housing Services (NHS) has now requested one further amendment. Originally, \$150,000 in CDBG funding was allocated to NHS's Sycamore Hollow project, a planned mixed home-ownership and rental development on Bradley Road in West Asheville. However, due to cost over-runs on its scattered site apartment project on Montford Avenue and Broad Street, NHS needs to re-allocate \$125,000 of Sycamore Hollow funding to the apartments project.

Staff have reviewed this request and the revised financial plan submitted by NHS for the apartment project, and are satisfied that this re-allocation, added to the \$125,148 in CDBG funds already committed to the project, will enable NHS to close out the construction of these 16 apartments. The start of the Sycamore Hollow development will be delayed until NHS has identified sufficient financing.

City staff recommends approval of the amendments.

Mayor Sitnick closed the public hearing at 5:28 p.m.

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

Councilwoman Field moved for the adoption of Resolution No. 01-03. This motion was seconded by Councilman Peterson and carried unanimously.

## **RESOLUTION BOOK NO. 26 – PAGE 258**

### **IV. UNFINISHED BUSINESS:**

### **V. NEW BUSINESS:**

#### **A. RESOLUTION NO. 01-04 - RESOLUTION SUPPORTING A MORATORIUM ON THE DEATH PENALTY**

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Mayor Sitnick said that a number of weeks ago City Council was approached by a group who wanted City Council to consider the matter of Council supporting a moratorium on the death penalty until the justice system can be reviewed, debated and improved. There were enough people on City Council who were interested in hearing about this issue so at the City Council worksession on December 12, 2000, City Council had a presentation from the WNC Chapter of People of Faith Against the Death Penalty. We asked the People of Faith Against the Death Penalty to provide City Council with additional information which they have done. City Council, at that time, had a preliminary discussion about their consideration of this resolution and decided to take it up on this agenda for formal discussion. She explained that City Council has a policy that anytime requests are made to our legislative delegation, that the request has to be unanimous or it is not forwarded to Raleigh. Basically our legislators don't like to consider requests that are not unanimous from Council. They have far more to deal with than we do and it's very difficult for delegation to represent local government entities unless they know everyone is on board, irregardless of the subject matter. It is her sense that we don't have unanimity on Council at this time. However, she felt that there is unanimity on the part of City Council regarding the importance of this issue and the need for us to express our opinions to our representatives in Raleigh.

Mayor Sitnick then explained that the request to City Council was to consider a moratorium on the death penalty, not to consider an abolition to the death penalty. It was brought to Council's attention at the worksession that there is inequity in the system. This is about whether or not the system applied to death penalty cases is applied fairly to all and whether or not people are represented equally. Local and national groups have been informed that since the advent of the DNA technology, approximately 80 people have

been released from death row because they have been proven innocent. She didn't believe there is anybody, victims of violent crime, families of victims of violent crime, people opposed to the death penalty, or people for the moratorium who would disagree on one thing – and that is, no innocent people should suffer either at the hands of an inadequate justice system or at the hands of a crazed criminal. That is why this has been such a profound subject for City Council to hear about. She then asked Council how they would like to proceed.

Councilman Peterson pointed out that there is distinction between the resolution and City Council's usual actions on legislative matters. City Council's usual action is on a particular bill that addresses some direct benefit to the City or directs state law that governs some sort of City action. This is not directed to a particular piece of legislation, but is more showing support of an idea. Because of this, he felt Council's general rule about not taking action on legislative requests unless it's unanimous, would not apply in this situation. Therefore, he felt it would be proper for City Council to continue with the request for a resolution supporting a moratorium on the death penalty.

Councilwoman Bellamy agreed with Councilman Peterson.

Councilwoman Field asked that if City Council moves forward with this request, she would like to request that whatever the vote is that the resolution indicate that vote so the legislators don't get the impression that it was a unanimous vote.

Mayor Sitnick stated that City Council has received a letter supporting the moratorium signed by 34 local religious leaders and also a letter supporting the moratorium signed by 31 local attorneys.

The following individuals spoke in support of the moratorium on the death penalty for the following reasons, some being, but are not limited to: the current system is unfair; the system sentences to death mentally retarded individuals and those who are juveniles at the time of the offense; issues of inaccuracy; 17 groups in Asheville alone have adopted moratorium statements;

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2,000 individuals in our community have signed a petition supporting a moratorium; broad base of support on this issue; survey by the Charlotte Observer showed 62% of Carolinians support a moratorium on executions; 10 municipalities in North Carolina and 21,000 citizens have signed petitions supporting a moratorium on executions; the death penalty encourages darkness, violence and resentment; racial bias is so evident and stark when the death penalty is handed down; people can't afford good representation and end up on death row; innocent people die; there is a long, lengthy, costly appeal process; system as it exists now is flawed and broken; we are executing our minority citizens; studies show that one in seven on death row is innocent; inhuman form of punishment; death penalty is immoral, unjust, disproportionately allocated and inhumane; poor people and people of color are more likely to get a death sentence; the criminal justice system can learn from a review of their process; the government should not have the right to execute it's own citizens; City Council should take a stand on this because the Police Department begins the investigation and it's City Council who oversees that department and its budget; we don't have a system now that captures only the guilty and allows the innocent to go free; and nothing is more demoralizing to a victim's family than to realize a mistake has been made and not only has an innocent person been put to death, but the real killer is free to walk the streets:

Noel Nickel, Co-Chair of the WNC Chapter of People of Faith Against the Death Penalty

Carol Dreling, survivor of a double murder and survivor of 7 bullet wounds

Helen Hill, member of the WNC Chapter of People of Faith Against the Death Penalty



Bob McPherson

Catherine Smith, mother of a person on death row

Daniel Breen

Kevin Rollins, representative of the Libertarian Party of Buncombe County

Frank Goldsmith, attorney

The following individuals spoke in opposition to City Council supporting a moratorium on the death penalty for the following reasons, some being, but are not limited to: City Council members should express their opinions individually, not as a group, because they should not interfere in state laws; the laws of the State of North Carolina should be supported and the Constitution of this State should be defended; the death penalty is a state law; the Constitution establishes a system of government that provides a forum for these people and all people of faith to address a state law that they do not agree with – and that forum is in Raleigh; and adoption of a resolution supporting the moratorium in the death penalty makes a mockery of our constitutional system and of our laws:

Fred English, resident of Haw Creek

Kate Dreher, Asheville citizen, taxpayer and citizen of faith

Mayor Sitnick said that whether or not Council supports the moratorium unanimously or in part, she asked that if individual Council members consider expressing their opinions to Raleigh that they at least strongly call for a review of the system so that the families of victims are properly served by having the right person punished.

Councilman Hay refuted comments made in the newspaper today from District Attorney Ron Moore related to him and his law practice. The statements were inaccurate. The paper read that the District Attorney's suggested that Councilman Hay would be influenced at this meeting in some fashion by pecuniary interest and if that wasn't so absurd, he might take it personally. That is just not true. The DA's statement, in his opinion, doesn't constitute the kind of responsible comment that we expect from public officials when sincere people are dealing with issues as serious as the sanctity of human life – it is quite frankly, he thinks, the kind of behavior which adds credence to the arguments by those who say that the system is driven more by personal bias than by seeking justice.

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

Councilwoman Bellamy moved for the adoption of a resolution supporting a moratorium on the death penalty. This motion was seconded by Councilman Peterson.

Vice-Mayor Cloninger said that he will vote against the resolution for reasons expressed in the past. He very much respects the opinions on both sides of this issue. It is a very important issue to society. But he does feel strongly that this is an issue that should be debated by the N.C. legislature and not by this city council. This is not a city issue, despite what has been said. City Council does not have any control over the imposition of the death penalty. A major concern about City Council taking up this issue has to do with precedent. As important as this issue is, there are many other social issues today that many other people feel just as strongly about. He does not want to set up a situation where we have group after group coming to this city council asking us to take action when it involves an issue that we have no authority to do anything

about - issues like abortion, like legalization of drugs, euthanasia, etc. He felt City Council was elected to do the business of the City (street paving, building parks, greenways, etc.) and he feels Council should stick to those issues and not consider topics such as this one.

Councilman Worley said that the arguments in support of a moratorium are compelling, as are the personal stories. He suspected there is a need for a moratorium, but he agrees with Vice-Mayor Cloninger that it is not an issue for this city council to take up. He totally agrees that we don't need to take an official city position on social issues that we don't have any control over. He thought that he could personally support a moratorium on the death penalty and he may very well end up doing that. But his heart says the City Council should not take an official position – that's the legislature. He would be in support of a resolution that calls upon the citizens of Asheville to become educated and to let the members of the General Assembly know their views. It is an important issue and the General Assembly does need to hear our views, but it needs to come from us as citizens where each member of the community can represent their own views and not from the City Council attempting to read the majority views of the citizens of the City of Asheville in an area where we have no authority to deal with it.

Councilman Peterson disagreed with Councilman Worley and Vice-Mayor Cloninger in that he felt the City does have a responsibility because they have a significant role in law enforcement. He felt we have a responsibility to make sure that the judicial system is being fair and accurate. Evidence has repeatedly come to light in the past few years that raises some questions. He personally supports the death penalty because he thinks that in certain cases it is an appropriate response. But, he's uncomfortable that it is not being applied fairly and accurately. Recognizing that the City has very limited financial resources, and we cannot fund all the expensive equipment that our Police Department should have, he felt it would be appropriate to ask the legislature to study that sort of issue of whether or not there are enough resources going into law enforcement. Maybe the legislature will come back and tell us that we need to do more. He felt it would be an appropriate role for the City to support this idea. He encouraged all members of Council to support this moratorium.

Councilman Hay said that he would vote in support of the resolution for a moratorium. In this particular case, we are being asked to follow the lead of other cities in North Carolina. We are also being told by knowledgeable and responsible citizens, who are interested in the issue, that the legislature is going to consider the positions taken by municipal governments in situations like this. In light of those things, he thinks this issue may be presented to us in a different way than some other social issue that is not a city government directed related issue. For those reasons, he did think it was appropriate for City Council to deal with the resolution. He does have experience with the criminal justice system and he does have a sense of how it works – it is not infallible. We count on a system that gives everyone the right to appeal and have their case

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reviewed to make sure the system works for everyone. The issue before Council is not the death penalty – it is a moratorium to give the Legislative Committee time to study the matter and present their report. This is about justice.

Mayor Sitnick said that she sees this as supporting our state representatives. She believes the support of this resolution does exactly that. This is supporting our legislatures who are already studying the system that we are talking about. She thinks that is totally appropriate for a local government to do. When things are broken, we ask them to be fixed. We are talking about a system that puts people to death. I am personally in favor of the death penalty. She wants to make sure that that justice is applied accurately and appropriately to people who commit heinous crimes. She is hoping that the Legislative Study Committee's findings actually go beyond what they are studying and it promotes a dialogue in this state and across our nation of ways to truly put an end to violence. If there is one person on death row or one person whose is put to death for a crime

they did not commit – then that means somewhere on some street in some city, a guilty person goes free. She agrees that if this Study Commission comes up with ways for us to do a more aggressive, stronger, better job and if gives our prosecutors and our local law enforcement officers better tools, then I am for that. She will support the resolution for a moratorium along with the other cities across our state. In addition she supports the Legislative Study Commission and their work to fix this system so that in every single case, 100% of the time, people who are guilty of creating those victims of violent crime are punished appropriately. She asked that if this resolution does not pass, that Council consider unanimously another resolution asking the state to fix the system, whether there is a moratorium or not.

The motion made by Councilwoman Bellamy and seconded by Councilman Peterson passed on a 4-3 vote, with Mayor Sitnick, Councilwoman Bellamy, Councilman Hay and Councilman Peterson voting "yes" and Vice-Mayor Cloninger, Councilwoman Field and Councilman Worley voting "no".

Mayor Sitnick said that pursuant to Councilwoman Field's request, this resolution will be sent to Raleigh as a 4-3 vote. She reiterated that Council's policy on resolutions to our legislators in the past have been required to be unanimous.

When Mayor Sitnick asked Council to consider a resolution that supports the work of the Legislative Study Commission to fix the system, regardless of whether there is a moratorium or not, Vice-Mayor Cloninger said that he would oppose that resolution for the same reason. Again, City Council would be taking up business that he thinks is not City business. We have already bent our rules and adopted a resolution on a simple majority vote.

Mayor Sitnick said that since there will not be a unanimous vote on this, then she suggested to members of Council individually write letters to members of the legislature and members of the Legislative Study Commission to express your opinions.

Councilwoman Field said that she has very strong feelings about the separation of church and state and strong feelings about being petitioned by a group that calls themselves "People of Faith Against" whatever. Secondly, she agreed with Vice-Mayor Cloninger in that is not City Council's purview. Asheville's Charter limits what City Council can and should do and she does not feel that the Charter gives Council the authority to deal with social issues of this kind. She is totally opposed to the death penalty and she will write a very strong letter on her own behalf to the legislators. She feels that everyone can be rehabilitated.

At the suggestion of City Attorney Oast, it was the consensus of Council to have a certified copy of the resolution, along with a certified copy of the minutes reflecting the vote, sent to the legislature.

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## **RESOLUTION BOOK NO. 25 – PAGE 259**

At 6:45 p.m., Mayor Sitnick announced a short break.

### **B. RESOLUTION NO. 00-05 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS**

Vice-Mayor Cloninger said that Doug Spell has resigned as a member of the Metropolitan Sewerage District Board of Directors, thus leaving an unexpired term.

Councilman Worley moved to appoint City Engineer Cathy Ball as a member of the Metropolitan Sewerage District Board of Directors to fill the unexpired term of Mr. Spell, term to expire January 19, 2003, or until her successor is appointed. This motion was seconded by Mayor Sitnick and carried unanimously.

**VI. OTHER BUSINESS:**

**Meetings**

City Manager Westbrook said that the Buncombe County Board of Commissioners has invited City Council to meet with them, and other area municipalities, on Saturday, May 19, 2001, at UNC-Asheville. In addition, the Commissioners have asked if City Council would be willing to meet with them in a Joint Meeting on Tuesday, May 29, 2001, at the Asheville Civic Center.

It was the consensus of City Council to instruct the City Manager to work with the County Manager on the times and agendas for these meetings.

Councilman Peterson understood that at the Buncombe County Commissioner's recent retreat, there was a fair amount of discussion concerning the City and he felt it would have been a good idea if someone from City staff would have attended that meeting. He suggested inviting someone from the management level in County government to City Council's upcoming retreat to begin better discussions between the City and the County. Mayor Sitnick noted that our retreat is open to the public and the County would be more than welcome to attend. She asked City Clerk Burlison to obtain a copy of the minutes of the Buncombe County Commissioner's retreat.

**Comment by Peter Dawes re: Buncombe County Retreat**

Mr. Peter Dawes said that Buncombe County did not have minutes of their retreat, however, he did video tape the entire meeting and would be happy to furnish a copy of that to the City. He did note that the Commissioners made an effort to put a limit on public speaking and commended City Council on their policy regarding public comment.

**Comment by David Gory**

Mr. David Gory, resident of east Asheville, felt Asheville has adopted a maze of illogical regulations and ordinances over the past years. He felt the Unified Development Ordinance is a prime example of the disaster. He also felt the continued subsidies to the Civic Center is another example of a lack of logic to the system. The local Libertarian Party did a brief review of the City's budget and has proposals to reduce the property tax burden to the citizens of Asheville by 50%. This would be a first step toward the elimination of property taxes. He wondered why the City budget has been allowed to swell and taxes on the citizens been allowed to increase when finding solutions to the financial needs to the City is as simple as looking at the budget. He felt

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that every City entity as well as every law and ordinance should have a careful review. Citizens should not have to pay for City government in areas it has no business in being in or paying for City government that is not doing it's job. In addition, they should not have to pay for the enforcement of bad laws.

**Claims**

The following claims were received by the City of Asheville during the period of December 15-28, 2000: BellSouth (Water), Terry Whittington (Police), Britt Kelley (Parks & Recreation), Bill Cogburn (Water), Sherman McKinney (Water), M.W. Curtis (Fire) and Rachel Scott (Streets).

The following claims were received during the period of December 29, 2000 – January 4, 2001: Kelvin

Reynolds (Water), Billie Rice (Water), Olene Cutshall (Water), Robert Dowling (Water) and Cindy Bailey (Streets).

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 7:09 p.m.

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CITY CLERK MAYOR

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