

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower (left meeting unexcused at 9:28 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; Assistant City Manager Jeffrey B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell gave the invocation.

**I. PROCLAMATIONS:**

**A. EMPLOYEE RECOGNITIONS**

Assistant City Manager Richardson recognized (1) Jason Mann, Stephanie Osbourn, Dave Michelson, Tony McDowell and Richard Grant employees who were instrumental in obtaining approximately \$300,000 for the state reimbursement for utility franchise fee; (2) Mark Combs, Steve Henderson and Wendy Simmons for their implementation of the new Roll Out Trash Can Program at Pisgah View apartments; (3) Sara McHone, Chad Pierce, Brad Davis, Leslie Carriero, Ron Kerns, Ivan Thomas, Nanci Farmer, Florie Presnell and Audran Stevens for their input into the Building Safety Department's ISO Certification, which auditor noted that the City of Asheville is a model organization for processes, education, training, and documentation; (4) Detective Kevin Taylor and Detective Yvonne Cobourne in the involvement in the cold case file of the death of Sandra Proffitt leading to the Asheville Police Department charging Terry Luther Spivey in the 1990 homicide; (5) Ken Putnam, David Foster, Dave Michelson, Jason Mann, Chad Pierce, Jeff Reble and Trisha Hardin for their efforts involving a public information outlet to notify the community about street closures; and (6) Gordon Reis – Parks and Recreation; David Rutledge – Police; Clarence McAfee – Fire; Patricia Hensley – Water; Beverly Ann King – Finance; David Anders – Fire; and Flavious Jackson (Transit Authority) who have retired with 30 years of service.

On behalf of City Council, Mayor Bellamy thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

Mayor Bellamy welcomed Ms. Edna Johnson as the new General Manager to the Transit Authority.

**B. PROCLAMATION PROCLAIMING APRIL 2009 AS "AUTISM AWARENESS MONTH"**

Vice-Mayor Davis read the proclamation proclaiming April 2009, as "Autism Awareness Month" in the City of Asheville. He presented the proclamation to Ms. Jean Alvarez, representing the Autism Society of North Carolina, who briefed City Council on some activities taking place during the month and thanked City Council for their support.

**C. PROCLAMATION PROCLAIMING APRIL 2009 AS "JAZZ APPRECIATION MONTH"**

Councilwoman Cape read the proclamation proclaiming April 2009, as "Jazz Appreciation Month" in the City of Asheville. She said that the proclamation would be sent to the WNC Jazz Society.

**II. CONSENT AGENDA:**

At the request of Councilman Mumpower, Consent Agenda Item "B" was removed from the Consent Agenda for discussion and/or an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 24, 2009**

**B. RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S SMART GROWTH IMPLEMENTATION ASSISTANCE PROGRAM**

This item was removed from the Consent Agenda for discussion and/or an individual vote.

**C. RESOLUTION NO. 09-58 - RESOLUTION ACCEPTING ALLIANCE COURT, HEART DRIVE, MACHEN ROAD, RIDGEFIELD BOULEVARD AND RIDGEFIELD COURT AS CITY-MAINTAINED STREETS**

Summary: The consideration of a resolution to accept three existing state-maintained streets as city-maintained streets and two privately-maintained streets as city-maintained streets, all from the recently annexed areas of the City of Asheville.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The recently annexed areas include the Ridgefield Business Park area and the Airport Road area. These areas were challenged through the Court system and the City prevailed.

SR 3624 (Ridgefield Blvd) from NC 191 (Brevard Road) to NC 191 (Brevard Road) is a state-maintained street that has an average width of 27 feet and 54 feet with 2-foot curb and gutter, a length of 0.83 mile, and a right-of-way width of 50 and 105 feet.

SR 3625 (Ridgefield Court) from SR 3624 (Ridgefield Blvd) to its dead-end is a state-maintained street that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.24 mile, and a right-of-way width of 45 feet.

SR 3644 (Machen Road) from SR 3527 (Bradley Branch Road) to its dead-end is a state-maintained street that has an average width of 18 feet with 4-foot grass shoulder, a length of 0.11 mile, and a right-of-way width of 45 feet.

Alliance Court from SR 3625 (Ridgefield Court) to its dead-end is a developer constructed street (privately-maintained) that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.05 mile, and a right-of-way width of 50 feet.

Heart Drive from SR 3624 (Ridgefield Blvd) to its dead-end is a developer constructed street (privately-maintained) that has an average width of 27 feet with 2-foot curb and gutter, a length of 0.18 mile, and a right-of-way width of 60 feet.

As a part of the Annexation Services Plan, the subject streets were inspected by Transportation and Engineering Department staff and Public Works Department staff and the general street conditions were determined to be satisfactory and any maintenance issues will be handled as part of the City's routine maintenance funding.

Typically, state-maintained streets that are entirely within the city and are classified as local type streets make good candidates to become city-maintained streets. Local type streets primarily provide access to property and many of these streets are found in residential communities.

Following City Council's approval of this resolution and approval by the North Carolina Department of Transportation for Ridgefield Blvd, Ridgefield Court, and Machen Road, the subject streets will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City. In addition, this action complies with the Annexation Services Plan for the Ridgefield Business Park area and the Airport Road area that was approved by City Council on April 26, 2005.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access and connectivity in a residential community and a professional business park.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.

- There will be no initial financial impact to the City, although the responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to \$6,326 per mile compared to the City's maintenance cost of \$18,189 per mile.

- Staff recommends that City Council accept the subject streets as city-maintained streets.

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**D. RESOLUTION NO. 09-59 - RESOLUTION AUTHORIZING THE CITY MANAGER TO WAIVE THE ANNOUNCEMENT REQUIREMENTS AS SET FORTH IN N.C. GEN. STAT. SEC. 143-64.31 TO PROVIDE ENGINEERING SERVICES FOR RANKIN AVENUE PARKING GARAGE**

Summary: The consideration of a resolution authorizing the City Manager to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

The City of Asheville owns and operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. The Civic Center deck was built in 1976. Rankin Avenue and Wall Street Garages were constructed in 1988. These parking decks have deteriorated and require restorative maintenance. This maintenance typically consists of waterproofing, concrete repairs, and re-caulking of joints between concrete slabs. The City of Asheville commenced a multi-year program to accomplish restoration of the garages in 2007. The restoration work was completed in Civic Center garage in 2008. Our capital program anticipated restoration work on Wall Street Parking Garage in fiscal year 2009 and in Rankin Avenue Parking Garage in fiscal year 2011.

Parking Services sent out a Request for Proposal to engineering firms for the restoration of Wall Street Parking Garage. The scope of work included a detailed assessment of the condition of the facility, preparation of working drawings, preparation of bid package for general contractors, and supervision of the restoration work. Five firms responded to the request for proposal. Based on qualifications, Walker Parking Consultants was selected to perform the work.

The Fiscal Year 2009 budget includes \$500,000 in debt service for the proposed parking garage at 51 Biltmore Avenue. We will not need to make this debt service payment and would like to use this money to move ahead with the renovations to the Rankin Avenue Parking Garage. We requested that Walker Parking provide us with a fee to perform the design analysis for the Wall Street and the Rankin Avenue Garages. The fee is \$82,000 and \$34,750 for Wall Street and Rankin Avenue Garages respectively for a total fee of \$116,750.00. City Council approved awarding the contract to Walker for the design of both parking garages on February 24, 2009, with the understanding that staff would need a waiver from the announcement requirements for the design of the Rankin Avenue Garage.

Staff is requesting authorization to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

This action complies with the City Council Strategic Operating Plan in that it addresses a plan to maintain the City's aging facilities.

Pros:

- Combining the engineering services for both Rankin Avenue and Wall Street garages significantly reduces the overall cost than if they were done separately.
- The advantage of this to the City is by correcting problems in the deck now will prevent more costly repairs later and will extend the useful life of the parking facilities.
- Precludes the City from having to fund a large debt service and restoration project in one fiscal year.

Con:

- Completing both garages at the same time can be administratively cumbersome but is not insurmountable.

Funds were approved in the Fiscal Year 2008-09 Operating and Capital Improvement Plan budgets.

City staff recommends City Council adopt a resolution authorizing the City Manager to waive the announcement requirements as set forth in N.C.G.S. § 143-64.31 to provide engineering services for Rankin Avenue Parking Garage.

**RESOLUTION BOOK NO. 32 – PAGE 4**

**E. RESOLUTION NO. 09-60 - RESOLUTION AUTHORIZING EXECUTION OF EASEMENT FOR POWER LINE AT WNC AGRICULTURAL CENTER (AIRPORT ROAD)**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the Western North Carolina Agricultural Center (herein "WNCAC")

The land on which the WNCAC is located is owned by the City of Asheville. It is leased to the State of North Carolina, specifically, the Department of Agriculture and Consumer Services, which uses it for the WNCAC. A new facility, the "Arts and Crafts Center," is being constructed on the property, and this new facility requires electrical service. The new lines would run from Airport Road, east across the south edge of the parking lot to the transformer. The easement area would include 10 feet for the line, with the line being in the center, and 10 feet around the enclosure for the transformer.

This installation has been approved by the Department of Agriculture, which requested it. Such improvements are within the scope of and contemplated by the lease.

This action complies with the City's Strategic Operating Plan in that it contributes to an existing partnership with the State for the operation of a regional facility, and promotes the Asheville area as an arts and crafts center.

Pros:

- Facilitates development and use of WNCAC

- Promotes arts and crafts heritage

Cons:

- None noted

No direct fiscal impact for City; marginal impact on State.

- Adoption of the resolution is recommended

#### **RESOLUTION BOOK NO. 32 – PAGE 5**

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy 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.

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

#### **ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

##### **RESOLUTION NO. 09-57 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S SMART GROWTH IMPLEMENTATION ASSISTANCE PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to apply for U.S. Environmental Protection Agency's Smart Growth Implementation Assistance Program.

The EPA has issued a call for proposals via their annual Smart Growth Implementation Assistance (SGIA) Program. This program is available to communities that want to develop in ways that reflect the principles of smart growth in order to foster economic development, protect environmental resources, enhance public health and meet other social and community goals. As a governmental agency and community that has embraced and supported smart growth principles, Asheville is eligible to serve as a primary applicant and submit a request. Successful applications are awarded technical assistance in the form of a multi-day visit from a team of experts organized by EPA and other national partners to work with local leaders. Team members will be nationally known experts in disciplines to be determined by the community's unique needs expressed in the application documents. City staff (Planning, Economic Development and Transportation) has collaborated with private partners including Mountain Housing Opportunities and the Asheville Design Center, to submit an application for assistance. Applications are due by April 23, 2009, and require support from elected officials.

The City of Asheville and its partners will ask for technical assistance in exploring policy options that maintain the community's vehicular mobility via major transit corridors while exploring options for neighborhood revitalization through corridor re-development and infill development focused on mixed uses, multi-modal transportation and the inclusion of affordable, accessible housing. This policy analysis will address the problems that Asheville's highway corridors have effectively created and our comprehensive plan and current practices fail to correct: disconnected neighborhoods and a sprawling, suburban development pattern around the city's urban core.

The analysis will be guided by the community goal of integrating transportation and land use as an economic development vehicle. The focus area will be Tunnel Road and US 70 east where need and opportunity appears to be the greatest; however, emphasis will be placed on developing policy that can be adapted and replicated in other corridors.

- The City would be the primary applicant for this proposal but will work closely with Mountain Housing Opportunities and the Asheville Design Center as co-applicants. Other community partners (or stakeholders) may include: Haw Creek Neighborhood Association; Asheville Buncombe County Christian Ministries; Pisgah Legal; River Link; the Clean Air Community Trust Fund; Land of Sky Regional Council; and the Western North Carolina Alliance.

Regarding Council's Strategic Operating Plan, the following two goals most directly addressed are: (1) Promote sustainable, high density infill growth that makes efficient use of existing resources; and (2) Ensure financial accountability by matching resources with strategic initiatives. Successful and effective policy in this area could also impact the following strategic goals: (1) Increase supply of affordable housing; (2) Support diversified job growth; (3) Promote emissions reducing transportation options; (4) Prioritize infrastructure investments that support citizen health and safety; and, (5) Develop plans with citizen participation.

- This application proposal was shared with the Planning & Economic Development Committee at their March 11, 2009, meeting and was unanimously endorsed.

Pros:

- If awarded, provides free expert assistance to a challenging corridor.

- Provides opportunity for collaboration between City staff and private partners.
- Successful implementation has the potential for meeting a number of strategic goals.

Con:

- Requires time commitment on behalf of staff and private partners.

Successful applicants for the SGIA program would be required to provide equivalent in-kind services during the contract team visit, and resources must be dedicated to analysis implementation (post visit). Estimates of City of Asheville in-kind assistance include:

- Pre-award: 10 hours
- Contract team visit: 25 hours
- Post- award hours:
  - First month after visit (assistance with report preparation): 20 hours
  - First quarter after report (Council consideration of any resulting recommendations): 25 hours.

Long term resource dedication cannot be estimated at this time. There is no financial contribution by the City other than the in-kind resources listed above.

Staff recommends the adoption of the resolution authorizing the City Manager to apply for the EPA Smart Growth Implementation Assistance Program.

After Ms. Tuch was unable to specifically state the dollar amounts of the in-kind City contribution, Councilman Mumpower felt the federal government should concentrate on the responsibilities they (not the City) control and let the City handle their responsibilities, noting that the City has the expertise in smart growth principles.

After Mayor Bellamy asked for public comment, but received, none, Councilwoman Cape moved for the adoption of Resolution No. 09-57. This motion was seconded by Councilman Newman and carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

#### **RESOLUTION BOOK NO. 32 – PAGE 1**

### **III. PRESENTATIONS & REPORTS:**

#### **A. HEALTH OF DOWNTOWN ASHEVILLE RECOMMENDATIONS**

Mr. Mike Rangel, Owner of Asheville Pizza & Brewing Company, representing the Quick Action Committee, provided Council with the following background information (1) more letters, phone calls and e-mails from residents and visitors expressing concern over "Health of Downtown" received; (2) presentations to Asheville Downtown Commission and City Council by Kelly Miller in fall of 2008; and (3) four areas routinely mentioned were graffiti vandalism, towing, cleanliness and panhandling.

Council's direction was for the committee to (1) come back to City Council with quick action steps recommendations addressing the four main concerns; and (2) have City staff follow up on recommendations.

Regarding the following, (1) two Quick Action Committee meetings were held; (2) Committee included representatives from Asheville Downtown Association, Downtown Asheville Residential Neighbors, Asheville GreenWorks, Asheville Area Chamber of Commerce, Lexington Avenue Merchants Association, small business owners, and others; (3) City staff attended as a valuable tool; and (4) Councilman Miller has met several times with staff to make sure recommendations were legal and met strategic goals.

Regarding graffiti vandalism, key recommendations include quick action steps recommendations in four special areas of concentration (1) clean-up (a) City-owned property: Public Works to remove all reported graffiti vandalism on City-owned property by a specified time period; (b) City staff to work with recycling contractors, commercial waste haulers, and utility companies to remove graffiti vandalism from their properties within a specified period of time; (c) 50/50 matching grant program for property owners to help cover one-half graffiti abatement costs; (d) research and recommend to Council a possible third party to be the first responder for graffiti vandalism removal; and (e) encourage and promote more groups like Asheville GreenWorks, who are removing graffiti for property owners at cost, as well as providing graffiti removal kits for small surfaces; (2) enforcement (a) the purchase and installation of a high definition, moveable surveillance camera capable of catching graffiti vandals in the act; (b) increase the number of stakeouts; (c) CrimeStopper rewards for citizens turning in graffiti vandals; (d) make public aware of motion sensor lights as a major graffiti vandalism deterrent; (e) govern spray paint sales; and (f) more boot patrolling; (3) policy; and (4) community and education (a) officially launch "Vandal Free in 3," a voluntary community-wide program that residents and property owners pledge to do all they can to remove graffiti vandalism within 72 hours (3 days); (b) create "Vandal Free in 3" website and launch public relations campaign including press conference. Website will serve many purposes, including report graffiti vandalism; post before and after photos; graffiti vandalism removal tips; volunteer sign-ups; frequently asked questions, etc.; (c) establish a hotline to report all graffiti vandalism; (d) Shame Game: Committee recommended promoting names and photos of captured graffiti vandals. Subsequent research by staff reveals conflicting viewpoints; and (e) communicate to the community the economic impact of graffiti vandalism and how these acts increase

consumer prices.

Regarding non-consensual towing, key recommendations include (1) regulate through ordinance (passed City Council on March 24, 2009); (2) convene major downtown property owners who own lots and discuss current challenges and opportunities regarding parking in private lots; (3) continue to explore feasibility of awarding parking contract to a third party parking vendor similar to other North Carolina cities; and (4) the integrated wayfinding program will be installed this summer/fall, directing drivers to City-owned parking decks. This should help in reducing the number of cars illegally parked in private lots.

Regarding cleanliness, key recommendations include (1) if dollars are available, have dedicated City staff tackle litter and weeds problem on a regular schedule; (2) Asheville GreenWorks to encourage monthly clean-ups by Adopt-A-Street sponsors; (3) more trash cans in Central Business District and at bus stops; and (4) make sure enough resources are available to keep Asheville's new "living room," Pack Square Park, clean.

Regarding panhandling, key recommendations include (1) re-launch "Spare Change for Real Change" effort; (2) increase number of "Spare Change" receptacles; (3) pursue City's strategic goal of establishing a "nuisance court" that can effectively deal with panhandlers; and (4) promote widely and encourage residents to call the Asheville Police Department at 252-1110 to report panhandling when witnessed.

In summary – Recommended Next Steps: (1) Ask staff to identify recommendations which can be implemented immediately with no budget impact; (2) Ask staff to identify recommendations which need budgetary funding for implementation; and (3) Ask staff to identify recommendations which need local ordinance adoption for legal implementation.

He said that to be successful, we must be diligent and focused on all four strategies.

Mayor Bellamy thanked Mr. Rangel for allowing the City to place their recycling center on his property as well as allowing the community to use his parking lot for the tailgate market.

Councilman Miller moved to direct City staff (1) to identify recommendations which can be implemented immediately with no budget impact; (2) to identify recommendations which need budgetary funding for implementation; (3) to identify recommendations which need local ordinance adoption for legal implementation; and (4) to report back to Council on May 26, 2009. This motion was seconded by Councilman Mumpower.

When Councilman Mumpower expressed concern over the length of time to report back to Council since the report was originally given to Council in October, Mayor Bellamy said that Asheville has been working throughout that time, citing the adoption of the non-consensual towing ordinance, kicked off the cleanliness campaign for April 25 with Asheville GreenWorks, continuing to work with the N.C. Dept. of Transportation on various projects, etc.

Mr. Rangel and Councilman Miller responded to various questions/comments from Councilwoman Cape, some being, but are not limited to: what entities are envisioned with the 50/50 matching grant program for property owners to help cover ½ of the graffiti abatement costs; is anyone aware of any grants that might be available for graffiti abatement; explanation of the first responder for graffiti removal; explanation of a third party parking vendor relative to the non-consensual towing ordinance; and suggestion of making a concerted effort to create relationships with clients of A-HOPE, ABCCM, etc. in order to make them feel a part of the community and perhaps participate in an Adopt-A-Street program.

Mayor Bellamy said that the Homeless Task Force has discussed this issue and the recipients of services from the Rescue Ministries and Homeward Bound have started cleaning up around their areas.

Councilman Newman updated Council on the nuisance court concept, which is moving forward. He felt it was possible to have the program running in the new fiscal year which will bring more accountability to the people who are being chronically arrested.

Councilman Russell was pleased to see the hotline to report graffiti vandalism and the use of volunteers.

Councilman Mumpower (1) suggested the City remove graffiti off their own property in three days (as is the same for property owners); (2) spoke against the 50/50 matching grant program in that the costs for that program would be difficult to determine; (3) supported the first responder relationship for graffiti removal as the costs of the initial equipment is defined; (4) spoke against governing spray paint sales due to complexity of enforcement; (5) spoke in support of a significant reward program for citizens turning in graffiti vandals; (6) supported a specific page on our website identifying all types of people that abuse our community; and (7) suggested information be placed on the Spare Change for Real Change boxes of the intent behind the boxes and a phone number to call if anyone is abused.

Ms. Susan Roderick, Executive Director of Asheville GreenWorks, spoke in support of the nuisance court and urged Council to continue their support of police officers.

Councilman Miller thanked representatives from Asheville GreenWorks, Mr. Rangel and all the Committee members for their

hard work on this Committee and their on-going commitment to improve the health of downtown.

The motion made by Councilman Miller and seconded by Councilman Mumpower carried unanimously.

**B. ECONOMIC STIMULUS PACKAGE UPDATE**

**RESOLUTION NO. 09-61 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE SARDIS ROAD AREA SANITARY SEWER LINE PROJECT**

**RESOLUTION NO. 09-62 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE AIRPORT ROAD AREA SANITARY SEWER LINE PROJECT**

**RESOLUTION NO. 09-63 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS PROJECT**

**RESOLUTION NO. 09-64 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE ROSS CREEK STORMWATER IMPROVEMENTS PROJECT**

**RESOLUTION NO. 09-65 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE VICTORIA ROAD DRAINAGE IMPROVEMENTS PROJECT**

**RESOLUTION NO. 09-66 - RESOLUTION APPROVING APPLICATION TO THE CLEAN WATER STATE REVOLVING FUND FOR ECONOMIC STIMULUS FUNDING FOR THE OLD TOLL ROAD STORM DRAIN REPAIR AND STABILIZATION PROJECT**

**RESOLUTION NO. 09-67 - RESOLUTION APPROVING APPLICATION TO THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES HIRING RECOVERY PROGRAM**

Assistant to the City Manager Lauren Bradley updated Council on the following application for the economic stimulus package. She said that as part of city staff's recurring ARRA update to Asheville City Council, staff is seeking Council consideration of Governing Board resolutions in support of applications for ARRA funding for six infrastructure projects from the Clean Water State Revolving Fund and for the salary costs of 12 full-time, sworn police officers from the Office of Community Oriented Policing Services (COPS) Hiring Recovery Program (CHRP).

**Clean Water State Revolving Fund**

At the City Council meeting on February 24, 2009, Council approved through consensus staff submission of letters of intent to apply for ARRA funding for six projects from the Clean Water State Revolving Fund. These six projects include a Sardis Road Area Sanitary Sewer Line, Airport Road Area Sanitary Sewer Line, Dingle Creek Stormwater Improvements, Ross Creek Stormwater Improvements, Victoria Road Drainage Improvements, and Old Toll Road Storm Drain Repair and Stabilization. At its March 26, 2009, meeting, the City Council Finance Committee reviewed the proposed projects and authorized staff to submit applications for funding. The Finance Committee also recommended that City Council approve a resolution in support of these applications, which is required as part of the application process. These projects are part of City Council's strategic goals to create jobs to aid in economic recovery and enhance the sustainability of city infrastructure.

**Pros:**

- Approval of these projects will ensure continuation of the application process. If awarded, the City of Asheville could realize significant savings in project costs.

**Cons:**

- If the resolutions are not approved, the application process and funding potential for these projects will not move forward, and the full project costs will be the City's responsibility.
- Approval does not guarantee the state will approve any or all of these projects.

There is no fiscal impact at this time for City Council to approve the resolution supporting these applications. If the projects are approved by the state, the CWSRF will award a zero percent interest loan, and forgive half the principal, to complete the projects.

Staff recommends that the Mayor and City Council approve resolutions for the six approved clean water projects known as Sardis Road Area Sanitary Sewer Line, Airport Road Area Sanitary Sewer Line, Dingle Creek Stormwater Improvements, Ross Creek

Stormwater Improvements, Victoria Road Drainage Improvements, and Old Toll Road Storm Drain Repair and Stabilization.

### **Office of Community Oriented Policing Services (COPS) Hiring Recovery Program**

At its March 26, 2009, meeting, the City Council Finance Committee authorized staff to submit an application to the COPS Hiring Recovery program for funding for entry-level salaries and benefits for 12 new full-time, sworn police officer positions. If awarded, the grant provides 100 percent funding for salaries and benefits for a period of three years (36 months). Grantees are then obligated to retain all positions awarded under the CHRP grant for a period of one year (12 months) following the conclusion of grant funding.

Pros:

- In order to meet City Council's strategic goals and projected community needs in public safety over the next four years, it is anticipated that the Asheville Police Department will need additional sworn personnel. This grant opportunity will allow the city to realize the benefit of additional officers over the next three years at no additional cost to the city.
- Additional officers will allow the Asheville Police Department to create a Downtown Patrol Unit, which has been identified as a priority based on results from the recent citizen survey indicating a need for greater law enforcement and crime prevention efforts in the downtown area.

Con:

- If the resolution is not approved, the application process and funding potential for these projects will not move forward, and the city will add public safety personnel incrementally as local funding allows.

There is no fiscal impact at this time for City Council to approve the Resolution supporting the COPS application. If Asheville receives funding for 12 officers, the grant funding requested for years 1-3 would total approximately \$1,645,668 with no local match. At the end of three years, the city would be responsible for funding the full salary cost for the 12 officers totaling between approximately \$578,160 and \$652,109, depending on promotions and salary increases. In addition, the city will be responsible for purchasing uniforms, equipment and vehicles for the personnel hired under the COPS program in the first year, totaling \$202,400 total for 12 requested officers.

Staff recommends that the Mayor and City Council approve the resolution authorizing the City Manager to apply for COPS funding under the American Recovery and Reinvestment Act program to increase the number of sworn police officers by twelve.

Vice-Mayor Davis wondered if there could possibly be a reduced stormwater fee for taxpayers if the stormwater projects are approved. Director of Transportation and Engineering Cathy Ball responded that these stormwater projects are not funded now and thus would not impact the fees currently charged.

In response to Vice-Mayor Davis, Ms. Ball said that the planning components on the four stormwater projects are complete and all these funds would be for the construction work.

Councilman Mumpower felt City government is responsible for all of these projects and the federal government should concentrate on their responsibilities which local governments cannot control, e.g., immigration enforcement.

Councilwoman Cape was very hopeful that the City receives funding on these projects as clean water is so essential to our children's future and to the future of our nature.

Mayor Bellamy said these infrastructure projects have been in need of addressing for many, many years and was pleased to see Council supporting these grants.

Police Chief Bill Hogan responded to various questions from Councilman Mumpower regarding the need for additional police officers and how the Police Department had plans to incrementally increase police positions due to the demands in downtown.

Councilman Mumpower spoke against the grant for additional police officers in that police enforcement is a City responsibility. He did, however, acknowledge that Council has done an excellent job in responding to the requests of Police administration for manpower and other forms of support. But, he reiterated that federal government is neglecting their responsibilities which local governments cannot control, e.g., immigration enforcement.

Councilman Newman noted that no part of the City's budget has received a greater percentage of our budget than public safety and this is a high priority.

Councilwoman Cape said that the federal government is doing what we ask – help with job creation.

Mayor Bellamy asked for public comment, but received none.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-61. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-61 - RESOLUTION BOOK NO. 32 – PAGE 7**

Councilwoman Cape moved for the adoption of Resolution No. 09-62. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-62 - RESOLUTION BOOK NO. 32 – PAGE 8**

Councilwoman Cape moved for the adoption of Resolution No. 09-63. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-63 - RESOLUTION BOOK NO. 32 – PAGE 9**

Councilwoman Cape moved for the adoption of Resolution No. 09-64. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-64 - RESOLUTION BOOK NO. 32 – PAGE 10**

Councilwoman Cape moved for the adoption of Resolution No. 09-65. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-65 - RESOLUTION BOOK NO. 32 – PAGE 11**

Councilwoman Cape moved for the adoption of Resolution No. 09-66. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-66 - RESOLUTION BOOK NO. 32 – PAGE 12**

Councilman Newman moved for the adoption of Resolution No. 09-67. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

**RESOLUTION NO. 09-67 - RESOLUTION BOOK NO. 32 – PAGE 13**

**RESOLUTION NO. 09-68 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ASHEVILLE FEDERAL AVIATION ADMINISTRATION GRANTS**

This is the consideration of a resolution authorizing the Mayor to execute several documents for funding opportunities for the Airport Improvement Program.

The Asheville Regional Airport Authority (ARAA) has several funding opportunities that will require the approval of the City and Buncombe County. The turnaround time to have these grants fully executed will be very short. As such, the ARAA is requesting that the City approve the acceptance of such grants and authorize the Mayor to execute these grants when they are received. Because we do not have them in advance of the request, the authorization for the Mayor's execution includes approval by the City Attorney.

The grants that the ARAA anticipate receiving and requiring approval are as follows:

1. ARAA is in the pipeline to receive \$7.5 Million in stimulus funding that is dedicated to Airport improvements. This amount could be more based on final bids received and if additional stimulus funding becomes available due to other airports not being able to have their projects ready to accept a grant. This is a 100% grant with no local match requirement. This grant requires a Sponsor Certification with the grant application once bids have been received, and then execution of the final grant. It is requested that the City approve the acceptance of the stimulus funding grant if offered by the Federal Aviation Administration (FAA), and authorize the Mayor to execute the necessary documents.
2. ARAA will be receiving a second Airport Improvement Program (AIP) grant this year, which will be approximately \$2.7 Million. This is a traditional 95% grant with a 5% local match. ARAA has the budgeted funds necessary for the local match. It is requested that the City approve the acceptance of the AIP grant when offered by the FAA, and authorize the Mayor to execute the necessary documents.
3. ARAA will have an opportunity to receive "fall-out" Fiscal Year 2009 AIP grant funds from the FAA in an amount yet to be determined. This will be a traditional 95% grant with a 5% local match. ARAA has the budgeted funds necessary for the local match. It is requested that the City approve the acceptance of the AIP grant when offered by the FAA

and authorize the Mayor to execute the necessary documents.

The combination of funds will be utilized for the renovation of the Terminal A-Gates area, the renovation and upgrading of the roadway leading into the general aviation area, purchase of a new Rapid Intervention Vehicle, and the construction of new aircraft parking apron and a taxiway connector. The City will not be responsible for any of the matching funds, or for carrying out the terms of the grant agreements. Compliance will be the responsibility of the ARAA.

This action complies with the City's Strategic Operating Plan in that it contributes to the development of a multimodal transportation program, supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center.

Pro:

- Facilitates development of Airport

Con:

- None noted

None to the City

Staff recommends adoption of a resolution authorizing the Mayor to execute several funding opportunities for the Airport Improvement Program, subject to approval of the City Attorney.

Airport Director David Edwards explained that there is the potential for the Airport to receive additional stimulus funds; therefore, he asked that the proposed resolution be amended so as to be flexible in the dollar amounts.

Councilman Newman recognized Mr. Edwards for his great work at the Airport and wished him well in his new position in Greenville, South Carolina.

In response to Councilman Mumpower, Mr. Edwards said that the Airport has approximately \$5 Million in reserve funds which is set aside to fund the Airport budget for 12 months.

Councilman Mumpower spoke against the motion in that the Airport has made major improvements, but at a time of major economic crisis (with \$5 Million readily available) he felt to accept money from the federal government is irresponsible.

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

Councilman Newman moved for the adoption of Resolution No. 09-68, as amended. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **RESOLUTION BOOK NO. 32 – PAGE 14**

#### **IV. PUBLIC HEARINGS:**

- A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS WESTMORE APARTMENTS LOCATED ON WESTMORE DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND CI COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 72-UNIT APARTMENT COMPLEX**
- ORDINANCE NO. 3720 - ORDINANCE TO CONDITIONALLY ZONE A PROJECT IDENTIFIED AS WESTMORE APARTMENTS LOCATED ON WESTMORE DRIVE FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT AND CI COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A 72-UNIT APARTMENT COMPLEX**

Mayor Bellamy opened the public hearing at 6:22 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone the project identified as Westmore Apartments located on Westmore Drive from RM-16 Residential Multi-Family High Density District and CI Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 72-unit apartment complex. This public hearing was advertised on April 3 and 10, 2009.

The site consists of five separate parcels located at 64 Westmore Drive with a combined area of approximately 5.518 acres. Four of the lots are zoned RM-16 with the remaining parcel (a portion of a larger parcel – recombination required) currently zoned CI – all lots are undeveloped. Adjacent parcels are similarly zoned CI and RM-16 as well as RS-8 to the north. This site is immediately

adjacent to the ETJ to the west and to Deaverview Apartments to the East.

The applicant, Mountain Housing Opportunities (MHO), is proposing to construct a multi-family complex that will consist of seven (7) buildings ranging in size from 10,445 to 12,534 square feet. The buildings are all 2-3 stories in height (26'6" – 36' to top of roof peak) and contain 10-12 units each (a mix of 1, 2, 3 and 4 bedrooms) to reach the total of 72 units.

Access to the site is proposed from Westmore Drive, which was created through a major subdivision approval in 2005 and connects with Deaverview Road. A total of 94 parking spaces are provided (4 HC spaces) to serve the residential units and all spaces are located around the 2-way private looped-drive (which is essentially a circular parking area). A 6' sidewalk is proposed to circle the looped-drive and should connect to the existing sidewalk along Westmore Drive.

The project will be required to comply with applicable landscaping and open space standards, including a type A (20') property line buffer around the western and southern boundaries. Approximately 38,000 square feet of open space will be provided throughout the site (exceeding the minimum requirements of the ordinance) as well as more than 72,000 square feet of Tree Save Area. Additionally the site design proposes a central courtyard with a playground.

The site is at elevations over 2220' but has a slope of just under 15% - therefore steep slope regulations do not apply. There are several retaining walls placed throughout the project area, two of which have heights of 26' – 30' and will require additional landscaping/screening.

All 72 of the apartments in this project will be offered at rents affordable to those below 60% annual median income (AMI). This affordability is assured for 30 years under federal and state programs. Verification of rents and tenant income qualification will be provided to the City of Asheville Community Development Department at the time of initial occupancy as required by the Housing Trust Fund loan guidelines.

The proposal has been granted \$470,000 in Housing Trust Fund monies and is awaiting approval of tax credits from the NCHFA (North Carolina Housing Finance Agency) as well as final approval of \$225,000 in HOME grant funding.

A conditional zoning is being requested due to the fact that recombination of the parcels would result in a split-zoned lot. Both current zoning designations (RM-16 and CI) permit a similar density of approximately 16 units per acre. Given the acreage of the property, 96 units could be constructed. The development proposes 72 units, a density of approximately 13 units per acre.

This proposal was evaluated by the Technical Review Committee (TRC) on March 16, 2009, and was approved with conditions as outlined in the TRC staff report. The Planning & Zoning Commission unanimously approved the project on April 1, 2009 (5-0). No members of the public spoke regarding this project at either meeting.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

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

The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. 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 or 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 proposed use and development of the land is compatible with the natural features and topography of the site as well as the surrounding area. Although most of the existing vegetation will be removed, the site is not heavily vegetated to begin with. Appropriate landscaping and open space will be provided to that is fitting and compatible with the residential neighborhoods surrounding this location. There are no significant topographic features on the site.

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

The development is not expected to injure the value of adjoining or abutting properties. The use proposed is similar to adjacent parcels (residential). Although Westmore Drive is platted for single-family detached housing, Deaverview Apartments (adjacent to the east) consists of multiple multi-family buildings as well.

**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.**

Although a portion of the site and adjacent parcels are currently zoned CI, the uses on the developed portions of those lots are residential. Other uses in the immediate vicinity are also residential, with a mix of single-family and multi-family structures. Therefore the proposed use on this site is complementary to the neighborhood. Likewise, the number of residential units

allowed is the same for both RM-16 and CI so there is no conflict with regards to density. The scale of the structures is similar to the adjacent existing multi-family development (Deaverview Apartments). Overall, this proposal should be compatible with the area in which it is located.

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

The *Asheville City Development Plan 2025* encourages a Smart Growth development pattern by recognizing the need for higher density residential infill projects located along transit lines (Rt. 15). With 72 units, this project is not only meeting that goal but also addresses what the *Plan* calls "the number one economic development problem for this community": lack of affordable housing. All units within this development will be offered as affordable rentals for households with less than 60% area median income for a 30-year period.

City Council's goal of *sustainability* is realized by these projects that encourage high-density growth in an area with existing infrastructure as well as this project's location along a transit route (Rte. 15). The development proposes for all of the units as affordable (rental) and Energy Star rated, aligning with Council's priority area on providing *affordable* and *green* housing opportunities for all citizens.

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

This proposed development is located near major road facilities and along a City bus route (#15). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.

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

The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Pros:

- The project offers 100% affordable housing units, aligning with City Council's goals.
- Higher density development furthers the goals and objectives of the comprehensive plan.
- The proposed development provides housing in a transit-served area.
- The project will be designed to qualify for Energy Star rating.

Con: None noted.

Based on the above findings, staff recommends approval of the conditional zoning as requested by the applicant, with the standard conditions.

Mr. Scott Dedman, Executive Director of MHO, spoke in support of the conditional zoning, noting that they are requesting 72 safe, attractive and affordable apartments in a convenient neighborhood near jobs, schools, shopping and transportation. He explained how this development will serve working families in a broad income wage – from approximately \$14,000 - \$34,000 annually. As these are initial income levels to the apartments, as their incomes go up, their rent does not. He explained there is a market need of approximately 1,400 units just in this part of Asheville. They perform a strict credit and criminal check screening. These privately owned apartments will pay full property taxes. The Mayor's affordable housing plan calls for 500 similar workforce housing apartments per year and this is a small step toward that goal. He was pleased to note that the design for the apartments will look as dignified as any other nice apartment building. They have a strong professional management company that performs a strict screening of applicants.

Mr. Chris Day, representing Civil Design Concepts, spoke in support of the conditional zoning explaining many of the smart growth characteristics of the project. He then explained how the project meets many of the sustainability goals of the City. He felt this project will be a great addition to the west Asheville area.

When Mr. Fred English spoke in opposition of using taxpayer dollars to build this project, Mr. Dedman explained the funding package. Councilwoman Cape also explained the concept of the Housing Trust Fund.

Mayor Bellamy closed the public hearing at 6:33 p.m.

Mr. Dedman responded to various questions/comments from Councilwoman Cape, some being, but are not limited to: concerns expressed of more low income housing in west Asheville; description of types of jobs people have that will be living in this development; explanation of workforce housing; reasons for building apartments in specific areas; note that this project is not low

income housing, but workforce housing; and when MHO is looking at areas to build, do they take into consideration the number of children added to the particular school district.

Councilman Newman said that this proposal was reviewed by the Regional Housing Consortium, which is represented by local governments from Madison County, Transylvania County, Henderson County, and Buncombe County, and this was one of two projects unanimously agreed upon, which is an indication of how well the project was regarded.

In response to Councilman Mumpower, City Attorney Oast said that regarding the seven conditional use standards, Council needs to consider the appropriateness of the project on its own merits. The source of money to finance the development should not be weighed in consideration of the project.

Mr. Dedman responded to Councilman Mumpower's concerns about concentrating a high density development beside one (Deaverview Apartments) that is not working in terms of drug activity and crime. He gave examples of a number of large scale rental apartments they have built and are managing successfully.

City Attorney Oast cautioned Council about acting in reliance on the continued operation by MHO, as the property could change hands.

In response to Councilman Miller, Mr. Dedman said that MHO has developed 337 apartments in the City of Asheville and if this project is approved, will add an additional 72 units.

Mayor Bellamy, former employee of MHO, said that MHO is an organization that resolves problems. She cited an example of the apartments they built behind Claxton Elementary School. When problems arose, instead of walking away, they worked with the Police Department to have an officer live rent-free in those apartments in terms of patrolling and working with that community. In addition, they built apartments in the West End/Clingman Avenue area when there was no redevelopment in new housing over 50 years. It is now a vibrant neighborhood.

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

Councilman Newman moved for the adoption of Ordinance No. 3720 to conditionally zone the project identified as Westmore Apartments located on Westmore Drive from RM-16 Residential Multi-Family High Density District and CI Commercial Industrial District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of a 72-unit apartment complex, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Vice-Mayor Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 25 - PAGE**

#### **V. UNFINISHED BUSINESS:**

##### **A. PACK SQUARE CONSERVANCY**

##### **MOTION TO ACCEPT THE PACK SQUARE CONSERVANCY'S BUDGET AND APPROVE THE DESIGN CHANGES**

Mayor Bellamy introduced the Pack Square Conservancy's new Board Chair Guy Clerici, who in turn introduced the new Executive Director Gary V. Giniat. Mr. Giniat briefly reviewed with Council the following executive summary on Pack Square Park:

##### **Pack Square**

The Conservancy is in the final weeks of construction on Pack Square. Rainy weather in late March and early April cost the crew a week of construction time, but work is proceeding rapidly nevertheless. The major tasks that remain in the square include landscaping, paving the street in front of the Biltmore building, completing work in front of Pack Place and the Asheville Art Museum, putting the finishing touches on brickwork throughout the square, and installation of granite pavers and Hoss Haley's bronze and stone fountain in Oates Plaza.

Once the contractor has completed construction, City representatives will inspect the square and notify the Conservancy if there are areas of concern. Once work in the square is completed to the satisfaction of all parties, the Conservancy will officially turn Pack Square over to the City of Asheville.

The Conservancy will announce a date for an opening celebration for Pack Square in the near future.

### **Roger McGuire Green**

Work in the green has been running slightly ahead of schedule and may be completed by the end of July, weather permitting. The pillars for the pergola at the back of the stage are in place. The crew is building seating walls on the south side of Splasheville and continues to install granite veneer on sections of the stage, the seating walls and the fountain.

The workers are preparing to install brick pavers on the forecourt of the stage. Bright blue tiles by Weaverville ceramicist Kathy Triplett will be woven into the pattern of the brickwork. The foundation for the Veteran's Monument was completed two weeks ago and work is beginning on the upper portion of the structure.

### **Reuter Terrace**

Work is about to begin in Reuter Terrace in the middle of the park. This section of the park will have a terraced lawn overlooking the main stage and will offer comfortable seating for main-stage events. Reuter Terrace will have extensive hardscape, including Visitors' Plaza, which will include decorative paving and movable furniture, a small stage, and a water feature. The 4,600 square-foot park pavilion will be located on College Street on the north side of the site.

The early work in Reuter Terrace will focus on hardscape and landscape. Work on the pavilion will begin somewhat later in order to avoid conflicting activities on the small site. Once work gets underway, the Conservancy will be able to develop a more accurate estimate of the completion date for this final portion of the park.

While updating Council on the construction of Pack Square Park, Mr. Giniat described the following four areas of changes and the reasons for those changes: (1) modified forecourt to compliment new museum design; (2) increased size of pavilion; (3) reduced size of water feature; and (4) added Veteran's Memorial.

Mr. Giniat said that Council has been provided with the Pack Square Conservancy's budget vs. actual as of February 28, 2009; their balance sheet as of February 28, 2009; and their Profit & Loss sheet of January through February 2009. Their current budget is \$20 Million and that does not include the \$2 Million endowment they are attempting to raise. So, when the Conservancy turns the Park over to the City they have funds for capital improvements to help with special maintenance. To date they have spent almost \$12 Million on the project. He said they still have to raise an additional \$3.9 Million and some of that is for the pavilion.

Mr. Giniat then requested approval of the Pack Square Conservancy's budget. In addition, he requested approval of design changes that have been made in Pack Square Park.

In response to Ms. Regan Evans, co-owner of Windows on the Park, Mr. Giniat said that the total footprint of the pavilion has not changed.

Mr. Fred English was pleased to note that the veterans group raised the money necessary for the veterans' memorial, but voiced concern over the rising costs of this Park – from \$6 Million to now \$20 Million.

Mayor Bellamy recalled that when this project was approved, Council said they wanted very little interaction as far as City dollars paying for this initiative going forward. The City has not invested \$2-3 Million of local tax dollars; however, the City does have oversight of the federal dollars that have been garnered. But again, those dollars are not City tax dollars.

When Councilman Miller acknowledged that he serves in a volunteer capacity on the Pack Square Conservancy Board, City Attorney Oast said that there was no disqualifying conflict of interest for him participating in this matter.

There was a brief discussion, initiated by Councilman Newman, about the City's authority to approve the Conservancy's budget when that approval has not been regularly sought during the course of the project. City Attorney Oast said that the agreement reads, in part "PSC shall coordinate capital funding for the Project and submit a budget for the Project to the City and County for approval, which approval shall not be unreasonably withheld or delayed." Any approval authority we have would be really over the use of public funds, which the agreement contemplates to a certain extent. Regarding the design approval, it was his opinion that approval by the City and County is required.

In response to Councilman Mumpower, Mr. Giniat said that he has not received any concerns about the design changes. In fact, the changes in the forecourt were done as a result of working with people around the park.

Councilman Russell moved to approve the design changes. This motion was seconded by Councilwoman Cape.

In response to Councilman Newman, Assistant City Manager Richardson said that the City, County and the Conservancy are looking at a request for proposal to see how much it will cost next fiscal year to bring the park on line for day to day operational maintenance. The agreement calls for the City and County to share those costs. At budget time, the City and County will report back

to their respective bodies for direction. In addition, Chief Financial Officer Ben Durant said that the City has put an initial placeholder in our budget of \$100,000 for operational upkeep.

Discussion surrounded the on-going maintenance of the Park. Councilman Newman was excited about the Park but was concerned that because the costs have tripled since the project began, that might have an affect the operating costs. Assistant City Manager Richardson responded and Mr. Durant said that staff will be assessing the impact of the on-going operating costs on this capital project (and all our capital projects) and will report back to Council as needed.

Councilman Miller said that Mr. Tim Marshall provided a major plan for maintenance, operations, security, programming and other costs. Now that the Park is coming on line in various stages, it allows us an opportunity to look at the recommendations made 4-5 years ago by Mr. Marshall and ask what is realistic.

Vice-Mayor Davis offered a friendly amendment to the motion that we accept the budget and approve the design changes as presented.

Councilwoman Cape noted this was an incredible initiative by a group of citizens in our community to do something amazing. The unknowns have been faced all along, but she felt sure we will look back on this great project.

Councilman Russell accepted the friendly amendment and moved to amend his motion to (1) accept the Conservancy's budget as presented; (2) approve the design changes as presented; and (3) waive the fee for the veterans' memorial dedication. Councilwoman Cape agreed to the amended motion. Said amended motion carried on a 6-1 vote, with Councilman Mumpower voting "no."

### **RESOLUTION NO. 09-69 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ESTABLISH PARK RENTAL FEES FOR PACK SQUARE PARK**

Cultural Arts Superintendent Diane Ruggiero said that this is the consideration of a resolution amending the Fees and Charges Manual to establish park rental fees for fees for Pack Square Park.

The use of Pack Square Park for outdoor special events has been limited due to park construction. Once complete, the park is destined to become one of the premier downtown event locations for organizations and event organizers. The first section of the park, Pack Square, will soon be complete and scheduled to open in late April or early May. Roger McGuire Green and Reuter Terrace are scheduled to open in the summer, but may not be immediately available for event use in order to protect the new turf. Staff is preparing to begin issuing outdoor special event permits for Pack Square section of the park.

Staff recommends separating park rental areas into four sections: Pack Square, Reuter Terrace, Roger McGuire Green and City/County Parking Lot. All use will follow the guidelines in the Outdoor Special Event Guide.

Please note as it pertains to the Outdoor Special Event Guide:

- Fees are charged from the time of event set-up to event break-down, not just the hours of the event.
- Priority for use is given in order to: 1) City of Asheville events; 2) Co-sponsored events; 3) Non-profit organizations whose event is of interest to the community; 4) Non-profit organizations whose event is of interest to the organization; 5) Commercial ventures and events organized for profit.
- Additional fees may be incurred for police support, fire/medic support, street closings, permits for tents, additional equipment needs, etc.
- Where available, park rental fees include electrical outlets and water supply.

Proposed Pack Square Park rental fees:

- Pack Square: \$100 per first three hours, \$25 for each additional hour
- Reuter Terrace and Roger McGuire Green: \$500 per first three hours, \$100 for each additional hour.

Note: Until the pavilion in Reuter Terrace is built, Reuter Terrace and Roger McGuire Green will be rented as one area. Once the pavilion is complete, the rental fee for the areas will be reassessed. Use of Roger McGuire Green includes use of the stage. Use of the stage may require use of the City/County Parking Lot.

Staff gathered public comment on the proposed park rental fees via three venues: 1) presentation to the Pack Square Conservancy Board on April 1, 2009; 2) public meeting with businesses surrounding the park on April 3; and 3) posting on the City of Asheville website for public comment. No specific issues or concerns were received via feedback.

This action complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it assures that administrative policies promote effective provision of community festivals and events.

This item was scheduled for review by the Recreation Advisory Board at its regular meeting on April 13 for their recommendation.

Pros:

- Allows the community affordable use of Pack Square Park
- Allows for permitting of the space to begin in conjunction with park construction completion
- Allows for better fee consistency across all City parks

Cons:

- Fees will not recover all operating costs Pack Square Park rental
- Heavy use of Pack Square Park could have an impact of the infrastructure, which may drive operational expenses higher in the future.

The fiscal impact of this action will be that park rental will generate revenue to offset operating cost.

Staff recommends City Council adopt a resolution amending the Fees and Charge Manual to establish park rental fees for Pack Square Park.

Ms. Regan Evans, co-owner of Windows on the Park, expressed concern over the way the Pack Square venue is drawn. The entire area should be split in half and there be a permitted area on North Pack Square and a permitted area on South Pack Square. Therefore, someone from the Pack Place side could host an event on the small green space in front of their building and Windows on the Park could host an event on the small green space on their side of Pack Square. If the area stays as one large area, only one event could be held. She asked Council instruct City staff to be lenient with their permitting process for the Pack Square area.

Ms. Ruggiero said that if someone gets a permit for Pack Square, it is the same as someone would rent for any one of our other parks. It just includes that use of the space. Street closings will be an additional fee charged through the Street Division. And, since there are parking meters along a portion of that street, Parking Services charges an additional fee to close each one of those meters if the event is on a weekday or a Saturday. Regarding permitting the entire Pack Square area, she said staff will definitely work with event organizers on a case by case basis if there are overlapping request for use, but it will depend on the scale of the different events, the event itself and the requirements for alcohol.

Councilman Russell supported event organizers not having to pay for the entire Pack Square area if their event is in a small area.

In response to Councilwoman Cape, Ms. Ruggiero said that just until the pavilion on Reuter Terrace is built, Reuter Terrace and Roger McGuire Green will be rented as one area. Once the pavilion is complete, the rental fee for the areas will be reassessed. We don't want to encourage event organizers to use just one of those spaces until the construction is completed in the middle section.

Councilman Miller agreed with Councilman Russell in that there should be some flexibility on the east corner of Pack Square.

In response to Councilman Miller, Ms. Ruggiero noted that a lot of the Pack Square area is sidewalk and currently we do not allow event organizers to block sidewalk access. In looking at the Pack Square as a whole, staff looked at what is the available usage space within that area.

In response to Councilman Miller, Ms. Ruggiero explained how costs for events that have been relocated to Dr. Martin Luther King Jr. Park are comparable to the events at the Reuter Terrace and Roger McGuire Green.

In response to Vice-Mayor Davis, Ms. Ruggiero said that they did not solicit comments from the Asheville Downtown Association because they hold co-sponsored events and their fees are waived through the co-sponsored event process. However, when the spaces are all opened, they will meet with all event organizers and solicit their feedback.

Councilman Mumpower suggested that after a period of time staff report back to Council with specific figures as to the actual recovery costs. Even though City taxpayers haven't invested much in the Park (other than infrastructure which would have had to be replaced), the City has agreed to take over maintenance of that Park, which will be a substantial cost to the community.

Councilman Russell supported letting the event organizers actually see the available spaces in the Pack Square area, but he does believe there should be some flexibility.

In response to Councilman Mumpower, Ms. Ruggiero said that once they get some feedback from all the event organizers as to what type of usage and the demand for that space, it will give staff a better idea of how they need to look at the space.

Councilman Mumpower wondered if Council should ask staff to come back with a specific proposal for sub-space rental or

should Council build something into the language of the proposal that gives staff the flexibility to adjust for sub-space rental until staff can bring back a specific proposal. Ms. Ruggiero said that she could bring back a specific proposal on sub-space rental if that is Council's wish.

In response to a co-owner of Windows on the Park, Ms. Ruggiero explained that currently in our parks that have underground irrigation systems, we do not allow tents to be staked into the ground because there is the risk of puncturing the underground irrigation system. We ask that event organizers use weighted buckets to hold down their tents. Regarding pavers, they are not looking at permitting tents in the hardscape area due to the risk of damaging the public art.

Mayor Bellamy supported three separate rental fees – Pack Square, Reuter Terrace and Roger McGuire Green. She also supported waiving the veteran's memorial dedication ceremony fee.

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

Councilman Russell moved to adopt the proposed permitting fees, subject to (1) after completion of the pavilion, there be three separate rental fees (Pack Square, Reuter Terrace and Roger McGuire Green); (2) staff bringing back a specific proposal on sub-space rental of the Pack Square area, with flexibility given to the rate structure; (3) waive the fee for the veterans' memorial dedication; and (4) staff report back to Council in 12-month for a review of the proposed rate structure. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **RESOLUTION BOOK NO. 32 – PAGE 16**

At 8:00 p.m., Mayor Bellamy announced a 20-minute recess.

#### **B. BUDGET PLANNING**

#### **ORDINANCE NO. 3721 - ORDINANCE ADOPTING FISCAL YEAR 2009-10 FEES AND CHARGES, EFFECTIVE JULY 1, 2009**

Chief Financial Officer Ben Durant said that the purpose of this staff report is to provide an update on the status of Fiscal Year (FY) 2009-10 Budget Process, including the budget balancing strategies that were discussed at the March 27 Finance Committee meeting. Staff is also requesting that Council take action at this meeting on the FY 2009-10 proposed fee adjustments.

#### **Fees & Charges**

The proposed FY 2009-10 fee adjustments have been reviewed by the Council Finance Committee, and their recommendations for fee adjustments have been provided to Council. If the full Council approves the Finance Committee's fee recommendations tonight, it will add an additional \$700,000 in revenue to the FY 2009-10 General Fund budget. In addition to the General Fund fee adjustments, the Committee also endorsed staff's recommendation for a 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds. Staff is requesting that Council take action tonight on the fee recommendations so that the additional revenue from the fee adjustments can be included in the Manager's Proposed Budget, which is scheduled for presentation to Council on 5-12-09.

#### **Budget Update**

At the March 24<sup>th</sup> Council meeting, staff presented an update on the status of the FY 2009-10 budget which showed a remaining General Fund budget gap of approximately \$800,000.

The following table summarizes the steps in the budget process that brought us from the initial fall General Fund budget forecast, which projected a \$5.0 million deficit, to the March 24<sup>th</sup> report which showed a remaining budget gap of \$800,000.

Initial Forecasted Gap	<b>(\$5,000,000)</b>
Eliminate Merit Pay (Salary Freeze)	\$750,000
Annexation Gain	\$325,000
Reduce Housing Trust Fund Transfer	\$300,000
Re-Engineering/Mgmt. Streamlining	\$1,000,000
Reduce Transit Fund Transfer	\$500,000
Increase Cost Recovery from Fees	\$700,000
Reduce Fund Balance from 19% to 18%	\$1,000,000
Additional Cost Savings Opportunities	\$500,000
Increased Utility & County Partnership Expenses	<b>(\$325,000)</b>

Reduction in Sales Tax Revenue Estimates	(\$300,000)
Add in Council Strategic Priorities	(\$250,000)

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March 24 Budget Gap (\$800,000)

At the March 27<sup>th</sup> Finance Committee meeting, staff presented to the Committee a set of specific strategies to address this remaining budget gap of \$800,000. Those strategies were:

- |  |           |
|--|-----------|
| 1. Apply Police Byrne Grant to Municipal Building security | \$150,000 |
| 2. Drawdown available transit funding in current year      | \$500,000 |
| 3. Reduce General Fund overtime                            | \$150,000 |

The Committee endorsed staff's recommended strategies, and staff is prepared to answer any questions that the full Council may have regarding these strategies.

Staff also indicated to the Committee that work was still being done to finalize the \$500,000 in additional cost savings opportunities which was included as a placeholder in our initial budget balancing plan. Since the March 27<sup>th</sup> Finance Committee meeting, staff has completed a package of recommendations that will achieve this additional \$500,000 needed to balance the budget. Recommendations include:

- |  |           |
|--|-----------|
| 1. Eliminate General Fund subsidy to the Golf Fund | \$150,000 |
| 2. Reduce brush collection to once per month       | \$140,000 |
| 3. Discontinue Civic Center skating and hockey     | \$ 50,000 |
| 4. Reduce budget for building security enhancement | \$100,000 |
| 5. Apply Energy Block Grant to administration      | \$ 60,000 |

If revenues decline further, options include (1) additional service reductions; (2) additional fund balance appropriation; and (3) reduce deferred compensation.

Staff recommends that Council adopt the Finance Committee recommendations regarding fees & charges and provide additional direction regarding the remaining budget.

Throughout discussion, Mr. Durant responded to various questions/comments from Council, some being, but are not limited to: explanation of the fee cost recovery; and was there any discussion about (1) reducing Council's or management staff's salaries, (2) re-thinking some of Council's decisions, such as the performing arts venue on Depot Street; or (3) outside agency funding reductions; does staff feel that the revenue picture is likely to improve.

Councilman Mumpower felt that if Council approves the Finance Committee's recommendations regarding fees and charges, it would represent a tax increase. He suggested we resist the temptation of reaching into our Fund Balance.

In response to Councilman Newman, Public Works Director Mark Combs pointed out an error in the full cost recovery for recycling charges – it should be \$2.63/household/month. When Councilman Newman asked what the logic is behind charging for one solid waste service and not another, Mr. Combs said that we City of Asheville performs sanitation services in-house and we contract out the recycling service to a third party. Councilman Newman hoped that Council would not increase the recycling fee in that it's like a property tax since it only affects families who live in the City. He supported either not increasing the recycling fee or set it as a long term goal to not charge for this type of service, especially since recycling is viewed as a basic service people expect to receive.

Vice-Mayor Davis said that the Civic Center Commission did confirm the discontinuance of skating and hockey at the Civic Center. He explained how there are greater costs associated with skating, especially the outdated equipment. Regarding the water rate increase, the City's consultants advised Council a few years ago that had the City incrementally raised water rates, we wouldn't have had such a difficult time in repairing the water system. Therefore, he supported moving forward with implementing that increase.

Councilwoman Cape recalled Council giving direction not to reduce the Housing Trust Fund. Mr. Durant said staff's initial recommendation was to transfer the entire \$600,000 of Housing Trust Fund monies. He felt the subsequent direction from Council was to cut it in half and not eliminate the entire transfer. Councilwoman Cape was not in support of reducing the Housing Trust Fund.

After Mayor Bellamy asked for public comment, but received none, she said that members of Council have been furnished with a copy of the ordinance and it would not be read.

Councilman Russell moved to (1) approve the General Fund fees and charges recommended by the Finance Committee; (2) approve the 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds; (3) direct staff to continue with the strategies proposed; and (4) set as a long-term goal to not charge for

recycling services. This motion was seconded by Councilman Miller.

Councilwoman Cape agreed with Councilman Newman that the City needs to look how we handle trash and solid waste and make a concerted effort to see what is the best way to encourage the proper disposal of solid waste. She felt that raising the recycling fee is the necessary thing to do, and for us to afford recycling pick-up at all, we need to have full cost recovery on it. She asked if the General Fund fees and charges could be voted on separately from the water rate increase.

Mayor Bellamy explained the discrepancy between the consultants recommended 3% incremental water rate increase vs. the 4% incremental water rate increase in the water bond documents. She also asked if the General Fund fees and charges could be voted on separately from the water rate increase.

Councilman Russell moved to amend his motion to (1) approve the General Fund fees and charges recommended by the Finance Committee; (2) direct staff to continue with the strategies proposed; and (3) set as a long-term goal to not charge for recycling services. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no"

Councilman Russell moved to approve the 4% increase in the regular water rate and the water capital improvement fee, along with some other minor fee adjustments in the other Enterprise Funds. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

#### **ORDINANCE BOOK NO. 25 - PAGE**

#### **C. LEGISLATIVE UPDATE**

#### **ORDINANCE NO. 3728 - ORDINANCE AMENDING ORDINANCE NO. 3719 REGARDING TRESPASS TOWING FROM PRIVATE PARKING LOTS TO CLARIFY THE EFFECTIVE DATE OF ON OR AFTER JUNE 1, 2009**

City Attorney Oast said that this is the consideration of an ordinance amending Ordinance No. 3719 adopted on March 24, 2009, regarding trespass towing from private parking lots to clarify the effective date of on or after June 1, 2009.

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

After Mayor Bellamy asked for public comment, and none was received, Councilman Russell moved for the adoption of Ordinance No. 3728. This motion was seconded by Councilman Mumpower and carried unanimously.

#### **ORDINANCE BOOK NO. 25 – PAGE**

City Attorney Oast said that this is an update on legislation of interest to the City of Asheville from the 2009 N.C. General Assembly

The 2009 North Carolina General Assembly convened on January 9 for its "long" session. The deadlines for filing local bills were March 11 (Senate) and April 1 (House). The deadlines for filing Public (non-local) bills was March 25 (Senate) and April 8 (House). The deadline for filing bills related to appropriations and finance is May 6 for the House. The "crossover" deadline, the day by which bills must pass out of one chamber or the other in order to remain eligible for consideration in this session is May 14.

The City requested introduction of some local acts, and we have been following other general legislation. This report will cover the status of our local legislative requests, and summarize other legislation of interest.

#### **A. Local Legislation**

1. Non-consensual towing (HB 500). At the City's request, a bill regarding regulation of non-consensual towing in Asheville was introduced in the House by Representatives Goforth, Fisher and Whilden. This was requested in case it was needed to bolster our local efforts to deal with this issue. Since Council adopted the non-consensual towing ordinance on March 24, I have requested that our delegation not pursue adoption of this bill, or the bill introduced by Senator Nesbitt (SB 551) to cap the rate for non-consensual towing at \$75.00. Raleigh and Wilmington have similar ordinances, and it appears that the federal law specifically permitting local regulation, together with the general police power, is sufficient.
2. Force Account Suspension (HB 747). This is the bill that will allow us to work with Buncombe County to complete the street paving and other work around the new jail with City work forces. Initially, some local contractors objected to this bill, seeing it as the "foot in the door" for further similar requests. Once the unique features of this project were explained, and that we did not plan to seek other similar local bills in this legislative session, the opposition was withdrawn and to Council for revision. This bill passed the House on first reading and has been re-referred to a

committee

3. Property disposition (HB 502). This is the bill that would clarify our ability to place conditions on the sale of real property. This bill has encountered no trouble, and has passed the House.
4. Sullivan Act revisions (SB 552). This would allow the City to use up to 5% of water system revenues to make repairs/do construction on non-water infrastructure, in connection with water system work. Council requested other revisions as well, particularly with regard to making water service available in connection with voluntary annexation, but these were not included in the bill. Members of the local delegation have been advised that the City will continue to press for revisions to the Sullivan Acts. However, especially in view of Statewide efforts to limit annexation (see below – Rep. Goforth is study commission co-chair), the bill in its current form is likely all that we can reasonably expect to get in the 2009 session. This bill was introduced in March.
5. Assessments for Energy Improvements (HB 1015). A bill has been introduced this week that would authorize the City to implement a program that would allow for the financing of energy conservation improvements made by homeowners to be financed through an assessment process. This would apply to such things as facilities for the generation of solar power, but is not limited to solar power. In essence, the City would pay for the equipment to be installed, and the cost of this work would be collected over time (10 years, usually) by the City in annual assessments. Water and sewer improvements are frequently financed in this way, and there is already a statutory framework. As drafted, this bill applies only to the City of Asheville, but could attract attention from other localities.
6. Civil Service (SB 556). A bill has been introduced a bill to revise the Asheville Civil Service law. Among other things, the bill would restrict the ability of former employees to serve on the Civil Service Board (CSB), would require that the CSB meet monthly, and would require that the City provide whatever administrative support the CSB needs, including legal assistance, at City expense. The bill contains a number of other provisions that go to details of process and that appear to be redundant or duplicative of State law, such as a requirement to observe the Open Meetings law.

Many of these revisions have been proposed previously, and they were covered in a presentation made to the Council at a work session in October of 2008. Council has established a commission made up from various segments of the business community to review the current Civil Service law and recommend any changes, including whether the law continues to meet its objectives. This study commission has been meeting and gathering information, and will have some recommendations soon. The commission members are aware that a bill has been introduced.

As a staff, we are formulating responses and recommendations on SB 556, and our timetable is necessarily driven by the legislative calendar. We will make the local delegation aware that the work of the study commission is progressing and, at Council's direction, will pass the commission's recommendations along to members of the local delegation.

B. GENERAL LEGISLATION. As of the date of this report, well over 2000 bills have been introduced, and there is one day left before the deadline for introduction of "public" or general bills passes. This is a lot to review and keep up with. As you might surmise, much attention in the legislature has been devoted to the current economic situation, governmental responses to it, and how to handle the federal stimulus initiatives. The State's budget has also taken up considerable attention. There have been certain areas of particular interest to municipalities – including Asheville – when there has been considerable activity.

1. Annexation. As you may know, municipal annexation has been the subject of a legislative study over the past year. Rep. Bruce Goforth co-chaired the legislative study commission. A conservative estimate is that over 20 bills have been introduced, not limited to specific cities, that would affect the ability of municipalities to engage in involuntary annexation. Other bills affect particular entities. The proposals include annexation moratoria, a requirement for a vote by property owners in the areas proposed for annexation, stricter qualifications for annexation, and increased requirements for provision of municipal services.

Of particular note, a bill that has been endorsed by the League of Municipalities (and was prepared with the League's assistance) has been introduced that is a measured response to many of the issues that have been raised. Because Asheville has been involved in some contested annexations, our input and comment was solicited (along with other municipalities) by the League.

He provided Council with an excerpt from correspondence from the League of Municipalities, summarizing the recommendations of the legislative study commission. He also provided Council with a copy of information from the League identifying particular issues, and the League's proposed response to it.

2. Immigration. There have been several bills introduced that deal with immigration in some substantive way. Most of them focus on the public contracting and work status verifications, and would require the use of some mechanism – like e-verify – as a condition of the award of public construction projects. Not surprisingly, many of these bills are also connected with the use of federal stimulus money. Of particular note is the proposed "North Carolina Illegal Immigration Reform Act" (SB 337), which appears to address the issue in a comprehensive way, requiring verification

of work authorization of all local government employees, and to require public contractors to use federal work authorization verification program (which would include e-verify).

A recent presentation at the UNC School of Government indicates that this particular area of the law – local regulation of immigration, including requiring e-verify as a condition of public contracts – is anything but settled. While it is clear that federal immigration law preempts State and local regulation in this area, the degree of this pre-emption is somewhat unresolved. However, with all of the public and governmental interest in illegal immigration, work eligibility for public projects, and the level of legislative activity, it seems probable that something will be done at the State level this year on this issue, and that the ability of local governments to regulate in this area will be affected and clarified.

3. Road maintenance issues.

- a. Bills have been introduced in both chambers (HB881 / SB 1001) under the somewhat innocuous name of “Transportation Corridor Mapping Changes.” These bills are being advanced by the State Department of Transportation. If adopted, these measures would (1) allow the State to delay distribution of Powell Bill funds, (2) would make Powell Bill distributions discretionary rather than mandatory, and (3) would add approximately 22,000 miles of roads to local maintenance responsibility without increasing the amount of the distribution (an unfunded mandate).
- b. Secondary road maintenance. A bill has been introduced in the Senate (SB 758) that would, if adopted, transfer the maintenance responsibility for secondary roads to counties. The concerns with this bill are (1) that it would be a partially funded mandate, and (2) that it would leave road maintenance decisions up to the counties, with some potential for inconsistency. Interestingly, when the State took over maintenance of the secondary road system from the counties in the 1930’s, one of the reasons was to address issues of inconsistent and inadequate maintenance. He provided Council with a memorandum to the N. C. Metro Mayors Coalition that provides some more detail on these bills, and a letter from the Coalition chair to the Speaker of the House.

He also provided the following information to Council from Public Works Director Mark Combs. Street maintenance means overlays (resurfacing) (a) potholes, reconstruction of sub-surface; signals; signs and markings; storm drain systems/erosion control; sidewalks; mowing and landscaping; tree maintenance; street lighting; litter administration; conduits; easements, encroachments; force majeure events; bridge maintenance; and conduit/utilities oversight.

Regarding Powell Bill funding, the state provides each year “...for the purpose of maintaining, repairing, constructing or widening of any street or public thoroughfare including bridges, drainage, curb and gutter...” (N.C. Gen. Stat. sec. 136-41.2). Regarding funding (a) 1 ¾ cents per gallon motor fuel tax; (b) disbursement is 75% based on population and 25% based on street mileage; (c) Powell Bill is dependent upon fuel taxes – more streets = dilution of the Fund; and (d) increases in City-maintained mileage is incrementally small (because 75% of disbursement is based on population).

Regarding Senate Bill 1001 and House Bill 881, there are 400 miles City-maintained streets and 147 miles maintained by NCDOT for a total of 547 miles of City or NCDOT maintained streets. The following is a NCDOT breakdown of streets in Asheville (a) 32 miles are “limited access” road ways (I-240, I-26, 19-23); (b) 40.5 miles are U.S. Highways”; (c) 12 miles are “N.C. Highways”; and (d) 62 miles are “State Roads” and “other”. The City likely to get 50-60 miles of roads.

Asheville spends \$17,100 per linear mile per year on streets. Asheville received \$5,964 per linear mile in Powell Bill funding.

If the City is forced to maintain 55 miles of streets:

-	Cost (\$17,100 per L/mi.) = 55 x \$17,100/mi =	\$940,500
-	Powell Bill reimbursement (est.) = 55 x \$5900/mi =	<u>\$324,500</u>
	FINANCIAL IMPACT TO ASHEVILLE =	\$616,000

Regarding the potential impact to Asheville Citizens, 66% of maintenance costs will shift to Asheville tax payers.

4. Miscellaneous issues. There have been bills introduced that address several issues of interest to municipalities, some of which are of particular interest to Asheville or Western North Carolina.

- a. Fuel supply / emergencies. Some bills have been introduced in apparent response to the fuel shortage situation that affected parts of the country in the fall of 2008, following the hurricanes that closed down some Gulf Coast oil refineries. WNC was particularly affected. Some of these are study bills.

- b. Several bills have been introduced that would encourage the use of energy efficiency measures; some are local bills, and some are general law bills. These include relaxing restrictions on the placement of equipment, and providing incentives for incorporating efficiency measures into building projects.
- c. A bill has been introduced that would extend times for the validity of certain land use approvals. This is similar to what Asheville has already done on the local level.
- d. Several bills have been introduced that address ethics for governmental officials. These include proposals to the State ethics rules applicable to local government, and to broaden the circumstances under which a local governing board member should be recused from a vote.

He said that copies of these bills, and other information where available, can be provided.

This report is primarily for information purposes. If Council directs, resolutions or letters can be prepared, or more information obtained.

Councilman Newman said that he shared with City Council earlier this year a proposal for revisions to the Sullivan Acts that would allow Asheville to use water resource funds to improve public infrastructure directly related to water line construction projects and allow Asheville to grow through the process of Voluntary Annexation.

At this time, Councilman Mumpower raised a point of order. Mayor Bellamy said that Councilman Newman has the floor and is in the middle of a statement. Once Councilman Newman puts the question on the floor, it would be the appropriate time for Councilman Mumpower to raise a point of order.

When Councilman Mumpower continued to raise a point of order, City Attorney Oast said that the Mayor is the presiding officer and as she pointed out, Councilman Newman is in the middle of a statement. He felt the appropriate time to address a concern is after Councilman Newman puts the question on the floor.

Councilman Newman continued in that he requested Council to affirm the proposal to settle the Sullivan Act dispute. As indicated in the legislative information prepared by City Attorney Oast, there has been a bill introduced by our legislators that addresses the infrastructure funding but not the Voluntary Annexation policy. He e-mailed to Council this morning the proposal.

He believes that Asheville's inability to grow through Voluntary Annexation is one of the single greatest threats to the economic health and viability of Asheville, in the near term and especially over the long term. The lessons of history are clear on this point. Cities that cannot grow die. And if the only way that Asheville can grow is through the poisonous and litigious process of Involuntary Annexation, we will never be able to grow in a manner that is healthy for our community or the region.

After Council's previous discussion and approval of the below proposal, he and Vice-Mayor Davis and Mayor Bellamy met with Senator Nesbitt and Representatives Goforth and Whilden. There was agreement on most of the items included in the proposal. The major substantive difference of opinion was on the issue of whether there should be a strict prohibition on Voluntarily Annexation of new developments that are non-contiguous with the city limits.

The proposal below is identical to the one approved by Council earlier this year, except for the two underlined sections. One change clarifies the size criteria for new developments that will require a Voluntary Annexation Agreement -- 16 residential units or 10,000 sq. feet of commercial facilities. The other change addresses the issue of non-contiguous properties.

#### **Proposal to settle the Sullivan Act dispute:**

##### **Proposal:**

- City of Asheville agrees there will be no differential rates charged for water customers inside and outside the city limits.
- The Sullivan Acts will be modified to allow Asheville to operate under the Voluntary Annexation policies that apply to all other cities in North Carolina. Asheville is open to policies to assure Voluntary annexation will not be abused. Potential policies could include:
  - No more than 5% of the city properties could be non-contiguous with the primary city limits unless specifically authorized by state legislation (such as the airport property). Existing state law allows cities to have up to 10% non-contiguous.
  - No properties could be Voluntarily Annexed into the city unless they are within one-half mile of the city limits. However, Asheville could still require other developments that more than a half mile from the city limits to sign an Voluntary Annexation agreement with the city if they wish to connect to city water lines, so that the city can bring them in to the city once the city has grown outwards to the point that the development is within one-half mile of the city.
  - Developments of less than 16 residential units or 10,000 square feet of commercial space would not be required to enter into a Voluntary Annexation Agreement with Asheville in order to access municipal water services.

No existing customers of the water system could be required to sign an annexation agreement as a condition of continuing to receive water service. The policy would apply only to new developments.

- New developments that are located closer to another incorporated town or city than Asheville could not be required to sign a Voluntary Annexation Agreement with Asheville unless there is a "sphere of influence" agreement between Asheville and the other town or city.
- Members of the legislative delegation have indicated they may be unwilling to allow Asheville to Voluntarily Annex any properties that are not physically contiguous with the city limits. There are significant new developments being constructed very close to the city limits that should be incorporated into the city but which, due to topography or the presence of other unbuildable lands, are not contiguous with the city limits. While the City Council is open to policies that strictly limit annexations that are non-contiguous, an outright prohibition is poor public policy and Council does not support it. However, it would be even more disappointing to not include any Voluntary Annexation policy in the revisions to the Sullivan Act because there is a difference of opinion about this specific point.
- Asheville will not be allowed to divert Water Funds to the General Fund. However, up to 5% of Water Funds may be used for infrastructure improvement projects directly related to water line replacement (such as improving streets or sidewalks torn up during the line replacement process).
- City and County continue discussions about opportunities to work together to be partners on infrastructure and facilities that serve the larger region. The previous water agreement included the following City/ County Partnerships:
  - County reimbursed Asheville about \$1.7 million annually for law enforcement services provided outside the city limits that are not provided in the city.
  - The County was financially responsible for the Nature Center, McCormick Field and the golf course.

**The Sullivan Acts II and III.** In 2004, the City Council decided to dissolve the Water Agreement that had governed management of the system since the early 1980s. In response, members of the legislative delegation passed Sullivan Acts II and III.

Sullivan Act II prohibits the city from charging differential water rates.

Sullivan Act III prohibits the city from using Water Funds for any purposes unrelated to management of the water system and prohibits Asheville from using Voluntary Annexation of new developments that wish to access City water services.

**Benefits of the proposed settlement:** The proposed settlement represents a compromise. Neither party gets everything they wish. However, it does address the core concerns identified by the City, County and legislators over the past several years.

Benefits of the settlement to Asheville:

- The water system will be managed by the City, which has demonstrated good stewardship of the system over the past several years, investing tens of millions in long overdue water infrastructure repairs.
- Voluntary Annexation will allow the city's tax base to grow as the area urbanizes.
- The city will have additional funds to upgrade streets and sidewalks as part of the process for replacing old water lines.

Benefits of the settlement to non-city residents:

- Assurance that water rates will be no higher for non-city customers than for those who live in Asheville.
- Assurance that for all existing customers, water cannot be used as a condition for annexation into the city.
- Assurance that payments made for water services cannot be diverted to the City's General Fund.

Benefits to the water system:

- Assurance that the infrastructure will be fixed as funds cannot be diverted to non-water system programs.

Councilman Mumpower felt it was extremely inappropriate to offer a last-minute proposal outside the established Council agenda. He also suggested that it was inappropriate for Council to discuss what amounts to a \$1 Billion surrender plan without ample notice to the public and some opportunity to discuss alternatives. He challenged the Council's actions if this item moves forward and suggests that it was an intentional effort to conceal giving up full control of a \$1 Billion City asset in the dark.

Councilman Newman responded that on this agenda (which is publicly advertised) is a legislative update. Changes to the Sullivan Act is already a part of this established agenda. As this was a complicated set of issues, he felt it was important to put some specific language on paper which was shared with members of the public and staff prior to this meeting. He felt Council is addressing an item which is part of the agenda.

Councilman Mumpower felt Councilman Newman was manipulating the public in that he felt the issue is hidden under the legislative update. There is no identifiable reference of the issue of our water system. He has no concern about Councilman Newman offering a proposal, but has problems with the timing. If there had been an interest in discussing proposals tonight, he would have added his own proposals.

Mayor Bellamy said that she has received Councilman Mumpower's agenda request for time to discuss other options regarding our water system and it will be scheduled as we do other agenda requests.

In response to Councilman Mumpower about the concerns raised earlier and about the addition of last minute documents outside of the Council agenda, City Attorney Oast said that because this is a regular meeting of Council, it's possible for things to be added to the agenda, just as he added the amendment to the non-consensual towing ordinance. It appears to what is being asked by Councilman Newman is to re-affirm a position that has already been taken, with some refinements.

When Councilman Mumpower asked if there was anything else he could do to intercept what he believes is inappropriate, City Attorney Oast said that he is not aware of anything other than to note the concerns raised.

At 9:28 p.m., Councilman Mumpower said that he personally was not willing to conduct the City's business in this manner and left the meeting unexcused.

Mayor Bellamy said that Council will continue with the business they were elected to do.

Vice-Mayor Davis felt it was appropriate to amend the language presented to our state legislators earlier. He didn't feel we are surrendering our \$1 Billion City asset as we still have ownership and control of that system, although we can't use it to the degree that other municipalities can.

Councilman Miller felt that Council gave clear direction to Mayor Bellamy, Vice-Mayor Davis and Councilman Newman to meet with our local delegation on water issues. He felt it was incumbent upon Council to have dialogue with our legislators and continue to press these issues.

Mayor Bellamy said that since the City has lost the Sullivan Act lawsuits, we believe that it's important that we work with our state legislators on the larger issue of using our water system to the best degree that we can. We have put major emphasis on fixing our water system and are letting our legislators know of that priority. We are asking them to consider how Asheville can grow as a community. Councilman Newman is asking for a reaffirmation of our commitment that we, as a City, feel this is important for us to move forward.

Councilman Newman noted that his proposal was e-mailed out to members of the media at the same time it was e-mailed out to City Council.

Councilman Newman moved to communicate to our legislative delegation our prospective on the revisions to the Sullivan Act consistent with the language in the proposal outlined above. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Russell voting "no."

## **VI. NEW BUSINESS:**

### **A. ORDINANCE NO. 3722 - BUDGET AMENDMENT FOR REIMBURSEMENT FOR OVERTIME EXPENSES RELATED TO ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE PARTICIPATION**

Summary: This is the consideration of a budget amendment, in the amount of \$19,000, for reimbursement for overtime expenses related to Organized Crime Drug Enforcement Task Force (OCDETF) participation.

The Asheville Police Department is an active member of the Drug Enforcement Administration (DEA) Task Force. As part of the agreement in joining, officers are authorized to work overtime which will be reimbursed by the Federal Government. The funds received vary depending upon the length and involvement in operations. In order to continue Asheville Police Department (APD) participation and long term involvement with operations, it is imperative that we continue to receive such overtime reimbursement. Based on the current operation APD has been allocated \$19,000 by the US Department of Justice (DOJ) to apply toward OCDETF overtime expenses.

This action complies with the City Council Strategic Operating Plan in Fiscal Responsibility in that we are using Federal Funds to reimburse for overtime that would otherwise come from APD's Operating Budget and, 2) Safe City in that participating in the DEA Task Force we are able to conduct long term operations that remove drug suppliers from our community, thus making Asheville a safer and more desirable community to live.

Pros:

- Provides a non-City revenue source to cover Police Department overtime expenses incurred during participation in the Drug Enforcement Administration (DEA) Task Force.

Con:

- None noted

As noted above, this grant provides a non-City funding source for a portion of APD's General Fund overtime expenses.

City staff recommends City Council adopt a budget amendment, in the amount of \$19,000, to accept the US DOJ funds to offset overtime expenses for APD officers involved in OCDETF operations.

When Mayor Bellamy asked for public comments, none were received.

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

Councilman Miller moved for the adoption of Ordinance No. 3722. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

**B. ORDINANCE NO. 3723 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT PROGRAMS AND IMPROVEMENTS AT THE NATURE CENTER**

**ORDINANCE NO. 3724 - BUDGET AMENDMENT FROM THE URBAN TRAIL COMMITTEE TO SUPPORT MAINTENANCE AND IMPROVEMENTS TO THE URBAN TRAIL**

**ORDINANCE NO. 3725 - BUDGET AMENDMENT FROM FUNDRAISING ACTIVITIES TO SUPPORT THE PUBLIC ART PROGRAM**

**ORDINANCE NO. 3726 - BUDGET AMENDMENT FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT THE CULTURAL ARTS PROGRAM**

**ORDINANCE NO. 3727 - BUDGET AMENDMENT FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT RECREATION PROGRAMS AND SPECIAL PROJECTS**

Summary: This is the consideration of various budget amendments for contributions to support programming and special projects as outlined below.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description of each is listed below.

- \$7,500 from the Friends of the Nature Center to increase the budget to support programs and improvements at the Nature Center. The Friends of the Nature Center is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate for and to raise funds to support the programs and enhancements at the Nature Center.
- \$3,806 from the Urban Trail Committee to increase the budget to support maintenance and improvements to the Urban Trail. The Urban Trail Committee is a sub-committee of the Public Art Board.
- \$4,363 from the fundraising activities to increase the budget to support the Public Art Program.
- \$2,000 from the Asheville Parks and Greenways Foundation to increase the budget to support the Cultural Arts Program. The Asheville Parks and Greenways Foundation is a 501 (c) 3 non-profit organization whose purpose is to act as an advocate and to raise funds to support programs and enhancements in parks, greenways and recreation programs within the City of Asheville Parks, Recreation & Cultural Arts Department.
- \$33,152 from the Asheville Parks and Greenways Foundation to establish a budget to support recreation programming and special projects.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pros:

- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:

- None

-

The fiscal impact for these actions will increase the City's Fiscal Year 2008/09 capital improvement budget by \$8,169, and special projects budget by \$42,652.

Staff recommends City Council to adopt budget amendments authorizing the City Manager to increase the budgets for 1) Nature Center by \$7,500, 2) Urban Trail by \$3,806, 3) Public Art Program by \$4,363, 4) Cultural Arts Program by \$2,000; and to establish a budget for recreation programs and special projects by \$33,152.

When Mayor Bellamy asked for public comments, none were received.

Mayor Bellamy said that members of Council have been previously furnished with copies of the ordinances and they would not be read.

Councilman Miller moved for the adoption of Ordinance No. 3723. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

Councilman Miller moved for the adoption of Ordinance No. 3724. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

Councilman Miller moved for the adoption of Ordinance No. 3725. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

Councilman Miller moved for the adoption of Ordinance No. 3726. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

Councilman Miller moved for the adoption of Ordinance No. 3727. This motion was seconded by Councilwoman Cape and carried unanimously.

**ORDINANCE BOOK NO. 25 – PAGE**

**C. RESOLUTION AUTHORIZING THE CITY TO EXERCISE EMINENT DOMAIN TO CONDEMN AND ACQUIRE PROPERTY FOR THE WESTON ROAD WATER BOND PROJECT**

At staff's request, this item was pulled from the agenda for consideration.

**D. RESOLUTION NO. 09-70 – RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE EARTH DAY EVENT**

Summary: This is the consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Earth Day event on April 18, 2009.

Lake Eden Arts Festival has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Earth day event coordinated by Mountain Roots Management and allow for consumption at this event.

The Asheville Earth Day event will be held on Saturday, April 18, 2009 from 11:00 a.m. to 10:00 p.m. within the boundaries of Martin Luther King Jr. Park and will be free and open to the public.

Pro:

- Allows fundraising opportunity for Lake Eden Arts Festival

Con:

- Potential for public safety issues.

There is no fiscal impact for the City of Asheville.

Staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and

consumption of malt beverages and/or unfortified wine at the Asheville Earth Day event located at Martin Luther King Jr. Park on April 18, 2009.

When Mayor Bellamy asked for public comments, none were received.

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

Councilman Newman moved for the adoption of Resolution No. 09-70. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Mayor Bellamy voting "no".

#### **RESOLUTION BOOK NO. 32 – PAGE 18**

#### **E. RESOLUTION NO. 09-71 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS FOR SERVICE TO AND FROM BLACK MOUNTAIN**

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Black Mountain.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Black Mountain. The Asheville Transit System will operate said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Black Mountain along US 70 with stops at the Asheville Mall, Veteran's Administration Hospital, and multiple residential areas. The service operates five times a day, six days a week. All financing will be provided by the State (maximum of \$287,398), the Town of Black Mountain (\$13,500), Mountain Mobility (\$4,000), and Fare Box Revenue (approx. \$20,000). The total budgeted cost for Fiscal Year 2009 is \$324,898 which also covers the pass through funding to Mountain Mobility for the operation of their route in Black Mountain. These funds are currently programmed in the City budget, with no City funds being expended. Ridership on this route in Fiscal Year 2008 was 42,902, 18% more riders than the prior year.

NCDOT has notified the City that future funding for Intercity routes may be discontinued beginning next fiscal year if the routes do not follow definitions provided in FTA Circular 9040.1F which defines Intercity routes under section 5311(f).

Staff is working with the Institute of Transportation Research (ITRE), NCDOT and HDR, the Transit Master Plan consultants, to determine the changes needed to comply with the circular.

HDR has proposed under the master plan an express service that will connect Weaverville and Black Mountain with the Greyhound terminal, addressing the requirement for limited stops and meaningful connections with intercity service; staff is working on the details: final destinations, stops along the route, and scheduling; cost implications if the routes are extended to connect other urban areas and changes to the buses to accommodate luggage.

This proposal will be presented to NCDOT and ITRE consultants for consideration by the end of the month.

This action conforms with the (1) City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva; (2) City Council Strategic Operating Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources; and (3) City Council Strategic Operating Plan in the Green Focus Area to Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

The City of Asheville will receive \$324,898 for intercity route operations between Asheville and the Town of Black Mountain. These funds are currently programmed in the City budget, with no City funds being expended.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Black Mountain.

Director of Transportation and Engineering Cathy Ball responded to a question raised by Councilwoman Cape.

When Mayor Bellamy asked for public comments, none were received.

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

Councilwoman Cape moved for the adoption of Resolution No. 09-71. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**RESOLUTION BOOK NO. 32 – PAGE 21**

**F. RESOLUTION NO. 09-72 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR REIMBURSEMENT OF FUNDS FOR SERVICE TO AND FROM WEAVERVILLE**

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation (NC DOT) for the reimbursement of funds to be expended for service to Weaverville.

The NC DOT has tendered a contract to the Asheville Transit System in which the NC DOT will contribute funds for bus service to Weaverville. The Asheville Transit System operates said service.

Asheville Transit System operates an intercity bus route between the City of Asheville and the Town of Weaverville along US 25 Business with stops at UNCA, along Merrimon Avenue, in downtown Weaverville, at the Rose's Shopping Center, Arvarto, and other locations along the route. The service operates five times per day, six times per week. The State and the Town of Weaverville have funded the entire amount of the operating costs less fare box revenue. The total budgeted cost for Fiscal Year 2009 is \$158,835. The State of NC is providing \$143,335 for this Intercity Project. The Town of Weaverville has budgeted \$10,000 to this route. The balance of \$5,500 is expected from farebox revenues. There are no City funds in this operation, and the City is specifically exempted from funding any of these operations in the contract from the NC DOT for these routes. Ridership on this route in FY 2008 was 13,935, 5% less than last's year ridership (14,678).

NCDOT has notified the City that future funding for Intercity routes may be discontinued beginning next fiscal year if the routes do not follow definitions provided in FTA Circular 9040.1F which defines Intercity routes under section 5311(f).

Staff is working with the Institute of Transportation Research (ITRE), NCDOT and HDR, the Transit Master Plan consultants, to determine the changes needed to comply with the circular.

HDR has proposed under the master plan an express service that will connect Weaverville and Black Mountain with the Greyhound terminal, addressing the requirement for limited stops and meaningful connections with intercity service; staff is working on the details: final destinations, stops along the route, and scheduling; cost implications if the routes are extended to connect other urban areas and changes to the buses to accommodate luggage.

This proposal will be presented to NCDOT and ITRE consultants for consideration by the end of the month.

This action conforms with the (1) City Development Plan 2025: Goal VI: Develop a transit system that is capable of meeting the needs of all residents of and visitors to the region. Strategy 4: Expand inter-city service to Hendersonville, Black Mountain, Weaverville, Mars Hill, and Sylva; (2) City Council Strategic Operating Plan Section on Planning, Goal 2, Objective A, Creating a Multi-modal Transportation System, leveraging outside funding sources, and Objective B, by creating a partnership between the state, the Town of Weaverville and the Asheville Transit System to mitigate congestion; and (3) City Council Strategic Operating Plan in the Green Focus Area to Establish a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit and other system improvements.

Pro:

- Increased mobility for the citizens of Asheville both within and outside the city at no additional cost to the City of Asheville.

Con:

- There are no disadvantages to the City of Asheville.

The City of Asheville will receive \$158,835 for intercity route operations between Asheville and the Town of Weaverville. These funds are currently programmed in the City budget, with no City funds being expended.

City staff recommends adoption of the resolution authorizing the City Manager to enter into an agreement with the N. C. Dept. of Transportation for the reimbursement of funds to be expended for service to Weaverville.

When Mayor Bellamy asked for public comments, none were received.

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

Councilwoman Cape moved for the adoption of Resolution No. 09-72. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 32 – PAGE 22**

**G. OAKLEY POLICE RESOURCE CENTER REPLACEMENT**

**RESOLUTION NO. 09-73 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH ASHEVILLE-BUNCOMBE TECHNICAL COMMUNITY COLLEGE FOR GREEN BUILT MODULAR HOME**

**RESOLUTION NO. 09-74 - RESOLUTION AUTHORIZING THE DEMOLITION OF CITY-OWNED PROPERTY LOCATED AT 711 FAIRVIEW ROAD**

Assistant City Manager Jeff Richardson said that this is the consideration of a (1) resolution to authorize the Mayor to enter into an interlocal agreement with Asheville-Buncombe Technical Community College (AB Tech) to purchase a student built energy efficient modular home replace a 100 year old Police Resource Center in the Oakley community; (2) resolution authorizing the demolition of City-owned property located at 711 Fairview Road.

Mr. Richardson was pleased to recognize two of our partners from AB Tech - Mr. C. Max Queen, Vice-President of Risk Management and Operations, and Mr. Vernon Daugherty, Dean of Engineering and Applied Technology.

Phase I analysis, for near term priority areas, showed significant constraints in the following facilities (1) City Hall (all floors) – impacts Customer Service Division, development services, internal support services; (2) Public Works Building (Department of Public Works and Building Safety) – impacts development services and Public Works administration operations; (3) Municipal Building (Police and Fire) – impacts downtown public safety operations; (4) Oakley Police Community Center – inadequate space with critical building code issues; (5) Parks Maintenance Facility (Aston area property) – inadequate space to maintain location and achieve redevelopment goals; and (6) Hunt Hill Purchasing Facility (McCormick Heights area) – inadequate space to maintain location and achieve redevelopment goals.

During the 2007 budget planning process, the City Council allocated a one-time infusion of \$500,000 into the City's Capital Improvement Fund. Subsequently, through its master facility planning process, the City determined the Oakley Police Resource Center was a first priority of all existing City buildings as needing immediate restorative repair, as the house is structurally unsafe. This decision was made after the City contracted with a structural engineer to review the house, as well as requesting an internal Building Safety Department inspector walk-through. It was determined as result of these site assessments that the police resource center is in need of a minimum of \$30,000 of immediate restorative maintenance in order to keep the house in usable condition. Additional significant investment was identified to modernize much of this house's outdated design features, which are not suited to accommodate the volume of police staffing traffic that occurs daily at this site.

The Oakley Police Community Center (1) is a 1910 residential structure with 1,200 usable square feet; (2) serves as northeast district office; (3) has 44 assigned sworn personnel; (4) has structural issues and space compatibility issues; and (5) has an estimated \$30,000 for minimum restorative maintenance.

An interdepartmental project team reviewed this situation and unanimously recommended that the home be demolished and that the city pursue an energy efficient modular home replacement. The City contacted Max Queen, Vice President of Risk Management and Operations at AB Tech, to inquire about partnering to build a green modular home as a joint project, and learned that AB Tech had recently completed an energy efficient student-built modular home and was preparing to auction this home off in the near future.

Staff analysis of the replacement of the Oakley Police Community Center includes (1) \$200,000 capital maintenance money available (Fiscal Year 2007); (2) modular energy efficient replacement pursued; and (3) AB Tech partnership opportunity (a) modular home available; (b) student constructed (2007-08); (c) built to NC Healthy Built standards; (d) 1,250 square feet / 1,250 unfinished basements; (e) AB Tech Carpentry Program willing to complete finish work on-site at materials-cost only (including exterior deck/porch roof); and (e) AB Tech Carpentry Program willing to finish basement at materials-cost only in future.

City staff has conferred with the Building Safety Department about the quality of this five star energy rated modular home. The Building Safety Department rates the building quality as outstanding. The Police Department staff toured the home and is impressed with the quality and features, stating that the home is perfect for their future needs.

As part of the demolition/site preparation process, the Asheville Fire & Rescue Department would like to conduct a live fire training using this structure. This will save the City money disposing of debris from the site. In addition, staff is looking into salvaging usable items in the house before the live burn.

Interim planning steps include (1) quality inspection/review of home (building safety); (2) Police Department walk-through site review of home; (3) staff presentation to Council Public Safety Committee; (4) AB Tech staff discussion/Board of Trustees; and (5) Oakley neighborhood community meeting.

He then showed an artist's rendering of the house.

The City of Asheville and AB Tech held a community meeting on April 6 in the Oakley Community to discuss this project. One hundred letters were sent in advance of this meeting to alert homeowners of this proposed project. Twelve citizens attended this

meeting, including the Oakley Neighborhood President. This project was endorsed by those citizens at this meeting.

Projected Budget:

-	
Site Demolition Cost	\$ 10,000
Home Purchase Cost	\$110,000
Site Preparation/House Transport Cost	\$ 57,000
Landscaping and paving/contingency	\$ 15,000
Total	\$192,000

This figure represents a 1,250 square foot finished home and also a 1,250 unfinished full basement.

This proposal was reviewed by the City Council Public Safety Committee on March 17, 2009, and they unanimously recommended that the project move forward for consideration.

This proposal aligns with many of the City's Strategic Plan goals to include: (1) Sustainable: (a) Expand partnerships with UNCA, AB Tech and other institutions to achieve goals in health and wellness, workforce development, and economic development, among others; (b) Develop a long-term plan to address the city's infrastructure including facilities; and (c) Supports the city council's desire to support the local economy through an effort to buy local; (2) Green: (a) Make environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations; and (3) Safe: (a) Prioritize public safety and infrastructure investments that support children's health and safety; and (b) Expand Community Policing Initiatives.

Pros:

- This project, if approved, aligns several key City Strategic Plan goals as noted above.
- This project is currently budgeted with earmarked capital money set aside in Fiscal Year 2007.
- The money paid to AB Tech will be used to fund future student built energy efficient modular home projects in this community.
- The design of this structure blends well ascetically with the characteristics of the Oakley community.
- Total square footage to include a full unfinished basement allows for necessary future growth needs in the Police Department.

Con:

- The APD North-East Patrol District will be required to temporarily be relocated to another site in the same vicinity during the timeframe that this project is completed. Estimated time to complete this project and open the new center is four months once underway.

Staff is recommending approval of the Intergovernmental Agreement with AB Tech, along with approval of demolition of the existing structure with the assistance of the Asheville Fire and Rescue Department.

Mr. Carlton Denning, Division Chief of the Safety and Training Division of the Asheville Fire Department, responded to Councilwoman Cape about the very strict federal, state and local guidelines that must be followed before a house is safe to burn. He also confirmed that a controlled burn is an excellent training for firefighters.

Mr. Queen explained how the carpentry in the modular home is exceptional and was pleased to partner with the City of Asheville.

Vice-Mayor Davis noted that this modular home is in keeping with the character of the Oakley community.

Mayor Bellamy said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-73. This motion was seconded by Vice-Mayor Davis and carried unanimously.

**RESOLUTION BOOK NO. 32 – PAGE 23**

Vice-Mayor Davis moved for the adoption of Resolution No. 09-74. This motion was seconded by Councilman Russell and carried unanimously.

**RESOLUTION BOOK NO. 32 – PAGE 24**

**H. RESOLUTION NO. 09-75 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD**

Vice-Mayor Davis said that the term of Sharon West, as a member of the Civil Service Board, expired on May 21, 2008. Ms. West has agreed to remain on the Board until May 1, 2009.

At the March 10, 2009, meeting, it was the consensus of Council to interview Bridgette Odom, Davidson Jones and Beatrice Brown. On March 24, 2009, Ms. Odom and Ms. Brown were interviewed. Mr. Jones did not attend the interview.

Due to residency concerns, it was the recommendation of the Boards & Commissions Committee, and the consensus of City Council, that the appointment to Ms. West's seat be postponed and re-advertised.

In addition, the term of John Miall, as a member of the Civil Service Board, expires May 21, 2009. Since City Council has recently interviewed Mr. Miall and reappointed him as Chair to the Civil Service Board, it was the recommendation of the Boards & Commissions Committee, and the consensus of City Council, that Mr. Miall be reappointed to serve an additional two-year term, term to expire May 21, 2011, or until his successor has been appointed.

## **RESOLUTION BOOK NO. 32 – PAGE 25**

### **I. BOARDS & COMMISSIONS**

It was the consensus of Council to interview Mark Allison, Harry Weiss and Abigail Emison for a vacancy on the Downtown Commission.

It was the consensus of Council to interview Rachael Bliss, Milton Simpson, John Calligan and Matthew Howard for a vacancy on the URTV Inc. Board of Directors.

In response to Mayor Bellamy, Vice-Mayor Davis said that the Boards & Commissions Committee recommended the two liaisons for the URTV Inc. Board (Councilman Russell and County Chairman David Gantt) meet with the URTV Manager and URTV Board Chair to see if they can resolve some of the problems associated with the Board.

### **VII. OTHER BUSINESS:**

#### **A. CLAIMS**

The following claims were received by the City of Asheville during the period of March 13 – April 2, 2009: Christopher Morris (Transit), Annie Jones (Fire), Randy Roland (Police), Mark Jackson (Streets), Ingrid Swayngim (Streets) and Karen Cianciulli (Traffic Engineering). These claims have been referred to Asheville Claims Corporation for investigation.

### **VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Ms. Kyle Ross urged the City of Asheville to get experts (forensic psychologist or forensic anthropologist) involved in solving crimes in Asheville, especially homicides. Mayor Bellamy said that Assistant City Manager Richardson would follow-up on her request.

Mr. Barry Durand thanked City Council for their earlier resolution of support for their (neighbors and others) efforts to encourage Environmental Protection Agency (EPA) restoration of soil and water quality in the area impacted by the CTS facility. He updated Council by saying that CTS is has now decided to enter into the State's voluntary remediation program, which incentive is a \$3 Million liability cap. He urged Council to support the community as they lobby that the CTS facility's voluntary remediation program request be denied and that they do an appropriate, proper clean-up. They feel that is an inappropriate application of voluntary remediation.

In response to Mayor Bellamy, Mr. Durand said that this issue is on the Buncombe County Commissioners' agenda next week.

After a brief discussion, it was determined that participation in a brownfields remediation program may not be the most appropriate course of action in this instance, largely because the site was still active.

Vice-Mayor Davis noted that Congressman Shuler's office is involved and it may be appropriate to prepare a resolution of support for doing something more immediate through the Congressman's office.

Mayor Bellamy also noted that Senator Burr would be in Asheville tomorrow and they may have an opportunity to speak to him regarding this issue.

It was the consensus of Council to instruct the City Attorney to prepare a resolution, to be placed on the May 12, 2009, agenda, requesting the CTS facility's request for voluntary remediation be denied. Councilwoman Cape suggested said resolution to state that while the voluntarily compliance is good, when it applies, because it encourages people to be proactive in cleaning areas up, but in this situation, it does not apply.

**IX. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 10:21 p.m.

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CITY CLERK

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MAYOR