

Tuesday – September 13, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; 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**

Councilwoman Manheimer gave the invocation.

**I. PROCLAMATIONS:**

**A. RECOGNITION OF IRA B. JONES ELEMENTARY SCHOOL**

Mayor Bellamy recognized Mr. Denny Trantham, Executive Chef at The Grove Park Inn Resort & Spa; Ms. Susan Bowers, Child Nutrition Manager at Ira B. Jones Elementary School; Ms. Sarah Cain, Principal at Ira B. Jones Elementary School; Ms. Tara Jardine, AmeriCorps at Ira B. Jones Elementary School; and Ms. Nichelle Burroughs, Student Participant at Ira B. Jones Elementary School. She was pleased to recognize this team for their participation in the National Cook-Off Event at the American Culinary Federation National Convention under First Lady Michelle Obama's Let's Move Recipes for Healthy Kids Initiative.

**B. RECOGNITION OF A-B TECHNICAL COMMUNITY COLLEGE'S CULINARY TEAM**

Mayor Bellamy recognized Team members Stephen Hertz, Sidney Ann Caton, Tracy Williams, Jonathan Zetterholm; Team Captain Danny Schwaije; Team Coaches Frederick Snyder and Charles deVries; Associate Dean, Hospitality Education Sheila Tillman; and Chef Bronwen McCormick, Culinary Arts & Hospitality Department Chair. She was pleased to recognize the "Hot Food Team" for their silver medal in the American Culinary Federation Student Team Championship.

**C. PROCLAMATION PROCLAIMING SEPTEMBER 15 – OCTOBER 15, 2011, AS "HISPANIC HERITAGE MONTH"**

Mayor Bellamy proclaimed September 15 – October 15, 2011, as "Hispanic Heritage Month". She presented the proclamation to Ms. Yolanda Bopp and Ms. Christiana Glen Tugman from the Asheville Latin Americans Advancement Society. Ms. Bopp briefed City Council on some activities taking place during the month.

**D. PROCLAMATION PROCLAIMING SEPTEMBER 19-23, 2011, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"**

Mayor Bellamy read the proclamation proclaiming September 19-23, 2011, as "Minority Enterprise Development Week" in the City of Asheville. She presented the proclamation to Mr. James Lee, the City's Minority Business Plan Coordinator, who introduced the 2011 MED Week

Committee of WNC, consisting of Chair Hope Huskey, Vice-Chair Adrienne Gordon; Secretary Natalie Murdock; Treasurer Sherrene Swayney; and members Joseph Fox, Sharon Oxendine, Jill Sparks and Pam Lewis. Mr. Lee briefed City Council on some events taking place during the week.

## **II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON AUGUST 23, 2011; AND THE COMMUNITY MEETING HELD ON AUGUST 30, 2011**
- B. RESOLUTION NO. 11-184 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH ROGERS GROUP INC. FOR THE WATER RESOURCES ROAD RESURFACING PROJECT AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS**
- ORDINANCE NO. 4008 - BUDGET AMENDMENT FOR THE WATER RESOURCES ROAD RESURFACING PROJECT AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with Rogers Group, Inc. in an amount not to exceed \$399,812, for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants; and a budget amendment, in the amount of \$224,812, from savings in a N.C. Dept. of Transportation capital project that was completed under budget.

On August 12, 2011, the Water Resources Department issued a Request for Proposals (RFP) for the Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants. The scope of the project includes all labor, materials, and equipment required for: (1) removing existing damaged pavement, (2) adding a stone base, (3) asphalt paving, (4) milling, (4) adding speed bumps, (5) repairing damaged curbing, (6) thermoplastic striping, and (7) additional scope as needed. The project locations include the North Fork Water Treatment Plant in Black Mountain and the William DeBruhl Water Treatment Plant in Swannanoa.

On August 31, 2011, Water Resources received two (2) proposals for the project in response to the RFP. The RFP was posted on the Interactive Purchasing System and Water Resources websites, and Water Resources also directly solicited seven (7) companies including the Public Works Department. Companies responding were:

1. APAC-Atlantic, Inc. – Asheville, NC; \$416,512.46 total bid
2. Rogers Group, Inc. – Hendersonville, NC; \$415,879.82 total bid

The lowest responsible bidder, Rogers Group, Inc. has been selected for the project. The project budget will be for a not to exceed amount of \$399,812. Since the total bid cost is higher than the anticipated project budget, Water Resources will work with Rogers Group to reduce the project scope in order to stay within the \$399,812 project budget.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

### Pros:

- Approval of the project will allow Water Resources to complete necessary road repair at the North Fork and William DeBruhl Water Treatment Plants.
- The project will provide a local company with work through June 2012.

### Cons:

- Additional funds will be needed from another capital project to cover the total bid cost.

Water Resources has a Road Resurfacing capital project in which \$175,000 is currently budgeted for this project. The contract with Rogers Group, Inc. will be for a not to exceed amount of \$399,812, even though their total bid is \$415,879.82. Water Resources will reduce the project scope to stay within the not to exceed amount. A budget amendment in the amount of \$224,812 is needed to increase the project budget in order to cover the additional funds needed. The additional funds needed for the project will be reallocated from an older N.C. Dept. of Transportation (NCDOT) project (Brevard Road from Sardis Road to the Parkway) that is completed and has the funds necessary for this project.

<u>Current Road Resurfacing Budget</u>	<u>\$175,000.00</u>
Rogers Group, Inc. Bid	\$415,879.82
<u>Reduction in Project Scope</u>	<u>\$ 16,067.82</u>
<u>Revised Project Budget (Not to Exceed)</u>	<u>\$399,812.00</u>

After this budget amendment, all funds will be expended in the aforementioned NCDOT Project.

City staff recommends City Council authorize the City Manager to enter into an agreement with Rogers Group, Inc. in an amount not to exceed \$399,812.00 for the Water Resources Road Resurfacing at the North Fork and William DeBruhl Water Treatment Plants Project; and a budget amendment in the amount of \$224,812 from savings in an NCDOT capital project that was completed under budget.

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**C. RESOLUTION NO. 11-185 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR REAL PROPERTY LOCATED AT ONE PAGE AVENUE, SUITE 116, ASHEVILLE N.C., WITHIN THE HISTORIC GROVE ARCADE BUILDING FOR THE RENAISSANCE COMPUTING INSTITUTE AT UNC-ASHEVILLE (RENCI)**

Summary: The consideration of a resolution authorizing the City Manager to execute a Sublease Agreement between the City of Asheville and the State of North Carolina for real property located at One Page Avenue, Suite 116, Asheville, N.C., within the historic Grove Arcade building for the Renaissance Computing Institute at UNC-Asheville (RENCI).

On June 1, 2009, the City of Asheville entered into a lease with the Grove Arcade Public Market Foundation, Inc. for office space in Suite 116 at the Grove Arcade. As part of the partnership outlined in the Memorandum of Understanding between the City of Asheville and the UNC Asheville, this space is utilized by the Renaissance Computing Institute at UNC-Asheville (RENCI) for a Downtown Engagement Site. Per the arrangement, RENCi covered all costs associated with the occupancy of the leased space.

On behalf of UNC- Asheville - RENCi, the State of North Carolina has requested a formal sublease between the City and the State, applicable through the remainder of the lease term, expiring May 31, 2012. The State of NC will continue to be responsible for costs related to the occupancy, including rental at a rate of \$2,908.51 per month, utilities, and janitorial services. As standard in State leases, the City (as Sublessor) is responsible for maintaining the premises in good repair and condition, including the maintenance and repair of the heating and cooling system.

This action complies with the City Council Strategic Operating Plan by supporting an ongoing collaborative partnership between the City of Asheville and the RENCI at UNC-Asheville.

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payment, utilities and janitorial costs are fully paid by the State of NC - RENCI

Con:

- The City is responsible for some maintenance and repair.

There is no immediate financial impact to the City. The State of NC (RENCI) will continue to reimburse the City on a quarterly basis for the full cost of the rental. The estimated replacement cost of the HVAC unit is \$5,000 and in the event it should fail during the remainder of the term, the City would be responsible for the replacement.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the sublease agreement with the State of North Carolina for Suite 116 at the Grove Arcade.

#### **RESOLUTION BOOK NO. 34 – PAGE 153**

#### **D. ORDINANCE NO. 4009 - ORDINANCE ADOPTING THE 2012 NORTH CAROLINA FIRE CODE AND AMENDING THE 2002 CITY OF ASHEVILLE FIRE PREVENTION CODE**

Summary: The consideration of adoption of an ordinance adopting the 2012 North Carolina Fire Code and amending the 2002 City of Asheville Fire Prevention Ordinance.

The State of North Carolina 2012 Fire Code became effective on September 1, 2011. This will require the City of Asheville to update its existing 2002 Fire Prevention Ordinance. The following is an analysis of changes from the City of Asheville 2002 Fire Prevention Ordinance to the proposed 2012 State of North Carolina Fire Code.

#### **Section 6-1. Fire Prevention Code Adopted.**

- (a) An ordinance of the City of Asheville adopting a Fire Prevention Code, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Asheville; providing for the issuance of permits and collection of fees therefrom; repealing Ordinance No. 2888 of the City of Asheville and all other ordinances and parts of the ordinances in conflict therewith.
- (b) In the event of conflicts with North Carolina Fire Prevention Code and this chapter, the more restrictive provisions shall prevail as allowed by GS 143-138(e).

*The preamble was edited using the model ordinance language found in the International Fire Code.*

**Section 6-2:** *The 2012 NC Fire Code is established as the base document for our city ordinance.*

City of Asheville amendments to the State Fire Code:

**104.13.1 Public Street and Sidewalk Closures.** The temporary or permanent closure or obstruction of any public street or sidewalk must be approved by the *fire code official* prior to such

closure or obstruction placement, when such closure or obstruction would affect life safety or fire apparatus response.

*Section edited to clarify when AFD approval of street closure permits is and is not required, such as only in public safety matters.*

**105.1.1 Permits required.** *This section was re-codified in the base NC Fire Code document, so this rewrite reflects those changes made in section numbering. Additionally the permit expirations have been changed to match the NC prescribed fire inspection schedule.*

**105.6.47 Road and Public Way Obstructions.** An operational permit is required for the temporary or permanent obstruction of any fire apparatus access road or public way when such obstruction, in the opinion of the *fire code official*, would affect life safety, exit discharge, or fire apparatus use.

*This is a new section that permits closures of private streets and sidewalks. It mirrors the closure process used for city maintained public streets and sidewalks.*

**109.3.4 Appeals of civil penalties.** *This is a new section intended to clarify City Policy 51 on appeals of civil penalties. It also clarifies that appeals on other matters are the purview of the NC Office of State Fire Marshal.*

**503.4.1.1 Responsibility for Vehicles.** The registered owner shall be responsible for their vehicle which obstructs an apparatus access road. Vehicles may park no more than 30 minutes for loading and unloading purposes and the vehicle is constantly attended by licensed driver. The use of a fire lane for loading and unloading shall comply with NC General Statute 20-162(b).

*This last sentence was added for clarity.*

**503.4.1. Traffic calming devices.** Traffic calming devices shall be prohibited, unless approved by the fire code official.

*This is a new section to apply city standards to private streets and parking lots.*

**506.1 Where required.** The *fire code official* is authorized to require a key box to be installed in an *approved* location. The key box shall be of an approved type, listed in accordance with UL 1037, and shall contain keys to gain necessary access as required by *the fire code official*.

*Amended Knox Box section related to a NC DOI appeal; specific local adoption is required.*

**511.1 Nuisance fire alarms.** *Section deleted, and an edited section added at 401.9. The section is relocated for clarity and placed adjacent to the same section as false alarms.*

**D105.1 Where required.** Approved aerial fire apparatus access roads shall be provided for any building with an occupied floor located more than 55 feet (16 764mm) above the lowest level of fire department vehicle access.

*Section was amended to make it applicable only to mid-rise and high-rise buildings.*

**Section 6-2(k)** Adoption of Appendix F

**Appendix F Hazard Ranking.** *The information in this appendix is intended to be a companion to the specific requirements which regulate the storage, handling and use of all hazardous materials classified as either physical or health hazards. This appendix lists the various hazardous mate-*

rials categories that are defined in the code, along with the NFPA 704 hazard ranking for each. This assists customers in completing their hazardous materials placard.

## **Section 6-2(I)** Adoption of Appendix J

**Appendix J Building Information Sign.** *This provides design, installation and maintenance requirements for a Building Information Sign (BIS), a fire service tool to be utilized in the crucial, initial response of fire fighters to a structure fire. The BIS placard is designed to be utilized within the initial response time frame of an incident to assist fire fighters in their tactical size-up of a situation as soon as possible after arrival on the scene of a fire emergency. The BIS design is in the shape of a fire service Maltese Cross symbol and includes five spaces (the four wings plus the centerpiece of the cross symbol) in which information is placed about the tactical considerations of construction type and hourly rating, fire protection systems, occupancy type, content hazards and special features which could affect tactical decisions and operations. Section J101.8 (2) was modified from annual inspection to the frequency required by the NC OSFM administrative requirements found in section 106.*

This action complies with the Strategic Operating Plan by making Asheville one of the safest cities, based on appropriate metrics as compared with similarly sized cities.

### Pros:

- Consistency with 2010 NC Fire Code.
- Clarifies City of Asheville Fire Prevention Ordinance
- Increased firefighter and community safety.

### Con:

- None identified

The updating of the City Fire Prevention ordinance and adoption of the 2012 NC Fire Code will have no fiscal impact.

As our local ordinance needs to reflect state law, City staff recommends that City Council adopt the 2012 NC Fire Code and the associated amendments to the City of Asheville Fire Prevention Ordinance.

## **ORDINANCE BOOK NO. 27 – PAGE**

### **E. RESOLUTION NO. 11-186 - RESOLUTION ADOPTING THE BUNCOMBE COUNTY HAZARD MITIGATION PLAN UPDATE**

Summary: The consideration of a resolution authorizing the City Manager to sign the acceptance of the Buncombe County Hazard Mitigation Plan update.

The City of Asheville is an agency in the Buncombe County Hazard Mitigation Plan. Buncombe County Emergency Management is the lead organization for the declaration process in requesting and receiving State and Federal funds for disaster assistance. This plan involves all jurisdictions in Buncombe County including the City of Asheville, Town of Montreat, Town of Black Mountain, Town of Woodfin, Town of Weaverville and the Town of Biltmore Forest. On August 1, 2011 at the Buncombe County EOC located at 164 Erwin Hills Rd. a public hearing was held for public review and comment to the plan.

The plan addresses City of Asheville needs through risk assessment and multiple map modeling scenarios. City Departments address hazards, mitigation, sheltering and public safety through education, enforcement and community outreach events. The City is subject to flooding events, severe weather, and other adverse conditions. The Department of Public Works, through flood plain mitigation and plan review, ensures that the City of Asheville remains in compliance

the FEMA National Flood Insurance Programs rules. This allows the businesses and residences in the flood prone areas to purchase flood insurance at reduced rates.

The plan is part of Section 322 of the Federal Disaster Mitigation Act of 2000 which states that local governments must develop an All-Hazards Mitigation Plan in order to be eligible to receive future Hazard Mitigation Grant Program Funds and other disaster-related assistance funding and that said Plan must be updated and adopted within a five year cycle.

This action complies with the Strategic Operating Plan by making Asheville one of the safest cities, based on appropriate metrics as compared with similarly sized cities.

Pros:

- This plan allows the City to receive disaster assistance funds
- This plan continues following the National Flood Insurance Program guidelines
- Firefighter and citizen safety will be enhanced.

Con:

- None identified

The Buncombe County Hazard Mitigation Plan will have no additional fiscal impact. The City of Asheville will continue to support the Nation Flood Insurance Program through plan review, enforcement and education.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign the Buncombe County Hazard Mitigation Plan update.

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#### **F. RESOLUTION NO. 11-187 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY TO OVERSEE THE ADMINISTRATIVE COORDINATION OF THE COLLABORATIVE COMMUNITY CRIME PREVENTION PROJECT, CHANGING TOGETHER**

#### **ORDINANCE NO. 4010 - BUDGET AMENDMENT FOR THE ADMINISTRATIVE COORDINATION OF THE COLLABORATIVE COMMUNITY CRIME PREVENTION PROJECT, CHANGING TOGETHER**

Summary: The consideration of a resolution authorizing the City Manager to execute on behalf of the City of Asheville an agreement with Buncombe County in which the City will act as the coordinating agency for the Changing Together community project aimed at reducing gang violence through strategic prevention, intervention and suppression; and a budget amendment in the Grant Fund in the amount of \$63,000 for Governor's Crime Commission grant revenue to be received from the County.

Changing Together is a comprehensive and collaborative community project with participation from law enforcement, the District Attorney's Office and numerous non-profit and social service agencies throughout Asheville and Buncombe County. It was formed to address the issue of escalating gang activity and violence in the area and chosen by the Governor's Crime Commission (GCC) as a Tier 1 site for implementation of the Focused Deterrence Model (High Point Model) in fiscal year 2009.

Currently, the County receives grant funding from the Governor's Crime Commission to provide direct services to people involved with gangs and/or violent crime. Prevention and intervention programs are also coordinated for youth at-risk of becoming gang involved. The funding pays for the coordination of Changing Together, which includes a salary for a program

coordinator, one case manager and one ten hour per week administrative support person. For fiscal year 2011-12, the grant is \$100,000. These positions are currently housed at the Mediation Center, a partnering agency of Changing Together.

If the agreement is approved, the program coordinator and part-time administrative support positions will be overseen by the community relations division of the city manager's office with associated funding from the County in an amount not to exceed \$63,000. This figure also reflects ancillary administrative program costs. The remainder of the grant will fund formal and informal service support systems and a case manager. These components will be managed by Buncombe County Human Services through service contracts or the direct provision of services.

The County is requesting the City assume responsibility for administrative coordination of Changing Together. One factor prompting the request is that the Governor's Crime Commission emphasized a preference for the coordination to be located in a municipality because of the stability it provides due to organizational capacity and infrastructure. The Buncombe County District Attorney's Office and the Buncombe County Sheriff's Office are supportive of this restructuring of program coordination responsibilities.

This action complies with the City Council Strategic Operating Plan in the Core Focus Area of Safety. This partnership will continue to assist the Asheville Police Department in its work to successfully work with youths at risk of gang exposure and as a strategy to improve safety in neighborhoods with high crime.

Pros:

- Through initiatives such as West Riverside Operation Weed and Seed, the City of Asheville has impactful experience administering federal and state grants focused on community-based crime prevention.
- Administrative coordination by the City creates an opportunity for seamless crime prevention coordination with the community and greater flexibility in adapting the Focused Deterrence function of Changing Together to meet future crime trends.

Cons:

- Public perception of program effectiveness may be associated with only the City when it is actually a collaboration between the community, City of Asheville, Buncombe County and other state and federal agencies.
- Additional administrative resources related to contract management and accounts payable will be required.

Buncombe County has agreed to provide the required grant match of \$33,000 for this fiscal year in addition to managing funds budgeted for the case manager position in the amount of \$37,000. With revenue in the amount of \$63,000 received from the County, the City will manage funds budgeted for ancillary costs, the program coordinator and administrative support position. All positions will be contract employees in order to re-evaluate available state funding at the conclusion of the current fiscal year. Other than the time commitment related to administrative oversight, there is no hard cost impact on the current year budget.

Staff recommends City Council adopt the resolution authorizing the City Manager to execute, on behalf of the City of Asheville, the agreement with Buncombe County to assume administrative coordination of Changing Together; and the accompanying budget amendment in the Grant Fund in the amount of \$63,000. The recommendation received unanimous approval by the Public Safety Committee at the August 16, 2011 meeting.

Assistant City Manager Jeff Richardson highlighted this partnership opportunity with Buncombe County.



Mayor Bellamy acknowledged the wonderful partnership in that the City has been at the table since the beginning. For the City being in this position says a lot about the collaboration that has been developed.

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**G. RESOLUTION NO. 11-188 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 27, 2011, FOR THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN ROAD – BELLE VISTA RETIREMENT**

Summary: The consideration of a resolution fixing the date of a public hearing on September 27, 2011, for the voluntary annexation of property located at 55 Piney Mountain Drive – Bella Vista Retirement.

Asheville Retirement Residence, LLC has petitioned the City of Asheville for the annexation of one (1) lot located at 55 Piney Mountain Drive containing a total of 13.52 acres on which was recently constructed a 120 suite retirement residence. The property is contiguous to the primary corporate limits of the City of Asheville. The area is subject to the standards for annexation of contiguous areas contained in NCGS 160A-31.

Pursuant to NCGS 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for the Asheville City Council to fix the date for the public hearing on this matter. Should the City Council decide to proceed with this request, the effective date for the annexation would be November 30, 2011.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new retirement community that would benefit from an urban level of service.

Con:

- Marginal costs for patrol.

The property located at 55 Piney Mountain Drive is valued at \$12,813,700. This property is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. As such, the City receives a share of the Haw Creek Fire District property tax revenue based on the property's value. If the property were to remain outside the City, the City would receive \$11,532 in revenue annually from the Haw Creek Fire District property tax. Once the property is annexed, it will no longer be subject to the 9-cent Haw Creek Fire District tax; instead the property will be subject to the City of Asheville's 42 cent property tax rate. Therefore, the City will receive \$53,817 annually in property tax revenue once the property is annexed. Thus, the net tax revenue gain from the annexation is \$42,285. As noted above, cost impacts from this voluntary annexation are minimal.

City staff recommends that City Council adopt the resolution setting the date of September 27, 2011, for a public hearing on the annexation petition.

**H. ORDINANCE NO. 4011 - BUDGET AMENDMENT FOR PURCHASE OF AN EXTRACTOR AND REMITTANCE PROCESSOR FOR CUSTOMER SERVICES**

Summary: The consideration of a budget amendment in the Water Resources Operating Fund, in the amount of \$130,000, for the purchase of an extractor and remittance processor for Customer Services.

The Customer Services Division currently uses two separate machines, a remittance processor and an extractor, to process approximately 1,250 utility bills daily. Utility Billing Specialists receive utility bill payments at City Hall, open them using the extractor, and scan the payments into the remittance processor for posting to the customer's account. The entire process is handled in-house by Water Resources staff. The current machines are approximately seven years old and break down on a regular basis. Since the useful life for this equipment is a maximum of five years, then it is well past time to replace them.

Water Resources consulted with the Finance Department on the decision to lease or purchase new equipment, and it makes more financial sense to purchase it. Once the budget amendment is approved and processed, the Purchasing Division will assist in the procurement of the new extractor and remittance processor.

This project is part of City Council's strategic plan to improve city infrastructure and to operate at the highest levels of fiscal responsibility.

Pro:

- Customer Services will have new equipment that is more efficient and reliable than the existing extractor and remittance processor.

Con:

- Customer Services will continue to use the older equipment, which is inefficient and breaks down on a regular basis.

The Water Resources Department does not have a budget in place for the purchase of the Mail Processing Equipment. Since this is a single year project, the budget amendment will create the budget in the Water Resources Operating Fund. The funds needed for this purchase in the amount of \$130,000 will be transferred from an older N.C. Dept. of Transportation (NCDOT) project (Brevard Road from Sardis Road to the Parkway) that is completed and has the funds necessary for this project.

Amount in Completed NCDOT Project	\$354,812.48
<u>Amount Needed for Mail Processing Equipment</u>	<u>\$130,000.00</u>
Amount Remaining in NCDOT Project	\$224,812.48

The amount remaining in the older, completed NCDOT Project will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council authorize a budget amendment in the Water Resources Operating Fund, in the amount of \$130,000, for the purchase of an extractor and remittance processor for Customer Services.

**ORDINANCE BOOK NO. 27 – PAGE**

**I. RESOLUTION NO. 11-189 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. FOR**

**RADIO SYSTEM MAINTENANCE FROM AUGUST 1, 2011 THROUGH JULY 31, 2012**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2011, through July 31, 2012, has remained the same as last year's cost.

The renewal agreement reflects an annual charge of \$142,877.40 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment. The agreement also covers infrastructure that has come out of the installer's warranty during the past year.

This action complies with City Council's Strategic Operating Plan of partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

Funding for this contract was appropriated in the FY 11/12 budget process.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2011 through July 31, 2012.

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**J. RESOLUTION NO. 11-190 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE EXISTING AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR THE FLOOD MITIGATION EFFORTS ASSOCIATED WITH THE LAKE CRAIG PROJECT**

**ORDINANCE NO. 4012 - BUDGET AMENDMENT FOR THE FLOOD MITIGATION EFFORTS ASSOCIATED WITH THE LAKE CRAIG PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to modify an existing agreement with the N.C. Dept. of Environment & Natural Resources (NCDENR) to supplement the current contract by an additional \$1,090,139 in order to complete Phase I of the Lake Craig Project; and a budget amendment in the amount of \$374,251 to appropriate additional Senate Bill 7 funding received from NCDENR.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities

hardest hit by the 2004 hurricane season. Through a study completed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of the project include stream relocation and restoration, removal of floodplain fill and flood bench restoration, and the evaluation of the existing dam.

On May 15, 2007, City Council approved a resolution allowing the City Manager to enter into the following three contracts with NCDENR:

- 1) \$2,500,000 for a three phase flood damage reduction measure which institutes a watershed-wide program for flood damage reduction in the Swannanoa
- 2) \$2,000,000 for acquiring property that is prone to flooding
- 3) \$75,000 to work with the Army Corps of Engineers to develop an emergency flood preparedness plan for Biltmore Village

The City did not utilize all the funds for acquisition of property, \$715,888 is remaining. This \$715,888 will be re-allocated and additional NCDENR (Senate Bill 7) funds in the amount of \$374,251 has been approved for the flood damage reduction measures contract. The \$1,090,139 supplements the existing NCDENR contract (\$2,500,000) for a new total amount of \$3,590,139.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. The CORPS continues to be involved with this project.

On June 28, 2011, City Council approved the City Manager to enter a contract with McGill Associates to perform the engineering services necessary to provide flood mitigations to the properties down stream of the Lake Craig Dam which will include the evaluations of the existing dam. The Lake Craig Project was the highest priority in the Swannanoa Flood Risk Management Project which was accepted by City Council on May 10, 2011. McGill Associates are also providing engineering services associated with the improved roadway connections to the John B. Lewis Soccer Complex and provide a much needed connection to the City of Asheville water system.

These funds will be in addition to the \$2.5 Million that have been made available for the City to perform flood mitigation work. The funds available for the completion of the engineering services for the Swannanoa Flood Risk Management project and to complete Phase I of the Lake Craig Project total \$3,590,139.

This action complies with the City's plans and commitments to continue to administer \$2.5M of Senate Bill 7 funding consistent with a contract executed with the N.C. Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- To continue to work with state, local and federal partners on a flood mitigation plan
- Priorities are set for expending the remainder of state flood mitigation funding
- This funding will allow the completion of the construction phase of the Lake Craig project

Cons:

- Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

The City has currently budgeted \$1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project and the Azalea Road capital improvement project. Funding for the engineering services contract has come from a combination of NCDENR Senate Bill 7 money and capital funds, made available from the water fund for work associated with the installation of water line infrastructure as permitted by state statute, which are already budgeted in the Azalea Road capital improvement project. The reallocation of the \$715,888 and the additional \$374,251 (total \$1,090,139) from NCDENR Senate Bill 7 will allow the city to finalize the design and complete the construction of Phase I of the Lake Craig Project for flood mitigation

Staff recommends City Council approve a resolution authorizing the City Manager to modify an existing agreement with NCDENR to supplement the current contract by an additional \$1,090,139 in order to complete Phase I of the Lake Craig Project; and a budget amendment in the amount of \$374,251 to appropriate additional Senate Bill 7 funding received from NCDENR.

Mayor Bellamy was pleased that the City received these funds, especially during times of budget cuts. The State has recognized this is a good investment for a comprehensive project.

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**K. ORDINANCE NO. 4013 - BUDGET AMENDMENT FOR THE PURCHASE OF LIFECYCLE REPLACEMENTS FOR COMPUTERS AND RELATED EQUIPMENT**

**RESOLUTION NO. 11-191 - RESOLUTION AUTHORIZING THE REIMBURSEMENT OF THE CITY FROM PROCEEDS OF THE FINANCING FOR PROJECT EXPENSES INCURRED PRIOR TO THE EXECUTION OF THE INSTALLMENT PURCHASE CONTRACT**

**RESOLUTION NO. 11-192 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INSTALLMENT PURCHASE CONTRACT FOR THE EQUIPMENT**

Summary: The consideration of a budget amendment, in the amount of \$350,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment; a resolution authorizing the reimbursement of the City from proceeds of the financing for project expenses incurred prior to the execution of the installment purchase contract; and a resolution authorizing the City Manager to enter into an installment purchase contract for the equipment.

In previous years, the City of Asheville has used an operating lease for computer equipment. This offered the operational benefit of a lifecycle replacement for computers every four years, which allowed for more reliable computing for employees. However, based on financial analysis of the operating lease rebid process, staff recommends moving away from the operational lease model and purchasing the equipment with debt proceeds for several reasons. First, it will cost the City 14-30% less to purchase the equipment with debt proceeds than to lease it over the useful life of the equipment. In addition, when computers are purchased rather than leased, an extension of the lifecycle is at zero cost because the City owns the equipment as opposed to leasing it.

The proposed purchase of the computer equipment would be from State and other authorized contracts. To execute the purchase, staff is asking for City Council consideration of:

- 1) A budget amendment from debt proceeds in the amount of \$350,000 to allocate funding for the project.

- 2) A reimbursement resolution allowing the City to move forward with the project and reimburse its accounts upon the issuance of the debt. When the FY 2011-12 budget was adopted, staff had not finalized its plan to purchase rather than lease computers, therefore only the operational lease costs were included in the adopted budget, not the purchase price. The money that was budgeted for the remaining operational lease payments will be redirected to pay debt service on the financing.
- 3) A resolution authorizing the City Manager to enter into an installment purchase contract in an amount not to exceed \$350,000 to finance the purchase of the replacement equipment.

This action supports the City Council's strategic goal to operate the City to the highest levels of fiscal responsibility by making smart investments that result in lasting returns.

Pros:

- Continue to offer the lifecycle replacement, allowing for more reliable computing for employees
- Save between 14-30% over the life of the equipment

Cons:

- Because the deferral of lifecycle computer replacements would be at zero cost in the future, several difficult budget years in a row could create a situation where employees have old, unreliable computers, creating a service impact.

The FY 2011-12 adopted budget included \$104,196 in the Information Technology Services departmental budget to pay the operational lease on the computers and related equipment that are set to be replaced in the current fiscal year. The City will pay approximately \$52,098 between July 1 and the time that the operational lease payment ends. The remaining funds will be used to pay the annual debt service on the amount up to \$350,000 borrowed for this purchase. Over the useful life of the equipment, staff estimates that purchasing the equipment will save 14-30% over leasing the equipment.

City staff recommends that City Council authorize a budget amendment, in the amount of \$350,000 from debt proceeds, for the purchase of lifecycle replacements for computers and related equipment and approve the reimbursement resolution and the resolution authorizing an installment purchase contract.

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RESOLUTION NO. 11-191 - RESOLUTION BOOK NO. 34 – PAGE 161  
RESOLUTION NO. 11-192 - RESOLUTION BOOK NO. 34 – PAGE 162**

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.

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

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

#### **A. EMERGENCY MANAGEMENT PLAN UPDATE**

Assistant Fire Chief David McFee said that our Emergency Plan is professionally developed, was updated in 2010, is comprehensive, and is a living document and developed to be easily updated.

For major emergencies and disasters, our plan is (1) designed to address any emergency or disaster; and (2) gives guidance to Council, staff and community fore preparedness, response, mitigation and recovery. Numerous annexes within our plan address more specific events such as radiological, terrorism and hazard materials release.

For flooding, our plan in action is (1) before or early onset, we warn, evacuate, and disseminate public information; (2) during a flood, we give direction and control and issue an emergency proclamation; and (3) after a flood, recovery.

Another tool available is the City of Asheville Elected Officials Guide to Emergencies and Disasters. The condensed guide contains disaster declarations, preparedness, response, recovery, mitigation and media guide.

Also included in our plan is a fuel conservation plan. We are participating in the Local Energy Assurance Project (LEAP). The Land-of-Sky Regional Council is our partner in this Project. It's made up of 22 local entities across our region. Its focus is (1) building regional energy assurance capabilities to allow counties/cities to better prepare for a fuel shortage or disaster; and (2) coordinating and communicating state-wide with one another on energy security, reliability, and emergency response issues. Its objectives are (1) strengthen and expand local government energy assurance planning and resiliency; and (2) reduce the impacts from energy supply disruptions such as premature budget depletion resulting in the inability to provide services.

In response to Councilman Davis, Mr. McFee felt that the Land-of-Sky has been trying to keep all 22 entities in the project and felt they are doing a good job in going in the right direction.

Mr. McFee responded to Councilman Smith regarding how fuel will be set aside for emergency services and in the event of a fuel shortage if there is any contingency for fuel for food distribution.

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

##### **A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL ZONING FOR SKYLOFTS/ALEXANDER DRIVE PROJECT**

##### **ORDINANCE NO. 4014 - ORDINANCE TO AMEND THE CONDITIONAL ZONING FOR SKYLOFTS/ALEXANDER DRIVE PROJECT**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the conditionally zoning of Skylofts/Alexander Drive Project. This public hearing was advertised on September 2 and 9, 2011.

Ms. Fields said that on June 27, 2006, the Asheville City Council reviewed and unanimously approved the conditional zoning (RM16 CZ) of 4.59 acres of property located off of Carroll Drive and Alexander Drive in order to allow for the construction of a 69-dwelling unit development, the Skylofts of Asheville. Subsequent to this approval and receipt of permits, two of the proposed eight buildings were constructed and units sold. The property then suffered during the recession and a foundation for a third building was in place at the time of foreclosure on the development.

A new developer, Progressive Consultants, LLC, has obtained the property containing the foundation for the third building ("Unit C") and the property across (to the south) Alexander

Drive. Given changes to the market, the developer wishes to complete the project with some amendments to the plan. For purposes of analysis, the entire Skylofts development has been reviewed although the amendment would only apply to the portion controlled by the new development team.

The new proposal would contain fewer buildings (seven vs. eight) but seven additional units (76 vs. 69) with more small units added. Up to 77 units would be allowed on the site under the zoning. The other significant change is that parking for buildings D, E, F, and G would become surface parking as opposed to the primarily structured parking that was to be provided. Because of the parking change, the building height is reduced in those buildings that are south of Alexander Drive. The existing and proposed heights are as follows: Building A - 28' 9/5"; Building B - 39' 5.5"; Building C - 39' 5.5"; Buildings D-G - 29' 10". The impervious surface area for the development will also be reduced from an originally proposed total of 1.89 acres to 1.78 acres. The proposed unit mix is as follows:

- Building A - 3 - 1 Bedroom; 3 - 2 Bedroom
- Building B - 3 - 1 Bedroom; 6 - 2 Bedroom
- Building C - 3 - 1 Bedroom; 6 - 2 Bedroom
- Buildings D- F - 4 - 1 Bedroom; 7 - 2 Bedroom; 1- 3 Bedroom
- Building G - 8 - 1 Bedroom; 7 - 2 Bedroom; 1 - 3 Bedroom

Although for purposes of City review there is no distinction, the developer is proposing to lease the new units as opposed to selling them, again reflecting current market conditions. Landscaping is proposed to be provided in accordance with the original conditional zoning approval.

The developer is proposing to complete the street and storm drainage repair work left incomplete by the previous developer. It is also proposed that the partially constructed parking deck to the east of Building A would be completed to provide six additional spaces at the time Building C is constructed.

The developer is working with the owners of units in Buildings A and B concerning the development of Building C which is restricted as part of the Skylofts Homeowner's Association (HOA) documents as to the number of rental units allowed.

Although this issue does not relate to City regulations, representatives of the Skylofts Homeowner's Association (HOA) and the developer agreed to (by letter dated September 13, 2011) to the following conditions: (1) stucco all exterior block walls and paint with color approved by the Skyloft HOA; (2) insure that the remaining foundation meets minimum building safety requirements; (3) paint and secure the existing elevator building; (4) cut all exposed plumbing down to ground level; (5) provide monthly landscape service; (6) remove all existing fencing and debris; and (7) plant perimeter landscaping as required under previous plan. The developer has committed to doing these items within 60 days after final permit approval by the City.

The staff strongly recommends that the City condition approval of any amendments on some improvements to the area surrounding Building C being provided if Building C is not constructed at the same time as the other buildings. The developer is willing to:

- Stucco all exterior block walls and paint with color approved by the HOA.
- Insure that the remaining foundation meets minimum building safety requirements.
- Paint and secure the existing elevator building.
- Cut all exposed plumbing down to ground level.
- Provide monthly landscape service.
- Remove all existing fencing and debris.



- Plant perimeter landscaping as required under previous plan.

If Building C is not constructed along with Buildings D-G, the staff recommends that any approval be conditioned on those items noted above being met within 60 days after final permit approval from the City

The developer proposes to maintain the originally approved 10% affordable condition on the project. There are four units in place in Buildings A and B. The developer will provide four additional units in the remainder of the development. The developer also plans to provide the previously required bus shelter at the corner of Martin Luther King, Jr. Drive and Alexander Drive.

The developer held a meeting with residents of the area on September 1, 2011, to discuss the project and to listen to neighborhood concerns. Most of the comments raised were related to the concerns of the homeowners in Buildings A and B.

At their meeting on August 15, 2011, the City of Asheville Technical Review Committee (TRC) reviewed the conditional zoning amendment and made a positive recommendation (with conditions) that the project be forwarded to the Asheville City Council. This amendment did not have to be reconsidered by the Planning and Zoning Commission because the changes were relatively minor in nature.

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

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

The project, if approved, must meet the technical standards set forth in the City's Unified Development Ordinance. The existing site plan shows compliance with most all of the City's development standards and the applicant is working on a resubmittal to address the comments of the Technical Review Committee.

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

The applicant has met all applicable provisions of the hillside regulations. The applicant has worked to create a design minimizing grading activity and impervious surface on the site.

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

The use of property that surrounds this site is varied. There is another multi-family housing development to the west of the site. The applicant is proposing buffering or other landscaping in compliance with City of Asheville standards along all property lines in the development.

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

The East End Valley Street area contains an array of building types and uses with varying with varying gross floor areas, densities, and elevations to existing structures. The developer is proposing to maintain an architectural design consistent with the existing Skylofts buildings.

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

The proposed development proposed development supports the following goals/strategies of the *Asheville City Development Plan 2025*:

- Locating development in areas where infrastructure exists and can easily be provided.
- Finding appropriate opportunities to establish transit supportive densities (8-16 units per acre) and facilities.
- Promoting infill developments proximate to the Central Business District and in developed areas that can support increased density in development.
- Providing affordable housing.

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

The proposed development is within a block of an existing transit stop and proposes to provide a shelter at this location. The original developer improved the existing water line along Alexander Drive.

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

The City of Asheville Traffic Engineer has indicated that the roads that will be accessed by this development are sufficient to handle any traffic generated. The provision of additional on-street parking along Alexander should assist in calming traffic along Alexander.

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

Pros:

- Completes a development that had been stopped due to economic conditions.
- Provides for infill development in an area in close proximity to downtown and infrastructure suitable for increased density of development.
- Provides additional affordable housing in an area with transportation options.

Con:

- Existing residents of Skylofts have concerns about the development of Building C.

At their meeting on August 15, 2011, the City of Asheville Technical Review Committee reviewed this conditional zoning amendment and made a positive recommendation to Council.

Mayor Bellamy opened the public hearing at 5:45 p.m.

Mr. Pace Burt, representing Progressive Properties, LLC, was excited about the project. He hoped to address all the concerns of Skyloft homeowners, as they would like the development to be successful.

Ms. Rebecca Cobbledick, representing the Skyloft Condominium Owners Association, said that they have been living next to an eyesore for several years and excited Progressive Properties have bought the land. With the agreed upon conditions, she supported staff's recommendation to amend the conditional zoning.

Mayor Bellamy closed the public hearing at 5:49 p.m.

In response to Mayor Bellamy regarding stormwater issues, the engineer for the project said that as soon as the project is started, that will be an area of focus. Ms. Fields also noted that the developer will have to meet all of the City's stormwater requirements and will have adequate drainage on the back side of the property. Anything off-site is not proposed to be addressed.

Ms. Fields responded to Mayor Bellamy regarding the condition in the previous approval regarding stormwater runoff onto the church's parking lot. The previous developer committed \$10,000 to work on the crushed storm drain; however, it required doing work on the Church's property and the two parties were not able to work out an agreement.

In response to Mayor Bellamy regarding air quality concerns on the previous project, Assistant Planning & Development Director Shannon Tuch said that issues of air quality will be regulated through our Building Safety Department. Our Building Safety Department would coordinate and assist with contacting the Division of Air Quality.

Mayor Bellamy asked the developer to keep in mind that the surrounding streets are also their neighbors.

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

Councilman Russell moved for the adoption of Ordinance No. 4014, to amend the conditional zoning for a portion of the Skylofts development located on Alexander Drive, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) A maximum of 76 units may be constructed in the development; (7) Four additional affordable units shall be constructed in the remainder of the development; (8) A bus shelter will be required at the corner of Alexander and Martin Luther King, Jr. Drives; and (9) Within 60 days of final zoning approval, if Building C is not to be constructed at the same time as Buildings D-G, the developer shall comply with the conditions for improving the area around Building C as follows: (a) Stucco all exterior block walls and paint with color approved by the HOA; (b) Insure that the remaining foundation meets minimum building safety requirements; (c) Paint and secure the existing elevator building; (d) Cut all exposed plumbing down to ground level; (e) Provide monthly landscape service; (f) Remove all existing fencing and debris; and (g) Plant perimeter landscaping as required under previous plan. This motion was seconded by Councilman Bothwell and carried unanimously.

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**B. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED ON CLUB STREET TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

**ORDINANCE NO. 4015 - ORDINANCE TO ZONE PROPERTY LOCATED ON CLUB STREET TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone property on Club Street to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on September 2 and 9, 2011.

He said that the subject property was erroneously left absent from the Buncombe County tax maps for a number of years. As a result, when zoning districts were studied and assigned as part of the creation of the Unified Development Ordinance, this area was believed to be within the interstate right-of-way and was not assigned a zoning district. Staff is bringing forward the initial zoning action to address this omission and make the zoning consistent with the surrounding area.

The adjacent properties on Club Street and other neighboring streets have similar characteristics and are all zoned RM8, Residential Multi-Family Medium Density. Staff feels that this zoning district is the only option for the subject parcel, as assigning any other district to an area this small could legitimately be challenged as spot zoning.

Further, the narrowness of Club Street and its one-way traffic pattern would not befit a higher-intensity zoning district.

At their August 3, 2011, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

The owner has stated that he is "looking to develop this property with residential development that is similar to, and fits within, the surrounding residential context."

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

Pros:

- Zones property in consideration of the surrounding zoning and land use and the City's comprehensive plan.
- Rectifies ambiguity in zoning map.

Con:

- None noted.

Staff recommends approval of the initial zoning.

Mayor Bellamy opened the public hearing at 5:55 p.m. and when no one spoke, she closed the public hearing.

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

Councilman Smith moved for the adoption of Ordinance No. 4015. This motion was seconded by Councilman Russell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

**C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF PROVIDING GREATER FLEXIBILITY IN THE REGULATION OF ACCESS ONTO RESIDENTIAL STREETS BY NONRESIDENTIAL USES**

**ORDINANCE NO. 4016- ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF PROVIDING**

## **GREATER FLEXIBILITY IN THE REGULATION OF ACCESS ONTO RESIDENTIAL STREETS BY NONRESIDENTIAL USES**

Urban Planner Julia Fields said that this is the consideration of an ordinance to amend the Unified Development Ordinance for the purpose of providing greater flexibility in the regulation of access onto residential streets by nonresidential uses. This public hearing was advertised on September 2 and 9, 2011.

The Unified Development Ordinance of the City of Asheville currently limits access onto residential streets by nonresidential uses. A residential street is defined in the ordinance as “those streets abutted primarily by residential uses and that provide direct access to these residences.” The ordinance states that nonresidential uses having frontage on more than one street (corner lots, through lots, etc.), “shall have their access from the street that is abutted by uses most consistent with the use located on or proposed for the lot for which access is being sought.” The ordinance, however, provides some flexibility for corner lots to have access from another street. This option is afforded if that portion of the street is zoned a nonresidential or mixed use district and where it is determined by the City’s traffic engineer that the access results in an improved traffic flow on the major street, or provided, that the access does not negatively impact the residential uses on the street (also determined by the City’s traffic engineer).

Staff has found that there are instances where more efficient access to a nonresidential use with frontage on more than one street can be provided from a residential street. This can be true even in situations where the access is not on a portion of the street with a nonresidential or mixed use zoning district designation. This ordinance amendment proposes to extend the flexibility for access from a nonresidential street to any situation where it is determined by the City’s traffic engineer that the access results in an improved traffic flow on the major street and provided that the access would not negatively impact the residential uses on the street.

At a meeting on August 3, 2011, the Planning and Zoning Commission discussed the proposed wording amendment and voted 4-2 to recommend the amendment to the Asheville City Council. One person was there to speak with concern for the amendment. They asked about procedures for appeal and whether these situations should be reviewed by someone other than staff.

**Pros:**

- Provides greater flexibility regarding access point on streets in the City’s jurisdiction.
- Provides for improved traffic management.

**Con:**

- Concerns of residential communities that access would negatively impact them.

City staff recommends approval of this wording amendment.

Mayor Bellamy opened the public hearing at 5:59 p.m. and when no one spoke, she closed the public hearing.

In response to Councilman Bothwell, Transportation Director Ken Putman explained that this is on a case-by-case basis and how such applications will be reviewed by his Department.

When Councilman Bothwell asked if there is a process for neighborhood appeal, Ms. Fields said that there is a provision in the ordinance that any decision by City staff can be appealed to the Board of Adjustment.

In response to Mayor Bellamy, Mr. Putnam said that he envisioned part of their review process would be to reach out to the neighborhood to get any concerns addressed up front.

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

Councilman Russell moved for the adoption of Ordinance No. 4016. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

**D. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY AMENDING THE STANDARDS FOR COTTAGE DEVELOPMENTS BY ADDING A PURPOSE STATEMENT TO THE USE-BY-RIGHT STANDARD**

**ORDINANCE NO. 4017 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE BY AMENDING THE STANDARDS FOR COTTAGE DEVELOPMENTS BY ADDING A PURPOSE STATEMENT TO THE USE-BY-RIGHT STANDARD**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance by amending the standards for Cottage Developments by adding a purpose statement to the Use-By-Right Standard. This public hearing was advertised on September 2 and 9, 2011.

The “cottage development” use was adopted by the City Council in June of 2007. Its stated intent was to allow small infill development of small single family homes as a means to increase the stock of housing affordable at the “workforce” housing levels. According to the staff report at the time, the impact of the allowed greater density is offset by the smaller size of the homes, and the layout and design are of particular importance to ensure that they complement the surrounding existing neighborhood. The Council had expressed an interest in this development type, and after substantial staff research, public input, and modifications suggested by the Planning and Zoning Commission; it was adopted unanimously. The use is defined as:

A cluster of small detached single family residences constructed to specific design standards and arranged around common open space, generally at higher density than the underlying zoning would allow for traditional detached single family residential development.

The use is a “by right” use, providing all technical standards are met, in the RS-8, RM-6, RM-8, and RM-16 zoning districts. To date, four have been approved and two have been fully built.

**The Kenilworth Cottages** development is located on at 127 Aurora Drive (off Kenilworth Road). The development was approved in 2010 for 11 homes, and 3 have been built and one is inhabited. The site was in bankruptcy proceedings but still advertises homes for sale and the site is kept mowed. Foundations are in place for 2 units, and basic grading and stub-out infrastructure is in place for the remaining 6 units.

**The Cottages on Liberty Green** development is located at 2 Cottage Cove Lane, off Liberty Street in the Oakley community off Fairview Road. It was approved in 2008 for 7 “green” homes for sale, and 2 have been at least partially built. None were purchased and none are inhabited; the site had appeared abandoned but recent activity has been noted.

**The Town View Common Cottages** were approved in 2008 for 11 homes and completed in 2009. They are located on at 45 Nancy Road, off Hansel Road near Patton. All 11 homes were built and are inhabited, and the project functions as an affordable housing rental property. This project received Housing Trust Fund support.

**The Beaucatcher Cottages** are located at 444 Beaucatcher Road off Kenilworth for 12 homes. They were approved in 2010 and are almost completed; some are already inhabited. It is being built by the same developer that built the Nancy Road development. It also received Housing Trust Fund support and is also to be operated as an affordable rental property.

Immediate neighbors across Beaucatcher Road are upset about this community due to its design, which located the required common green on the interior of the property (with the homes facing it), and the rear of 7 of the homes facing Beaucatcher Road. Staff is working with the developer on an augmented landscaping plan for that area to provide increased screening for the neighbors across the street.

In summary, the standards for this development type include criteria that set:

- Minimum development area (smaller than standards for the zoning district);
- Minimum street frontage on a public street;
- Minimum and maximum number of units;
- Distance requirement between cottage development and between the homes in a development;
- Height limits for the home and any accessory structure (garage);
- Size limit for the homes and “accessory structures” (generally garages);
- Percentage limit on accessory structures and accessory dwellings above garages;
- Parking requirements, including screening requirements and parking dispersal requirements;
- Common and private open space requirements including a requirement for a front porch;
- Design standards for roofs and siding materials;
- Design standards for the relationship of the homes to the street; and
- The use is not allowed on steep slopes or ridgetops; or portions of sites with a 15% grade

Despite the standards, there have been concerns with recent designs for this development type. The staff believes that some of the problems inherent in the design standards are because they seem to have been designed to accommodate properties that are “interior” - surrounded by other lots facing a public street, and taking access from a single access drive. All of the approved developments in Asheville, however, take direct access from public streets. While the developments approved include intended design features, there has been some awkwardness to certain aspects of the designs, especially related to orientation to the surrounding neighborhood and parking areas. This has led to developments that do not blend well with their surrounding neighborhoods as intended.

Further, another problem with the standards is that they do not include a purpose clause, stating the intent for this development type and allowing Planning staff some discretion in evaluation of designs that may meet the “letter” of the standards, but not the “intent” for this type of development.

Proposal: Given the concerns noted above the staff believes that a review of the standards is warranted, and modifications should be considered. Such a study is, however, likely take at least 6-8 months to complete. Further, we believe the new Affordable Housing Commission should be involved in that review and members have not yet been appointed or meeting dates set.

Therefore, as an interim measure, the staff recommends that the suggested purpose clause and statement of expectations be added to the use to allow some added flexibility in review of the use type while the more extended study is underway. Alternately, the use could be

removed from the UDO while revisions to address the other concerns are studied, but this would preclude this use which has become an option of interest for affordable housing development.

In either scenario, the staff will be proposing modifications to bring before the newly created Affordable Housing Commission for review and comment (once they are seated) before being brought to the Planning and Zoning Commission and Council. The areas of change are likely to include:

- Evaluation of the added density allowed - specifically for the very small units allowed in the accessory structures
- Evaluation of the standards given the growing interest in the use of the development for affordable rental housing
- Modifying the design standards for properties that have more than 25 feet of frontage on a public road (to ensure visual protection and preferably enhancement for existing dwellings)
- Considering additional standards for how a cottage development relates to nearby lot sizes, setbacks, and other neighborhood characteristics
- Expanding the type of architecture and siding allowed, establishing more flexibility in design (reflecting the increased use of contemporary or blended architectural styles in many Asheville neighborhoods)
- Reconsideration of the common open space requirements and associated building orientation.
- Reconsideration of the approval process to determine if it should remain as a USSR approved only by the staff or changed to an approval by the Planning and Zoning Commission under a different type of process allowing public input on the design. In order to meet the intent for the use, it would be important for any level of public review to be about the proposed design and, not the density. Currently the staff is left in the role of determining whether the submitted plan meets the required standards; and despite the intent that the standards be very explicit, we have found more opportunity for interpretation than was intended

It is important to recall that design is the crucial element for successful cottage development standards. As noted in the "Cottage Housing Development Standards Guide (Seattle, WA - 2000) used for the original staff research:

*"In all cases careful attention to design detail and landscaping softens the impact of higher densities... "Going one step further, a design goal should be that the cottage cluster actually improves the surrounding neighborhood, rather than having just a neutral impact"... "The surest way to destroy public support for cottage development would be to build cheap little boxes that add density while degrading the aesthetics of the neighborhoods. While very inexpensive cottages may provide affordability in the short run, such development will inevitably erode support for the higher densities necessary for long-term affordability...". The policy challenge is to find ways to ensure that cottage development in single family areas follows good design principles. Cottage housing is a wonderful idea that could be killed off with just a few bad experiences."*

Thus, with a bit over four years of experience, the staff now believes that we should consider changes to "tailor" these very important design criteria to our experiences in Asheville



and elsewhere. Foremost is the need to ensure that the overall development fits smoothly into its setting, and is a complement to the existing homes in the area.

The Planning & Zoning Commission considered the proposal at their July meeting and voted 6-0 (with one Commissioner absent) to recommend support for this change.

As a first step in the re-evaluation of this use the staff recommends approval the wording amendment to the use Use-by-right standards located in Article XVI, to provide a new purpose statement. The purpose clause clarifies that the use is intended to allow small infill development of small single family homes that increase the stock of housing affordable at the “workforce” or “affordable” housing levels. And it clarifies that the greater density allowed for such housing is offset by the smaller size requirement for the homes, and development design standards that work to provide infill housing that is a complement to the surrounding existing neighborhood.

Mayor Bellamy opened the public hearing at 6:09 p.m. and when no one spoke, she closed the public hearing.

Vice-Mayor Newman asked that as we go through the process of getting feedback from the community, he asked that staff also solicit feedback on if there are any unneeded barriers for cottage development.

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

Vice-Mayor Newman moved for the adoption of Ordinance No. 4017. This motion was seconded by Councilman Smith and carried unanimously.

## **ORDINANCE BOOK NO. 27 – PAGE**

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

#### **A. SECOND & FINAL READING OF ORDINANCE NO. 4007 – ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO CLARIFY THE REGULATIONS FOR MOBILE FOOD VENDING**

Assistant Planning & Development Director Shannon Tuch said that at the August 23, 2011, City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. She provided Council with the following information with answers to the various concerns noted.

- (1) Regarding trash removal, at the August 23, 2011 City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. Among the issues raised was a concern that MFV would contribute to the on-going issues and concerns over trash and litter downtown.

Presently, there are approximately 136 city trash receptacles downtown that are emptied nightly by the Department of Public Works’ (DPW) downtown cleanliness crew. In addition to emptying cans every day, this crew of four full-time staff also manually picks up litter throughout the downtown core.

Recognizing a need to not only increase trash collection downtown, but also to add a recycling component, the DPW has been researching and procuring grants to begin replacing the current receptacles with new, larger trash and recycling

receptacles that will include solar compaction (similar to the receptacle in front of the Wolcott building now). Beginning in 2012, this replacement program will afford the downtown cleanliness crew additional time to expand its manual trash pick up and/or expand its service area.

The limited mobile food vending that will be permitted downtown is not expected to generate large amounts of trash and is expected to be primarily a “grab and go” style of dining. Once food is picked-up, it is expected that most patrons will carry the food back to their offices or other public destinations (parks) to eat and where the resulting trash can be disposed of properly. For those few folks who choose to eat on-site or nearby, the mobile food vendor will be required to provide a trash receptacle for the patrons to use. This receptacle will be removed from the site each day with the contents being disposed of at the commissary.

With these considerations in mind, staff is not proposing to make any amendments to the current ordinance regarding trash collection. Regarding the discussion about a possible budget amendment; however, any additional revenue to expand this service would have to be considered through a grant process or a budget amendment to be considered separately. It is unclear, given the plan for the current expanded service, if that is still warranted.

While raising privilege license fees for MFV is an option available, it is recognized that MFV is not the only business generating trash downtown (most restaurants offer take-out as well) and to place the burden of cost recovery for expanded service on this one business operation would likely be cost prohibitive for these small start up enterprises. Should Council desire to see privilege license fees raised in order to provide additional trash collection services downtown, staff would recommend examining the fees for all businesses that sell or produce disposable packaging. There has already been substantive talk regarding the establishment of a Business Improvement District (BID) and tax that would allow, among other things, the ability to generate revenue to be reapplied in that district. This is one alternative to raising privilege license fees.

- (2) At the August 23, 2011 City Council meeting the subject of Mobile Food Vending (MFV) was discussed. During this meeting a number of questions were raised regarding various aspects or impacts associated with the proposed use. Among the issues discussed was a concern regarding a disparate use of liquid petroleum gas (LPG) containers.

The subject of LPG use and regulation has proven to be somewhat interesting. Regarding codes and jurisdiction:

- The NC State Fire Code does not apply to motor vehicles, only structures.
- The NC State Fire Code does not regulate LPG use outside of buildings.
- The NC State Fire Code applies to structures and the use and storage of LPG (portable cylinders) in the structures and is primarily determined by the occupancy of the structure but is generally prohibited inside of structures. Most restaurants’ gas is piped, and not from portable sources.
- The Fire Code also regulates and prohibits the use of portable, open flame heaters in outdoor dining areas where the assembly of people is expected in association with a structure (usually a restaurant).

- The Department of Transportation and the Division of Motor Vehicles are responsible for registration and licensure of the motor vehicle, but does not examine the operation of the mobile food vendor or its kitchen.
- Buncombe County Health Department does issue permits for mobile food units but limits their inspections to food safety, and does not examine the vehicle or its attachments.
- The Department of Agriculture does inspect LPG use but has only five inspectors for the entire state of NC, and only two individuals dedicated to field inspections including mobile food vending. Their inspection process is primarily complaint driven or investigations after an accident.

This research has revealed that there is little to no inspection occurring for the safe use of the portable LPG containers, and there is some risk associated with the use of these containers. Propane is extremely flammable. While propane is used as a gas, it is transported and stored as a liquid under high pressure in tanks or cylinders. When liquid propane changes into a gas vapor, it expands in volume by about 270 times. Propane vapors are heavier than air and, therefore, will not dissipate rapidly and will accumulate in low areas. These two characteristics mean that even a small leak of liquid propane can result in a much larger quantity of propane vapor, which poses a risk of explosion and fire in a confined space or in low lying areas.

Determining the extent of the risk is challenging, however. Clearly, the use of portable LPG containers is a widespread practice and is most commonly used for heating and cooking, including the very common backyard grill used residentially throughout the country. In all of these instances, it is expected that the use of the LPG is in accordance with the manufacturer's instructions and if followed properly, is used with minimal risk. The proposed ordinance requires that all systems be used in accordance with these standards and if a system is found to be suspicious in any way, it would be within the city's power to withhold or revoke a permit. An inspection from the Fire Marshal's office may also be considered when trucks are initially permitted, and random inspections from zoning may be used to check to make sure connections are secure and that the cylinder and all connections are free from corrosion.

Staff has proposed a small amendment to the proposed ordinance be considered that the Fire Marshal's office, upon inspection, may hold or revoke a permit for any public safety related concern. The Asheville Fire & Rescue Department has been willing to ensure that the public safety concern is adequately addressed. In collaboration, Planning staff will check on the systems during our random inspections. Planning staff is currently in the process of drafting a check-list that would allow our inspectors to check all safety-related concerns.

The Planning and Fire staff had the opportunity to meet with one of the inspectors from the U.S. Dept. of Agriculture, which is one entity that does inspect propane systems. He was in the area to inspect the food vendors at the Mountain State Fair. They walked around the fairground site and checked all the different propane systems. They discussed any potential concerns that could arise from the different systems and staff now feels more comfortable with our ability to check the systems.

- (3) Regarding privilege license fees, one of the items on which information was requested was whether a separate privilege license tax may be charged for a MFV, and if so, how much.

Pursuant to N.C.G.S. 160A-211, a MFV is considered to be a restaurant. Restaurants may be charged a separate privilege license tax for each location. If the restaurant has four or fewer seats, the fee that can be charged, by statute, is \$25.00. The City already charges privilege license taxes on restaurants as State law allows. Accordingly, privilege licenses are already required for MFVs as a separate location for a restaurant; all that may be needed to implement this for MFVs is to notify the operators of this requirement. Because the tax is established by State law, the City may not impose a higher tax.

Council also inquired about the fees collected by Planning for its review of the permits for MFVs for cost recovery in association with the MFV use. Permit fees can only cover the anticipated cost associated with the actual review of the permit (not necessarily including enforcement). The applications are treated as Level 1 reviews, which is essentially a staff-level site plan review. The charge for this review is \$104. It would be problematic for the City to charge anything more than the basic Level I review fee.

Fees charged for processing of regulatory permits, like Level 1 reviews, may be set at a level that is intended to defray the costs of the regulatory program, and must be reasonable. This would include the "direct" costs of the program, such as staff time for processing permits, and may be approximate. This methodology has been upheld against legal challenges. Fees may be adjusted from time to time depending on changes in the direct costs of administration, or based on experience as to the costs of the program.

She also provided Council with copies of the draft minutes of Downtown Commission meetings where the issue was discussed including the final recommendation made and draft minutes from the August Planning and Zoning Commission where their recommendation was made. These Commissions are scheduled to adopt these minutes before the Council meeting - Planning and Zoning Commission on September 7 and Downtown Commission on September 9.

Staff proposes a small clarifying language amendment regarding the enforcement as follows: "Section 4. This ordinance shall be enforced as provided in Article 18 of Chapter 7 and Sec. 1-5 of the City Code, except that a failure to obtain or display a permit, as required by Sec. 7-14-2 d. (3) e. 4 and Section 7-16-1 (c) x g (display of permit) shall be punishable as a misdemeanor pursuant to N. C. Gen. Stat. sec. 160A-175 (b) and 14-4."

Finally, the proposed ordinance is included as well, containing the following modifications per direction of the Council at their August 23 meeting including:

7-16-1(c).x.b.2.c. – Clarifying that in the downtown area, a MFV must begin operating within thirty (30) days of receiving their permit and clarifying that individuals (not corporations) may obtain a single truck permit.

7-16-1(c).x.d.7 – Modifying hours of operation in the downtown area

7-16-1(c).x.d.10.(a.) – Prohibiting the use of generators in the downtown area

City Attorney Oast said that because this is a second reading, for which the public hearing has already been held, further public comment is not in order unless there are substantive changes proposed that would change the effect of the ordinance. It was his opinion that the changes outlined by Ms. Tuch would not require further public debate.

Mayor Bellamy noted that there are two issues on the table: (1) city-wide regulations for mobile food vending; and (2) including those regulations in the downtown area. City Attorney Oast said that Council can separate their vote on the two issues.

Councilwoman Manheimer is interested in three different issues regarding this ordinance (1) possibility of requiring some kind of aesthetic regulation for the appearance of the food truck; (2) further limiting the hours of operation in the downtown area - cease operations at 11:00 p.m.; and (3) limiting the number of permits issued from 10 to 5. We are launching a pilot program and we should be cautious because if it does not go well, it may be difficult to scale it back or repealing it. If it goes well, we can expand it.

Councilman Manheimer moved to amend the ordinance that limits the number of permits issued from 10 to 5. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Vice-Mayor Newman, Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

Councilwoman Manheimer moved that the downtown hours of operation be reduced from 2:00 a.m. to 11:00 p.m. This motion died for a lack of a second.

Vice-Mayor Newman understood that the fees charged for processing of regulatory permits must be set at a level that is intended to defray the costs of the regulatory program and must be reasonable. He wondered how we define the regulatory program. One way is to look at the cost to cover the specific set of tasks of staff time to review the permit and make a decision. But, it's his sense that with a pilot program, you should define the regulatory program in a broader sense. When we think about the staff time to develop this pilot program, he personally would like to have a fee level set at a level that really does cover the cost of this regulatory program that we are putting into motion in addition to the specific staff time for receiving the permit and making sure it meets technical requirements. Ms. Tuch responded that it was her understanding of what we can capture in our permit review fee is just those costs associated with reviewing the application and issuing the permit, including the initial inspection. We cannot include the time spent developing an ordinance, working with stakeholders, etc., all which is part of their long-range planning function.

City Attorney Oast said that it is legal for us to charge our direct costs. Beyond that, he was reluctant to advise Council that they can charge for other less direct costs. In fact, there has been legislative proposals to restrict cities abilities to charge anything other than direct costs. We can charge same fees we charge for a Level I permit. He said staff can look at this fee question to see if they can identify any other direct costs and adjust the fees later. Council does not need to take any action to authorize the charging of fees for this purpose, as the Level I permit fee is already covered in the fee schedule.

Ms. Tuch said that staff will be coming back to Council in a year with a report summarizing the list of different items they will monitor, and fees may be one thing they should look at.

Councilman Davis said that at the Boards & Commissions Committee they discussed an oversight committee recommended by Mayor Bellamy. He wanted to see how the program progresses first, but if a committee is established, that would be another staff expense.

In response to Councilman Smith, Ms. Tuch said that, from memory, the checklist included some of the following items: trash collection; enforcement issues; permitting issues; whether there was a need for an oversight committee; whether or not we want to check on food quality; whether or not aesthetic concerns become a problem; whether 10 permits was an appropriate number for downtown; whether tables and chairs should be allowed; noise resulting from generators outside of downtown; ensure that sales tax is being collected; etc.

In response to Mayor Bellamy, Ms. Tuch said the food carts pay an initial fee of \$125 (and possibly an encroachment fee onto a public sidewalk) and the renewal fee is, she believed, \$75.00/year.

Upon inquiry by Mayor Bellamy, Ms. Tuch said that she would clarify the ordinance that property owners (in addition to the vendors) cannot bring tables and chairs to the site.

Vice-Mayor Newman said that he supports the policy, but it is a policy that from a direct business standpoint is benefitting a pretty small number of specific businesses. If there is a way to have those businesses help recover the costs of putting a program together, that would be fair. City Manager Jackson said that staff will capture those costs and include it in the report on the pilot program.

Mayor Bellamy expressed concern that there is not a limit on the number of food vendors that can be permitted outside of downtown and the number of staff hours necessary to monitor those vendors.

Councilwoman Manheimer was concerned that said that some of the owners of dilapidated properties will use the band-aid approach and let a mobile food truck on their property for rental income, noting that this ordinance does not require the owner to fix up their real property. She did not want the mobile food vending on a dilapidated parking lot to become a substitute for non-recovery of some of our real estate. That would move us in the wrong direction in terms of economic recovery. Planning & Development Director Judy Daniel responded that staff will monitor that and if there are 25-30 applications, they would bring it through the Planning & Zoning Commission with a recommendation to Council. It was the consensus of Council for that to occur.

Councilman Bothwell asked staff to monitor mobile food trucks which locate near schools, defeating the attempt of the schools to encourage students to have healthier eating habits,

Vice-Mayor Newman said that he supports the policy, but it is a policy that from a direct business standpoint is benefitting a pretty small number of specific businesses and if there is a way to have those businesses help recover the costs of putting a program together, that would be fair. He moved to ask staff to track their direct costs associated with administering the new regulations for this ordinance and after the pilot project that we include that full staff administrative costs into future fees. This motion was seconded by Councilman Davis and carried unanimously.

At Mayor Bellamy's request, Vice-Mayor Newman moved to divide the question with one vote being city-wide (except the downtown area), and the other vote being for the downtown area. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Councilman Bothwell, Councilman Russell and Councilman Smith voting "no."

Councilman Russell moved to adopt the mobile food regulations city-wide (except for the downtown area). This motion was seconded by Councilman Bothwell and carried unanimously.

Councilman Russell moved to adopt the mobile food regulations for the downtown area. This motion was seconded by Councilman Bothwell and carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

## **ORDINANCE BOOK NO. 27 - PAGE**

### **VI. NEW BUSINESS:**

#### **A. RESOLUTION NO. 11-193 - RESOLUTION APPOINTING MEMBERS TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Affordable Housing Advisory Committee.

On June 14, 2011, City Council established the Affordable Housing Advisory Committee.

The following individuals have applied for vacancies: Allison Bond, Anthony Goodson Jr., William Irby, David Dills, M. Mae Creadick, Brian K. Alexander, Richard Warren, Barber Melton, Scott Dedman, Lindsey Simerly and Paul Reeves.

On August 9, 2011, City Council (1) appointed Scott Dedman, William Irby, Allison Bond, Brian Alexander, Barber Melton, Lindsey Simerly and Anthony Goodson Jr. to each serve a three-year term, or an initial two-year term respectively, until their successors have been appointed; and (2) asked the City Clerk to arrange interviews for Paul Reeves, M. Mae Creadick, David Dills and Richard Warren. Mr. Reeves was unable to attend the interview.

After other Council members spoke highly of the strong candidates, M. Mae Creadick received 7 votes; David Dills received 5 votes; and Richard Warren received 2 votes. Therefore, David Dills was appointed as member to the Affordable Housing Advisory Committee, to serve an initial two-year term, term to expire September 1, 2013; and M. Mae Creadick was appointed as member to the Affordable Housing Advisory Committee, to serve a three-year term, term to expire September 1, 2014. Both terms are until their successors have been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 163**

**B. RESOLUTION NO. 11-194 - RESOLUTION APPOINTING A MEMBER TO THE CRIME-STOPPERS BOARD OF DIRECTORS**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Crime-Stoppers Board of Directors. .

The term of Michele McClure expired on June 30, 2011.

The following individuals have applied for this vacancy: Princess Adams, Lynda Bell Haynes, Karl Katterjohn, Allen Brailsford and Daniel L. Ater.

On August 9, 2011, the Boards & Commissions Commission recommended interviewing Princess Adams and Karl Katterjohn.

After other Council members spoke highly of the strong candidates, Karl Katterjohn received the majority of votes. Therefore, Karl Katterjohn was appointed as member to the Crime Stoppers Board of Directors, to serve a three-year term, term to begin immediately and expire on June 30, 2014, or until his successors has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 164**

**C. RESOLUTION NO. 11-195 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Recreation Board. .

There currently exists a vacancy left by Ms. Sara Manual whose term would have expired on June 30, 2012.

The following individuals have applied for a vacancy: Barry Mundt, Richard Warren, John Parrish, Robert Pierce and John Broadbooks.

On August 9, 2011, The Boards & Commission Committee recommended interviewing: John Parrish, Barry Mundt and Robert Pierce. Mr. Pierce was unable to attend the interview.

After other Council members spoke highly of the strong candidates, Barry Mundt received 2 votes; and John Parrish received 5 votes. Therefore, John Parrish was appointed as a member of the Recreation Board to serve a three-year term, term to begin immediately and expire on June 30, 2012, or until his successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 165**

**D. RESOLUTION NO. 11-196- RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Due to a conflict of interest, Vice-Mayor Newman moved to recuse Councilwoman Manheimer from participating in this issue. This motion was seconded by Councilman Russell and carried unanimously.

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority. .

The term of Eric Scheffer (individual who is involved in the tourist business and who has demonstrated an interest in tourism development but who does not own or operate a hotel, motel or other taxable tourist accommodation) expires on August 30, 2011.

The following individuals have applied for this vacancy: John Ellis, Cesar Romero, Ruth Summers and Chris Bubenik.

On August 9, 2011, the Boards & Commission Committee recommended interviewing: John Ellis, Ruth Summers and Chris Bubenik.

After other Council members spoke highly of the strong candidates, John Ellis received 5 votes; Ruth Summer received 1 vote; and Chris Bubenik received no votes. Therefore, John Ellis was appointed as a member of the Buncombe County Tourism Development Authority ((individual who is involved in the tourist business and who has demonstrated an interest in tourism development but who does not own or operate a hotel, motel or other taxable tourist accommodation) to serve a three-year term, term to begin August 31, 2011, and expire on August 30, 2014, or until his successor has been appointed.

**RESOLUTION BOOK NO. 34 – PAGE 166**

**E. RESOLUTION NO. 11-197 - RESOLUTION APPOINTING A MEMBER TO THE RIVER DISTRICT DESIGN REVIEW COMMITTEE**

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the River District Design Review Committee.

Mr. Randy Shull (one of two members who must be a property owner located within the River District) has resigned from the Committee, thus leaving an unexpired term until September 1, 2013.

The following individuals have applied for the vacancy: Darren Green, Chase Brugh, Philip Ellis, Jay Marino, Laurie K. Miller, Tadd Clarkson, Stuart Smith, Michael McDonough and Leslie McCormick.

The Boards & Commissions Commission recommended appointing Mr. Darren Green.



Councilman Smith moved to appoint Darren Green to serve the unexpired term of Mr. Shull, term to expire September 1, 2012, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 167**

**VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Rev. Christopher Chiaronmonte spoke about the homeless issue in Asheville and how Asheville needs a legal place for the homeless to camp.

Rev. Lisa Landis spoke about she felt the public is mistreated by our government.

Mr. Fred English did not want his tax dollars spent for gay unions.

Dr. Milton Byrd felt that the City should issue a historic proclamation to recognize the Asheville Drum Circle.

**Lawsuit**

The following civil action was commenced in Superior Court on August 26, 2011, which is generally described as follows: Susan Zakanyycz vs. City of Asheville, City of Asheville Transit Authority, Transit Management of Asheville, First Transit Inc. First Transit Transportation and Ralph Dowdle. The nature of the proceeding is a complaint for negligence.

**Closed Session**

At 7:06 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11 (a) (4); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:14 p.m., Vice-Mayor Newman moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:14 p.m.

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CITY CLERK

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MAYOR