

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy (participating via speaker phone); Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

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Army veteran Wid Crain led City Council in the pledge of allegiance.

INVOCATION

Councilwoman Jones gave the invocation.

I. PROCLAMATIONS:

A. PRESENTATION BY RIVERLINK

Ms. Karen Cragolin, Executive Director of RiverLink, presented the City with a check, in the amount of \$212,835.32, from RiverLink for funds it raised to help pay for the construction of the French Broad River Park. She talked about the on-going partnership with the City and the community at large.

On behalf of the entire Council, Mayor Worley thanked Ms. Cragolin and RiverLink for their work with the City of Asheville.

B. PROCLAMATION PROCLAIMING THE MONTH OF MAY, 2003, AS "MENTAL HEALTH MONTH"

Councilman Mumpower read the proclamation proclaiming the month of May, 2003, as "Mental Health Month " in the City of Asheville. He presented the proclamation to Ms. Jane Carter, Director of the Mental Health Association in Buncombe County, who briefed City Council on some activities taking place during the month.

C. PROCLAMATION PROCLAIMING THE WEEK OF MAY 17-23, 2003, AS "NATIONAL SAFE BOATING WEEK"

Councilman Peterson read the proclamation proclaiming the week of May 17-23, 2003, as "National Safe Boating Week" in the City of Asheville.

II. CONSENT:

Councilman Ellis asked that Consent Agenda Item "I" be removed from the Consent Agenda for discussion.

Mayor Worley asked that Consent Agenda Item "B" be removed from the Consent Agenda due to a conflict of interest.

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A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 22, 2003; THE COMMUNITY MEETING HELD ON APRIL 29, 2003; AND THE WORKSESSION HELD ON MAY 6, 2003

B. RESOLUTION AUTHORIZING THE MAYOR TO RELINQUISH THE CITY'S EASEMENT CROSSING REAL PROPERTY OWNED BY HERSHEL T. ANDERSON AND LUDY D. ANDERSON – This item was removed from the Consent Agenda due to a conflict of interest by Mayor Worley.

C. RESOLUTION NO. 03-82 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE DISPOSAL PARCEL 74 ON MARTIN LUTHER KING JR. DRIVE

Summary: The consideration of a resolution establishing minimum price and authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74 in the East End/Valley Street Community for the appraised value of \$12,000.

Disposal Parcel 74 is a residential lot located on the east side of Martin Luther King Jr. Drive at the intersection with Miller Street comprising 6,970 square feet. The lot is irregular in shape and sloping upward from street level. The bid from WNC Housing, Inc., equals the appraised value of \$12,000. WNC Housing, Inc., proposed to construct a single family dwelling on the lot.

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

Community Development staff recommends adoption of the resolution authorizing the City Clerk to advertise an offer to purchase Disposal Parcel 74.

RESOLUTION BOOK NO. 27 – PAGE 407

D. RESOLUTION NO. 03-83 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXTEND AN AGREEMENT WITH THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY TO PROVIDE REGIONAL HAZARDOUS MATERIALS EMERGENCY RESPONSE FOR REGION SIX

Summary: The consideration of a resolution authorizing the City Manager to extend an agreement with the N. C. Dept. of Crime Control and Public Safety to provide regional hazardous materials emergency response for Region Six.

North Carolina is divided into seven geographical regions for the purpose of hazardous material emergency response. The N. C. Dept. of Crime Control and Public Safety contracts with municipalities across North Carolina to respond into the geographical regions and provide technician level hazardous materials emergency response.

The region six area covers from Rutherford County west to the Tennessee Border. Twenty counties comprise the response region. The State of North Carolina provides the hazardous materials response truck, all response equipment and provides for administrative costs of operating the team. In addition, the state funds extensive training for members of the Asheville Fire and Rescue Department to enable us to competently handle hazardous materials emergencies.

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The City of Asheville has full use of the truck and all specialty equipment within the City of Asheville. Without the state hazardous materials contract, Asheville taxpayers would need to provide much of resources necessary to properly respond to emergencies within Asheville. With the contract, we have the advantage of the equipment and resources being funded at the state level, rather than at the local level.

The City of Asheville has been a regional hazardous materials provider since Fiscal Year 1994-1995, and during the nine years that we have provided regional hazardous materials response services, we have not experienced difficulties or disadvantages with the program. This program is also consistent with the City's Mission Statement.

The N. C. Dept. of Public Safety and Crime Control is now in the process of extending contracts with seven North Carolina governmental units in North Carolina for provision of regional hazardous materials emergency response.

The State of North Carolina provides funding that fully supports the operational costs of the program.

City staff recommends City Council authorize the City Manager to renew extension of the Regional Hazardous Materials Contract with the N. C. Dept. of Public Safety and Crime Control for Region Six.

RESOLUTION BOOK NO. 27 – PAGE 408

E. RESOLUTION NO. 03-84 - RESOLUTION AMENDING THE CITY COUNCIL 2003 MEETING SCHEDULE TO (1) CANCEL THE MAY 20, 2003, WORKSESSION; AND (2) ADD A SPECIAL WORKSESSION ON MAY 29, 2003, AT 12:15 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM OF THE CITY HALL BUILDING, ASHEVILLE, N.C., TO DISCUSS THE JOINT PLANNING AREA

RESOLUTION BOOK NO. 27 – PAGE 409

F. RESOLUTION NO. 03-85 - RESOLUTION EXTENDING THE TERM OF THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE FOR AN ADDITIONAL TWO YEARS

Summary: In May 2000, City Council adopted the Sustainable Economic Development Strategic Plan and, at the same time, appointed an Implementation Task Force (ITF) of local citizens to make recommendations for its implementation. The three-year term of the ITF expires in June 2003.

Going forward the Task Force suggested the City prepare for fundamental shift in economic base; capitalize on strongest asset (Quality of Place); collaborate with other agencies; seek public-private partnerships for redevelopment; build tax base, provide housing, enhance community with higher density, mixed use development in commercial areas; improve both inter and intra-city transportation and telecommunications access and connectivity; continue Task Force in advisory capacity; and focus areas where the City has an opportunity for impact: sustainable development pattern; new development tools – regulatory and financial; riverfront development; entrepreneurial/small business development; technology infrastructure; transportation; and creative/knowledge economic workforce.

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The Task Force members have determined a need for continuing this effort and have developed a recommendation asking Council to continue the Task Force as an advisory group for Phase II of implementation for an additional two-year period, terms to expire June 30, 2005.

Further, existing Task Force members were asked if they would like to continue serving in this capacity. For any vacancies, the Task Force will seek Council approval of any potential replacements.

City staff recommends City Council approve the resolution and re-appoint the Sustainable Economic Development Implementation Task Force for an additional two-year period to serve in an advisory capacity to City Council and City staff.

RESOLUTION BOOK NO. 27 – PAGE 410

G. RESOLUTION NO. 03-86 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE AN UNNAMED ALLEY OFF CATAWBA STREET AND SETTING A PUBLIC HEARING ON JUNE 10, 2003

RESOLUTION BOOK NO. 27 – PAGE 411

H. RESOLUTION NO. 03-87 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY PROPERTY AT THE CORNER OF LUFTY AND DRAKE STREETS TO NEIGHBORHOOD HOUSING SERVICES

Summary: The consideration of a resolution authorizing the Mayor to convey property on Lufty Street in the west Asheville community to Neighborhood Housing Services in the amount of \$9,500.

On April 8, 2003, the City Council directed the City Clerk to advertise for upset bids on property on Lufty Street. The advertisement ran in the Asheville Citizen-Times on April 11, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from Neighborhood Housing Services in the amount of \$9,500 was not upset and the sale to Neighborhood Housing Services should be approved.

Approval of the resolution will authorize the sale of the property to Neighborhood Housing Services for the amount of \$9,500.

City staff recommends adoption of the resolution authorizing the Mayor to convey property on Lufty Street to Neighborhood Housing Services in the amount of \$9,500.

RESOLUTION BOOK NO. 27 – PAGE 412

I. ORDINANCE ESTABLISHING FILING FEE FOR OFFICES OF MAYOR AND CITY COUNCIL – This item was removed from the Consent Agenda for discussion.

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

Councilman Peterson moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Ellis and carried unanimously.

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ITEMS PULLED OFF THE CONSENT AGENDA

ORDINANCE NO. 3019 - ORDINANCE ESTABLISHING FILING FEE FOR OFFICES OF MAYOR AND CITY COUNCIL

Summary: The consideration of an ordinance setting the filing fee for candidates for City Council.

One of the recommendations that came out of the work of the Campaign Finance Reform Committee is to increase the filing fee for City Council candidates. State law, N.C.G.S. 163-294.2, establishes a minimum filing fee of \$5.00, but permits the governing board to set the fee, provided that the fee is not less than \$5.00 nor more than 1% of the annual salary for the office. Council has apparently never set the filing fee, and it is the minimum \$5.00 provided for in the statute.

Currently, the annual salary for the Mayor is \$13,772; the annual salary for Council members is \$9,390. The Vice-Mayor makes \$11,268, but the Vice-Mayor is selected from the members of Council, not by election of the people, and is not an office for which the filing fee is applicable. Car allowances are not salary, and are not included in these amounts. One percent of the Mayor's salary is \$137.72; one percent of a Council member's salary is \$93.90.

The proposed ordinance rounds those amounts down to \$135.00 and \$90.00 respectively. They can be any amount less than the 1% figures set forth above, but more than \$5.00. The statutes contain a provision, N.C.G.S. 163-107.1(d), wherein the filing fee can be avoided through a petition-like procedure.

Since Council salaries increase periodically, Council may want to consider reviewing this ordinance each election year.

If Council wishes to increase the filing fee for candidates for the offices of Mayor and City Council for the City of Asheville, adoption of the ordinance is recommended.

After a brief discussion, Councilman Ellis moved to increase the filing fees for candidates for the office of City Council Member from \$5.00 to \$75.00 and to increase the filing fees for candidates for the office of Mayor from \$5.00 to \$100.00. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE 286

RESOLUTION NO. 03-88 - RESOLUTION AUTHORIZING THE MAYOR TO RELINQUISH THE CITY'S EASEMENT CROSSING REAL PROPERTY OWNED BY HERSHEL T. ANDERSON AND LUDY D. ANDERSON

Due to a conflict of interest by Mayor Worley, Mayor Worley asked Councilman Peterson to preside over the meeting during this item.

Councilman Mumpower moved to excuse Mayor Worley from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Upon inquiry of Councilman Dunn, City Attorney Oast said he didn't feel there was a disqualifying conflict of interest for Councilman Dunn.

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Summary: The consideration of a resolution authorizing the Mayor to relinquish the City's easement crossing real property owned by Hershel T. Anderson and Lucy D. Anderson.

As part of the Brevard Road Annexation Phase III Contract "3" sanitary system improvements project, the City was required to provide sanitary sewer service to this property and other adjoining parcels. The City acquired an easement from the Andersons. The Andersons conveyed an easement to the City for the aforesaid purpose and the easement was recorded in Deed Book 2446 at Page 523 of the Buncombe County Register of Deeds Office. Subsequent negotiations with other affected property owners resulted in the revision of the horizontal alignment of the sanitary sewer line away from the Anderson's property. The City's Engineering Department has determined that this easement is no longer needed for this purpose or any other future needs.

The Engineering Department recommends adoption of the resolution authorizing the Mayor to execute a non-warranty deed relinquishing the City's easement interest.

Vice-Mayor Bellamy moved to adopt Resolution No. 03-88. This motion was seconded by Councilman Ellis and carried unanimously.

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Councilman Peterson relinquished the gavel back over to the Mayor to preside.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED ON KNOB HILL FROM RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT TO RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Worley said that City Council received the following letter on Tuesday, May 13, 2003, from Michael and Shirley Wells: "The merits of rezoning the property located on Knob Hill Road are numerous. Rezoning the property would not only provide a buffer zone between the industrial area and the residential area that adjoins it, but would also fully utilize the available land as a means of providing for additional affordable housing. Rezoning the property would be a step forward, moving the community toward growth, with a new infusion of people able to live closer to the Asheville area. The issues at stake today are the same issues that will be faced each and every time a piece of land falls into, what has been defined as, the 'Smart Growth' development pattern. There will be other properties that will come before the council with similar requests. As elected officials, your decision will be a difficult one; represent the best needs of the Asheville area or the best needs of the individual homeowner. Today, however, we will not ask you to make that decision. While we still believe our desire to build a quadruplex is justifiable, several homeowners in the neighborhood have made it clear that they are opposed to any growth to their community and frankly we have invested far too much time and energy in their irrational fears. Therefore, after much deliberation, we have chosen to withdraw our request to have the property located on Knob Hill Road rezoned. We appreciate all of the time and effort that has gone into bringing the request this far but would ask that you allow us to withdraw the petition."

B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 16 POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MOBILE HOME OVERLAY) TO HIGHWAY BUSINESS DISTRICT

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ORDINANCE NO. 3020 - ORDINANCE REZONING OF PROPERTY LOCATED AT 16 POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MOBILE HOME OVERLAY) TO HIGHWAY BUSINESS DISTRICT

Mayor Worley opened the public hearing at 5:25 p.m.

Ms. Shannon Tuch, Urban Planner II, said that this is the consideration of a request to rezone property located at the southeast corner of the intersection of Brevard Road and Pond Road from RS-8 Residential Single-Family High Density District with a Mobile Home Overlay (MHO) to Highway Business District. This public hearing was advertised on May 2 and 9, 2003.

Susan G. and Darrell Fender, Ronald Gentry, Debra K. Gentry and Terry L. Gentry, applicants, are requesting to rezone the southeast corner of the intersection of Brevard Road and Pond Road (PIN No. 9627.16-93-0902) from RS-8 (MHO) to Highway Business District to allow for further development of the Brevard Road corridor. The existing land uses in the area include single-family residences and mobile homes to the north, east, and west of the subject property. However, these residential uses are zoned Highway Business District and are anticipated to change in use over time. Additional residential uses are located to the south of the site and are zoned RS-8, however, they remain underdeveloped or vacant. In addition, there are several commercial or commercial industrial uses to the north and west of the subject property that would be more compatible with a Highway Business use.

The purpose of the RS-8 district is to provide a high density per acre for single family dwellings but this designation appears to have been underutilized with no, or low density, residential development. The lack of high density single family residential development is likely due to the amount of commercial development and commercially zoned properties adjacent to the subject property or in the vicinity. The Highway Business District is established to address the needs of commercial development

along major thoroughfares. The existence of an already established Highway Business corridor directs the future development of adjacent properties.

The site is located at the intersection of a major north-south thoroughfare and an east-west connector street, Pond Road, which already provides access to a number of commercial industrial uses to the west of the site.

A rezoning to Highway Business District would provide for appropriate continuity between the adjacent Highway Business zoned properties located along Brevard Road and would also serve as a compatible transition between the unzoned, undeveloped property on the east side of Brevard Road and the existing commercial industrial uses to the west of the subject property.

City staff feels Highway Business District is an appropriate zoning category for the property and recommends approval of the request to rezone the property to Highway Business District. The Planning and Zoning Commission at its April 5, 2003, meeting voted 7-0 to recommend approval of the rezoning as well.

Mr. William F. Wolcott III, listed agent for the property owners, spoke in support of the rezoning request.

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

Upon inquiry of Councilman Peterson, Ms. Tuch explained the type of buffer required.

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

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Councilman Ellis moved for the adoption of Ordinance No. 3020. This motion was seconded by Councilwoman Jones and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER A REVISION TO THE CONDITIONAL USE PERMIT FOR THE BROTHERTON AVENUE MULTI-FAMILY PROJECT LOCATED AT THE INTERSECTION OF BROTHERTON AVENUE AND VIRGINIA AVENUE

ORDINANCE NO. 3021 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR THE BROTHERTON AVENUE MULTI-FAMILY PROJECT LOCATED AT THE INTERSECTION OF BROTHERTON AVENUE AND VIRGINIA AVENUE

Oaths were administered to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process.

After hearing no questions about the procedure, Mayor Worley opened the public hearing at 5:33 p.m.

All Council members disclosed that they have visited the site and would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

Mr. Carter Pettibone, Urban Planner II, submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pettibone said that this is the consideration of a revision to the Conditional Use Permit for the Brotherton Commons multi-family project to allow for revisions to the approved site plan for the project.

The project site, which consists of two properties (PIN Nos. 9638.18-21-9316 and 9638.18-31-0773) currently owned by the City of Asheville, is located within the City Limits at the intersection of Brotherton Avenue and Virginia Avenue (City Exhibit 3 – Location Map). The subject properties are zoned RM-8 Residential Multi-Family Medium Density District/Conditional Use and are

surrounded by a predominantly detached single-family neighborhood zoned RS-8.

Originally, this project was approved as a conditional use rezoning from RS-8 to RM-8 (CUZ) and a conditional use permit for the project was issued on May 28, 2002. The project then received conditional technical approval from the Technical Review Committee and the developer began site development. On February 28, 2003, the applicant, Jack Morse, submitted development plans for a revision to the conditional use permit for the Brotherton Commons project. The proposed project consists of 32 condominium units along with a community center, open spaces, and two parking areas. The Technical Review Committee (TRC) reviewed the plans at its March 17, 2003, meeting and recommended approval with conditions. Some of the TRC comments were addressed in subsequent revised plans.

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Conditional uses are uses, which because of their unique characteristics or potential impacts on the surrounding neighborhood and/or city as a whole require individual consideration of their location, design, configuration, and/or operation at the location proposed.

Originally, the site plan called for the 32 dwelling units on 7.36 acres to be housed in nine buildings and average 1,100 square feet in area. As now proposed, the 32 dwelling units will be consolidated in 6 buildings and average 1,064 square feet (City Exhibit 3 – Site Plan). The arrangement of the buildings has also been revised with fewer units fronting on Virginia Avenue and Brotherton Avenue. The two buildings fronting on Virginia Avenue will remain two stories in height and the remaining buildings will be three stories, which is similar to what was originally proposed (City Exhibit 3 – Building Elevations). No additional dwelling units or developed areas within the site are proposed and the density of the project will remain 4.35 units per acre. Twenty-two of the 32 units will be reserved as affordable units (City Exhibit 3 – Site Plan).

A two-story (one story with basement) community building was also proposed initially and has been changed to a smaller single-story multi-purpose community center that can be converted from open-air shelter to heated space. In the place of the area taken up by the larger community building, the developer is now proposing a community garden and playground area.

The size of the two parking areas have been increased; now proposed are 59 spaces up from the 48 original. The developer also now proposes double-loaded spaces and optional covered parking for some of the spaces in the larger parking lot located off Brotherton Avenue. As originally proposed the dwelling units will utilize the two parking areas and no individual driveways are proposed.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2(c) of the Unified Development Ordinance (UDO). City Council must make seven (7) findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The findings are listed below. Following each finding is technical information from staff to assist Council in making these findings. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case:

1. That the proposed use or development of the land will not materially endanger the public health or safety.

The project received conditional technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District (MSD), Engineering, and other City Departments. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

2. That the proposed use or development of the land is reasonably compatible with significant natural and topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant:

The project complies with all City standards in regards to maximum clearing and grading, erosion control, and maximum slope for streets. The project has been designed with consideration for the natural and topographic features on the site and the immediate vicinity and preserves significant

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natural areas. Development, the density of which is considerably less than permitted in RM-8, is also concentrated near the

intersection of Virginia Avenue and Brotherton Avenue and is not proposed to the east and north, which is significantly steeper and more heavily wooded.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property:

The project's density is below what is permitted by either the site's RM-8 or the surrounding area's RS-8 zoning. Building design and scale has also been designed to be compatible with surrounding residential development.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located:

The project has been designed to take advantage of the slope of the property by incorporating basement dwelling units in some buildings. The proposed density is consistent with the area's current development and the project is intended to be compatible with the character of the surrounding area.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City:

The proposed residential development is at a density lower than what is permitted by the existing zoning district and appears to be consistent with the 2010 Comprehensive Plan. The proposed development will comply with all applicable UDO and Standards and Specifications requirements, as well as any of the City's other plans and policies. The development will also meet some of the City's Smart Growth policies.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities:

The project received technical approval from the Technical Review Committee, which includes representatives of the Water Resources Department, MSD, Engineering, the Fire Department, and Public Works. Tests of fire hydrants in the neighborhood indicate that recent improvements to the water infrastructure have been effective in resolving concerns about water flow for fire protection and water pressure.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Originally, as approved as part of the conditional use rezoning, it was thought that the traffic impact generated by the proposed use would not exceed the volume anticipated by single-family residential development. Since no additional dwelling units are proposed, no additional traffic is anticipated. The project has also been designed with pedestrian oriented characteristics.

The plan for the revision to the conditional use permit was reviewed by the TRC at its March 17, 2003, meeting. The TRC identified a number of outstanding technical issues and recommended approval with the condition that these issues be addressed prior to final approval. At present, the applicant is working with the various City departments to address these outstanding conditions.

Since all the conditions have not been addressed at this time, City staff recommends approval with the following conditions:

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- The site plan must be revised to identify forested areas to be preserved on the entire site and provision must be made to protect these areas.
- The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development and submit revised landscape plans.
- All plans must clearly and consistently identify areas to be set aside for permanent open space as required by the UDO.
- The developer must apply for a fee in lieu of sidewalks for the frontage of Brotherton Avenue not served by sidewalks.
- Fences to be used along Virginia Avenue or Brotherton Avenue are limited to four feet in height.
- All TRC comments are addressed.

Upon inquiry of Vice-Mayor Bellamy, Mr. Pettibone showed where the additional parking spaces would be located and how the landscaping will change.

When Councilman Dunn asked if the City awarded Community Development Block Grant (CDBG) funds for this project,

Community Development Director Charlotte Caplan said that \$397,000 of CDBG funds were allocated in 2000 for this project and \$147,000 will come back as CDBG programming from the sale of the land.

Councilman Mumpower stated that he voted against the original conditional use permit because of traffic concerns and since there have been no changes to mitigate the traffic pattern, he would have to regretfully vote against the revised permit as well.

Upon inquiry of Councilman Mumpower about the developer paying a fee in lieu of installing sidewalks, Planning & Development Director Scott Shuford explained that due to the topography along Brotherton Avenue and the relatively few houses along that portion of dead-end road, a fee in lieu of was being requested. He said that this would not have to come back to Council in that it is a staff-administered process which must meet certain criteria.

When Councilman Peterson stated that it looks like a clear-cut forest on that site, Mr. Pettibone explained the previous landscaping (City Exhibit 4 – Brotherton Co-Housing Site Plan) plan vs. the new plan (City Exhibit 3 – Site Plan).

Mr. Jack Morse, developer, reiterated Mr. Shuford's comments about why they are applying for a fee in lieu of building sidewalks along Brotherton. He felt that the fee was in the ballpark of what it would cost to install a sidewalk. He said that he has met with the neighbors to outline the changes and he felt the changes were well received. He said that on a total of 7.5 acres, there is only disturbance on about 3 acres and that is where the buildings are located. He then explained the need for increased parking spaces.

There being no request from the applicant for rebuttal, Mayor Worley closed the public hearing at 6:04 p.m.

Councilman Peterson felt the changes are fairly consistent with the original plan and meet the seven standards, but personally he didn't particularly like the way that the houses on Brotherton Avenue will have their backs toward the neighborhood. He felt staff needs to be aware that we are looking for something that is in character with the rest of the neighborhood.

Councilman Mumpower agreed with Councilman Peterson about the design of the project and felt there were many good things about the plan, but would have to vote against the revised permit just on the basis of consistency. He said the traffic issues that existed with the last plan have been enhanced with the addition of 11 more parking spaces.

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Councilman Dunn was also concerned about the traffic but recognized the need for affordable housing. He hoped that in the future when CDBG money is granted that projects be constructed quicker.

Councilwoman Jones moved for the adoption of Ordinance No. 3021 amending the Conditional Use Permit for the Brotherton Avenue multi-family project located at the intersection of Brotherton and Virginia Avenues, subject to the following conditions: (1) The site plan must be revised to identify forested areas to be preserved on the entire site and provision must be made to protect these areas; (2) The applicant and/or landscaper shall work with the Planning and Development Department to determine the best placement of buffering and landscaping materials throughout the development and submit revised landscape plans; (3) All plans must clearly and consistently identify areas to be set aside for permanent open space as required by the UDO; (4) The developer must apply for a fee in lieu of sidewalks for the frontage of Brotherton Avenue not served by sidewalks; (5) Fences to be used along Virginia Avenue or Brotherton Avenue are limited to four feet in height; and (6) All TRC comments are addressed. This motion was seconded by Vice-Mayor Bellamy and carried on 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 20 – PAGE 289

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE REQUIREMENTS FOR HOME OCCUPATIONS

ORDINANCE NO. 3022 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO REVISE THE REQUIREMENTS FOR HOME OCCUPATIONS

Mayor Worley opened the public hearing at 6:08 p.m.

Planning & Development Director Scott Shuford said that this is the consideration of an amendment to the Unified Development Ordinance to revise the requirements for home occupations. This public hearing was advertised on May 2 and 9, 2003.

This code amendment is a general "housekeeping" type amendment intended to clarify and simplify the wording of this section of the Unified Development Ordinance and to formalize prior interpretations of the code. For example, the existing subsections containing language about prohibitions against advertising and allowance of signage that may have seemed to be potentially conflicting are combined in one section for clarification purposes.

The two material changes to the code are listed below. Each codifies prior interpretations of the code.

- The revision of the parking requirements to establish a specific parking requirement and to allow someone who cannot park in the side or rear to have a home occupation (subsection f).
- The establishment of a specific limitation on the number of visitors allowed (subsection i).

The Planning and Zoning Commission recommended approval of this code amendment on April 2, 2003, by a vote of 7-0. City staff recommends approval of the proposed code amendment as well.

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At Council's May 6, 2003, worksession an additional clarification was suggested in order to allow incidental retail sales. Staff suggests the following language be added to revise subsection (d): On premise retail sales shall not be a principal component of the home occupation; incidental retail sales of items directly associated with the principal home occupation may be allowed.

Upon inquiry of Mr. Chad Nesbitt, Mr. Shuford explained the ordinance amendment.

Upon inquiry of Mr. Bill Fishburne, Mr. Shuford said that this would not apply to an occasional Tupperware-type party.

Mr. Fred English, Haw Creek resident, felt this ordinance was not necessary.

Ms. Pat Wald briefly explained an incident where a school in the residentially zoned Beaverdam Road area was allowed after City Council had denied their rezoning request. Mr. Shuford explained the circumstances surrounding the rezoning noting that they are in the process of investigating Ms. Wald's concerns and they will report back to her.

Mayor Worley closed the public hearing at 6:21 p.m.

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

After Councilman Mumpower questioned the limitation of six visitors, Mr. Shuford responded that a City staff member who has the experience of enforcing this ordinance suggested the number six. He felt six represents a reasonable amount of traffic volume and would be what you would typically see at any one time at perhaps at a dance class or musical lesson. He said they didn't research what other communities did in terms of that limit but would be happy to do that research if Council instructed him to do so.

Councilman Mumpower expressed his concerns about the six visitor limitation and wondered if we needed that provision in the ordinance or not. Mr. Shuford replied that in the absence of some specific quantitative study that manages to provide an exact number, it's really a policy issue for Council to decide whether six is a good number or not, or if Council wants to put that provision in or not. If a number is not put in, then you would have to rely on the good judgment of City staff to figure out what that provision means in terms of traffic impact.

Councilman Mumpower explained he was trying to make a case for affordable business for people who may not be able to afford the overhead.

As a compromise, Mayor Worley suggested the following revision to the second sentence of 7-16-1 (c) (32) (i): Pursuant to this, a maximum of six individuals per day will not be deemed to materially increase traffic.

Councilman Mumpower moved for the adoption of Ordinance No. 3022, with the following amendment to 7-16-1 (c) (32) (i) "The home occupation shall not materially increase the traffic that is found in its vicinity when the use is not in operation. Pursuant to this, a maximum of six individuals per day will not be deemed to materially increase traffic." This motion was seconded by Councilman Ellis and carried unanimously.

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IV. UNFINISHED BUSINESS:

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V. NEW BUSINESS:

A. ORDINANCE NO. 3023 - ORDINANCE AMENDING THE SOLICITATION AND PANHANDLING ORDINANCE

City Attorney Oast said that this is the consideration of amendments to the ordinance regulating solicitation and panhandling.

Back in November of last year, Council adopted some amendments to the City ordinance regulating solicitation and panhandling, particularly in downtown and Biltmore Village. Council expressed some concern about the reach of these amendments, and requested staff to propose further amendments to address these concerns.

The November amendments prohibited panhandling of any sort within a designated "halo" of certain locations such as banks, cash dispensing machines, or bus stops. It also prohibited panhandling while intoxicated or after dark; and prohibited panhandling from people standing in lines, such as for a musical or theatrical performance. The November amendments also prohibited panhandling within certain high traffic areas of downtown and Biltmore Village, because of their high tourist presence.

This draft retains the "halo" limitation, but clarifies that it applies to ATMs and financial institutions, and reduces the size of the halo from 50 to 20 feet; it retains other location-specific prohibitions, such as bus stops and taxi stands, and lines for entertainment venues; it adds outdoor dining areas and outdoor merchandise areas to the list of locations where panhandling is prohibited. The ordinance retains substantially all of the "aggressive begging" prohibitions, and adds some clarification to the acts that constitute aggressive begging. Also retained is the prohibition against panhandling while intoxicated. The previous ordinance prohibited those activities on public property; this proposal is not limited to public property.

The most significant change is in the regulation of panhandling within the high traffic areas. The areas themselves are the same. However, within these areas, a person would be able to make use of non-verbal means to panhandle or ask for money, such as displaying a sign, an open musical instrument case, or an upturned hat. What is prohibited within these areas is the use of personally-directed words or gestures. Solicitation between mutual acquaintances or family members is excepted from this prohibition.

These amendments target the conduct that has been a problem, and the locations where those problems arise, and is based on ordinances from other cities that have been judicially upheld. With respect to the high traffic areas, the amendments do not prohibit panhandling, but essentially establish a different threshold for what constitutes "aggressive begging".

These amendments are being brought forward with some changes to the sidewalk vendor ordinance.

In response to some questions raised at the May 6, 2003, worksession, the following should serve as a general guide for how the solicitation ordinance will apply:

Passive Solicitation:	Use of signs, open instrument cases; not personally directed
Active Solicitation:	Asking another person for money directly
Aggressive Solicitation:	Asking another person for money in a threatening manner

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Under the current ordinance, aggressive solicitation is prohibited City-wide; passive and active solicitation are permitted except in high traffic zones (part of downtown, Biltmore Village), where no solicitation of any kind is allowed.

Under the proposed ordinance, aggressive solicitation is still prohibited City-wide; passive and active solicitation are permitted except in the high traffic zones, where only passive solicitation will be permitted.

All of the location-specific prohibitions (intersections, ATMs, bus stops) will remain (with some clarification).

He suggested the proposed ordinance, Sec. (b)(1)j., be changed to permit passive solicitation after dark.

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

When Councilman Dunn explained why he felt this ordinance should be City-wide, not just in the high traffic zones, City Attorney Oast explained that solicitation has certain constitutional recognition as a First Amendment right and our ability to regulate that conduct is accordingly restricted. He said that he reviews cases constantly and if he becomes aware of something he thinks Council would consider, he will bring it back. In addition, if other areas of the City become high traffic zones then the ordinance could be expanded to those areas.

When Councilman Mumpower if other cities prohibit activity panhandling city-wide, City Attorney Oast said that he found none in his research, but did find a few cities that prohibited panhandling in certain defined areas of their towns. That prohibition included solicitation of any sort whether for personal benefit, for a charity, or as consideration for musical talent.

Councilman Peterson pointed out that the ordinance does have several prohibitions city-wide, e.g., within 20 feet of an ATMs, blocking the path of a person, using profane or abusive language, under the influence of alcohol, etc.

Councilman Ellis asked if the owners of private parking lots, like Wal-Mart and K-Mart, have the ability to control solicitation on their property. City Attorney Oast responded that when the areas are large pieces of private property, but essentially perform a public function, they sometimes take on the characteristics of public forums, and even though it is private property, people do have certain First Amendment rights in those areas.

Councilman Dunn felt private property owners, like the Asheville Mall or a strip mall, should not have to pay security officers to enforce the panhandling laws. City Attorney Oast said that the previous ordinance prohibited solicitation on public property and this amendment is not limited to public property. He noted that private property owners have other remedies available to them, such as trespassing, etc. If it is aggressive solicitation, however, then the Asheville Police Department can do something about that.

Mr. Chad Nesbitt wondered why the City was amending their ordinance if there has been no threat to sue the City.

Mr. Fred English pointed out that K-Mart and Wal-Mart have their own security to enforce rules on their own property.

Councilman Ellis moved for the adoption of Ordinance No. 3023. This motion was seconded by Councilman Peterson and carried unanimously.

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B. ORDINANCE NO. 3024 - ORDINANCE AMENDING THE SIDEWALK ORDINANCE

Director of City Development Sasha Vrtunski said that this is the consideration of a revised sidewalk ordinance to improve the administration and implementation of the ordinance.

As a result of the City Council's worksession on May 6, 2003, Ms. Vrtunski suggested the following amendment be added as Section 16-144 (17) "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exemption will be in effect until the time that the operator can no longer use the cart." She said this amendment would ensure that the one pushcart that does not comply with the size requirement would be allowed to continue operation. In addition, it ensures that all existing carts with permits will be allowed to continue operation.

When Councilman Dunn asked what would happen if the cart needed to be repaired, Ms. Vrtunski explained that if the new cart needed to be replaced, not repaired, it would have to be brought into compliance. Planning and Development Director Scott Shuford also responded that this is very common on zoning codes that if the use or the building is damaged or destroyed to 50% or more of its value then it has to be brought into compliance. For example, if you have a non-complying sign and the sign has to be replaced, it has to be replaced with a sign that would comply with the ordinance. He said the intent of this amendment is for the one cart that is out of compliance to continue to operate and be repaired, but it does fall apart or is unusable, it would have to

comply with the ordinance at that point in time.

Ms. Vrtunski gave Council a brief background in the crafting of the ordinance. She said that in 1999, a Sidewalk Usage Team was formed consisting of several City departments. They held meetings with the Downtown Commission, Streetscape Commission, Asheville Downtown Association Issues Committee, Asheville Downtown Association Board, Merchants Action Coalition and held two large public forums in which 500 businesses and residents were invited to give input on this ordinance. In 1999, City Council approved revisions to the sidewalk ordinance, which regulated outdoor dining, merchandise, pushcarts and street entertainers on City sidewalks in downtown and Biltmore Village. Communities nationwide have discovered that active sidewalks augment downtown revitalization efforts and enhance downtown businesses. Asheville has been a leader in this area for the past ten years. Downtown currently has 21 restaurants with sidewalk dining, 4 retail shops that display merchandise, 12 pushcarts and approximately 70 street entertainers. These uses contribute to our vibrant downtown and help businesses expand their sales area, especially during the warmer months.

It has been four years since the last amendments to the ordinance and staff felt that there was a need to fine-tune the ordinance. Some of the changes are simply wording changes that will make the ordinance clearer for both the public and staff. Other changes are being recommended to you as substantive ways to streamline and improve the ordinance.

This is not a complete summary of changes, but the major proposed changes are as follows:

Street Entertainers - With the revisions to the solicitation ordinance, it will be allowable for anyone to passively solicit. To make the sidewalk ordinance compatible with the solicitation ordinance, permits would no longer be issued for street entertainers. The rules for Street Entertainers in Section 16-145 (general requirements) would still be in force. Currently, police

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officers provide enforcement for this ordinance, and would continue to do so. If these revisions are passed, the City Development office will notify all current street entertainers of the changes, including the entire list of rules for entertainers.

Amendments to 16-145 include:

- Perform no longer than one hour in a location, and wait an hour before returning to that location. Generally, there have not been conflicts between entertainers, but this requires entertainers to share locations in downtown, especially popular ones.
- Not perform at locations designated for community event or festival, unless permitted to play at the event or festival by the coordinator. This is not a new rule per se, but has been added to this section.
- Minimum distance of 40 feet between entertainers.
- Entertainers must comply with the solicitation ordinance and the noise ordinance, and all other federal, state and local laws.
- Removal of requirement for street entertainers to obtain a permit.

Pushcarts

- Pushcarts may not be enclosed such that the pushcart operator can stand inside it.
- Pushcart operator shall keep the immediate area within a 5-foot radius of his/her pushcart clean.
- If a permitted pushcart operator requests to move, then he/she shall submit a new application and fee.
- Hours of operation extended from 9 a.m. – 10 p.m. to 7 a.m. - 10 p.m.
- Pushcart operators cannot be absent from their location for more than 15 consecutive days during the months of April through September. These months represent the busiest season for downtown, and there is a high demand for pushcart locations in the core of downtown. Currently, there is a problem with people obtaining permits, using the location occasionally, sometimes not at all, and tying up the spot so that no other pushcart vendor can use it. In cases where a pushcart operator is not consistently operating their cart, staff will be able to revoke their permit for non-use and allow another individual to place a pushcart on the location.

There are no changes to the Outdoor Dining and Merchandise section.

City staff recommends approval of the proposed sidewalk ordinance revisions.

Ms. Vrtunski said that the dimensions of the pushcart were arrived at due to the sidewalk widths downtown. As the downtown continues to thrive, pedestrian traffic and the demand on public space has increased. Given these dynamics, the City should clearly define the pedestrian passageways and establish boundaries of private use in public space. As the administrator of the ordinance, she needs to make sure staff can effectively and efficiently process permit applications and that there is also

predictability for cart operators so they know what the City expects. For those reasons, one cart size makes sense; permits are issued on a first-come, first-served basis; and it would be best if all carts (excluding the grand fathered cart) fit the approved sites. The current size is suited to all the locations, however, not all of our locations will accommodate larger carts.

Ms. Vrtunski said that the first sentence in Section 16-144 (2) which reads, "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart" was added to clarify the existing ordinance. City staff would have no problem if Council chose to delete that sentence, however, they would still recommend the 24 square feet size requirement remain.

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Councilman Mumpower expressed concern that pushcart operators cannot stand inside their carts. He felt there is nothing wrong with giving consideration to allow people to have some weather protection in a cart. Mr. Davis (the pushcart operator who has the only non-conforming cart) is the only successful pushcart operator in the City so far. He is the example of someone who can maintain a good business by serving consistently and with our weather factors, consistency seems to require some level of protection. Since the City is recommending a maximum of 24 square feet and Mr. Davis' cart is 30 square feet, he felt we should amend our ordinance to allow all our vendors to be protected on a year-round basis. He felt that when we adopt rules, we need to make things better and not restrictive. We felt we should make our ordinance more use-friendly.

Ms. Vrtunski said that Mr. Davis used to be the only pushcart operator but within the last three years we have gone from two operators to approximately seven operators who operate in 11 spots. Even though this seems small, it is a dramatic increase.

Councilwoman Jones moved for the adoption of Ordinance No. 3024, with the addition of Section 16-144 (17) as read by Ms. Vrtunski above. This motion was seconded by Councilman Ellis. Mayor Worley pointed out that Council has not heard from the public yet and that a motion at this time is not appropriate.

Vice-Mayor Bellamy felt that Section 16-144 (2)'s first sentence should be deleted, which deals with pushcarts not being enclosed. In addition, she supported increasing the dimensions of the pushcart from 24 square feet to 30 square feet.

Councilman Ellis supported the ordinance as proposed by staff. He felt that the grand fathered cart was fine, but had concerns about establishing semi-permanent-type pushcarts downtown because they do block traffic and they compete with downtown restaurants that do pay property taxes. This ordinance amendment has gone through the process of the Downtown Commission, Downtown Association and all downtown merchants.

Councilman Mumpower felt that if we get a saturation of pushcarts and they begin to present a problem, then we can amend the ordinance again. However, he was suggesting that we try the experiment that seems to have worked with the one consistent successful example we have of allowing him some protection from the weather.

Councilwoman Jones supported the ordinance as proposed by staff as well.

Mr. Fred English pointed out that the vendors do pay \$125 for a permit.

Mr. Chad Nesbitt felt that the ordinance was unnecessary.

Mr. Bill Fishburne felt Council should allow all pushcarts to be 30 square feet and suggested the City pro-rate the permit fees.

Councilman Mumpower moved to amend (1) Section 16-144 (2) to delete the first sentence that reads "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart;" and (2) Section 16-144 (13) (ii) to increase the square footage from 24 square feet to 30 square feet. Ms. Vrtunski said that the guiding principle for being sheltered from the elements is the height of the cart. If we strike the first sentence in Section 16-144 (2), there needs to be an adjustment to the height requirement. There was no second to the motion.

Mayor Worley asked if all of the available locations would accommodate the larger 30 square feet size. Ms. Vrtunski replied no, but she hasn't physically measured each location. She

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also had a concern that if you have someone construct a cart 30 square feet, they might not get the same spot they had last year and the only available location left doesn't fit the cart. City

Attorney Oast also responded that we do have ordinances that prohibit people from obstructing the sidewalk.

When Councilman Peterson suggested an ordinance amendment to identify those locations downtown that a larger cart would be permissible, Mayor Worley suggested language be included that allows staff to designate those areas where the larger carts could be accommodated.

Upon inquiry of Councilman Mumpower, Ms. Vrtunski said we currently have 23 sites that are designated as available. One example where a larger cart would not fit is Pack Square, near the four restaurants.

Councilwoman Jones felt it was unfair if someone invests \$4,000 in a pushcart and then finds out they can't use it.

Councilman Dunn felt that if the larger cart locations are identified then the pushcart operator should be given advance notice of those locations. It would be up to him then if he chooses to build that larger one.

Councilman Mumpower felt it is not fair for the City to force people to work out in the weather.

At 7:27 p.m., Mayor Worley announced a short break.

Councilman Mumpower moved to adopt the ordinance with the following amendments: (1) Section 16-144 (2) to delete the first sentence that reads "The pushcart shall not be enclosed such that the pushcart operator can stand inside the pushcart;" (2) Section 16-144 (13) (i) to change 4'6" in height to 8" in height; (3) Section 16-144 (13) (ii) to allow for a minimal standing room within a cart; (4) Section 16-144 (13) (ii) to increase the square footage from 24 square feet to 30 square feet and that the width be kept at no wider than 4 feet; and (5) a new Section 16-144 (17) to read as follows: "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exception shall be in effect until the time that the operator or his successors can no longer maintain the cart in a fashion acceptable to the Health Department or in a fashion that precludes its ready removal in the event of an emergency situation." This motion was seconded by Councilman Dunn.

Vice-Mayor Bellamy wanted to make sure that the pushcart owners are made aware of the locations of spaces that larger carts would accommodate and also that it's on a first-come, first-served basis. Ms. Vrtunski said that will be made known to the operators during the application process.

Councilman Mumpower didn't believe that pushcarts represent major danger to our existing restaurants and if it appears to be the case, we can amend the ordinance in the future.

Councilman Peterson felt the original proposal is more consistent with how he would like to see downtown developed.

Mayor Worley felt all of Council was in favor of allowing pushcarts because they are a fabric of our downtown. He felt the reality is that these size limitations have been in effect since

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1999 after considerable discussion and we have had no complaints about the size limitations. Council's original concern has now been addressed by the grandfather provision. He supported adopting the ordinance as originally proposed, with the grandfather clause, and with the deletion of the pushcarts not being enclosed.

The motion made by Councilman Mumpower and seconded by Councilman Dunn failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting "yes" and Mayor Worley, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting "no."

Councilman Peterson moved to adopt the original ordinance as presented by staff with the following amendment: A new Section 16-144 (17) to read as follows: "Any pushcart with a valid permit as of May 15, 2003, that complies with Ordinance No. 2595 (1) (b); Section 16-144 (13) passed June 22, 1999, or in operation before the passage of said ordinance, will be allowed to continue operation subject to the remaining provisions of this Code section. This exception shall be in effect until the time that the operator or his successors can no longer maintain the cart in a fashion acceptable to the Health Department or in a fashion that precludes its ready removal in the event of an emergency situation." This motion was seconded by Councilman Ellis.

Mayor Worley asked if Councilman Peterson and Councilman Ellis would be willing to amend their motion to delete the first sentence in Section 16-144 (2) that reads, "The pushcart shall not be enclosed such that the pushcart operator can stand inside

the pushcart.” Councilman Peterson and Councilman Ellis both agreed to amend their motion to delete that sentence.

The amended motion made by Councilman Peterson and seconded by Councilman Ellis passed on a 4-3 vote with Mayor Worley, Councilman Ellis, Councilwoman Jones and Councilman Peterson voting “yes” and Vice-Mayor Bellamy, Councilman Dunn and Councilman Mumpower voting “no.”

City Attorney Oast said that since the ordinance failed to pass by a 2/3 vote, there would have to be a second reading of the ordinance at the next formal meeting on May 27, 2003.

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C. RESOLUTION NO. 03-89 - RESOLUTION APPOINTING AN ALTERNATE TO THE BOARD OF ADJUSTMENT

Vice-Mayor Bellamy said that on April 22, 2003, there was a tie vote between Jane Mathews and Bradley Taylor for an alternate seat on the Board of Adjustment.

Jane Mathews received 3 votes and Bradley Taylor received 4 votes. Therefore, Bradley Taylor was appointed as an alternate member to the Board of Adjustment to serve a three year term, term to begin immediately and expire on January 21, 2006, or until his successor has been appointed.

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VI. OTHER BUSINESS:

Budget Worksession

It was the consensus of City Council to hold a budget worksession on Thursday, June 5, 2003, at 3:00 p.m., in the First Floor North Conference Room of the City Hall Building.

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Board Vacancies

Vice-Mayor Bellamy announced that City Council was accepting applications for vacancies on the following Boards: The Civic Center Commission, the Regional Water Authority and the Civil Service Board. The application deadline is Friday, May 16, 2003, at 5:00 p.m.

Claims

The following claims were received by the City of Asheville during the period of April 11-24, 2003: Nancy Restuccia (Inspections), Victor Babaoff – WNC Tire (Fire), James Lauer (Parks & Recreation), BellSouth (Streets), BellSouth (Water) and Nancy Tabel (Sanitation).

The following claims were received during the period of April 25-May 1, 2003: Heidi McDaniel (Water), Jimmy Cole (Water), Esther C. Hollifield (Water) and John C. Redmond (Streets).

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

Lawsuits

The City filed a Complaint on May 2, 2003, which is generally described as follows: City v. Carol Howard, Commissioner of N.C. Div. of Motor Vehicles, Dept. of Crime Control & Public Safety. The nature of the proceeding is a refund of \$4,010 paid by the City for a protested civil penalty. This matter will be handled in-house.

The City received a Complaint on May 9, 2003, which is generally described as follows: Buncombe County vs. James B. White Sr. and wife Helen C. White, et al. The nature of the proceeding is tax foreclosure proceedings for unpaid real estate taxes. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Fred English

Mr. Fred English commented on several items and felt that City Council should be looking for ways to save money.

Closed Session

At 8:02 p.m., Councilwoman Jones moved to go into closed session to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorized the payment of economic development incentives will occur in open session. The statutory authorization is contained in G. S. 143-318.11 (a) (4). This motion was seconded by Councilman Dunn and carried unanimously.

At 8:29 p.m., Councilman Dunn moved to come out of closed session. This motion was seconded by Councilman Ellis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 8:29 p.m.

CITY CLERK

MAYOR