

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 (excused from meeting at 8:59 p.m.); Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; 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 Miller gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 26, 2009

B. RESOLUTION NO. 09-113 - RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE AN OFFER TO PURCHASE AIR SPACE AT 51 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing the City Clerk to advertise an offer to purchase air space at 51 Biltmore Avenue.

A bid has been received from McKibbon Hotel Group, Inc. in the amount of \$889 for the purchase of 187 square feet of air space at the 51 Biltmore Avenue property, further identified by the PIN # 964849357600000.

The property at 51 Biltmore Avenue is the currently being used as a surface parking area. A public-private mixed use development has been proposed for the site, and includes the construction of a 145-room hotel; 2,600 square feet of retail space, an 83-seat restaurant and a public parking deck. This project has received approval from the Downtown Commission, the Planning and Zoning Commission, and the final Technical Review Committee approval was granted on April 20, 2009. Council approval was granted on October 14, 2008.

This air rights request is specific to the proposed hotel, the Aloft by Starwood, via McKibbon Hotel Group, Inc. According to the plans, the hotel building will be sited at the corner of Biltmore Avenue and Aston Street. At 90' above the sidewalk level on the Aston Street side, a decorative seam metal roof element, known as a "swoof", is designed that will extend 5'6" over the right-of-way boundary (sidewalk), with a corresponding length of 34'. The total area of this architectural feature that encroaches into the public right-of-way equals 187 square feet.

Past appraisals indicate that the value of air space over public rights of way is 20% of the per square foot land value of the property applied to the horizontal area of the airspace. This method was used to extrapolate a value for the air space using the tax assessment for the property at 51 Biltmore Avenue. The estimated value of the air space for 187 square feet is \$889. The bid from McKibbon Hotel Management is to acquire the air space for the architectural details for the sum of \$889.

This action complies with the City Council Strategic Operating Plan in that this development proposal supports the strategic goal of sustainability by providing infill growth where infrastructure currently exists and encourages economic development in the downtown.

Pros:

- The sale will be at fair market value.

- The architectural details will provide a more visually interesting roof feature on the building.

Con:

- None

The fiscal impact for this sale of air rights will be finalized once the upset bid process has concluded.

City staff recommends City Council adopt a resolution which will initiate the sale of the air space through the upset bid process.

There as a brief discussion, initiated by Councilman Mumpower, regarding the current formula to determine the value of air space. It was the consensus of Council to have staff review the current formula for possible revisions, along with best practices in other cities, and report their findings to the City Council Planning & Economic Development Committee for review.

Economic Development Director Sam Powers said that he would get a response to Councilwoman Cape's question regarding if the 187 square feet of air rights is included in the tax bill.

RESOLUTION BOOK NO. 32 – PAGE 76

C. RESOLUTION NO. 09-114 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH KEEN IMPRESSIONS INC. FOR PRINT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement not to exceed \$175,000 with Keen Impressions, Inc. for print services.

Approximately every three years, the City of Asheville conducts an analysis to determine the most cost effective means for fulfilling the organization's print needs. This exercise is consistent with best practices for ensuring internal services are provided at the lowest possible cost given defined standards for quality and responsiveness.

This year, city staff issued a Request for Proposals for print services to compare costs proposed by external print companies to the costs associated with operating an internal print shop. The lowest responsive bidder, Keen Impressions, demonstrated the ability to provide print services at rates 30 percent lower than the full cost recovery rates of the internal print shop. Keen Impressions also demonstrated the ability to meet the organization's expectations for turn around times, job delivery, and quality of print work.

As a result, staff is seeking City Council authorization to enter into an agreement with Keen Impressions that sets rates for a comprehensive set of print services utilized by the City of Asheville. These rates will remain in effect for a period of three years with an allowance for a fixed paper price increase of not more than 2 percent each year.

This action complies with the City Council Strategic Operating Plan by upholding Council's commitment to operate the city to the highest levels of fiscal responsibility.

Pros:

- Establishes print rates from a lowest responsive bidder established through a competitive process.
- Expected to yield a net cost savings to the General Fund in year two of contract implementation.
- Existing staff members from the internal print shop will be offered employment opportunities with the organization.

Con:

- Requires a transition period for the organization to learn the processes and procedures of facilitating print work through an external vendor.

The contract is structured not to exceed \$175,000 throughout the course of each fiscal year, although staff expects the actual amount spent on print services to be less as a result of targeted efforts to limit paper use across the organization. The print services contract will be rebid after three years. The contract is expected to result in a net savings to the General Fund of at least \$40,000 in year two of implementation.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with Keen Impressions, Inc. in an amount not to exceed \$175,000 for print services.

RESOLUTION BOOK NO. 32 – PAGE 77

D. ORDINANCE NO. 3735 - BUDGET AMENDMENT FOR TO SETTLE THE LAWSUIT CAPTIONED TROY WYATT VS. CITY OF ASHEVILLE, ET AL

Summary: The consideration of a budget amendment, in the amount of \$150,000, to settle the lawsuit captioned Troy Wyatt v. City of Asheville et al. (file no. 1:09-CV-00023, WDNC).

On January 25, 2006, Troy Steven Wyatt was injured when the Asheville Police Department (APD) conducted a raid on a suspected drug house. APD deployed a distraction device into a room that was occupied by Mr. Wyatt and others. This action resulted in injury to Mr. Wyatt when the device burned him. Mr. Wyatt sued the individual officers and the City of Asheville on the basis that the officers used excessive force and falsely arrested him. The officers and City denied the allegations. The Asheville Claims Corporation, through its attorneys, has reached a settlement with Mr. Wyatt in the amount of \$300,000. Because the proposed settlement amount exceeds the settlement authority of the Asheville Claims Corporation, City Council approval of it is required. Sufficient budget authority already exists in the City's liability insurance budget to pay for half of this settlement; however a budget amendment in the amount of \$150,000 is needed to cover the full amount of the settlement. This \$150,000 will be appropriated from the liability insurance fund balance reserves.

The Asheville Claims Corporation settles claims against the City of Asheville.

This action complies with the City Council Strategic Operating Plan – Sustainability, in that the fund balance exists to be used for this type of situation.

Pros:

- Settlement has been reached with Mr. Wyatt.
- This settlement will release the City and its officers from any future liability.
- The City's guidelines regarding the deployment of distraction devices have been reviewed and changes have been made.
- Settlement would be made under the City's actual damages administrative policy. Facts and law specific to this case have been reviewed by City Staff and City Council. Payment is not a waiver of governmental immunity.

Con:

- The Liability Claim Fund balance will have a net decrease of \$150,000.

\$150,000 will be appropriated from the liability insurance fund balance. The City itself is self insured up to \$500,000 for liability claims rising against the City. The Asheville Claims Corporation mitigates and settles claims for the City of Asheville. Based on the most recent actuarial recommendation, the liability insurance fund balance will remain healthy to pay future claims. Because the liability insurance fund balance is considered reserved, the \$150,000 appropriation will not impact the City's available fund balance.

The Asheville Claims Corporation requests that City Council adopt a budget amendment, in the amount of \$150,000, for settlement of the lawsuit Troy Wyatt v. City of Asheville et al.

Councilman Mumpower said that this settlement has the potential to save City taxpayers a lot of money, but this settlement illuminates what is a nightmare problem in our country – a dysfunctional judicial system. We are going to pay someone who was in a crack house \$300,000 and this action is very distasteful.

Mayor Bellamy noted that there is more to the story than someone going into a crack house and felt this settlement is the best outcome for all parties.

ORDINANCE BOOK NO. 25 – PAGE 289

E. MOTION WAIVING FIRE, ZONING AND TECHNICAL REVIEW FEES FOR DOWNTOWN ASHEVILLE RESIDENTIAL NEIGHBORHOODS TO CONDUCT A CULTURAL ART PROGRAM AT PRITCHARD PARK

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

F. RESOLUTION NO. 09-115 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR THE INSTALLATION OF POWER UTILITY LINES AND FACILITIES ON CITY PROPERTY ON RESERVOIR ROAD (WHITE FAWN RESERVOIR – UNITED STATES CELLULAR)

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the White Fawn Reservoir property for an extension to the United States Cellular (herein "US Cellular") tower on the site.

The land on which the White Fawn Reservoir is located is owned by the City of Asheville. The subject property contains a cellular tower used by US Cellular. The utility lines on the property will be installed underground, and three (or is it four) power poles will be removed. The new installation will involve a 36 foot span over Reservoir Road to a new pole, and then 270 feet underground to a new pad-mounted transformer and light. Approximately 300 feet of existing overhead line and at least two poles will be removed. The easement area will be 30 feet for the new overhead facilities, and 10 feet on either side of the underground line, and 10 feet around the new transformer and light.

This action complies with the City's Strategic Operating Plan in that it supports sustainable economic development, and contributes to Asheville's role as a regional economic and service center in the operation of the cellular telecommunications tower regional facility. The project has been reviewed by the City's arborist, who notes that one semi-mature tulip poplar will be removed, but no other significant vegetation. The new tower facility is expected to serve some of the City's communication needs.

Pros:

- Facilitates development of telecommunications towers
- New lines will be mostly underground; above ground lines removed
- City communication capability will be enhanced

Con:

- None noted

The fiscal impact is eventual cost saving to City from relocation and consolidation of communications facilities.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 32 – PAGE 78

G. RESOLUTION NO. 09-116 - RESOLUTION SUPPORTING THE CITY OF ASHEVILLE BOARD OF ALCOHOLIC CONTROL'S OPERATION OF ABC STORES AND OPPOSING MERGER OF ABC BOARDS AND "AGENCY STORES"

Summary: The Asheville Board of Alcoholic Control has requested City Council support of spirit sales through ABC Stores and in opposition to "agency stores."

Councilman Mumpower, liaison to the ABC Board, felt that the state government is looking for additional revenue sources and intruding on local authority. This creates basically two lines of operational opportunity over the ABC services and urged Council to support the resolution opposing the merger of the ABC Boards and "agency" stores.

RESOLUTION BOOK NO. 32 – PAGE 80

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 Councilman Miller and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

E. MOTION WAIVING FIRE, ZONING AND TECHNICAL REVIEW FEES FOR DOWNTOWN ASHEVILLE RESIDENTIAL NEIGHBORHOODS TO CONDUCT A CULTURAL ART PROGRAM AT PRITCHARD PARK

Summary: The consideration of a request from Downtown Asheville Residential Neighborhoods (DARN) to waive fire, zoning and technical review fees in the amount of \$286 for a cultural arts program at Pritchard Park.

DARN has proposed conducting a cultural art program at Pritchard Park during the park's regular operation hours

according to the dates and event descriptions listed below. All of the events conducted by DARN will be free and open to the public.

The total event permits include park rental fees (valued at \$8,725) as well as fire, zoning and technical review fees (valued at \$286) for the said events. The Recreation Board will review DARN's request to waive the park rental fee (valued at \$8,725) for the cultural art program at its meeting on June 8, 2009. If the Recreation Board does not waive the park rental fee, it will be reported to City Council at its meeting on June 9, 2009.

DARN is asking that the Asheville City Council consider waiving the fire, zoning and technical review fees, valued at \$286, for the cultural arts programming. The Recreation Board does not have the authority to consider waiving these fees because they fall outside the scope of the Parks, Recreation and Cultural Arts Department.

Descriptions of the events and dates that will comprise DARN's proposed cultural arts program include:

- Entertainment every Tuesday and Thursday at 5–7 p.m.; and Wednesday at noon through September 2009. Activities will most often include music performances.
- Arts Market every Saturday at 10 a.m. – 4 p.m. through September 2009. Local artists will display and sell their work.
- Movies in the Park every Saturday in August 2009 at 8 – 10 p.m. An outdoor movie will be shown each night.
- Pritchard Park Birthday Party, August 1, 2009 at 10 a.m. – 1 p.m. Pritchard Park was originally dedicated as a public park on July 31, 1932. The event will celebrate the park's 77th year as a public park with children activities and music.
- Santa in the Park every Saturday November 28 through December 19 at 9 a.m. – 4 p.m. Santa will greet park visitors and holiday entertainment.

DARN is a neighborhood association for residents in the Central Business District of downtown Asheville to connect residents to the community and support neighborhood issues. Besides supporting Pritchard Park, DARN collaborates with Asheville Greenworks, MANNA Foodbank, Homeward Bound, Arts 2 People, Asheville Mural Project and the Asheville Downtown Association to benefit downtown Asheville.

DARN is working with the City of Asheville to enhance Pritchard Park to 1) partner with Asheville Downtown Association to provide and install holiday lights in the park, 2) beautify the park by donating and maintaining planters with seasonal plant material.

This item has been reviewed by the Council's Public Safety Committee at its meeting on May 19, 2009.

Pros:

- Enhances DARN's ability to provide cultural arts programming in Pritchard Park
- Supports recommendations of the Downtown Social Issues Task Force

Cons:

- Reduces the annual revenue in the included service areas.

In 2008, the City supported the entertainment and arts market component of the cultural arts program in Pritchard Park via an agreement with Art2People in which the City allocated \$10,000 and waived the park rental fee and event permit fees for a total value of \$17,585. The current proposal includes waiver of the park rental fee and event permit fees for a total value of \$9,011. The remainder of the cost associated with the 2009 program is included in the volunteer services as provided by DARN.

City staff recommends City Council to approve the permit fee waiver in the amount of \$286 for fire, zoning and technical review fees for the cultural arts program provided by Downtown Asheville Residential Neighborhoods in Pritchard Park.

Councilman Mumpower felt that providing cultural art programs at Pritchard Park is a City function. In addition, he didn't believe it was fair to create special deals to a special interest groups.

Councilwoman Cape felt this is an example of citizens taking responsibility and engagement with their neighborhood park. They have raised a lot of money, put in flower boxes and spent countless hours being engaged with that park. This feels like a partnership with DARN rather giving them a special deal.

Ms. Susan Griffin, Chair of DARN, said that they are partnering with two groups that have two main focuses in the park – (1) beautification; and (2) programming. They have installed 21 planters in the park and raised money for the maintenance of them. Also, this year they are not asking for any funds from the City for programming – they have raised all the funds themselves.

Mayor Bellamy said that other neighborhood groups often times have the opportunity to utilize their neighborhood park for very limited cost or not at all. She felt this is an opportunity for the City to continue their partnership with DARN especially since we have seen the curbing of some illegal activities in Pritchard Park due to the positive nature of the programming as well as the variety of people from across downtown that are actually utilizing the park.

Councilwoman Cape moved to approve the permit fee waiver in the amount of \$286 for fire, zoning and technical review fees for the cultural arts program provided by Downtown Asheville Residential Neighborhoods in Pritchard Park. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no."

-
ADDITIONS TO CONSENT AGENDA

-
A. RESOLUTION FAVORING AN INDEPENDENT ENERGY EFFICIENCY ADMINISTRATOR FOR THE STATE OF NORTH CAROLINA

Councilwoman Cape said that there is a bill in the legislature to create NC SAVES ENERGY, which legislation is to establish an independently administered statewide energy efficiency program to reduce energy usage and costs for low and moderate income households across the state. She felt this is an important tool, noting that the program will not be administered by the power companies. She explained that this would be a very low surcharge (approximately \$1) on the power bill, which will go to reduce consumption.

She provided Council with the following resolution: "WHEREAS, the NC General Assembly has passed a very modest Renewable and Efficiency Portfolio Standard, which calls only for up to 5% efficiency by the state's electric utilities by 2021; and WHEREAS, electrical production is a major contributor to air pollution and greenhouse gases, and baseload power plants, less than 40% efficient themselves, constitute the single largest locus of inefficiency and wasted heat in NC's energy budget, as well as a significant contributor to drought vulnerability and degradation of aquatic ecosystems; and WHEREAS, studies by several energy experts have shown that efficiency gains of at least 19% are achievable cost-effectively, even before implementation of any taxation or cap and trade limits for greenhouse gas emissions; and WHEREAS, low- and moderate-income households with poor quality housing use a disproportionate amount of energy to heat and cool their homes and thus disproportionately pay 'per unit used' energy surcharges, our state's energy plan should include weatherization and other energy efficiency programs to assist these households, which will provide a meaningful improvement to the quality of life of these citizens as well as a significant environmental impact, and WHEREAS, legislation to establish an independently administered statewide energy efficiency program for electric and gas customers, NC SAVE\$ ENERGY, House Bill 1050, has been introduced into the House of Representatives of the NC General Assembly, to reduce energy usage and costs for low and moderate income households and a small program for government buildings, schools and hospitals, create thousands of green jobs, prevent the building of any new baseload power plants, and reduce pollution and climate changing emission. NOW THEREFORE, BE IT RESOLVED BY ASHEVILLE CITY COUNCIL that: Section 1. The North Carolina legislature and especially our region's representatives, are urged to pass House Bill 1050 in 2009, in order to create NC SAVE\$ ENERGY, a statewide energy efficiency independent administrator, and the Governor is urged to sign the legislation, to begin implementation of the programs at the earliest possible date. Section 2. That such a North Carolina energy efficiency program be required to save significant energy and reduce greenhouse gas emissions; be fairly funded by all electricity and gas customers in proportion to their energy use; and provide incentives to customers to both conserve energy and implement energy efficiency measures, and finances and efficiency accomplishments be independently evaluated annually. Section 3. That the priorities for the North Carolina energy efficiency plan include addressing the unmet needs of working families and those on fixed incomes for assistance in implementing energy efficiency measures, as well as the need to create new North Carolina-based public and private jobs in the growing efficiency and conservation markets. Section 4. That such a program be fairly funded by electric and gas customers in proportion to their energy use, with exemptions for participants in a range of federal and state subsidy programs for low and fixed income and disabled persons. Section 5. This resolution shall be effective on and after its passage."

Councilwoman Cape said that the purpose in bringing this to Council at this meeting is because time is of the essence in that the bill is in the House Energy Committee now and will be moving forward into the Budget Committee. She noted that a lot of the particulars have not been worked out yet, but it's saying that we recognize the need for encouraging more opportunities for energy efficiency and that the consideration of an independent administrator is a good idea.

Councilwoman Cape moved to adopt a resolution supporting NC SAVES ENERGY, House Bill 1050. This motion was seconded by Councilman Mumpower.

After a short discussion, Councilwoman Cape asked that her motion be withdrawn and that she be allowed to bring the resolution back up for Council consideration at the next meeting after Council has had an opportunity to study and receive more information on the requested action.

B. RESOLUTION NO. 09-123 – RESOLUTION URGING STATE LAWMAKERS TO REDUCE CUTS IN PUBLIC EDUCATION FUNDING IN THE 2009 BIENNIAL STATE BUDGET

Mayor Bellamy said that as a result of the teacher's meeting last night there has been a request for Council to urge state lawmakers to reduce cuts in public education funding. The Buncombe County School Board has passed a resolution asking the state to minimize their projected cuts in funding for their education programs for 2009-10 so as to reduce teacher job loss, preserve manageable class size, and to ensure the continued availability of quality public education in North Carolina.

In response to Councilman Mumpower, Mayor Bellamy said the urgency in bringing this to Council at this meeting is the pending vote for the State budget.

Mayor Bellamy then read the following resolution: "WHEREAS, the State of North Carolina is experiencing financial problems of historic proportions, resulting in reductions of funding for many government programs; and WHEREAS, in response to anticipated budget cuts, public school systems across the State are eliminating teacher staff positions and increasing class size; and WHEREAS, a quality public education program is important to the State's future, and essential to the well-being of its population; and WHEREAS, a well-educated work force will be a key component of sustained economic recovery, and will buffer the State from the effects of future economic downturns; and WHEREAS, competent elementary and high school teachers and assistants, together with manageable class sizes and sufficient resources, are the foundation of a quality public education program. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The Governor and the State legislature are hereby respectfully urged to minimize projected cuts in funding for public education programs in the 2009 biennial budget so as to reduce teacher job loss, preserve manageable class size, and ensure the continued availability of quality public education in North Carolina."

When Mayor Bellamy asked for public comment, she received none.

Councilman Mumpower moved to adopt Resolution No. 09-123, with the following amendment: "WHEREAS, our State leaders continue to spend limited resources on non-essential services that have a direct impact on the education budget." This motion was seconded by Councilman Russell.

Councilman Miller asked for a friendly amendment to read "WHEREAS, local school systems are being required to provide additional math and science instruction, but are not provided with funds to hire the necessary personnel."

Councilman Mumpower and Councilman Russell accepted the friendly amendment and said amended motion carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 93

III. PRESENTATIONS & REPORTS:

A. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-117 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ASHEVILLE AND BUNCOMBE COUNTY FOR THE 2009 BYRNE JUSTICE ASSISTANCE GRANT PROGRAM

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

Staff is seeking City Council approval of a resolution authorizing the City to apply for additional funding under the 2009 Byrne Justice Assistance Grant (JAG) and enter into a Memorandum of Understanding (MOU) with Buncombe County.

Edward Byrne Justice Assistance Grant (JAG) – Local Solicitation

The Asheville Police Department is applying for additional funding available for the JAG – Local Solicitation Award. This is a predetermined amount of funds based on Part 1 Uniform Crime Reporting. Asheville Police and Buncombe County Sheriff have been allocated \$90,560 with Asheville receiving \$64,516 and Buncombe receiving \$26,044. As part of this additional allocation

grant, APD must adopt another MOU with Buncombe County that authorizes APD to administer the Grant and disperse the appropriate funds to the Buncombe County Sheriff's Department.

APD plans to purchase twelve (12) in-car cameras that are digital in nature and provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure storage device and wireless upload capabilities of the system create a user friendly video storage system that is extremely secure and versatile. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by police officers. This would allow for an even greater level of protection of police officers and citizens.

These cameras are based on Asheville Police Department's contract through risk management, which is scheduled to come to the Council Finance Committee in June.

12 Digital Ally In-Car Camera systems (\$5,350 each)	\$64,200.00
Cost of Equipment Rep to provide installation and training for staff	316.00
Total:	\$64,516.00

This action conforms to the City Council's Strategic Plan under **Safe** to make Asheville the safest city in America based on approved metrics for similarly sized cities and by strengthening the enforcement of existing laws and regulations as opposed to adding new ordinances.

This is a 100% non-matching grant that will enable the APD to purchase and install 12 Digital Ally In-Car Camera systems which includes the cost of equipment representative to provide installation and training for APD staff.

Pros:

- The Police Department obtains needed in-car video equipment to document traffic stops and other incidents for prosecution.
- More video/audio recorded evidence is available to review when critical incidents occur.
- The Police Department will receive 12 new in-car video units that will compatible with the propose wireless upload system.

Con:

- The City will have to bear the full cost of maintaining the equipment in future budgets after the warranties expire.

The City will have the cost of maintenance in future budgets at an annual cost of \$2,400 for all 12 cameras following a one-year warranty.

City staff recommends City Council adopt the resolution authorizing the City Manager to apply for the 2009 Byrne Justice assistance grant for additional funding and to into a Memorandum of Understanding (MOU) with Buncombe County.

Councilman Mumpower felt we should fund our own police services, noting these are nice, but not necessary expenses. He noted that these are borrowed federal dollars that will have to be repaid by our children and grandchildren.

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.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-117. This motion was seconded by Councilman Newman and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 81

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ADOPTION OF THE 2008-09 ANNUAL OPERATING BUDGET

Mayor Bellamy opened the public hearing at 5:41 p.m.

Chief Financial Officer Ben Durant said that this is a public hearing to receive public input on the budget issues before the Annual Operating Budget is adopted. This public hearing was advertised on May 29 and June 5, 2009.

The Fiscal 2009/2010 Annual Operating Budget was presented to City Council on May 12, 2009. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Budget along with a notice of the Public Hearing was published on May 29, 2009 and June 5, 2009. Adoption of the Budget Ordinance is scheduled for June 23, 2009, at the regularly scheduled City Council meeting.

The Fiscal Year 2009/2010 Annual Operating Budget is balanced with an Ad Valorem tax rate of \$0.42 per \$100 of assessed value. All essential City services are continued in the Proposed Budget.

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

He recapped the budget by saying that (1) this has been a difficult budget yet with the sales tax decline and significant cost increases; (2) there is no property tax increase; (3) there are no service cuts; (4) there is no market or merit pay adjustments for employees; and (5) there is minimal capital funding.

Staff recommends City Council conduct the public hearing on the City of Asheville Fiscal Year 2009/2010 Annual Operating budget and include public input in considerations on the Budget.

Mayor Bellamy said that adoption of the 2008-09 annual operating budget is scheduled for June 23, 2009.

As there was no public comment, Mayor Bellamy closed the public hearing at 5:44 p.m.

Mayor Bellamy urged the public to contact the Finance Department with any questions they may have on the budget. In addition, the budget is on-line and several bound copies are available in the Finance Department.

In response to Councilwoman Cape, Mr. Durant said that when you look at the budget you have to put it in some type of context. You have to decide if you are dealing with short-term cyclical issues that you can rebound in a couple of years or are you looking at some structural imbalances, meaning that you have costs that are on an on-going basis significantly outpacing your revenue growth. In the later scenario there are policy decisions that Council has to make, e.g., do you want to raise taxes to deal with that structural gap, do you want to curtail certain services or do you want to do a combination of both. Once you frame your budget situation you then need to gear your strategies toward that scenario. He explained why he personally felt we have some structural imbalances that will grow out of this recession that we're not going to be able to recover from immediately. Consumers are not going to be as free spending their money because they are going to have to replenish some of the wealth that they lost in their homes, their 401-K's and investments. He personally didn't think the economy will bounce back as quickly as it does when you are dealing with a typical recession. He thinks there are some structural issues that will be here for awhile that we will have to deal with.

Mr. Durant responded to Councilman Mumpower regarding the Consumer Price Index.

Housing & Community Development Committee Recommendations on Outside Agency Grant requests

Community Development Director Jeff Staudinger said that the Housing and Community Development Committee (HCD) has reviewed the Outside Agency Grant applications for 2009.

The City has tentatively budgeted \$161,000 for Outside Agency Grants, level-funded from last year. Two of the previously funded organizations (Asheville Green Works and Asheville-Buncombe Community Relations Council) were exempted from the competitive process, and their funding removed from the pool of available funds, leaving a total of \$101,000 available for competitive distribution. Seventeen organizations submitted applications totaling \$368,325.

In a change from prior year practice, this year's recommendations are being made by the Housing and Community Development Committee (HCD). A three-person staff team from Community Development, Finance, and Economic Development,

initially reviewed the applications, scored them according to criteria approved by the HCD, and presented application summaries, scoring, and funding recommendations to the HCD.

At the HCD meeting of May 27, 2009, the committee acted upon the funding applications, and is recommending that the City fund thirteen organizations for a total grant amount of \$95,700.

A table of applicant organizations and recommended funding per organization is below.

This proposed action complies with the City Council's Strategic Operating Plan in that it directly relates to the Council's Strategic Goals of: Affordable: These funding recommendations directly support organizations in Asheville that promote affordability for Asheville residents; Green: Two of the programs have an environmental education component; Safe: Six of the programs address issues of abuse and safety; and Sustainable: Three of the programs include resources to prepare workers and businesses for future employment.

Pros:

- Approval of Outside Agency Grants provides operating and project support to Asheville- based organizations that improve the quality of life for Asheville residents.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

Outside Agency Grants are funded from the City's general fund. The amount available is projected to be the same as last year.

The HCD recommends approval of the Outside Agency Grants as presented below:

Outside Agency	Summary Statement	2008-09 Amount Awarded	2009-10 Amount Requested	HCD Rec.
Asheville Area Arts Council	General operating support, targeted to three elements: expand website (\$50,000); increasing support of area artists (\$5,000); arts in education (\$5,000) and general administration (\$15,000)	\$ 12,500	\$ 75,000	\$ -
Asheville Art Museum	Expansion planning: complete design development phase	5,000	50,000	\$ 5,000
The Arc of Buncombe County	General operating support		15,000	\$ -
Center for Diversity Education	Fee to show four traveling exhibits in mutually decided locations		1,200	\$ 1,200
Child Abuse Prevention Services, Inc.	General operating support targeted to parenting education and outreach (\$6,000) and crisis intervention counseling for non-offending parent support groups	-	10,000	\$ 6,000
Children First /Communities in Schools	Project MARCH: after-school safe-haven program at three housing complexes in the City	22,500	40,000	\$ 22,500
	Coordinating community			

Design Center	and design professional work on public infrastructure projects		15,000	\$ 5,000
Downtown Association	Hire executive director to support economic development and cultural development in downtown		50,000	\$ -
Hall Fletcher PTO	Build playground and outdoor classroom in West Asheville		20,000	\$ 5,000
Homeward Bound of Asheville-AHOPE	A HOPE Day Center outreach, intake and support for homeless persons. Operates mornings seven days a week, and afternoons Monday through Friday	20,000	25,000	\$ 20,000
Kids Voting Buncombe County	Recruits and trains high school students to be advocates for voting	1,000	2,000	\$ 1,000
Math mentorship (UNCA)	UNCA students act as mentors to prepare at-risk middle school students for algebra		20,125	\$ -
Meet the Geeks	Provides classes, membership networking, job referrals to grow the IT sector of the local economy	3,000	10,000	\$ 3,000
One Youth at a Time	Provides mentoring, job training and placement assistance to at-risk students	7,000	10,000	\$ 7,000
United Way 2-1-1 and Hands On	Comprehensive community information and referral provider (2-1-1). Volunteer coordination for wide variety of community services (Hands-On)	5,000	10,000	\$ 5,000
YWCA of Asheville and WNC	Support Our Students (SOS) is an afterschool and day-long summer camp for at-risk students; with screening and intervention services for students involved with gangs	10,000	10,000	\$ 10,000
Housing Authority- Youthful HAND	After-school program for children residing at Lee Walker Heights housing development will purchase lap-top computers for the students' use	5,000	5,000	\$ 5,000
Total		\$ 91,000	\$ 368,325	95,700

When Mayor Bellamy asked for any comments from the public, she received none.

Councilman Miller moved to direct staff to include the outside agency grant requests recommended by the HCD Committee in the budget. This motion was seconded by Councilman Newman.

Councilman Mumpower felt we are essentially supporting non-profit agencies who already receive the benefit of not having

to pay taxes with another forced subsidy from taxpayers. He felt the reason we have non-profits is because those of us who care about the community and want to contribute can do so, and deduct those contributions.

Councilman Newman commented that the process used this year worked well. He noted that most allocations are very small amounts that in essence to a lot of different groups being able to list the City as an official partner on their projects is very important to them.

Vice-Mayor Davis did not want to second-guess the HCD Committee's recommendations, stating that he felt sure that the HCD Committee reviewed the projects thoroughly, but he did question some of the allocations, in particular the non-funding of the math mentorship at UNC-Asheville.

Mayor Bellamy explained this was a key time to invest in helping our students be successful in math and the math mentorship at UNC-Asheville would be a good place for the City to contribute to a real need. She asked for Council's support to help with this initiative and questioned the "low" staff rating the program received.

In response to Mayor Bellamy, Mr. Staudinger explained the 100 point rating system, which was an attempt to bring fairness in comparing applications to each other. Qualifications included whether the program directly supported the Council's strategic operating plan, whether it directly supported the goals of the City, how the organization would leverage the money, how responsible were the organizations handling of their own finances and their accountability for that, etc. In terms of the Math mentorship program, the major issue was that the City was asked to pay for 100% of the cost of the project, which would have required 20% of the available funds to one applicant. In addition, the application did not clearly identify the direct relationship to Council's goals. As every application was worthy, in comparison with the other applications, it was difficulty to give them a high rating. He also explained that the goal for next year is to increase the transparency of this process and to bring early on in the process what the rating criteria would be so everyone will have a clear understanding of the process.

Councilman Mumpower did not argue against the programs, but argued against the forced taxpayer dollars and where we are spending them. He felt we are taking dollars that could be invested in things that no one else can do (e.g., paving streets, hiring additional police officers) and allocating those dollars to programs that others can do.

Mayor Bellamy noted that every budget our Police Chief has put forward has been approved. There have been good efforts arising from the Public Safety Committee including illuminating people who have been caught and we are also working with the Housing Authority to address problems at the public housing developments. She explained that there is a direct correlation between individuals who are not successful in school and the penal system. It has been repeatedly proven that those individuals who are not prepared for school are more likely to drop out and when they drop out, they are more likely to be found in our court system. If we are not investing in some of these programs, we will be investing in the police department. She noted there is more participation from the residents in the South French Broad area and as a result you see less crime happening in those neighborhoods. She didn't want to diminish in any way the work that has been done.

The motion made by Councilman Miller and seconded by Councilman Newman carried on a 4-3 vote, with Vice-Mayor Davis, Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy supported the recommendations but noted that she would prepare a resolution to be placed on the next Council agenda asking for monetary support for the UNC-Asheville Math Mentoring Program because she felt it was something our community should support to help address the math concerns at the middle school.

Closed Session

At 7:01 p.m., Councilman Miller moved to go into closed session for the following reason: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously.

At 7:16 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE MASTER DEVELOPMENT PLAN FOR MONTFORD COMMONS URBAN VILLAGE IN ORDER TO CHANGE THE DEVELOPMENT INTENSITY

ORDINANCE NO. 3736 - ORDINANCE AMENDING THE MASTER DEVELOPMENT PLAN FOR MONTFORD

COMMONS URBAN VILLAGE

Mayor Bellamy opened the public hearing at 7:19 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to amend the master development plan for Montford Commons Urban Village in order to change the development intensity. This public hearing was advertised on May 29 and June 5, 2009.

The project area consists of 51 separate parcels with a combined area of approximately 11.3 acres (including unopened rights-of-way). The site, which is bounded by Hill Street to the south, Gudger Street to the east, the Montford Local Historic District to the north and Isaac Dickson School to the west, was rezoned to Urban Village by City Council on September 25, 2007. Adjacent zoning districts include RS-8, RM-8 and Office.

The rezoning to Urban Village is accompanied by a corresponding conceptual master development plan that indicates a general street network, mix of uses, development intensity, open space, pedestrian amenities and proposed parking configurations. This conceptual plan was also approved by Council on September 25, 2007.

Changes to the Master Plan

Section 7-8-23 of the Unified Development Ordinance (UDO) states that Council shall review any revisions to a master plan that **increases the overall development intensity** or **changes the proposed mix of uses by increasing or reducing any use category by 25%** or more, along with a number of other criteria. The developer has revised this project in the following ways, thereby requiring review by Council:

Mix of Uses: Residential increased 38.6%
Commercial decreased 26.7%
Office newly designated

Overall Development Intensity: Greater residential and office intensity; less commercial intensity

Other Changes (notable revisions, but do not trigger review by City Council):

- The site shall be traversed by a network of internal streets – which should seek to avoid dead-ends roads and other features that hamper connectivity. Roads may terminate at a green space – in such cases, a sidewalk or other connection must be provided to ensure the goals of connectivity.
 - Due to the placement of the Phase 1 building, the road layout has changed. A pedestrian pathway circles the Phase 1 structure, connecting an emergency access to the east and a turn-around for utility vehicles to the west.
- Phase 1 – Previous plan proposed 8 buildings, 5 of which were small, a mix of multi-family Options. Current plan proposes a single large multi-family apartment building
- Phase 2 – Previous plan proposed 1 building. Current plan shows 1 building but in a slightly different location
- Phase 3 - Largely unchanged

The following chart provides a breakdown of the overall development as previously approved by Council compared to the proposed revisions:

2007	2009
PHASE I <ul style="list-style-type: none"> • Approximately 5.67 acres • 145 residential units • +/- 25 units/acre • 48,000 square feet commercial • 1-4 stories <ul style="list-style-type: none"> ○ 1A – commercial, 52 apartments ○ 1B – (2) senior living 81 units ○ 1C – (3) SF ○ 1D – (3) attached SF 9 units 	PHASE I <ul style="list-style-type: none"> • Approximately 6.5 acres • 280 residential units • +/- 43 units/acre • 20,000 square feet commercial • 4 stories <ul style="list-style-type: none"> ○ 1 building – commercial & residential (280 units)

<ul style="list-style-type: none"> • Parking in 2 garages (1 under, 1 above) and on-street • Open space 0.28 acres 	<ul style="list-style-type: none"> • Parking in 1 garage and on-street • Open space 0.33 acres
<p>PHASE II</p> <ul style="list-style-type: none"> • Approximately 1.5 acres • 50 residential units • +/- 33 units/acre • 10,000 square feet commercial • 4 stories <ul style="list-style-type: none"> ◦ 2A – commercial, 50 apartments • Parking lot and on-street • No open space 	<p>PHASE II</p> <ul style="list-style-type: none"> • Approximately 0.9 acres • 0 residential units • 0 units/acre • 22,500 square feet commercial • 67,500 square feet office • 4 stories <ul style="list-style-type: none"> ◦ Commercial & office • Parking - surface lot • Open space 0.05 acres
<p>PHASE III</p> <ul style="list-style-type: none"> • Approximately 4 acres • 25 residential units • +/- 6 units/acre • No commercial • 1-3 stories <ul style="list-style-type: none"> ◦ 3C – 18 apartment units ◦ 3D – (7) SF • Private parking and on-street • Open space 2.07 acres 	<p>PHASE III</p> <ul style="list-style-type: none"> • Approximately 4 acres • 25 residential units • +/- 6 units/acre • No commercial • 1-3 stories <ul style="list-style-type: none"> ◦ 3C – 18 apartment units ◦ 3D – (7) SF • Private parking and on-street • Open space 2.07 acres
<p>OVERALL</p> <ul style="list-style-type: none"> • 220 residential units • 19.4 units/acre • 58,000 commercial • 0 office identified • 4 story maximum • 2.35 acres open space 	<p>OVERALL</p> <ul style="list-style-type: none"> • 305 residential units (85 additional units – increase 38.6%) • 26.9 units/acre (Residential density increased 7.5%) • 42,500 commercial (15,500 SF less - decrease 26.7%) • 67,500 office (none previously) • 4 story maximum • 2.45 acres open space

Similar to the previously approved layout, this project is still divided into three phases. Where the proposal differs is that the residential density has increased overall, as has the amount of office space. Commercial space has decreased. The development phases still structure the proposed intensity of uses in a way that seeks to integrate with the surrounding neighborhood and existing uses. The office and commercial node and areas of highest density and building height remain along Hill Street in Phases 1 & 2, where there is an existing commercial/office/business presence. Development intensity tapers off into single-family homes towards the historic Montford neighborhood. Where there were previously single-family or duplex uses proposed along the portion of the site that borders the Isaac Dickson School, there is now a single, multi-family apartment building. The lower density residential node incorporates large areas of public open space to create a more natural neighborhood feel and to buffer them from the higher-density multi-family and commercial development. The large apartment building in Phase 1 is buffered from the property adjacent to the west. Ample street trees and on-street parking throughout the project further seek to mirror a relationship with the adjacent neighborhood.

Buildings are proposed to be between one and four stories, with the two four-story structures sited towards Hill Street. In the previous plan, building heights, massing and project densities receded as the development moved away from Hill Street. In the current plan, the area of greatest intensity is now more site-centered. The revised layout complies with the Urban Village standard, although the design is not as visually complementary to the adjacent existing development as the original plan.

As mentioned earlier, the urban village district requires that the site shall be traversed by a network of internal streets –

which should seek to avoid dead-ends roads and other features that hamper connectivity. Roads may terminate at a green space – in such cases, a sidewalk or other connection must be provided to ensure the goals of connectivity. The road network has changed notably from the previous plan, *resulting in less vehicular connectivity*, although pedestrian access has not been impeded as a clearly designated pathway is provided around the Phase 1 structure.

Required Reviews

At their May 4, 2009, meeting, the Technical Review Committee (TRC) approved this project with the conditions listed in their staff report. A number of Asheville residents were present to seek more information and to voice concern regarding stormwater and erosion control issues and property value impacts. Communication has been received from an adjacent property owner, expressing concerns regarding traffic and a strong desire to see the construction entrance moved from Jason Street due to the impact on residences and business along this roadway, not included in the Urban Village. The City's Transportation & Engineering Department included a condition to the TRC that Jason Street should not be used as the construction entrance.

The applicant attended a meeting of the Montford Neighborhood Association on May 19, 2009, and answered questions and concerns from the residents regarding increased traffic, pedestrian connectivity to downtown and loss of existing vegetation. The applicant also discussed including an area within the project site to connect into the City's greenways master plan trail system.

Summary

The amendments to the previously approved conceptual master development plan indicate a greater residential density, more office space, slightly less commercial space, larger (but not taller) structures and a diminished roadway network. These changes comply with the standards and requirements of the Urban Village district and although the resulting plan is not as complementary to the existing surroundings as the previous layout, it does not jeopardize the success of the proposed development.

Pros:

- Provides more residential units.
- Supports good pedestrian access and links to the City Greenway system.

Cons:

- Previous plan focused area of highest intensity along Hill Street whereas the current proposal shows the greatest intensity in the center of the site.
- Phase 1 of the previous plan showed a greater number of buildings, but smaller in scale whereas the current proposal has just one large structure.

The proposed revisions to this project comply with the requirements of the Urban Village district and staff still supports the project. The previous plan configuration and layout more directly fit the vision for the Urban Village district, but current market conditions appear to have made that layout less viable.

Mr. Vince Smarjesse, representing Frontier Syndicate, LLC, explained the reason for the requested amendment is the change in economy. They have re-designed the plan and feel this is a better than ideal project. All units are rental and vary in size from 540 square to 1700 square feet, ranging in price from \$1.10 to \$1.27 per square foot, which puts them in the range of workforce housing.

Mayor Bellamy closed the public hearing at 7:25 p.m.

Vice-Mayor Davis hoped the project would be successful and that the finished product would look like the conceptual plan, as that is not always the case.

Mayor Bellamy was pleased that we will be able to use visualization tools which will help Council and the community know what the finished product would look like. She suggested the City Council Planning & Economic Development Committee review at that tool.

In response Mayor Bellamy about alleviating traffic from using Hill Street, Mr. Smarjesse said that a hypothetical design was a new street from Montford Avenue to Gudger Street and that is actually on the Chamber of Commerce's property using their curb-cut off Montford Avenue. They have provided the Chamber with a traffic study and a civil design plan, and they are in the process of providing them with more requested information on traffic, specifically as it pertains to the high tourist season. That connection is still on the table and they are open to discussions with the Chamber for that use.

In response to Mayor Bellamy about the narrow sidewalks on Hill Street, Assistant Director of Transportation & Engineering Ken Putnam said that the sidewalks will be increased to 7 feet.

In response to Mayor Bellamy about the process for the greenway, Mr. Smarjesse said that he is working with City staff on implementing the greenway connection. Ms. Bernstein noted that staff has added the following condition in the amendment that "the site is in the Greenway Master Plan overlay and a location for the greenway has been identified by City Staff. The applicant has agreed to work with staff on implementing the greenway connection (most likely will be integrated into Phase 3)."

Mr. Putnam responded to Councilman Newman's concern that if the connection through the Chamber's property does not happen, what other kind of improvements could be made to the Hill Street connector, e.g., traffic signals.

In response to Councilwoman Cape, Mr. Smarjesse said that the 507 parking deck is being built for all phases of the project, including the commercial component in Phase II.

In response to Councilman Mumpower, Mr. Putnam said that they will build a full bus shelter that is Americans with Disabilities Act compliant, to compliment the two Top A Stops in the area.

Councilman Mumpower felt the City was penalizing the developer by asking for upgrades to the street system when the traffic is not originating from the neighborhood or immediate area.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3736 amending the master development plan for Montford Commons Urban Village showing changes to the mix of uses and overall development intensity, adopting the proposed master development plan for the Urban Village subject to the standard conditions and the additional conditions recommended by staff: (1) The project must comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance; (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; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) The site is in the Greenway Master Plan overlay and a location for the greenway has been identified by City staff. The applicant has agreed to work with staff on implementing the greenway connection (most likely will be integrated into Phase 3). This motion was seconded by Councilman Newman and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 291

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE BILTMORE PARK TOWN CENTER SIGN PACKAGE

ORDINANCE NO. 3737 - ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGN PACKAGE

Mayor Bellamy opened the public hearing at 7:51 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is the consideration of an ordinance amending the Biltmore Park Town Center sign package. This public hearing was advertised on May 29 and June 5, 2009.

In July 2007, City Council approved a signage plan for the Biltmore Park Town Square (BPTS) urban village project. Comprehensive signage plans are allowed by ordinance and enable larger development sites to develop a custom plan for signage that addresses unique needs and contexts in a comprehensive and harmonious manner. The BPTS plan was the City's first and most comprehensive; however, as individual buildings begin to open for business and more and more units and commercial/office space comes available, the signage needs are becoming better understood and insufficiencies in the approved plan are being identified. The developer is now requesting some new signs that had not been contemplated as part of the original proposal.

For efficiency, only the amendments are detailed below.

Temporary Sign

Description: The applicant is requesting a temporary banner-style sign to be placed on the back side of the movie theater for a period of four months with a one-time renewal option of an additional four months. The sign is proposed to be 625 square feet to maximize visibility from I-40 and would contain a simple text message of "Apartments, Condos, Retail shops, Office Space" with simple high contrast colors. For context, the average billboard is typically 300 square feet.

Considerations: Council recently adopted a new standard to allow temporary style banners for new multi-family structures coming onto the market. The adopted standards restrict the period of display to four months (no renewal) and to 10% of the building face up to a maximum of 400 square feet. Standards from other municipalities appear to limit the size of the sign to a percentage of the wall face between 10-20%. This sign appears to cover approximately 25-30% of the wall face.

Monument Sign

Description: Two 60 square foot stone monument signs were originally located at the entrance to the park. A recent road widening project removed one of the two signs and the remaining sign is designed primarily as a basic monument sign. With a number of national retailers locating to the development, the owner would like to replace this with a larger 188 square foot free-standing monument sign with individual panels used to advertise the large, national retailers.

Considerations: The site is very large (42 acres) and the entrance is located approximately 1000 feet from the primary intersection with Long Shoals Road. Consequently the monument signs are located off-site at the intersection of Schenck Parkway with Long Shoals Road. While current sign code standards do not allow off-premise signs, these particular signs had been grandfathered and could be maintained for a period of five years. The Highway Business zoning district does, however, allow free-standing multi-tenant signs with a maximum of 200 square feet of sign face. Thus, the proposed sign would be consistent with a free-standing multi-tenant sign in the HB district.

Project Identity Sign

Description: The developer is requesting a separate project identity sign to be attached to the side of the parking structure. The requested sign is designed to be more visible from the interstate at a size of 510 square feet than the originally approved sign.

Considerations: The original request had included a rooftop sign at 700 square feet. That request was amended to 350 square feet to be lowered from the roof and placed on the side of the structure. Prior to the installation of this permanent sign, staff has approved the installation of a 350 square foot temporary sign which has served as a reasonable study in determining the effectiveness of the sign's readability from the interstate (exit 37). Redesigning the existing sign could improve the readability (using darker letters and illumination), but it is clear that the 350 square feet limits the size of the letters. To increase the size of the letters would necessitate increasing the sign allowance.

The proposed sign would not be illuminated in the day but is proposed to be internally illuminated at night (LED lighting).

The developer is also proposing to remove two monument signs (75 square feet each) that had been previously approved as part of the original plan.

Staff feels that the unique context and nature of this large urban project warrants special consideration and there are no significant concerns for either the temporary or monument signage requested changes.

Increasing the size of the project identity sign also seems warranted; although it is unclear how much of an increase is necessary to afford relief. The submitted renderings appear awkward and out of proportion to the structure on which they are mounted. It is also difficult to determine from the renderings submitted how the design may (or may not) blend with the parking structure. Staff has requested additional photo examples along with other considerations from the applicant and will be prepared to discuss this request at the time of the hearing.

Regarding the City Council Strategic Operating Plan, this proposal most closely supports the goal of sustainability through improved identity and advertisement supporting the economic viability of the overall project.

Pros:

- Addresses a specific need and context
- Provides enhanced entrance identification and wayfinding from interstate
- (Generally) consistent and harmonious with other signage already approved

Cons:

- Size of temporary sign may create a feeling of disparate regulation and may elicit similar requests from other smaller developments
- Size of permanent identity sign appears out of scale with structures (covers openings in deck)
- Monument signs would remain off-premise (although still on property owned by the developer)

There will be no direct fiscal impact to the City. It could be argued that improved signage will contribute to the sale and

leasing of available space along with improved identity, providing a positive fiscal impact through new property and sales tax.

Staff recommends approval of the signage plan amendments. Should Council members express concern over individual signs, staff recommends voting on the requests separately, as follows: (1) Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) Multi-tenant Monument Sign at 188 s.f. to be located at the entrance off of Long Shoals Road; and (3) Project Identity Sign at 510 s.f. to be located on the side of the parking structure.

Mr. Chris Squier of Crosland, representing the developer, said that the BPTS Master Sign Program was passed by City Council in August of 2007 and this is the first request for amendment (1) temporary sign to create awareness; (2) modification of entrance monument sign; and (3) modification of project identity sign. He explained the temporary sign (4 to 8 month) would (1) be 625 square feet; (2) based on context, not "minimum square feet" or "% of façade"; (3) be entirely on their own property; (4) adjacent property is the N.C. Dept. of Transportation right-of-way; and (4) from an economic standpoint they need people to know what they are. The entrance monument sign (1) of the existing two 60 square feet signs at the entrance (120 square feet total), they would replace with one 158 square foot sign; (2) Long Shoals Road and their tenants have changed; and (3) allows for better visibility and quicker decisions for drivers. Regarding the project identity sign, the buildings shield view of new sign for all but intended viewers. The current approved 350 square feet is just too small. A compromise solution would be (1) lowered off a parapet down to side of deck; and (b) reduced from requested 700 square feet down to 350 square feet. They are requesting (1) a modern adaption of the historic identity sign; (2) still below rooftops; not visible from Biltmore Park homes; (3) modified to be more readable; and (4) more energy efficient using LED lighting. The specifications would be (1) Navy Blue lettering, non-illuminated during day; (2) square footage = 510 square feet; (3) modify deck by using perforated metal backer; (4) at night, internally illuminated using LED lighting; and (5) energy use is approximately 24% of standard lighting. Physical and economic hardships include (1) current approved size (350 square feet) not visible; and (2) new size of 510 square feet more feasible. In exchange, they will not build currently approved (1) two 75 square feet monument signs near Biltmore Park homes; and (2) one 350 square feet identity sign (combined 500 square feet). This will promote city goals of wayfinding and business identification without negatively affecting surrounding homes.

Ms. Cathy McCartan, President of the Biltmore Park Association, could not support the large Biltmore Park identity sign for the side of the parking deck for the following reasons (1) the original sign "Biltmore Park Town Square" correctly identified the commercial/retail/residential center being advertised and they request the "Town Square" reference remain on any sign; (2) the proposed Biltmore Park identify sign is unattractive and does not convey that Town Square is an upscale, desirable destination; (3) the proposed sign is too large and the opaque backing adds to the mass making the sign completely dominate the space in an unappealing way; and (4) the maximum letter height should equal the height of the concrete deck wall and not extend above or below – the width of each word needs to be proportionally increased to accommodate the letter height and they would prefer a frame support rather than the proposed opaque backing. Basically, the Biltmore Park Association supports a larger illuminated version of the originally approved sign.

Mayor Bellamy closed the public hearing at 8:15 p.m.

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

Councilwoman Cape moved to approve the (1) Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) Multi-tenant Monument Sign at 188 s.f. to be located at the entrance off of Long Shoals Road; and (3) Project Identity Sign at 510 s.f. to be located on the side of the parking structure. This motion was seconded by Councilman Mumpower.

Regarding the project identity sign, there was some discussion, initiated by Councilwoman Cape, about allowing the developer construct the parapet sign that they originally requested back in July of 2007. Mr. Squier said that they would have to go through their own internal process, but structurally they lost the opportunity to build that because the parking deck was structurally built on what was approved by Council. To construct a parapet sign now would not be feasible.

Discussion surrounded amending the project identity sign to include "Town Center", noting that the developer would need a sign 650 square feet. Options at this meeting could be that Council approve the temporary sign and monument sign amendments and (1) approve a 650 square foot project identity sign and ask the developer to develop a revised sign with the words "Town Center" and bring the revised sign back to Council at their next meeting; or (2) approve the project identity sign at 650 square feet and give the developer the flexibility to develop an attractive revised sign with the words "Town Center" in keeping with the theme of the project.

Councilwoman Cape moved to amend her motion to (1) approve the Temporary Sign at 625 s.f. to be located on the side of the movie theater for a period of 4-8 months; (2) approve the Multi-tenant Monument Sign at 188 s.f. to be located at the

entrance off of Long Shoals Road; and (3) instruct the developer to work with City staff and the Biltmore Park Association on a revised Project Identity Sign at 650 s.f. to include the words "Town Center" to be located on the side of the parking structure, said sign not being contingent upon the Biltmore Park Associations' approval. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Mayor Bellamy voting "no."

Mayor Bellamy noted that she supported the temporary sign and the multi-tenant monument sign, but not the project identity sign.

ORDINANCE BOOK NO. 25 – PAGE 294

D. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE

ORDINANCE NO. 3738 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ARTICLE 5: SITE PLAN REVIEW: CUMULATIVE DEVELOPMENT THRESHOLD)

ORDINANCE NO. 3739 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ARTICLE 11: ACCESS REQUIREMENTS FOR FLAG LOTS)

ORDINANCE NO. 3740 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (STREET TREES)

ORDINANCE NO. 3741 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (LANDSCAPING ALTERNATIVE COMPLIANCE)

ORDINANCE NO. 3742 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ATTACHED SIGNAGE FOR TENANTS IN PED-ORIENTED AREAS)

ORDINANCE NO. 3743 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (INTERIM PARKING AND CONSTRUCTION STAGING USES)

ORDINANCE NO. 3744 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO RESPOND TO THE CURRENT ECONOMIC CLIMATE (ACCESSORY STRUCTURES ON NON-CONFORMING LOTS OR LOTS WITH NON-CONFORMING STRUCTURES)

Mayor Bellamy opened the public hearing at 8:41 p.m.

Urban Planner Jessica Bernstein said that this is the consideration of seven amendments to the Unified Development Ordinance (UDO) for the purposes of responding to the current economic climate to assist businesses and development proposals to open and operate more easily, while still meeting the technical UDO standards along with City adopted goals. This public hearing was advertised on May 29 and June 5, 2009.

This series of economic relief amendments is proposed to relax certain non-life safety standards that affect businesses and smaller economic endeavors while still addressing public welfare and supporting city adopted goals.

The first phase of the economic relief amendments was brought before City Council on March 10, 2009. At the time City Council supported the amendment as a starting point and directed staff to continue to review applicable ordinances for additional opportunities to provide relief and encourage economic opportunities for large and small scale commercial endeavors.

The current list is derived from a review of the UDO and requests from the development/ business community for relief from specific standards that have affected business or development opportunities. While offering relief is currently an important consideration, careful attention has also been paid to the impacts or consequences of relaxing standards that have been long held. The benefits and impacts are identified for each item.

Staff is proposing seven (7) separate code changes that will assist enterprises facing difficulties and offer additional opportunities for small business ventures. The seven changes are grouped together for purposes of this report although they are distinct in their directives and will therefore be described separately below. Each item will require a separate vote.

The proposed wording amendments are focused in four areas of the UDO:

- Threshold requirements that affect cumulative development (Article V)
- Design and development standards (Article XI)
- Sign regulations (Article XIII)
- Uses by right subject to special requirements (Article XVI)

The changes included in this report are the second set of changes as requested by Council. Staff continues to meet with neighborhood representatives, property owners, members of the business community and other stakeholders to consider these and other additional changes.

1. Issue: Modify the distance criteria that require that projects be cumulatively combined for purposes of plan review submittal processes.

Current: Development proposals that are within 1500 feet of each other and are permitted within three (3) years and are under the same ownership, are required to be combined and considered as a single development for the purposes of determining development review thresholds and criteria. This has required that somewhat separate and independent projects be combined and reviewed together in a fashion similar to multi-phased projects. This often results in a higher standard of review and, in some instances, can evolve into a Level III Conditional Use Permit application.

Proposal: The change would be to reduce the distance of projects from 1500 feet down to 500 feet and maintain the three (3) year time frame of the permit approval time period overlap.

Relevant Code Sections: 7-5-9(a)(1)b., 7-5-9(b)(1)b. and 7-5-9(c)(1)g.

Pros:

- Potentially reduces the permit review time for project applications
- Reduces the disincentive for successful developers (owners) to initiate new investment in proximity to earlier projects
- Maintains sufficient technical review of development proposals
- May reduce the number of conditional use permits (CUP)

Cons:

- May remove some incremental developments from coming before the public hearing process (limits public input)
- Reduces the ability to mitigate the impacts of incremental development(s) by holding them to a higher standard

2. Issue: Reduce the width of the access way at the street (flagpole) from 25 feet to 20 feet for flag lots in order to match the requirement for alternative access subdivisions.

Current: Flag lots are required to provide a 25 foot wide access way where the lot connects to the public street (the rest of the lot must meet the lot size standard by district for the buildable portion of the lot). Alternative access subdivisions are special subdivisions requiring the establishment of a lesser 20 foot right-of-way (ROW) with a 16 foot wide paved private driveway to serve up to four lots.

Proposal: Having identified no apparent problems with the narrower ROW areas for the alternative access subdivisions, and as a matter of consistency, it was recommended that the flagpole portion of the lot be reduced to 20 feet wide to match.

Relevant Code Sections: 7-11-2(j)(1)c.2.

Pros:

- May allow more lots to be subdivided
- Provides consistency between access methods for different types of subdivisions
- Benefits the smaller scale developers and the individual property owner
- The maximum length of the flag pole section remains unchanged

Cons:

- The narrower access way limits the ability to adjust the driveway profile in steeper grade situations - reduces design flexibility in general

3. Issue: Offer more options for providing street trees in urban, pedestrian-oriented development areas to respond to

developer preference and site conditions.

Current: The landscape section for street trees (Article XI) prescribes a single option for urban street trees that specifies a structural soil vault under a sidewalk at a rate of 200 square feet per tree. After implementation of several proposals in recent years, it is clear that additional options in satisfying the street tree requirement in response to specific site conditions would be beneficial.

Proposal: Amend the section to reduce the dimensions of the root zone area in structural soil plantings from 200 square feet to 300 cubic feet (for example, 10'X10'X3'). A second change would be to allow the option of providing amended soil or structural soil in the tree planting area. Finally, this proposal provides additional tree planting space options:

- 1) A reinforced suspended sidewalk system around a tree grate;
- 2) A continuous planting area between trees that is a minimum of 4-feet wide;
- 3) A system of tree grates or pervious paving that allows water infiltration and oxygen exchange for tree root systems;
- 4) An on-street bulb-out which has been reviewed and approved by the traffic engineer for traffic safety.

Relevant Code Sections: 7-11-3(d)(3)e.

Pros:

- Reducing the root zone dimensions better accommodates typical downtown sidewalks
- Additional options for street trees provides flexibility to respond to site conditions such as underground utilities and narrower streets and sidewalks
- Tree bulb-outs can provide protection for on-street parking spaces and may be a cost savings
- Using a cubic foot standard instead of square feet is more appropriate to address the growth requirements for trees that include de-compaction of soil to the depth of the root run

Cons:

- Structural soil plantings have provided mixed results for street trees
- Field verification of cubic volume may be difficult

4. Issue: The Tree Commission needs expanded authority to approve alternative compliance requests in situations where existing buildings and utilities are the cause of the constraint and the reason for the non-compliance.

Current Procedure: The landscape code allows the Tree Commission to consider alternative compliance requests from the standards of the landscape ordinance with specific stipulations. In addition to the stipulations, the Tree Commission is not permitted to approve an alternative that reduces a standard by more than 50%. This provides a particular hardship for existing buildings that are required, through expansion or renovation, to bring an entire site into compliance with the ordinance.

Proposal: Allow the Tree Commission to consider requests for a greater than 50% reduction in required landscaping in situations with existing buildings when the existing utilities or buildings are the reason for the non-compliance. For these specific situations, the Tree Commission will consider on-site alternatives to the landscape standard to mitigate the loss of the required landscaping in addition to the existing seven (7) alternative compliance standards.

Relevant Code Sections: 7-11-3(e)(5)

Pros:

- Allows greater alternatives for sites that have limited options
- Provides some incentive for renovation and improvement of existing sites
- Supports the goal of adaptive reuse of structures that may be non-conforming
- Allows the Tree Commission greater flexibility to work with developers (owners) to provide an appropriate and effective alternative to the landscape standards

Cons:

- Some sites have minimal / low value structures that are better replaced
- Neighboring properties may not receive the benefits of landscape improvement

5. Issue: Provide a new option to allow up to two signs for tenants in multi-tenant developments where the projects or developments meet standards for pedestrian oriented design with minimal building setbacks from the right of

way area. For these more urban forms of development the sign allowance could be split between two different types of attached signs (window sign and a wall sign; or projecting sign and a window sign) that would better inform an individual approaching the business from multiple directions.

Current Procedure: Businesses in multi-tenant buildings may place a single sign at the side of the building with the primary entrance based on the allowances provided in the ordinance.

Proposal: Allow up to two attached signs split between an attached sign and a window sign or other combination that in total would not exceed the square footage allowance. This would be limited to buildings that meet the standards for pedestrian oriented design that are placed a minimal distance from the right of way line (or such setbacks to create pedestrian oriented amenities).

Relevant Code Sections: 7-13-4(c)b.2.b.

Pros:

- Provides a new option for better meeting the identification needs of pedestrian oriented developments
- Encourages the types of signage that enhances the pedestrian experience of the district
- Does not result in additional sign area allowances

Cons:

- Increases the number of signs
- Opens the door to additional requests to increase allowances

6. Issue: As denser urban areas are redeveloped, there are often few viable options for providing for interim needs related to construction such as staging of materials and equipment, parking for construction staff and queuing areas for delivery vehicles etc. as well as displacement for existing parking for the new building or project.

Current Procedure: As new districts are redeveloped in a more urban form (as encouraged by the comprehensive plan and city council goals), there are few viable options to locate temporary uses related to, or displaced by, the new construction. This issue includes construction support for development occurring on another parcel or parking displaced by construction particularly common in the Central Business District.

Proposal: The proposal is to allow commercial lots as a use by right subject to special requirements on an interim (but renewable) basis to be used for staging in support of other commercial development without specific site improvements commonly required of development (street trees and parking lot landscaping) using the following standards:

- The parcel is not zoned residential or is located within 500 feet of residentially zoned districts
- The temporary use is permitted for a period of two years and may be extended along with a valid open building permit by reapplying and referencing the open building permit
- The lot may be used in succession with subsequent building permits on other parcels but must be reestablished by permit
- Activities may include: parking for construction workers and stand alone parking, materials staging, delivery queuing, equipment storage
- Site improvements will not be required during this time except that sidewalks will be constructed and traffic issues will be reviewed
- Grading and other applicable permits will be applied for separately
- Use of the lot, as a stand alone use (aside from this interim-use provision) will be governed by applicable UDO standards

Relevant Code Sections: 7-16-1(b) and 7-16-1(c)

Pros:

- Facilitates redevelopment activity in commercial districts
- Mitigates negative impacts of construction by providing suitable areas for staging on a interim basis
- May provide a temporary economic driver for underdeveloped parcels

Cons:

- Nearby parcels may experience the impacts of additional construction traffic without mitigation (landscaping)

7. Issue: Provide a new option for accessory structures on non-conforming lots in residential districts as an amendment to the Uses by Right, Subject to Special requirements section (USSR).

Current Procedure: It is a particular hardship to construct additions to, or provide new accessory structures on non-conforming residential lots because the use is subject to USSR standards and are only allowed on conforming lots.

Proposal: Allow accessory structures on non-conforming lots subject to the following changes to the USSR standards:

- New buildings or expansions will comply with setback standards
- New structures will be limited to 350 square feet
- Structures will meet all building code requirements

Relevant Code Sections: 7-16-1(c)

Pros:

- Allows homeowners to fully utilize their parcels
- Provides relief for what is a fairly common situation in older parts of the city or recently annexed and ETJ areas (and not previously subject to City subdivision standards)

Cons:

- May create concern from nearby residential property owners
- Increases the intensity of use on a property that already has some other size or dimensional disadvantage

Items regarding landscaping changes were presented to the Tree Commission at their meeting on Monday, May 18, 2009. The Tree Commission supported the changes to provide more options for street trees in urban areas and the landscape alternative compliance changes. This report was shared with the Coalition of Asheville Neighborhoods and their only comment was regarding using the lot on an interim basis for construction and they felt it should be renewed on a yearly basis, instead of every two years.

Collectively, these amendments may encourage some additional or small scale development or re-development without increasing a need for service. Fiscal benefits include those typically associated with new development or re-development but are difficult to predict.

The Planning and Zoning Commission recommended approval of the seven UDO amendments as presented by a vote of 5-0. City staff also recommends approval of the code amendments.

Mayor Bellamy closed the public hearing at 8:48 p.m.

In response to Mayor Bellamy, Ms. Bernstein said that all these changes are permanent changes to the UDO.

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

Councilman Newman moved for the adoption of Ordinance No. 3738 (Article 5: Site Plan Review: Cumulative Development Threshold). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 298

Vice-Mayor Davis moved for the adoption of Ordinance No. 3739 (Article 11: Access Requirements for Flag Lots). This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 300

- Councilman Newman moved for the adoption of Ordinance No. 3740 (Street Trees). This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 302

- Councilman Mumpower moved for the adoption of Ordinance No. 3741 (Landscaping Alternative Compliance). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 304

- Councilman Mumpower moved for the adoption of Ordinance No. 3742 (Attached Signage for Tenants in Ped-Oriented Areas). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 306

- Councilman Mumpower moved for the adoption of Ordinance No. 3743 (Interim Parking and Construction Staging Uses). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 308

- Councilman Mumpower moved for the adoption of Ordinance No. 3744 (Accessory Structures on Non-Conforming Lots or Lots with Non-Conforming Structures). This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 310

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-118 - RESOLUTION ADOPTING THE 2009 UPDATE TO THE TEN YEAR SOLID WASTE MANAGEMENT PLAN FOR THE JURISDICTIONS OF BUNCOMBE COUNTY

Solid Waste Manager Wendy Simmons said that this is the consideration of a resolution by City Council to adopt the 2009 Update to the Ten Year Solid Waste Management Plan for the jurisdictions of Buncombe County.

Pursuant to NC General Statute 130A-309A(b), each unit of local government is required to develop a Ten Year Solid Waste Management Plan and update the plan every three years. In Buncombe County, the original plan was adopted in 1997 and has been updated every third year since. The 2009 plan update was completed in cooperation with all six local municipal governments in Buncombe County and was prepared in accordance with the latest Ten Year Solid Waste Management Plan Guide issued by NC Division of Waste Management. The plan presents a progressive vision for managing solid waste in the jurisdictions of Buncombe County through the development of intended actions for solid waste planning elements which include: reduction; collection; recycling and reuse; composting and mulching; incineration; transfer; disposal; education; special wastes; illegal disposal/litter; purchasing of recycled products; disaster response; collection of discarded electronics; and management of abandoned manufactured homes.

She reviewed some Plan highlights for Asheville, including 23% City recycling rate in Fiscal Year 2008 opposed to 11% Buncombe County recycling rate in Fiscal Year 2008; 8.6% increase in amount recycled from 2005 to 2008; and increased types of recycling materials collected.

The following jurisdictions participated in the development of the plan update: Asheville, Biltmore Forest, Black Mountain, Montreat, Weaverville, Woodfin, and Buncombe County.

Pros:

- Maintains compliance and fulfills the requirements of the Solid Waste Management Act of 1989
- Promotes City of Asheville recycling efforts
- Promotes waste diversion from the landfill, decreasing tipping fees

Con:

- None

There is no additional funding impact to accepting the Plan update.

City staff recommends City Council adopt a resolution accepting the 2009 update to the Ten Year Solid Waste Management Plan for the jurisdictions of Buncombe County.

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

Councilman Mumpower pointed out that the City has dramatically failed in waste reduction. According to the statistics, the average person in Buncombe County generated .91 tons of solid waste in 1999 and most recently we generated 62% more than that.

Ms. Simmons explained that the Plan was originally put in place with the goal that the entire state would reduce the amount of solid waste that is generated by 40% by 2001. We didn't, nor did the state as a whole, reach that goal. The rate Councilman Mumpower mentioned was a rate that the members of the Committee who wrote the Plan set – it was a self-inflicted goal that we didn't reach. It has been adjusted to a more realistic rate of 10% over the next 10 years.

Councilman Mumpower and Councilwoman Cape felt that the 10% reduction over the next 10 years is too low.

Councilwoman Cape said that one way the City can play into this conversation is to switch the dynamic of what we charge for and what we don't charge for. Now it's free to throw things away and it costs to recycle. What we should do is implement a "Pay to Throw Program" with weights on the side of our trucks that measures the amount of waste thrown away and charge them for that amount. And then let people recycle for free. That would encourage them to shift on how they react to their trash. We must be willing to have this conversation even if it's not a politically comfortable one.

In response to Councilman Newman, Public Works Director Mark Combs said that staff would be happy to put together a program at Council's direction. The program will result in a lot of administrative costs, and a lot of equipment and capital costs. He said pros would be a disincentive to throw waste away and to compost. The cons would be billing, up front capital costs, maintaining the weight systems on the trucks, working out the billing, additional customer service staff and additional field staff. One neighbor may complain that their other neighbor is putting their trash into their can and making them pay for it. He felt that program would be far more costly than the roughly \$3-4 Million to collect the solid waste every year now.

Vice-Mayor Davis explained some of the items that were discussed when he served on the Environmental Affairs Board for Buncombe County. The result of those efforts was a state of the art landfill and that is now beginning to fill. He felt that this will require a regional approach as there are budget implications. There is also the issue of exporting household and commercial waste to another county or state. That is not a good thing but something we will have to consider in the near term.

In response to Councilman Mumpower on any policy direction Council can give to staff to help reduce solid waste per person, Mr. Combs said that we should strengthen the recycling program more, and promote solid waste and recycling education from K-8, along with strengthening composting and other peripheral programs.

Councilman Mumpower suggested we ask staff to come up with some incremental steps that they might recommend to us for policy consideration and that we review this issue on an annual basis.

Mr. Combs responded to Councilwoman Cape on why the City of Asheville does not recycle downtown.

In response to Mayor Bellamy, Mr. Combs said that the pending legislation about mandatory recycling will not impact the City. If it is mandatory for the households, City staff would have to knock on doors and leave notices on homes where we don't see their recycling bins out when it's their pick-up time. That could impact us in terms of staff. Eight out of 10 households recycle now and we would concentrate on the other 20% of households. Mayor Bellamy asked staff to be prepared with a plan if the state does call for mandatory recycling. She looked forward to hearing some options going forward on how we can better outreach to our community.

Councilman Russell felt our society is a throw away society instead of a recycling society, so until some of these programs and ideas come into reality, we still have to manage what is put on the curb now.

Mayor Bellamy suggested sending these ideas to the City Council Finance Committee prior to coming before the full Council because if there are changes, there will be budgetary impacts. She also noted that the Sustainability Advisory Committee on Energy and the Environment can review the ideas as well. She asked staff to bring include this Plan in Council's quarterly Strategic Plan update.

It was the consensus of Council to ask staff to review some best practices and come up with some incremental no-cost small steps that they might recommend to Council for policy consideration and that this Plan be included in Council's quarterly Strategic Plan update.

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 for the adoption of Resolution No. 09-118. This motion was seconded by Vice-Mayor Davis and carried on a 6-1 vote, with Councilman Mumpower voting "no".

B. RESOLUTION NO. 09-119 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CURBSIDE MANAGEMENT INC. TO PROVIDE CURBSIDE RECYCLING COLLECTION PROGRAMS AND RELATED SERVICES

ORDINANCE NO. 3745 - ORDINANCE AMENDING THE FISCAL YEAR 2009-10 FEES AND CHARGES MANUAL TO REVISE THE RECYCLING CHARGE

Solid Waste Manager Wendy Simmons said that this is the consideration of (1) a resolution authorizing the City Manager to enter into a contract with Curbside Management, Inc. (CMI) to provide curbside recycling collection programs and related services for City of Asheville residences and facilities; and (2) an ordinance amending the Fiscal Year 2009-10 Fees and Charges Manual in order to revise the Recycling Charge to \$2.95 per household per month.

The City issued a request for proposal for curbside recycling collection and related services in April 2009. A five member City Review Committee evaluated each bidder's proposal for providing economical, efficient, uniform, and safe curbside recycling collection services to residences and City facilities. The committee unanimously recommended CMI as having the lowest responsive and responsible bid. The contract is for an initial term of five years with one-year renewal options for each successive year.

The monthly bid prices received through the bidding process for City facility collections and bi-weekly residential collections are listed below:

Curbside Management, Inc.	\$ 73,542.00/month
Waste Management of Carolinas, Inc.	\$ 124,378.00/month
Waste Industries	\$ 133,229.70/month

CMI's bid includes the familiar bin collection system for residential customers on a bi-weekly basis. It also includes scheduled collections from City facilities.

A detailed cost structure proposed by CMI is listed as follows:

Service Recipient	Collection Frequency	Container Type	Cost/recipient/month
Residential	Bi-weekly	Bins (min. 2)	\$2.66/household/month
Residential On-premise	Bi-weekly	Bins (min. 2)	\$5.98/household/month
City Facilities	Weekly	Bins (min. 2)	\$8.00/facility/month
City Facilities	Weekly	Roll out cart	\$32.00/facility/month
City Facilities	Bi-weekly	Bins (min. 2)	\$4.00/facility/month
City Facilities	Bi-weekly	Roll out cart	\$16.00/facility/month
City Facilities	Monthly	Bins (min. 2)	\$4.00/facility/month
City Facilities	Monthly	Roll out cart	\$12.00/facility/month

This action complies with the Strategic Operating Plan in that it promotes the City's strategic priorities to be green and environmentally sustainable by reducing waste and encouraging recycling. The City has one of the most efficient recycling programs in the state. In 2008, 9,748,813 pounds of recyclables were collected through the City's curbside recycling program. The below chart graphs historical data for the amount of recyclables collected through the curbside recycling program.

Pros:

- Most efficient and cost effective proposal
- New recycling materials will be added to the collection program
 - aluminum pie plates and aluminum trays
- CMI provides current recycling service, resulting in no disruption of service to residential and City facility service recipients.
- Promotes City of Asheville recycling efforts
- Promotes waste diversion from the landfill, decreasing tipping fees

Cons:

- Five year contract term
- The recycling fee proposed for next fiscal year does not cover the increased contract costs by \$0.30

The initial term of the contract is for five years. Based on the pricing structure previously outlined in this report, the total annual cost to the City for the CMI contract is \$910,066 with pricing subject to adjustment based on the Consumer Price Index each year on July 1st.

Currently, the City charges \$1.32 per household per month for the recycling program. The Manager's projected budget for the recycling program for Fiscal Year 2009-10 provided for full cost recovery of the entire recycling program. The entire recycling program includes the curbside collection contract costs as well as the costs for the following services: recycling drop-off center, advertising, outreach materials, Mobile Environmental Learning Center, and recycling supplies. To obtain full cost recovery, the budget included an overall increase of \$1.33 per household per month or \$2.65 per household per month. CMI's bid exceeded the projection by \$0.30. Consequently, to fully recover the increased costs for the CMI contract through the residential recycling fee, the rate charged per household per month will need to be adjusted by \$0.30 for fiscal year 2009-10 to \$2.95 per household per month. If the rate is not increased from \$2.65 per household per month to \$2.95 per household per month, the cost of the recycling program will exceed the amount included in the Fiscal Year 2009-10 Manager's recommended budget by \$132,957.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into contract with Curbside Management, Inc. to provide curbside recycling collection programs and related services at an annual estimated cost of \$910,066 for residential and City facility collections, as amended; and (2) adopt an ordinance amending the Fiscal Year 2009-10 Fees and Charges Manual in order to revise the Recycling Charge to \$2.95 per household per month.

When Mayor Bellamy asked for public comments, no one spoke.

Councilwoman Cape moved to adopt resolution authorizing the City Manager to enter into contract with Curbside Management, Inc. to provide curbside recycling collection programs and related services at an annual estimated cost of \$910,066 for residential and City facility collections, as amended. This motion was seconded by Councilman Mumpower.

Councilman Newman initiated discussion regarding making curbside recycling a basic City service and that this fee be phased out in the next 3-4 years. He then asked for an amendment to the motion that it is the intent of Council to phase this fee out in the next 4 years.

Councilwoman Cape accepted the amendment. Councilman Russell also accepted the amendment noting that even though the citizen will not be paying the fee, it will have to be paid for out of the General Fund.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolution and ordinance

and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-119, as amended by phasing the recycling fee out in the next 4 years. This motion was seconded by Councilman Mumpower and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 83

Councilman Russell moved for the adoption of Ordinance No. 3745 as amended. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting “no.”

ORDINANCE BOOK NO. 25 – PAGE 312

C. ORDINANCE NO. 3746 - BUDGET AMENDMENT FOR FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER IN ASHEVILLE’S WEED & SEED TARGETED AREA

Mr. Danny Hopkins, Recreation Superintendent, said that this is the consideration of a budget amendment, in the amount of \$103,000, for funding from the N.C. Dept. of Public Instruction for the 21st Century Community Learning Center in Asheville’s Weed & Seed targeted area.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address issues of law enforcement, neighborhood restoration, and prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of target area residents and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an “Officially Recognized” site for the federal Weed and Seed initiative aimed at reducing crime and improving quality of life.

Weed & Seed sites are required to leverage additional funds to carry out their respective goals and objectives. The 21st Century Community Learning Center grants funds for academic based afterschool programs serving youth who are not performing at grade level. Asheville’s model will serve any middle and high school student attending Asheville City Schools. Programs will take place at the Pisgah View Community Center and the Burton Street Recreation Center, both of which are designated Weed & Seed Safe Havens. This grant represents the first time these highly competitive funds have been awarded in Buncombe County.

This action complies with the City Council Strategic Operating Plan in that it expands community policing initiatives and supports recreation and employment alternatives for youth at risk of gang exposure. In addition, this action complies with the community driven Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults. The program also meets needs identified in other citywide collaborative efforts such as the Mayor’s RICH Taskforce and Asheville City Schools’ School Success Council.

Pros:

- Program will bring much needed academic assistance to middle and high school students who are struggling in school.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the target area.

Con:

- Additional funds will need to be leveraged during the 2010-2011 school year to sustain the program since funding decreases by 20% in that year and 40% the following year.

Grant revenue in the amount of \$103,000 will cover all operating expenses related to the afterschool program at no additional cost to the City in FY 2009-10. However, as noted above, grant revenue will not cover all of the expenses if the program continues in FY 2010-11. Expenses include, but are not limited to: salary for a full time program director, part-time assistants, contracted tutors and resource providers, and supplies and transportation costs.

City staff recommends City Council adopt a budget amendment authorizing the City Manager to establish a budget in the amount of \$103,000 for the 21st Century Community Learning Centers which will occur in Asheville’s Weed & Seed target area.

Councilman Mumpower was concerned that we are asking the State to fund our Weed & Seed target area at the same time they are firing teachers in public education.

Mr. Hopkins responded to Councilwoman Cape when she questioned where the 40% funding for the following year would come from.

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 Newman moved for the adoption of Ordinance No. 3746. This motion was seconded by Councilman Miller and carried on a 6-1 vote with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 314

D. RESOLUTION NO. 09-120 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2009 FEDERAL TRANSIT ADMINISTRATION APPORTIONMENT AND AUTHORIZING THE MAYOR TO EXECUTE SAID GRANT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to apply for the 2009 Federal Transit Administration apportionment in the amount of \$1,945,172; and the authorize the Mayor to execute said grant.

The City of Asheville has received the 2009 Federal Transit Administration apportionment under Division I of the "Omnibus Appropriations Act 2009". Section 5307 authorizes Federal funding for capital and in some cases, for operating assistance, and planning activities for transit in Urbanized areas. The City was reclassified as Urbanized Area, as part of the 2000 Census and therefore restricted in its ability to use operating assistance. However, the City, among others, will be allowed to use part of this year's allocation in operating assistance, in the amount of \$484,022.

As part of the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal allocation. The County will receive approximately \$439,911 of the total allocation. The City and the County had signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The city is responsible before FTA of the use of these funds and owns all the capital items Henderson County purchases with the allocation.

The City is intended to use these funds for operating assistance, and for capital items allowed under the Master Agreement, such as preventive maintenance, Americans with Disabilities Act (ADA) service, and for other minor capital items (repairs to the Transit Garage and Transit Center, small equipment for the buses, etc.). 1% of the allocation must be used for security purposes.

This action complies with the Strategic Operating Plan proactively leveraging funding from the Federal Government and other funding sources for transportation improvements.

Pro:

- These funds were budgeted in the 2009 City Budget and will offset costs related to operations, preventive maintenance and ADA services.

Con:

- The city has to contribute with 20% of the capital items, including preventive maintenance and ADA services; and 50% of the operational expenses. The city has already incurred in these expenses.

The project cost will be \$1,945,172, with \$439,911 being allocated to Henderson County. The City's contribution to transit this fiscal year was \$1,814,313.

City staff recommends City Council authorizing the City Manager to apply for the 2009 Federal Transit Administration apportionment in the amount of \$1,945,172; and the Mayor to execute said grant.

Councilman Mumpower felt that we have a terrible state deficit and we are receiving borrowed funds that our children and grandchildren will have to repay.

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. 09-120. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 84

E. RESOLUTION NO. 09-121 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2009 INGLES 4TH OF JULY CELEBRATION

RESOLUTION NO. 09-122 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2009 BELE CHERE FESTIVAL

Ms. Diane Ruggiero, Cultural Arts Superintendent, said that this is the consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2009 Ingles 4th of July Celebration and the 2009 Bele Chere Festival.

2009 Ingles 4th of July Celebration

Benevolent Patriotic Order of the Does have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer at the 2009 Ingles 4th of July Celebration and allow for consumption at this event.

The 2009 Ingles 4th of July Celebration will be held at Martin Luther King, Jr. Park on Saturday, July 4, 2009 from 4:00 PM – 10:00 PM. The festival area will be open on Saturday, July 4 from 4:00 PM – 10:00 PM. The sale of malt beverages will end at 9:30 PM. However, the possession of open containers of malt beverages or consumption of malt beverages would be allowed during the festival hours of 4:00 PM – 10:00 PM.

2009 Bele Chere Festival

The following organizations: Asheville Ski Club, The Mediation Center, Benevolent Patriotic Order of the Does, Phi Beta Lambda –AB Tech, Cataloochee Ski Patrol, Brother Wolf Canine Rescue, Xi Omega Chapter of Beta Sigma Phi, Sigma Nu Fraternity, Wild South, Asheville Inner City Outings, and Friends of the Nature Center have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2009 Bele Chere Festival and allow for consumption at this event.

The 2009 Bele Chere Festival's Festival Area will be open on Friday, July 24, 2009 from 12:00 PM – 10:00 PM, Saturday, July 25, 2009 from 10:00 AM – 10:00 PM and Sunday, July 26, 2009 from 12:00 PM – 6:00 PM.

The sale of malt beverages and/or unfortified wine will end at 9:45 PM in all instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows:

Friday, July 24, 2009, from 12:00 Noon to 10:00 PM
Saturday, July 25, 2009, from 10:00 AM to 10:00 PM

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday July 26, 2009.

This action does not tie-in with the Strategic Operating Plan. This action does not comply with any of the adopted City plans.

Pro:

- Allows fundraising opportunities for charity

Con:

- Potential for public safety issues

The fiscal impact will be overtime pay for Ashville Police Department officers.

City staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2009 Ingles 4th of July Celebration and the 2009 Bele Chere Festival.

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 resolutions and they would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-121. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 85

Councilman Newman moved for the adoption of Resolution No. 09-122. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 88

At 8:59 p.m., Councilman Mumpower asked to be excused in order to observe the Phish concert at the Civic Center. Councilman Russell moved to excuse Councilman Mumpower. This motion was seconded by Vice-Mayor Davis and carried unanimously.

F. BOARDS & COMMISSIONS

Councilman Newman moved to instruct the City Clerk to prepare the proper paperwork to reappoint Tommy Wilson, Fred Pratt and Harold Garland; and appoint Phil Wilson and Randy Osborne to the Board of Electrical Examiners. This motion was seconded by Councilman Russell and carried unanimously.

Councilwoman moved to instruct the City Clerk to prepare the proper paperwork to reappoint Brad Brock and Beth Gillespie to the Historic Resources Commission. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Miller moved to instruct the City Clerk to prepare the proper paperwork to reappoint Jim Fink (regular), Barbara Hodgson (regular) and John Hayes (alternate) to the Noise Ordinance Appeals Board. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Russell moved to instruct the City Clerk to prepare the proper paperwork to reappoint Wanda Hawthorne, Sara Manuel and Spencer Hardaway to the Recreation Board; and to re-advertise for the two other vacancies on the Recreation Board. This motion was seconded by Councilwoman Cape and carried unanimously.

Councilwoman Cape moved to instruct the City Clerk to prepare the proper paperwork to appoint David Erb to the Transit Commission. This motion was seconded by Councilman Russell and carried unanimously.

Mayor Bellamy moved to instruct the City Clerk to prepare the proper paperwork to appoint Dale Joyner for a vacancy on the URTV Inc. Board of Directors. This motion was seconded by Councilwoman Cape and carried unanimously.

Vice-Mayor Davis said that the Pack Place Board of Directors is willing to amend their regular meeting time and date in order for a Council member to be appointed to replace former Council Member Holly Jones. It was the consensus of Council to appoint Councilman Russell to the Pack Place Board with Vice-Mayor Davis coordinating the new schedule with the Pack Place Board Chair Karen Tessier and Councilman Russell.

VII. OTHER BUSINESS:

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:09 p.m.

CITY CLERK

MAYOR