

Tuesday – February 27, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; 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 Burleson

Absent: Vice-Mayor M. Charles Cloninger

INVOCATION

Councilman Peterson asked for a moment of silence for Mr. Dale Earnhardt Sr.

ADDITION TO THE AGENDA

City Attorney Oast asked that a resolution endorsing legislative requests for 2001 Session of the North Carolina General Assembly be added to the Agenda under Other Business.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 13, 2001, AND THE WORKSESSION HELD ON FEBRUARY 20, 2001

B. MOTION APPROVING THE FESTIVALS AND SPECIAL EVENTS FOR 2001

Summary: The consideration of a motion approving the festivals and special events for 2001.

In March of 1995, the Asheville City Council adopted a Festivals Policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis.

The Parks and Recreation Department met with a Co-sponsorship Task Team in an effort to set forth appropriate criteria to determine the qualifications of organizations applying for co-sponsorships with the City of Asheville. It was determined that the best way to determine qualification was to rate the events as they occurred on the degree that they met the terms of the co-sponsorship agreement and served the citizens of Asheville. The Task Team proposed the following minimum criteria for future co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.
6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

This year's list for co-sponsorship includes several new events which include: 1st Annual St. Patrick's Day 10K Road Race, Mountain Renaissance Adventure Fair, YMCA's World's Largest Run, Statewide Preservation Commission Conference Dinner, Pathways Pedal Pushers, Asheville Citizen-Times Half Marathon, Smoky Mountain Motorcycle Toy Run.

The Parks and Recreation Department recommends approval of the festivals and special events for 2001.

C. RESOLUTION NO. 01-19 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY BY N.C. NON-WARRANTY DEED THE CITY'S INTEREST, IF ANY, IN A PORTION OF AN UNOPENED ALLEY LOCATED BETWEEN TWO PRIVATELY-OWNED PROPERTIES OFF CONESTEE STREET

Summary: The consideration of a resolution authorizing the execution of a Non-Warranty Deed for a portion of property located between two privately owned properties off Conestee Street.

A request was received from the attorney for James M. Wilson and Audrey Wilson, Co-Trustees of the Irrevocable Trust of Elizabeth Lindsay Wilson on December 29, 2000, requesting that the City execute a non-warranty deed, quitclaiming all government interest if any, in the portion of the trust property that encroaches onto an undeeded strip of land, that has since 1912, been referred to as an alley.

According to the attorney for the Wilsons, the dwelling situated on the property identified as PIN No. 9649.10-26-8359 has existed at the current location for approximately 90 years. The dwelling encroaches into the undeeded strip of land called an alley as shown on an unrecorded Plat prepared by Glenn Haynes dated March 11, 1998. The date of the dedication of this alley is not known.

The Public Works Department staff recommends City Council authorize the execution of a North Carolina Non-Warranty Deed quitclaiming all government interest, if any, in the portion of the property where the encroachment lies.

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D. RESOLUTION NO. 01-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE METROPOLITAN SEWERAGE DISTRICT FOR THE INSTALLATION OF SIDEWALKS ALONG STATE STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Metropolitan Sewerage District (MSD), whereby MSD will, in connection with soliciting formal bids for the sewer rehabilitation project for State Street, include at the request of the City of Asheville, the requirement for the installation of sidewalks along State Street, the cost of which shall be paid by the City of Asheville.

The Metropolitan Sewerage District plans to disturb the pavement of State Street for major sewer rehabilitation project. The City has already designated State Street to receive sidewalks. MSD agreed to and did solicit formal bids for the construction and installation of sidewalks along State Street as part of its sewer rehabilitation project for State Street. MSD solicited the formal bids in accordance with N. C. Gen. Stat. Sec. 143-129 and three bids were received as follows:

Company MB Part Drug Free Bond Bid

Hobson Construction Co. Inc. 100% Yes Yes \$618,040

T&K Utilities 0 Yes Yes \$688,836

Bryant Electric Company 0 Yes Yes \$847,139

MSD's governing body awarded the project to the lowest responsive bidder, being Hobson Construction Company, Inc., in the amount of \$618,040, with \$114,970 of that amount being the City's portion for the construction and installation of the sidewalk. MSD has otherwise complied with all statutory requirements in awarding the contract.

The Public Works Department staff recommends City Council authorize the City Manager to enter into an agreement with MSD whereby MSD will cause their contractor to construct and install approved sidewalks along State Street in accordance with City specifications, in an amount not to exceed \$114,970 upon assurance from MSD that all statutory bidding laws and requirements have been met.

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E. RESOLUTION NO. 01-21- RESOLUTION ACKNOWLEDGING MIDWAY PLACE AS A PUBLIC RIGHT-OF-WAY

Summary: The consideration of a resolution acknowledging and accepting a right of way dedication.

Reynolds Mountain Subdivision, LLC, has requested the City to acknowledge the public status of a dedication of right-of-way bordering the subdivision currently under development.

The right-of-way in question is a dedicated but unopened right-of-way. Our investigation shows that it was first dedicated as Midway Place with the recordation of a plat in 1933 (Plat Book 16 at Page 70), as part of Lakeview Park. Midway Place again appears in a resubdivision of property that was recorded in 1955 (Plat Book 29 at Page 12). The right of way was particularly in the City until 1960, when the entire area was annexed.

Properties located on the south side of this right-of-way have been sold and developed with homes. Tax maps indicate that the right-of-way is public, and field observation shows that it has been improved for part of its length, but currently only serves one residence, essentially as a private driveway.

In 1998 the developer obtained City approval for a subdivision of the part of the Reynolds Mountain Subdivision that is in the City. This consists of all or a part of 12 lots located along the north side of Midway Place right-of-way. The approved preliminary plat shows that the street that will serve these lots runs along the northern or uphill side, while the Midway Place right-of-way runs along the southern or downhill side of the lots. The developer at present proposes to use the Midway Place right-of-way for installation of utilities, but wishes to preserve such other rights of use as he may have.

The reason that this matter has come up now is that, despite the above-described indications that the Midway Place right-of-way has been considered public for many years, there is no record that its public status was ever officially recognized by the City or County. Given the age of the original subdivision, this is not unusual, and the record of that action may simply have been lost. Moreover, there are sufficient other acknowledgements of the public status of Midway Place that are matters of record that the City may be estopped from denying it. A search of the Buncombe County records indicates that the Midway Place right-of-way has never been

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withdrawn from dedication, and a search of the City's records has similarly disclosed no record of withdrawal or abandonment.

Usually, the City is not requested to recognize rights-of-way until whatever improvements are to be installed are complete. However, the developer in this case wishes to have the added measures of the City's official recognition of the Midway Place right-of-way prior to undertaking utility installation within it.

Staff's primary concern is that, by this recognition, the City does not assume responsibility for maintenance of the right-of-way, or for any problems that might arise during construction. The developer has agreed to enter into appropriate agreements with the City to ensure that this is accomplished.

Staff recommends that Council adopt a resolution acknowledging the public status of the Midway Place right-of-way for the purpose of utility installation, and accepting it to the extent that acceptance has not already occurred, subject to the condition that the developer assume all responsibility for its maintenance and for any construction-related issues until the improvements are accepted by the City or other appropriate authority.

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F. MOTION APPROVING CITY COUNCIL OUTSIDE AGENCY POLICY

Summary: This is the consideration of a motion approving City Council's outside agency policy.

During a budget worksession on the proposed Fiscal Year 2000-2001 Annual Budget, City Council asked staff to develop an official policy to guide the Outside Agency Committee's process for evaluating outside agency funding requests.

Staff has developed a draft policy, which has been reviewed by the Outside Agency Committee, and is presented for full Council review. At Council's February 6, 2001, worksession, City Council suggested minor changes to the policy and those changes have been made. Key aspects of the recommended policy include the establishment of priority service areas for which Council may direct its outside agency funds, the setting of limits on the number of consecutive years certain agencies can receive City funds, and a focus on funding specific programs rather than general operating expenses.

City staff recommends City Council adopt the City's recommended outside agency policy.

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 Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. SELECTION OF INTERVIEWEES FOR SCHOOL BOARD

After reviewing all written responses to City Council questions, it was the consensus of City Council to have the City Clerk arrange interviews for Adam Baylus, Lewis Isaac, Barbara

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Blackburn, John Legerton, Mark Gordon, Richard Sandoval, Keith Thomson, and Allison Jordan on March 6, 2001, beginning at 5:00 p.m. in the Council Chamber of the City Hall Building.

V. NEW BUSINESS:

A. RESOLUTION NO. 01-22 – RESOLUTION MAKING ALLOCATIONS FROM THE CITY’S HOUSING TRUST FUND

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of approving the recommendations from the Housing & Community Development Committee for loans totaling \$400,000 from the City’s Housing Trust Fund.

A Request for Proposals for Housing Trust Fund loans was issued on December 1, 2000. Eleven applications were received by the due date of January 19. All were essentially complete and eligible for funding. We were very pleased with the number, variety, and quality of these applications.

Evaluation Process: A group of four staff from the Planning & Development Department visited all the project sites and evaluated each application using 23 criteria drawn largely from the Housing Trust Fund policies approved by Council last year. Each project was given scores of 0-5 for each criterion, and then the scores were multiplied by a weighting factor of 1, 2, or 3 before being totaled. The highest weighting factor was given for financial capacity, funding requested per unit, affordability, and readiness to proceed. Other important criteria were developer experience, good design, careful budgeting, location, site suitability, and preservation of long-term affordability.

Results: Although all the projects submitted had attractive features and were appropriate for HTF assistance, three stood out in the evaluation process, scoring at least 36 points higher than any of the other eight projects:

- Ron Moser Homes – Glendale Avenue Subdivision (18 units for homeownership)
- Neighborhood Housing Services – Short Street (4 units for homeownership)
- Mountain Housing Opportunities – Compton Place (40 units for elderly rental)

The Housing and Community Development Committee has reviewed the evaluation and recommends the following loans be made, on the terms requested:

Ron Moser Homes: \$195,000 at 2% interest with staged repayment as each house is sold

Neighborhood Housing Services: \$65,000 at 0% for 30 years (amortizing)

Mountain Housing Opportunities: \$140,000 at 0% for 20 years (non-amortizing)

The Housing and Community Development Committee and staff recommend approval of the Housing Trust Fund loans listed above.

Councilman Worley said that he is supportive of the projects, however, he did want to mention a couple of his concerns. He said that his concern was primarily the terms of two of the grants which provided for both zero percent interest and on one of them zero amortization over the twenty year period of the loan. His concern is that in creating the Housing Trust Fund, one of the things talked about in terms of justifying the creation of it and justifying the penny tax was the revolving nature of the Trust Fund. He understands in these two situations that there are other factors that off-set the lack of interest and on one the lack of any amortization. He would like to

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see us, at least in the early stages of the creation of the Trust Fund though, work a little harder to make sure it remains revolving so that we can keep turning it over and reap multiple benefits from the use of those funds. He asked the Housing and Community Development Committee take his suggestions into account in the next year's process.

Councilman Hay said that one of the nice things about the Housing Trust Fund is that it is our money, unlike Community Development Block Grant Funds where we operate within someone else's rules. Because it is our money, we can change our rules as we go along and we can learn from experience. We can also, from year to year, be flexible on what we think the needs are and set different priorities.

Upon inquiry of Councilman Hay, Ms. Caplan said that the polices for the Trust Fund outline that staff will come back to City Council within 90 days of the end of the fiscal year and report to Council about the progress of this year's program. In addition, Council will establish priorities for the coming fiscal year. She felt it might be wise to vary those priorities from year to year and keep it responsive to local conditions.

Upon inquiry of Councilwoman Field, Ms. Caplan gave a brief description about each of the three projects.

Mayor Sitnick felt it might be a good idea if a group of non-profit and for-profit representatives, Ms. Caplan and a City official go to Raleigh next year to discuss enhancing the State Housing Trust Fund.

Upon inquiry of Mayor Sitnick, Councilwoman Field said that Buncombe County is working on some guidelines to waive the tipping fees at the landfill for non-profit and for-profit developers who are remodeling a home on a lot to rebuild affordable homes.

Mayor Sitnick suggested the corporate construction material neighbors be contacted to see if they would be willing to hold damaged goods (like torn insulation) to be recycled or reused by people who are building affordable housing in our community.

Upon inquiry from the audience, Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that currently the proposed apartments on Compton Place are just off the transportation route. However, he has talked with the Transit Services Manager and he has indicated a willingness, at least on a trial basis once the apartments are built, to see how much demand there is to extend the route and if it is being used, to continue that in the future.

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 to adopt Resolution No. 01-22. This motion was seconded by Councilman Hay and carried unanimously.

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B. RESOLUTION NO. 01-23 - RESOLUTION APPOINTING MEMBERS TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Councilwoman Bellamy said that this is the consideration of appointing members to the Buncombe County Tourism Development Authority.

Don Tomlinson (owner or operator of hotel over 100 rooms) has resigned as a member of the Buncombe County Tourism Development Authority, thus leaving an unexpired term until

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August 30, 2003. In addition, Barbara McEwan (owner or operator of hotel less than 100 rooms) has resigned leaving an unexpired term until August 30, 2001.

City Council unanimously appointed Herman Turk (owner or operator of hotel over 100 rooms) to fill the unexpired vacancy of Mr. Tomlinson, term to expire August 30, 2003, or until his successor has been appointed.

On February 13, 2001, City Council interviewed Victor Trantham and Catherine Sklar for the vacancy of an owner or operator of hotel less than 100 rooms.

After each Councilmember (Mayor not voting), Mr. Trantham received 4 votes and Ms. Sklar received one vote. Therefore, Victor Trantham (owner or operator of hotel less than 100 room) was appointed to fill the unexpired term of Ms. McEwan, term to expire August 30, 2001, and then to serve a full three year term, term to expire August 30, 2004, or until his successor has been appointed.

Mayor Sitnick said both Mr. Trantham and Ms. Sklar are good people and represent their industry well, however, there is one philosophical difference she has with both of them that does not allow her in good conscience to vote either one to the Buncombe County Tourism Development Authority. She explained that the average room tax across the state is 5-6%. The room tax in Asheville is currently 3% and none of that money is earmarked to help the Asheville taxpayers who almost totally supports the infrastructure that welcomes the tourist here. The Tourism Development Authority has lobbied the state legislature for a room tax increase of one cent, to raise the room tax to 4% (with no money earmarked to help with infrastructure). Both candidates don't feel the need to bring the room tax to 5-6% with perhaps earmarking some of that money back to the community to help with infrastructure. Therefore, she could not vote to appoint either candidate.

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VI. OTHER BUSINESS:

A. RESOLUTION NO. 01-24 - RESOLUTION ENDORSING LEGISLATIVE REQUESTS FOR 2001 SESSION OF NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast reviewed the following legislative requests:

1. The City's legislative delegation is respectfully requested to introduce bills for consideration in the 2001 Session of the North Carolina General Assembly, to address the following matters:

- a. Provide the City with authority to enforce traffic signal (red light) violations through the use of remote photographic monitoring and civil penalties, similar to the process currently used by the City of Charlotte, among others; and
- b. Provide for the suspension of the force account cost limitations of N.C.G.S. 143-135 in connection with the construction of the City's proposed skateboard park on Cherry Street.

2. The City fully supports House Bill 43, which provides for the inclusion of agencies organized pursuant to the Interlocal Agreements Act among those entities

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exempted from the payment of non-betterment costs for waterline relocation pursuant to G.S. 136-27.1, and thanks its legislative delegation for its continued hard work on this issue.

3. The City Council fully supports the introduction and consideration of legislation proposed by Buncombe County, entitled "An Act to Authorize Supplemental Sources of Revenue for Infrastructure and Capital Improvements," for authority to adopt a time-limited, one percent local sales tax, targeted to specific projects for Buncombe County and its constituent municipalities, including the City of Asheville.

4. As an alternative to Buncombe County's sales tax request, and to be considered only in the event that said request is not introduced or fails passage, the City requests the introduction of a bill to provide the City with authority for a one percent prepared food and beverage tax in the City of Asheville, with the proceeds to be used for capital projects in the City that benefit the region and support the tourism industry, including renovation and maintenance of the Asheville Civic Center.

5. The City fully endorses and supports its legislative delegation's favorable consideration of House Bill 99, "An Act to Authorize Counties and Cities to Levy a Menu of Local Option Taxes if Approved by the Voters", especially in the event that items 3 and 4, above, fail for any reason.

Mayor Sitnick felt that prescription drugs and food should be excluded from the additional one-cent local option sales tax, even though there would be a reduction in revenue. City Attorney Oast said that the County proposal does not tax food.

Councilman Peterson said that he has talked with a number of the Buncombe County Commissioners and they are supportive of the idea that if their one-cent local option sales tax does not pass that they would support the one percent prepared food and beverage tax County-wide (not only in the City of Asheville), with the money going to the renovation of the Civic Center.

City Attorney Oast explained that he was limiting, whatever Asheville asks for, to just the City of Asheville's jurisdiction. If Buncombe County would like to join in with that, he would be happy to talk to them.

Councilman Worley said it was important to emphasize that we are not discussing a one-cent local option

sales tax and a one-cent prepared food and beverage tax. If the County is successful in it's request for a one-cent local option sales tax, then the City will ask for it's one-cent prepared food and beverage tax to be withdrawn. If the County is not successful, then we are asking for either a one-cent prepared food and beverage tax or a menu of items to chose from subject to voter approval.

Councilman Peterson was concerned with the underlined language "as an alternative to Buncombe County's sale tax request, and to be considered only in the event that said request is not introduced or fails passage, the City requests the introduction of a bill ... for a one percent prepared food and beverage tax in the City of Asheville" He said that won't happen until after a deadline and if the legislators follow that language exactly, then a prepared food and beverage tax wouldn't get introduced. He explained that City Council needs to be pursuing both. City Attorney Oast responded that he understood Councilman Peterson's concern and would re-phase that particular provision or at Councilman Peterson's suggestion, delete the underlined language totally. In addition, he would make it clear to the legislators what Council's intentions are on that in his transmittal letter.

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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 Field moved for the adoption of Resolution No. 01-24. This motion was seconded by Councilman Worley and carried unanimously.

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B. CLAIMS

The following claims were received by the City of Asheville during the period of February 2-8, 2001: Princess Dawidalle (Transit Services), BellSouth (Water), Doug Duckett (Water), Darren Payne (Finance) and Kelly Ramsey (Streets).

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

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Request for Resolution of Support to the N.C. Dept. of Transportation for a Pedestrian Safety Initiative on New Haw Creek Road

Mr. Bob Brummond, representing the Haw Creek Community Association, requested City Council to adopt a resolution of support to the N. C. Dept. of Transportation (DOT) for a pedestrian safety initiative on New Haw Creek Road. They are requesting the DOT to replace the existing dirt and grass area currently functioning as a shoulder on both sides of New Haw Creek Road with a three foot wide paved shoulder on each side. This request is for a demonstration project which would greatly improve the safety and free travel for people who drive cars on the road, people who use foot power, and bicyclists, all of whom use the roadway. They ask that this demonstration project begin at the entrance to Sondley Estates, and move south as far as the funding will allow. They further ask that a six inch wide rumble strip treatment be placed at the white line separating the main roadway from the paved shoulder area. This rumble treatment would be continuous along each side of the road. If there are funds available, they request a six inch wide rumble strip treatment be installed in the center yellow lines before, through, and after the curve at Antioch Church. They need to determine if this remedy can reduce the incidence of center line crossover at this dangerous curve. He urged City Council endorse the Haw Creek Pedestrian Safety Demonstration Project and to call upon the DOT to implement the terms of the proposal outlined above.

At the City Manager's request, it was the consensus of City Council to have City staff re-work the resolution in order for it to have a better chance of receiving favorable consideration by the DOT.

Comments by Ms. Sharon Martin

Ms. Sharon Martin, resident in Montford community, spoke about Buncombe County's one-cent local option sales tax and hoped the City would stand firm that the tax does not include prescription drugs or food, however, the tax is a regressive tax. She noted that the City's food and beverage tax is geared towards renovation of the Civic Center. With our community facing affordable housing needs and the budget crisis passed down from the State, she questioned the City's priorities. She felt that the Civic Center is an entertainment venue and the actual needs of citizens should come before entertainment.

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Comments by Mr. Scott Osborne

Mr. Scott Osborne shared some ideas about the Civic Center. He felt that Asheville should grasp what it has and market it in an aggressive manner. If the Civic Center was turned into an art and cultural center, this would be perfect for many of the retail entertainment sections of downtown. He felt if Asheville attracts an outside interest in building a privately funded first-rate high tech sports and convention center, then Asheville could have the best of both works.

Comments by Mr. Mickie Mahaffee

Mr. Mickie Mahaffee, representing Peacemakers, felt that even if there was no Civic Center, Asheville still is a thriving entertainment center. He felt that instead of spending money on the Civic Center, we should look at the needs of the local people and put that money and energy into them. He felt that entertainment is a privilege, not a necessity.

Comments by Mr. Dan Waterman

Mr. Dan Waterman, representing North Carolina Hemp, began educating City Council on prejudice, marijuana and the Jim Crow laws.

Comments by Mr. Dave Mittler

When Mr. Dave Mittler, representing Asheville People for Cannabis Education, requested ten minutes to educate the public on cannabis, Mayor Sitnick stated that she felt Mr. Mittler already had representation through Mr. Waterman's organization (as they both were dressed in clown costumes, arrived together and were sitting together). Mr. Mittler responded that his organization was new even with a few members present in the Council Chamber. Mayor Sitnick then allowed Mr. Mittler three minutes to speak. During the three minutes, Mr. Mittler argued that the Mayor was not being uniform in her time limits for public comment.

Mayor Sitnick asked the City Attorney to draft a policy for Council's consideration that allows City Council to understand group representation. She suggested some type of document that acknowledges that there is such a group, that the group has a board and structure, and that the person requesting to speak has been officially appointed as the spokesperson for that group. She felt that some groups have taken advantage of City Council's ten minute policy by organizing a group that day or week just to address Council for ten minutes.

VIII. ADJOURNMENT:

At 7:29 p.m., Councilwoman Field moved to adjourn the meeting. This motion was seconded by Councilman

Hay and carried unanimously.

CITY CLERK MAYOR
