

Tuesday – November 22, 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 Deputy City Clerk Philip Kleisler

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION

Mayor Bellamy was pleased to recognize Robert W. Oast Jr., who has been Asheville's City Attorney for 15 years. On behalf of City Council, she thanked him for his service.

II. CONSENT AGENDA:

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

At the request of Mayor Bellamy, Consent Agenda Item "H" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 25, 2011

B. RESOLUTION NO. 11-223 - RESOLUTION SETTING A PUBLIC HEARING ON JANUARY 10, 2012, TO CONSIDER THE PERMANENTLY CLOSING OF A PORTION OF COLLEGE STREET

Summary: The consideration of a resolution of intent to permanently close a portion of College Street, and setting a public hearing on January 10, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner Buncombe County has requested the City of Asheville to permanently close a portion of College Street, being a portion of College Street running with the Buncombe County property line on the Southern sidewalk of College Street beginning in the front of the existing Buncombe County Courthouse and toward the old Biltmore Press Building.

The proposed permanent closure of a portion of College Street has been placed on the Greenway Commission's agenda at their regular meeting on December 8, 2011.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Buncombe County will be installing the sidewalk within the remaining College Street right of way.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to close a portion of College Street, and setting a public hearing on January 10, 2012.

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C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COPELAND HOLDINGS, LLC FOR SECURITY SERVICES IN THE CITY'S PARKING GARAGES

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

D. RESOLUTION NO. 11-224 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A NON-MATCHING GRANT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

ORDINANCE NO. 4030 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF CRIME CONTROL AND PUBLIC SAFETY FOR THE PROCUREMENT OF EQUIPMENT FUNDS TO BE USED BY HAZARDOUS MATERIALS REGIONAL RESPONSE TEAM 6 – ASHEVILLE

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a non-matching grant from the N.C. Dept. of Crime Control and Public Safety, Division of Emergency Management, for the procurement of equipment and training funds to be used by Hazardous materials Regional Response Team 6 – Asheville; and (2) the associated budget amendment, in the amount of \$25,000.

The U.S. Department of Homeland Security and the Office of Domestic Preparedness has made funds available through State Homeland Security Grant Number: FY2011-SS-00119-S01 to implement the State Homeland Security Strategy. The strategy identifies the NC Hazardous Materials Regional Response Teams (RRT) as an integral component of North Carolina's preparation and response to manmade and natural emergencies and disasters. The purpose of the grant is to purchase specialized equipment to be used on-scene and to prepare for threatened or actual weapons of mass destruction or domestic terrorists' attacks or major disasters and to train for such events.

There are seven Regional Response Teams (RRT) strategically located throughout the state. Asheville Fire and Rescue hosts one of the seven state funded teams - RRT 6. The team responds to hazardous materials incidents in the twenty westernmost counties of North Carolina.

Each of the seven RRTs will receive an equal amount of non-matching funding and each will procure comparable equipment. The equipment consists of updated existing equipment and for training. The grant is non-matching and all equipment provided through this grant will become the property of the Asheville City Government. This action also complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; this grant will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

The City Council Public Safety Committee reviewed this item on their November 15, 2011, agenda and recommended approval.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, will provide \$25,000 in non-matching funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses. This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

There is no fiscal impact associated with this grant, as it is non-matching.

City staff recommends that City Council (1) authorize the City Manager to accept the non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management, to enhance AFD's capabilities to protect Asheville and Western North Carolina; and (2) adopt the associated budget amendment.

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ORDINANCE BOOK NO. 27 – PAGE**

**E. RESOLUTION NO. 11-225 – RESOLUTION AUTHORIZING THE CITY
MANAGER TO SIGN A LETTER OF AGREEMENT WITH THE LAND-OF-SKY
REGIONAL COUNCIL FOR A BROWNFIELDS ASSESSMENT FUNDING
GRANT**

Summary: The consideration by Council to authorize the City Manager to sign a letter of agreement to verify that the City of Asheville, NC, agrees to be a member of the Regional Brownfields Initiative Coalition for the purpose of applying for and the subsequent award of a US Environmental Protection Agency (EPA) Brownfields Assessment Coalition Grant, and that the Land of Sky Regional Council of Government (LOSRC) will be the lead member of the Coalition for the purpose of the grant application and subsequent award.

The LOSRC submitted a Brownfields Assessment Grant application to EPA on behalf of the City of Asheville in 2007; the program was successfully funded in the amount of \$400,000, as was a separate regional (four-county) grant application. Land of Sky, using the same strategy, submitted separate and unsuccessful grant applications on behalf of the City of Asheville and the region in 2010. LOSRC staff then researched and analyzed current best practices for EPA programs and recommended that applying for a Coalition grant instead of separate grants be

considered by the LOSRC Board. At their October 2011 meeting, The LOSRC board voted to approve LOSRC staff submittal of a Coalition application, and for LOSRC staff to pursue the signing of Letters of Agreement with each of the proposed Coalition partners.

This action aligns with Council's Strategic Goals related under Job Growth and Community Development, specifically Goal 1, objective 3: partner in regional economic development strategies and Goal 2, objective 1: Promote sustainable, high-density, infill growth that makes efficient use of existing resources.

Pros:

- City promotes sustainable infill development through re-use of commercial properties
- City promotes safety of citizens through potential clean up of hazardous materials
- City re-establishes brownfield redevelopment assistance as part of the toolbox of incentives for sustainable development

Cons:

- None noted

No fiscal impact. Any grant awards will be received and administered by Land of Sky Regional Council of Government. Program participation expected of City staff includes only existing resources.

Staff recommends Council authorize the City Manager to sign the letter of agreement.

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F. ORDINANCE NO. 4031 - ORDINANCE AMENDING SECTION 12-42 TO CLARIFY WHERE CONCEALED HANDGUNS ARE PROHIBITED ON CITY PROPERTY

Summary: The consideration of an ordinance, in response to new State law, clarifying where concealed handguns are prohibited in City recreational facilities.

Pursuant to State law, N. C. Gen. Stat. sec. 14-415.23, North Carolina local governments since 1994 have been able to prohibit the carrying of concealed handguns in all government "buildings, appurtenant premises, and parks." In the 2011 session, the General Assembly adopted Session Law 2011-268, which limits the authorization to prohibit concealed handguns in parks. The new law does allow municipalities to prohibit concealed handguns in "recreational facilities", if the municipality adopts an ordinance to prohibit, by posting, the carrying of a concealed handgun in or on municipal recreational facilities (defined in the new law as including only playgrounds, athletic fields, swimming pools and athletic facilities) that are specifically identified by the unit of local government.

Currently the City has an ordinance, City Code Sec. 12-42, that prohibits the possession of all firearms or weapons in City parks or facilities. This ordinance (Ordinance No. 2121) was adopted by City Council on June 21, 1994. Per the ordinance language, the City Council adopted the ordinance because it had, "determined that it should prohibit firearms or weapons in city parks or other facilities in order to promote public safety." The effect of the new law will be to pre-empt the current ordinance as it applies to the prohibition of concealed handguns in parks. All other provisions of this ordinance would remain in effect.

In order to bring the City's ordinance into compliance with the new law, and to prohibit the possession of concealed handguns in City recreational facilities, as allowed by the new law, several revisions are necessary. These proposed revisions will ensure, to the greatest extent possible under the new law, that the City's policy, as articulated in the 1994 ordinance, of promoting public safety as it relates to the possession of firearms or weapons on or in City owned property, will remain in place. Concealed handguns would continue to be prohibited from certain

recreational facilities, and their appurtenant premises, as identified and defined by the City's Parks Department.

While most of the park areas/facilities clearly fall within the statutory definition of playgrounds, athletic fields, swimming pools and recreational facilities, some areas may fall outside of these definitions, i.e. open park areas that do not clearly have any "facilities" associated with them. This may present some issues in terms of enforcement and we are continuing to review the law.

There are actually very few changes necessary in order to revise the current ordinance language in order to bring it into compliance with the new law and to add a provision prohibiting concealed handguns in recreational facilities.

- (a) In order to make the ordinance compliant with the new law, Sec. 12-42 (a) which prohibits firearms and weapons would need to be modified to state that the prohibition does not apply to concealed handguns in parks.
- (b) If a new ordinance prohibiting concealed handguns in recreational facilities is adopted, a new section would need to be added, Sec. 12-42 (b), to specifically identify the recreational facilities to which this ordinance would apply.
- (c) Additionally, the definition of "recreational facility" would need to be added to Sec. 12-27, "Definitions," and
- (d) The term "park" would need to be replaced with the term "recreational facility" in Sec. 12-43, "Posting of Signs," and Sec. 12-44, "Location of Signs."

This new law is effective on December 1, 2011. If Council desires to maintain a prohibition on concealed handguns in City recreational facilities, action is needed.

This matter was presented to the Public Safety Committee on November 15, which supported the proposed revisions, and directed that they be sent to Council for action.

This action complies with the City Council Strategic Operating Plan for Asheville to be safe and secure

Pro:

- Continues, to the fullest extent allowed by law, the prohibition of concealed handguns on City property.

Con:

- Potential difficulty in enforcement.

There will be some cost associated with the posting of new signs in areas that may not have them now. Estimated costs are \$1,000.

Adoption of the ordinance is recommended.

In response to Mayor Bellamy, City Attorney Oast said that state law was amended to provide that concealed handguns could be carried in City parks, but if City Council designates certain facilities, those would be areas where handguns could be prohibited. He said that he will review the federal law recently passed to make sure that Asheville is in compliance or if further changes are necessary.

Councilman Bothwell suggested we consider a resolution, similar to Raleigh, disagreeing with the state legislature.

ORDINANCE BOOK NO. 27 – PAGE

G. MOTION SETTING A PUBLIC HEARING ON DECEMBER 13, 2011, TO CONSIDER AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

Summary: The consideration of a motion to set a public hearing on December 13, 2011, for substantial amendments to the 2010-2011 and 2011-2012 Consolidated Annual Actions Plans for CDBG and HOME.

Three Action Plan Amendments are proposed.

1. Homeward Bound requests an amendment to increase their \$55,203 2011-2012 CDBG Supportive Housing grant by \$28,000. This request is made to allow for a full-time case manager position to be focused on the permanent housing program being run in collaboration with the Asheville Housing Authority.

Homeward Bound employs case managers to provide direct assistance to chronically homeless persons to allow them to access and retain affordable housing. The partnership with the Housing Authority gives homeless persons priority for public housing and housing choice vouchers. This program has been recognized both by HUD and by the US Interagency Council on Homelessness as a national best practice. Evidence of its effectiveness has been the Point-In-Time Count reduction of the numbers of chronically homeless persons in Asheville, and the 93% retention rate in permanent housing for the persons who have been assisted by this program. This amendment would allow for service to be provided to an additional 5-10 persons currently experiencing chronic homelessness. Sufficient CDBG funds are currently held in contingency to amend this grant at the level requested.

2. Housing Assistance Corporation requests an amendment to increase their \$350,000 2010-2011 HOME grant award for their Oak Haven development by \$95,000.

HAC is constructing 56 LIHTC units in Hendersonville for elderly and disabled persons. The project is now under construction. Prior to construction, updated project pricing created a \$291,000 finance gap. In order to make up the gap, HAC reduced the project cost by \$90,000, and deferred \$200,000 of its development fee. HAC seeks \$95,000 of additional funding to recover a portion of the deferred development fee. The project would still require a deferred fee of \$106,000. Deferred fees affect the sustainability of the organization. The Consortium has \$95,000 in available funds, due to the cancellation of the WCCA Rosman development.

3. Western Carolina Community Action is requesting approval to repurpose \$15,400 of their 2010-2011 HOME Downpayment Assistance Program grant to Tenant Based Rental Assistance (TBRA).

WCCA was awarded \$23,100 of HOME funds in 2010-2011 to provide downpayment assistance loans to four households in Transylvania County. Transylvania County provided \$7,700 in matching funds. Since then, four WCCA clients have been able to become homeowners through the USDA 502 direct lending program without the necessity of using DPA funds, and one additional client has been approved by USDA. WCCA has one loan of \$7,000 pending. There are no additional clients seeking assistance at this time. There is no program in Transylvania County that provides security deposit, utility deposit and other upfront rental assistance to low income renters. Asheville's TBRA program has proven very effective in helping low income households secure affordable rental housing, and by so doing house persons who have experienced or are in danger of homelessness. WCCA has operated the HUD Housing Choice

Voucher program in Transylvania County for 35 years, and is a consistent “high performer” in this program.

The draft Action Plan Amendments directly relate to the Council's Strategic Goal of “Affordable.”

The Housing and Community Development Committee and Asheville Regional Housing Consortium agree with this recommendation to set the public hearing and amend the plans.

Pro:

- The activities are all eligible activities under CDBG and HOME program rules. These proposed amendments allow for efficient use of funds in a timely fashion, and will assist in meeting overall program goals. The funds will also assist the sponsoring organizations viability and ability to meet community needs.

Con:

- There are none.

The proposed amendments use funds already available through the CDBG and HOME programs. There is no increase in administrative responsibility for the City. No City General Funds are allocated for these programs.

Staff recommends that Council move to set a public hearing on December 13, 2011, for consideration of amendments to the 2010 and 2011 Consolidated Annual Action Plans.

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS

BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS

These items were removed from the Consent Agenda for discussion and/or individual votes.

I. ORDINANCE NO. 4033 - BUDGET AMENDMENT TO REALLOCATE CAPITAL IMPROVEMENT FUNDS FROM THE TRANSIT BUS SHELTER PROJECT TO THE TRANSIT GARAGE ROOF REPAIR PROJECT

Summary: The consideration of a budget ordinance amendment, in the amount of \$35,000, to move previously approved Capital Improvement Funds from the Transit bus shelter project to the Transit garage roof repair project.

In FY 2009-10, City Council approved a capital project budget for the transit operations garage roof repair in the amount of \$125,000. The purpose of the project is to repair the roof at the transit operations garage. The subject building, which was constructed in 1971, is a one-story steel and masonry structure containing about 12,600 square feet. The current roof is an EPDM ballasted roof that was installed in 1985. The membrane on the roof has deteriorated to the point that leaking is occurring in the parking shed, vehicle maintenance area, and offices during rain events. This leaking not only creates a safety hazard with the electrical wiring and equipment in the garage but it has also caused the wood to rot around the skylights and flashing at the mechanical units.

The existing insulation has also been damaged and is therefore not energy efficient. It needs to be replaced in the areas where the water damage has occurred. We do not know at this time if any major structural damage has occurred.

The project would replace the existing roof with a new EPDM mechanically adhered roofing system, which would meet current energy conservation requirements and it would provide savings in energy consumption.

The City issued a Request for Qualifications and hired REI Engineers, Inc. (REI) on April 14, 2011, as the engineering firm to design, develop the technical specifications, and manage the construction project. REI developed the specifications and the city released the construction bid on July 22, 2011. The bids received were higher than the budget available and the bid was not awarded.

Even when REI developed new specifications to bid the project again, the existing budget of \$125,000 was not enough to make the repairs. Therefore, city staff is requesting the reallocation of \$35,000 in the CIP budget from the previously approved bus shelter project to the roof project to be able to complete the necessary roof repairs. The total cost of the project will now be \$160,000. Federal Funds will provide 80% of the cost, which equates to \$128,000 and the remaining \$32,000 will come from the local match.

The project is scheduled to take place during the next eight months.

This action complies with the City Council 2011-12 Strategic Operating Plan within the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Provides needed maintenance to an aging facility.
- Helps to make the building safe and more energy efficient which should generate savings in energy consumption.
- Federal Funds will provide 80% of the total project cost, which equates to \$128,000.

Cons:

- The total cost of the project is \$160,000.
- The City's share of the total cost of the project is \$32,000.

There is no net financial impact in the Transit Capital Fund. Staff is reallocating existing capital funds to cover the increased cost of the garage roof repairs.

Staff recommends that City Council adopt a budget ordinance amendment to reallocate \$35,000 from Federal Funds and Capital Improvement Program Funds to build bus shelters to the project budget for the Transit Operations Garage roof repair project.

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

- C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH COPELAND HOLDINGS, LLC FOR SECURITY SERVICES IN THE CITY'S PARKING GARAGES**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Copeland Holdings, LLC for security services in the City's parking garages.

The City of Asheville, through the Parking Services Division, currently operates three parking garages; Civic Center, Rankin Avenue, and Wall Street. A fourth garage, Lexington Avenue Parking Garage will open on or about July 1, 2012. The Parking Services Division uses a combination of City employees and contract security officers to provide security and customer assistance in the garages. Generally, City employees work during the business day and early evenings while contract security is on duty during late nights, weekends, and holidays.

Contracts for security are in effect for three years and the current contract expires on November 30, 2011. In September 2011 the Parking Services Division requested quotes for service from interested vendors resulting in 20 vendors responding. Copeland Holdings, LLC provided the lowest price for the service. Copeland Holdings, LLC, is headquartered in Alpharetta, Georgia, and they have a district office in Burnsville, N.C. On a normal week, a total of 205 hours of security services will be needed. In addition, the Parking Services Division will request additional security support during periods of high demand; for example, Bele Chere, Southern Conference Tournament, Moogfest, employee vacations, or large concerts at the Civic Center. The total cost of the three-year security contract will be \$375,000.00 but will not exceed \$125,000.00 per fiscal year.

This action complies with the City Council Strategic Operating Plan in that it provides safe facilities for residents and visitors to park in the most cost effective manner.

Pros:

- Provides safe facilities for residents and visitors to park in.
- Using contract security is the most cost effective manner to augment the Parking Services Division's security requirements.
- Achieves the City of Asheville's assurances to its partners at 51 Biltmore that adequate security will be maintained in the Lexington Avenue Parking Garage.

Con:

- Total cost of \$375,000.

The necessary funds are already budgeted in the Parking Services Fund's Operating Budget for FY 2011-12.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign a three-year contract with Copeland, Holdings LLC to provide security services in the City's parking garages at a total cost of \$375,000.00; not to exceed \$125,000.00 per fiscal year.

Councilman Smith said that Copeland pays their employees \$8.00/hour, but the City could provide the service for \$137,000 a year. He felt the \$12,000 difference is worth further investigation for this service to be performed in-house as it would align with the City's mission of providing living wages.

At Mayor Bellamy's suggestion, Councilman Smith moved to have the Finance Committee review at their next meeting in January whether to enter into this contract or to bring the service in-house. This motion was seconded by Vice-Mayor Newman and carried unanimously.

Director of Transportation Ken Putnam said that the current contract expires at the end of November; however, he said we can do a short-term contract.

H. RESOLUTION NO. 11-226 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS

ORDINANCE NO. 4032 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES FOR RESIDENTIAL RECYCLING CARTS

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant from the North Carolina Department of Environment and Natural Resources (DENR) to purchase 95 gallon roll-carts for the residential curbside recycling program; and (2) a budget amendment, in the amount of \$75,000, for said grant.

As part of the FY 2011-12 Capital Improvement Program, City Council approved a \$1.5 million budget for the purchase of 95 gallon recycling containers. The purchase of the new containers was to be fully funded with debt proceeds. After the budget was adopted, staff applied for and was awarded a grant to help offset the cost of purchasing the new 95 gallon recycling carts. The grant award is for the maximum allowable amount of \$75,000. Use of these funds will go exclusively to the purchase of new carts. Receipt of this grant will allow the City to reduce the amount of funds borrowed for the purchase of the carts.

This action complies with City Council's Strategic Operating Plan in the following ways: (1) Implement ways to reduce city-wide solid waste; and (2) Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Support financial responsibility of the recycling program
- Reduces the amount of debt proceeds required to fund the 95-gallon cart purchase

Con:

- None

As noted above, the receipt of this \$75,000 grant will lower the amount of debt that the City will incur for the purchase of the 95-gallon recycling carts.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant from DENR to purchase 95 gallon roll-carts for the residential curbside recycling program; and (2) a budget amendment, in the amount of \$75,000.

In response to Mayor Bellamy, Director of Finance and Management Lauren Bradley said that the \$75,000 will reduce the amount of debt that we issue for the roll-carts.

Mayor Bellamy said that she did not support the new recycling program for \$1.5 Million, but since we are reducing that amount by \$75,000, she would support these motions to help offset what the tax-payers will have to pay in debt service.

Vice-Mayor Newman moved to adopt Resolution No. 11-226. This motion was seconded by Councilman Russell and carried unanimously.

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Vice-Mayor Newman moved to adopt Ordinance No. 4032. This motion was seconded by Councilman Russell and carried unanimously.

III. PRESENTATIONS & REPORTS:

**A. PRESENTATION OF THE EXTERNAL AUDIT OF THE FISCAL YEAR 2011
COMPREHENSIVE ANNUAL FINANCIAL REPORT**

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: “Our report for the 2011 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one material weakness in internal controls and no instances of non-compliance in the administration of federal and state awards programs. As noted in the City’s Corrective Action plan, changes to accounting procedures were implemented during the year which resulted in the City’s staff identifying and correcting the material weakness. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. Also, they noted some areas for improvement in the City’s accounting function that they have communicated to management in a separate letter dated October 28, 2011.” He was pleased to report that the City’s fund balance policy is 15% of operating expenditures and that the City’s available fund balance for 2011 is 15.2%. He then briefly reviewed the summary of property tax collections and analysis of debt service.

Director of Finance & Management Services Lauren Bradley briefly provided Council with some of the following key highlights regarding the audit from staff’s perspective.

The City’s financial statements, internal control, stewardship, accountability and program compliance with federal and state awards continue to receive high marks.

The independent audit firm is required to conduct an analysis of the City’s compliance with various federal and state laws, regulations, contracts and grant agreements. Dixon Hughes reviewed the City’s accounting and administrative controls over a wide range of financial transactions such as cash, investments, revenues, receivables, expenditures, payroll, property, debt and grant programs.

Dixon Hughes found no instances of material noncompliance in connection with applicable statutes and regulations regarding expenditures of major federal and state financial assistance programs. This favorable report is due to the significant efforts of City staff and finance department employees in developing and maintaining strong internal financial controls.

There was one material weakness noted in internal control over financial reporting. The City restated beginning net assets in Governmental Activities and Business-type Activities to correct errors in construction in progress and the net OPEB obligation. The necessity of these corrections was discovered as a result of staff’s efforts to institute new procedures in connection with capital asset management and control. Those efforts included the development of procedures designed to capture capital expenditures prior to their incurrence and the development of multifunctional teams comprised of budget, finance and the affected departments to improve communication in connection with the recording of capital expenditures and project status. Capital asset identification reviews now occur periodically throughout the fiscal year. The net OPEB obligation restatement related to the methodology of calculating employer contributions to the retiree health plan. City staff, after consultation

with its independent actuaries, determined that the previous methodology understated the employers' contribution resulting in a correction that favorably impacted the City's net assets.

The independent external auditor gives the City a "clean" opinion on financial statements.

Dixon Hughes has provided the City with an unqualified, or "clean," opinion that the financial statements are fairly presented in conformity with generally accepted accounting principles. This opinion is the highest form of opinion that the external auditors can express on the presentation of the City's financial statements.

Timeliness of audit completion significantly improved.

As of October 28, 2011, the City had fully completed the audit process and was ready to submit its Comprehensive Annual Financial Report (CAFR) to the Local Government Commission (LGC) in compliance with its published October 31 deadline for submission, as well as City Council's direction to meet the deadline. As illustrated by the table below, completion and delivery of the CAFR by October 28 with presentation to be made at the November 22 City Council meeting is a significant improvement in timeline since 2006. Thanks go to the Finance Committee for its leadership throughout the audit process and to staff and Dixon Hughes for working diligently during the last several months to meet the schedule.

Fiscal Year	Opinion Letter	Council Presentation
FY2011	10/28/2011	11/22/2011
FY2010	12/28/2010	1/25/2011
FY2009	11/12/2009	1/12/2010
FY2008 (2)	12/30/2008	2/10/2009
FY2007 (1)	10/31/2007	1/8/2008
FY2006	10/27/2006	12/12/2006

(1) SAS No. 103

(2) SAS No. 104 - No. 111

SAS - Statement on Auditing Standards issued by the AICPA
 Relates to risk assessment standards; effect of delaying the opinion letter date

General Fund financial results are as predicted - breakeven.

Due to a continued soft economy and uncertainty surrounding revenue projections, City staff implemented various savings strategies throughout FY 2011 to ensure the best possible General Fund operating results at year end. While revenues came in under budget, staff made efforts to control expenditures. As a result, revenues over expenditures were \$1,870,000.

During the year, \$4,747,000 was appropriated from different categories of General Fund fund balance, including appropriations for FY 2010 encumbrances, the transfer to the Festival Fund to address its cumulative deficit net asset position and thereby close the fund, and other appropriations for high priority expenditures. For the year, including transfers out of \$4,164,000, expenditures exceeded revenues by \$2,294,000. Of the \$2,294,000, the transfer to the Festival Fund and the allocation for City Hall repairs represented \$2,000,000.

She showed a table of the General Fund revenues, expenditures and changes in fund balance for FY 2011.

General Fund unassigned fund balance has improved and meets the 15% policy threshold.

Unassigned fund balance improved year over year, up from \$12,319,000 in FY 2010 to \$13,176,000 at the end of FY 2011. For FY 2011, this amount represents 15.2% of expenditures and transfers to other funds. The improvement in undesignated fund balance can be attributed to several factors. One of those factors includes improved financial performance in the Civic Center Fund, thereby permitting the General Fund to avoid making an operating transfer to the Civic Center Fund to address the fund's operating deficit. The amount budgeted for this subsidy in FY2011 was \$392,594; the amount was not transferred. Another factor that contributed to the improved fund balance position was a transfer back to the General Fund in the amount of \$275,000 from the Special Projects/Grants Fund as a result of project savings in those funds. The final factor contributing to a higher fund balance related to the staff's effort at conducting a thorough review of outstanding contracts and purchase orders which resulted in the liquidation of more than \$246,000 in encumbrances that had been reserved at FY2010 year-end.

City Council has established a threshold of 15% as the minimum amount necessary to support the General Fund's working capital levels. The FY 2011 fund balance level meets this threshold. She showed a table which reflects the components of fund balance that appear in the CAFR.

Financial performance as predicted or better than budget in nearly every proprietary fund.

Despite the declining economy, financial results in most of the City's business-type activities experienced positive net income for FY 2011. Exceptions include the Golf Fund and the Festival Fund, areas in which the City has or will restructure operations to improve financial results. Within the Internal Service Fund, it is worth noting that the revenues exceeded expenditures in the Health Care program by \$7,189, illustrating that the changes to benefits implemented in FY 2011 allowed the program to essentially break even. She showed a table which summarized the operating activity in these funds.

Fund balance levels in some proprietary funds may allow for enhanced capital investment in FY 2012-2013.

In September 2011, City Council adopted fund balance targets for all funds as part of its Financial Policy. At the end of FY 2011, four enterprise funds exceeded the established fund balance targets. It is staff's recommendation that City Council consider appropriating a portion of these funds for identified capital needs in the FY 2012-2013 budget cycle. She showed a table which illustrates year over year changes in fund balance for the enterprise funds as well as a comparison to the adopted fund balance targets.

We are pleased to present the audit and look forward to continuing to improve the City's financial reporting and planning efforts. We would also like to express our appreciation to the numerous city employees who contributed to successful financial management in FY 2011, and to those employees, especially in the Finance Department, who worked tirelessly on the audit process.

The City Council Finance Committee received monthly reports on the audit process since summer 2011.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- City received a “clean” opinion on financial statements and high marks on internal control, stewardship, accountability and program compliance with federal and state awards.
- Timeliness of audit completion significantly improved.
- General Fund undesignated fund balance meets City Council’s 15% policy.
- Financial performance in nearly all funds as predicted or better than budget.
- Fund balance levels in some enterprise funds may allow for additional capital investment.

Con:

- None noted.

Staff recommends that City Council accept the FY 2011 Comprehensive Annual Financial Report.

In response to Mayor Bellamy, Ms. Bradley felt the single largest thing we can do to position ourselves to improve our credit rating is to work toward fully funding our Other Post Employment Benefit Fund obligation and consider discontinuing retiree health care insurance for future employees. She felt that would be looked at very favorably by the credit rating agencies.

It was the consensus of Council to accept the Comprehensive Annual Financial Report.

B. THE WILMA DYKEMAN RIVERWAY IN ACTION UPDATE

Ms. Karen Cragolin, Executive Director of RiverLink, said the Wilma Dykeman Riverway Plan is a 17 mile plan that looked at where the tax and population base is for the entire watershed and then looked at the fact that we had two rivers running through our City. The 7 district plan was adopted by City Council in 2004. The Plan has three strategies for economic development. In 2004, they looked at (1) road costs per mile - \$2 million a mile, 17 miles @ 2 million = \$34 million (Can be paid for with state and federal highway funds); (2) Current tax base (Northern City Limits to Fairview Road, exclusive of Sayles Bleachery) (a) Current tax value of land - \$17 million; (b) Current tax value of improvements (buildings) - \$11 million for a total of \$28 million; and (3) Tax Base Enhancement Estimated (*Northern City Limits to Fairview Road, exclusive of Sayles Bleachery*) (a) Estimated single story redevelopment = \$106 million; and (2) Estimated Mixed Use vertical redevelopment in accordance with plan = \$214 million.

The Plan looks at recreation, arts & crafts and wellness.

Economic impact for recreation is (1) Tourism \$16.5 billion industry (a) 49 million visitors primarily for natural resources; (b) Fishing – commercial and recreations - \$1 billion; and (c) Paddle Sports - \$100 million; (2) 60 million Americans (18 years and older) bicycle each year; (3) Bicycling contributes \$133 billion to the U.S. economy; (4) Supports nearly 1.1 million jobs across the U.S.; (5) Generates 17.7 billion in annual federal and state tax revenue; (6) Produces 53.1 billion annually in retail sales and services; (7) \$6.2 billion in bicycling gear sales and services; (8) \$46.9 billion in bicycling trip-related expenditures; (9) Provides sustainable growth in rural communities; and (10) \$4.3 billion 3.4 million participants.

She showed graphics and photographs of things happening around Pearson Bridge and the historic Pearson Bridge. She also spoke about the Easy Street Discount Tires & Auto Service store being converted to an outdoor adventure building. They have received several applications for utilizing the building for bike rentals/charter fishing trips/camping equipment, etc. Rentals would include (1) bicycles (a) a wide selection of road bikes and mountain bikes; and (b) helmets; (2) fishing gear (a) rod and reel; (b) fly rods; (c) landing net; (d) bait; and (e) pads; (3) boats (a) high-quality flatwater and whitewater boats in a variety of sizes and styles (a) stand up paddleboards; (b) personal floatation devices; (c) helmets; (d) skirts; (e) paddles; (f) dry bags; (g)

bilge pump; and (h) paddle floats; and (4) camping equipment (a) tents; (b) sleeping bags and pads; (c) stoves; (d) water filter; (e) dining fly; (f) head lamps; and (g) compass and maps.

She said that several years ago the City purchased .47 acres at 706 Riverside Drive designated River District. She said that the operators for the outdoor recreation center really need that property to park vehicles, locate boats, stack bicycles, etc. She asked if the City would transfer that .47 acre (\$5,000 tax value) property to RiverLink. The Brownfields group is willing to put this property into the system as an addendum to their application as is the State hazardous waste person.

Mayor Bellamy asked Ms. Cragolin to put their property request in writing to the City Clerk and the City will follow the normal procedures for requests of this nature.

Ms. Cragolin was pleased to announce that the last week in April, RiverLink will be hosting the International River Management Society Conference.

C. ABC BOARD REPORT

Chairman of the ABC Board Charles Worley said that the Board has had its challenges over the last three months as a result of the report of the Alcohol Law Enforcement Division report on our General Manager. He said they quickly responded to that report and to the State ABC Commission concerns that were properly raised as a result of that report and there are several things to note.

First, no member of the board was implicated in that report as having participated or known about any of the actions that were going on. Those activities took place outside of the scope of the day-to-day operations of the Asheville ABC System. They did not affect the operation of the system in any way that we can discern, and finally the Board responded quickly and appropriately concerning the matters raised in that report.

He obtained a copy of that report in the late afternoon of September 22, and immediately emailed a copy to all of the other Board members. On September 27 they had a Board meeting and a thorough discussion in closed session. Following that closed session, their General Manager resigned and the Board accepted his resignation.

In order to prevent similar activities from occurring in the future, they took immediate action prior to the completion and distribution of the ALE Report and before they knew or had any hint of the contents of that report.

First, they adopted an ethics policy in January of last year which closely mirrors the ethics policy of the City of Asheville. They then adopted several other policies in June of this year - a credit card policy, a travel policy, a gift policy and a purchasing policy, all of which were designed to tighten the physical controls and ethical controls for the ABC system.

Following the resignation of their General Manager, they began the process of a search for a new general manager or CEO and that search is ongoing, but we have just hired an interim general manager. He was pleased to announce that Mr. Mark Combs, former Public Works Director of the City of Asheville, has accepted the position of interim general manager and in fact began work yesterday. Mr. Combs remains a candidate for the permanent position but they will continue and broaden the search to be sure that they have the very best applicant for that position.

He provided Council with a few statistics to show how well they have done even during the economic downturn. Over the last five years they have distributed over \$3.9 million to the City of Asheville and \$1.3 million to Buncombe County. That's a total of \$5.2 million that they have distributed to local government in the last five years. They've weathered the opening of new

ABC systems to our immediate north - openings that have cost our Merrimon Avenue store in particular, some \$250,000 per month in lost sales, and they have survived a substantial increase in the State excise tax in 2010 that cost us approximately \$400,000 in profits.

He then gave a quick overview of how this year is starting out. A comparison of the 1st quarter of this year (July through September) with the same time period last year shows that Sales are up over 10%, Gross profit is up over 11%, total income before distributions - up almost 33% and Distributions to City and County are up over 38% - \$207,600 vs. \$150,300 last year to the City.

During the last five years they had an extensive capital improvements program. They opened a new store on Sweeten Creek Road in November of last year, a new Tunnel Road store in July of 2009 and a new Leicester store in July 2009. They opened their new Long Shoals store in 2007 and they remodeled the Merrimon Avenue store in 2007 and the Louisiana Avenue store in 2008.

They are successfully pursuing a plan to build new stores, remodel old stores and provide a pleasant customer experience. And they are funding drug and alcohol abuse programs, as well as educational programs to help prevent underage drinking. They believe that they are carrying out their mission of controlling the sale of alcoholic beverages, educating the public and the establishments that sell alcoholic beverages to prevent improper use of alcoholic beverages and underage drinking and providing a safe and pleasant environment in which the sale of alcoholic beverages take place.

Mayor Bellamy thanked Mr. Worley for the timeline and how the Board handled the issues.

Vice-Mayor Newman said that after the report came out, the Boards & Commissions Committee invited Mr. Worley to their meeting for an update. After hearing the report, they felt it would be valuable to have Mr. Worley fully update the entire Council and the public and made arrangements for him to attend this meeting.

Councilman Bothwell said it was a fact that the report listed the ABC Board as having committed offenses, listing malfeasance, embezzlement, obtaining property by false pretenses, etc. including 59 counts of store personnel accepting things of value. Given that the Board is there to oversee the operations of the agency, he asked Mr. Worley to explain how the ALE considered it serious enough to present charges against the Board members.

Mr. Worley responded that the activities that took place, took place outside the scope of the day to day activities and operations of the ABC system. He struggled to find out what they could have done to have found out what was going on and he could not find that answer. He felt that is true of any board that has an oversight responsibility – there is no way to monitor the activities of all the employees all the time to find out what they are doing. You hope that things show up that bad things are happening so you can deal with them. That did happen here and they did deal with it. In response to the author of the ALE report listing 59 counts against the ABC Board, those were not charges, but simply his observations. If you read the report, there was not a single instance of a single member of the ABC Board participating in any of those activities. He noted that there were allegations that ABC Board members carried liquor out after board meeting and that is absolutely false during the entire time he has been associated with that board. A lot were allegations but nothing substantiated.

As Mr. Worley's term on the ABC Board recently expired, he thanked City Council for allowing him to serve his two full successive terms on the ABC Board. He was also pleased that the ABC Board continues to contribute to the City.

D. QUARTERLY REPORTS

Finance Committee Chair Report

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the second quarter of FY 2011. Those highlights are as follows:

- **FY 2011 Annual Audit**
The Finance Committee received monthly updates on the annual audit process since July 2011. Brian Broom, head auditor for Dixon, Hughes gave positive reports on the progress of the audit and the schedule. As of this report, the audit was completed prior to the October 31 deadline. The audit is scheduled to be presented to City Council at the November 22, 2011, meeting.
- **Water Rate Analysis**
During the FY 2012 budget adoption, City Council recommended that the Finance Committee review the adopted water rate structure and its impact on large manufacturers as well as the possibility of creating a manufacturing customer class. At the direction of the committee, staff conducted a financial analysis on the impact that an alternative implementation of proposed rates would have on overall revenue projections. The committee reviewed the analysis at the September 27, 2011, meeting. Staff will bring forward the same analysis at the November 22, 2011, City Council meeting.
- **Other Post Employment Benefits (OPEB)**
The Finance Committee received a briefing on OPEB and the long-term financial sustainability of offering retiree health care coverage. In 2008, the Governmental Accounting Standards Board (GASB) required local governments to recognize expenses for the cost of retiree health care benefits as those benefits are earned by employees during their active service life. The committee directed staff to bring forward a plan and associated recommendations for addressing the City's OPEB liability, which will come forward to the full City Council on November 22, 2011.
- **City of Asheville Financial Policy**
As part of the annual review process for the audit, the committee reviewed the draft of the City of Asheville's finance policy. There were two key modifications staff made to the policy: the adoption of fund balance targets for all funds and a section that clarifies when interfund transfers are made. The policy was adopted by full City Council at the October meeting.
- **Community Media Development Request for Proposals (RFP)**
A joint city-county evaluation panel reviewed the nine submitted proposals during this RFP process. After it was the consensus of the review panel that the quality of the submissions fell below expectations, the committee recommended that the panel invite the organizations that submitted the two highest scoring proposals to make presentations to the panel. Based on those presentations, the review panel selected the highest scoring group. At the October 11, 2011, City Council meeting, due to concerns that the proposals did not meet City Council's intent, funding was not authorized.
- **City of Asheville Combined Campaign/Earthshare Proposal**
At the invitation of a committee member, a representative from Earthshare made a presentation requesting that the City consider implementing a combined campaign that includes other charitable federations. This item went to City Council for consideration at the October 25, 2011, meeting. Council directed staff to work with Earthshare and the United Way to determine if a mutually beneficial proposal could be crafted for Council consideration.

- **Golf Course Request for Information (RFI)**

At City Council direction, staff is exploring alternative models of golf course operations to ensure the financial viability of the service. Staff updated the Finance Committee on their efforts to develop a Request for Information from golf course providers to determine what variables should be included in a formal RFP. Responses to the RFI are due December 12, 2011, and staff expects to update City Council on progress during the third quarter of the fiscal year.

Public Safety Committee Chair Report

Councilman Russell, Chairman of the Public Safety Committee, updated Council on some of the following major accomplishments during the first quarter of FY 2011-12 (1) Positive recommendation from the Public Safety Committee for Mobile Food Vending Amendment to be moved to full council; the amendment was passed; (2) The Focus Deterrence/Changing Together program received a positive recommendation from the Public Safety Committee for the City of Asheville to acquire program coordination responsibilities; (3) Regional Response Team 6 (RRT 6), hosted by Asheville Fire and Rescue received a non-matching grant from the NC Department of Crime Control and Public Safety, Division of Emergency Management for the purpose of procuring equipment and training in the amount of \$25,000; and (4) Firehouse Subs Safety Foundation awarded Asheville Fire and Rescue a Technical Rescue Trailer valued at \$16,994.47.

In response to Mayor Bellamy about the Committee's discussion regarding cameras at an Occupy Asheville rally, Councilman Russell stated that was not discussed at their Committee. Assistant City Manager Jeff Richardson, support staff for the Public Safety Committee, recognized this was an issue that Council was hearing from the community, but the challenge last week was the sheer volume of agenda items for the Public Safety Committee. He said that staff has talked internally regarding the use of cameras for a wide range of activities. It was his recommendation that at the next regularly scheduled Public Safety Committee meeting staff come prepared to present information on the use of video, best practices used throughout police departments throughout the nature, what our current use is, advantages/disadvantages, etc. and then let the Committee determine what the next appropriate next step.

Mayor Bellamy said that she would forward Mr. Richardson the e-mails she has received regarding concerns. The Committee can then address those specific questions.

Planning & Economic Development Committee

Councilman Davis, Chair of the Planning & Economic Development Committee, briefly updated the Council on some items the Planning & Economic Development Committee has have reviewed. Most recently, they reviewed a request from the River District Design Review Committee for a boundary and responsibilities change. He requested Council direction on whether to refer the matter to the Boards & Commissions Committee or directly to the Planning & Zoning Commission which will then come back to City Council for a public hearing.

It was the consensus of the Council to refer the matter directly to the Planning & Zoning Commission.

Strategic Operating Plan

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the February, 2011 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurements through the Fiscal Year 2011-12.

Due to the significant work associated with end-of-year operations, there will not be a formal quarterly update presentation regarding the progress of the Strategic Operating Plan. However, staff provided Council with the quarterly economic indicators, and crime statistics for this quarter. The next quarterly update presentation on Council's Strategic Operating Plan is scheduled for February 28, 2012.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 25 couples have registered.

At the request of Mayor Bellamy, Mr. Richardson highlighted the unemployment rate, which is good news for the community.

Financial Report

Budget Manager Tony McDowell provided Council with the following financial information which reflects the City's overall financial position for the fiscal year through September 2011.

Amendments. The General Fund budget presented in this first quarter report reflects the adopted budget of \$87,645,955; along with four budget amendments approved by Council during the first quarter that totaled \$492,850. A summary of the four amendments is presented below. None of the amendments involved an appropriation from fund balance.

Adopted Budget	87,645,955
Budget Amendments:	
NCDENR Park Recycling Bin Grant	30,000
NC Arts Council Grassroots Arts Grant	49,850
Buncombe County/Changing Together Partnership	63,000
Debt-Funded Purchase of Computer Equipment	<u>350,000</u>
9/30/2011 Budget	<u>\$88,138,805</u>

Revenues. Through September 30, 2011, the City has collected \$9,853,268 in General Fund revenue, which represents approximately 11.2% of the total General Fund revenue budget. There is no change in property tax estimates to report. Staff will receive updated property tax data from Buncombe County in late December or early January. Sales tax estimates also appear to be on track to meet budget. Staff is projecting that state utility tax revenue and several other smaller revenues will fall short of budget in the current year based on how those revenues came in during FY 2010-11. Because of the projected under-performance in these revenues, staff is currently estimating that *total FY 2011-12 General Fund revenue will come in under budget by \$630,000 or 0.7%.*

Expenditures. General Fund expenditures through September 30, 2011, total \$18,184,586 or 20.6% of the budget, which is typical for this point in the fiscal year. One area to note on the expenditure side is fuel expenses. Average fuel prices in the first quarter were approximately 40% higher than they were one year ago. Prices have moderated some since September, but staff will need to continue to closely monitor fuel expenses throughout the year. In order to address the projected under performance in revenues and fuel expenses, staff continues to actively pursue savings strategies as it has in previous years. *These strategies include evaluating vacancies as they occur, line item reductions, and seeking opportunities to maximize efficiency in operations. Staff anticipates being able to generate the necessary expenditure savings with these strategies to fully offset the expected revenue shortfall.*

Fund Balance. The City ended FY 2010-11 with available fund balance of \$13.18 million, which equated to 15.2% of FY 2010-11 expenditures. *With implementation of the savings*

strategies mentioned above, FY 2011-12 expenditures are expected to equal revenues, which means available fund balance will remain at \$13.18 million or 15.2% of estimated expenditures.

In summary, he said that regarding capital improvements (1) \$267,000 is in our capital reserve account; (2) the following are the FY 2012 debt-funded projects moving forward: City Hall exterior, new sidewalk construction, greenway development and vehicle replacements - Debt is to be issued in March 2012; and (3) City Hall service elevator repairs is \$100,000. He explained that we will reallocate some of the building maintenance funding this year for the elevator repairs, which may mean we may have to delay one routine roof replacement project to next fiscal year.

IV. PUBLIC HEARINGS:

A. CONTINUATION OF PUBLIC HEARING TO CONSIDER CLOSING SEVERAL PORTIONS OF UNOPENED RIGHTS-OF-WAY AND CITY STREETS WITHIN THE MONTFORD COMMONS DEVELOPMENT AREA

Mayor Bellamy said that the City has been notified that the petitioner has withdrawn their request for these closings.

B. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE

RESOLUTION NO. 11-227 - RESOLUTION TO PERMANENTLY CLOSE AN ALLEY BETWEEN NEBRASKA STREET AND NEVADA AVENUE

Public Works Director Cathy Ball said that this is the consideration of a resolution to permanently close an alley between Nebraska Street and Nevada Avenue.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, City Council at their regular meeting on October 11, 2011, initiated the closure process, on behalf of the adjacent property owners, Julia Watts Schafer, Edward V. Hardin, Jane P. Ward, Hannah Danise, Dewitt Hurst, Kandi Kilpatrick, Alexander Brown, Bonnie R. Locklear, Jack Askew and Katherine Folkman, and Joanne C. Gunter, who have requested the City of Asheville to permanently close an alley between Nebraska Street and Nevada Avenue. Three (3) adjacent property owners did not join the petition to close the alley between Nebraska Street and Nevada Avenue and were sent a copy of the Resolution of Intent via certified mail.

The Greenway Commission met on August 11, 2011. The Commission discussed various subject areas and voted 4-1 against supporting the closure.

The Asheville City Development Plan 2025 (comprehensive plan) exemplifies a 'Smart Growth' vision for growth and development in Asheville. Included in this vision is an inextricable connection between transportation and development where access to property supports sustainable infill development and combats sprawl. This section of west Asheville is well suited to sustainable infill development given its proximity to transportation, employment centers, and goods & services along Haywood Road. Additionally, unlike many other unopened rights-of-way in the city, Moody Alley is relatively flat and developable and all of the adjacent properties allow for multi-family development (RM-8 zoning). Of these adjacent properties, approximately half are of sufficient size to support more than one full residential unit, in some cases up to 4 units; while the other half can support, at a minimum, an accessory apartment. Given a variety of site constraints the most practical means of access to construct additional units would be through Moody Alley which would provide additional flexibility and options for sensitive siting and design.

Besides improving opportunities for sustainable infill development, alleys provide a variety of other benefits including:

- Access to off-street parking for residents and delivery vehicles
- Off-street pedestrian and bike connectivity
- Creates multi-purpose common space for property owners
- Provides accessible location for utility placement

Not all subdivision plats and residential communities can accommodate alley access, and not all unopened alleys can be developed in a practical manner that will help meet carbon reduction goals by controlling sprawl. There are, however, numerous opportunities that still exist, and to withdraw public dedication of Moody Alley will diminish the city's ability to adapt to meet future needs for housing and connectivity in this area. New recognition for these alleyways (and other rights-of-way) is a phenomenon that is being observed across the United States and many cities are now developing guidelines to develop, recapture, and retrofit these spaces to address present and future community needs.

City Council waived the \$4,000 closure fee at the City Council meeting of October 11, 2011.

City staff does not recommend City Council adopt the resolution to permanently close an alley between Nebraska Street and Nevada Avenue. A resolution is provided should City Council wish to approve the closure.

City Attorney Oast understood that a temporary restraining order that prohibits work in the alley is still in effect.

When Vice-Mayor Newman asked if the Greenway Commission reached their conclusion not to close the alley because the property has value for a greenway, Assistant Planning & Development Director Shannon Tuch did not wish to speak for the Commission; however, she thought part of their concern over some of the other land use issues raised. It's not to say that that strip of land wouldn't have some value as a potential pedestrian or bicycle connection, but not necessarily for a greenway.

Vice-Mayor Newman wondered if Council needed to give clarification to the Greenway Commission to specifically look at whether land has value for a greenway and not to weigh in on larger land use questions.

At 6:16 p.m., Mayor Bellamy opened up the public hearing.

The following individuals spoke in support of closing the alley for various reasons, some being, but are not limited to: this 20-foot wide alley was dedicated in the 1920's but never formally accepted by the City; there are no records of the alley having been used as a road, but only as an extension of neighbor's backyards; the alley is a slice of wilderness and provides peace and harmony in the backyards of adjoining property owners; Mr. Jay Fiano began cutting trees and brush in the alley without any discussion of the adjoining property owners; opening up the alley will only benefit one of many property owners abutting the alley; state statutes allow City Council to close an alley; 11 out of 13 adjacent property owners want the alley closed; this issue has no bearing on the pending litigation even though the Court has granted a preliminary injunction forbidding Mr. Fiano from cutting anymore foliage or trees in the alley; the public interest is being served by the alley being closed; Mr. Fiano does have access to a public right-of-way; alley is a source of privacy and security; if Mr. Fiano had not over-built on his property, there would not have been any need for his to request the alley to be opened:

Ms. Julia Schafer, resident on Nebraska
Mr. Jason Peltz, attorney representing Ms. Julia Schafer
Mr. Brian Lee, adjoining property owner
Ms. Jane Ward, resident on Nebraska Street
Ms. Barbara Hurst, adjoining property owner
Mr. Steven Brewer, resident on Nebraska
Ms. Tray Groce, resident on Nebraska
Adjoining property owner
Mr. Timothy Sadler
Mr. Evan Schafer, resident on Nebraska
Mr. Dewitt Hurst, adjoining property owner
Ms. Amena Spangler, west Asheville resident

The following individuals spoke in support of not closing the alley for various reasons, some being, but are not limited to: staff says the topography of the area is appropriate for a road; the road has been shown on City maps for over 100 years; Council should listen to their staff and the Greenway Commission not to close the alley; City Council should not intervene in what is clearly a disagreement between two property owners (Ms. Schafer and Mr. Fiano); builders need access to rights-of-way to complete infill development; private parties should not be allowed to close public rights-of-way; the property could be used for a greenway; there are not a lot of areas suitable for infill development and we should use existing infrastructure and zoning to take advantage of those areas; area is suitable for more dense development, which will reduce sprawl; postpone action to allow property owners to find the best solution for the neighborhood:

Mr. Robert Deutsch, attorney representing Mr. Jay Fiano
Mr. Raymond Thompson, President of Sure Foot Builders
Mr. Russell Davis, Civil Engineer
Mr. Marcus Renner, representing Green Building Council of WNC
Mr. Michael Silverman, resident on Nebraska Street

Ms. Pat Johnson said that Mr. Fiano built his house and then sold her the two lots of land left over, which in effect made his back part land-locked. It was his choice on whether to sell the property or to have access.

Mr. Jay Fiano, adjoining property owner, apologized for disrupting his neighborhood and not being more open with his neighbors. It was his understanding that he need only work with the Planning & Zoning Department and the Building Safety Department for the issuance of permits for clearing the alley. He said that he divided his property and since the back portion did not abut a publicly maintained street, there was the concept that it may be easier to access the back parcel through the alleyway. He felt he may be able to work this out in a manner that is more beneficial to his neighbors. He asked Council to defer action for potential mediation from the City Attorney or other suitable party.

City Attorney Oast read the pertinent portion of N.C. Gen. Stat. sec. 160A-299:
“At the hearing, any person may be heard on the question of whether or not the closing would be detrimental to the public interest, or the property rights of any individual. If it appears to the satisfaction of the Council after the hearing that closing the street or alley is not contrary to the public interest, and that no individual owning property in the vicinity of the street or alley or in the subdivision in which it is located would thereby be deprived of reasonable means of ingress and egress to his property, the council may adopt an order closing the street or alley.”

At 7:04 p.m., Mayor Bellamy closed the public hearing.

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

Vice-Mayor Newman moved to adopt Resolution No. 11-227 to close the alley between Nebraska Street and Nevada Avenue. This motion was seconded by Councilman Smith.

Vice-Mayor Newman felt the basic question is whether or not there should be a public street constructed in this location for the public's interest. After hearing the large majority of residents who live in the area and a visit to the site, he felt it was against the public interest to have a new public street in this location. There are paper alleys all over Asheville and when people were building they had ideas where streets might be located. Some streets were built and some were not. Since then mature neighborhoods have been established and the neighbors did not want those new streets built. He appreciated staff's interest in preserving infill development; however, this is a location where building a new public street is not worth the cost to the neighborhood.

In response to Councilwoman Manheimer on whether there is an access issue, Ms. Tuch said that the statutes describe reasonable access. All lots currently front publicly maintained streets. Mr. Fiano's lot was larger and he divided some of his property off to create an "L". In terms of reasonable access, the property is zoned multi-family and there is a question about whether or not it's reasonable to expect that someone may want to add another residential unit to back of the property that is large enough to support more than one unit.

Mr. Deutsch understood that the "L" shaped lot would support an ancillary structure in the back but if it is built his only access is through the alley.

In response to Councilwoman Manheimer, Ms. Ball said that 11 out of 13 adjacent property owners signed the petition to close the alley.

Councilwoman Manheimer said that there is a platted alley that appears as an easement in the deeds for most of the properties adjacent to this strip of land. That means there is a private right to use it to those people that are adjacent to the alley. She thinks there will still be (if Council chooses to close this alley) a legal question of whether or not the affected land owners have the right to use the 20-ft wide strip regardless of whether the City has an interest in it or not. That being said, that is an issue for those property owners. Based upon what she had heard tonight, she will support the closing.

In response to Councilman Davis, Ms. Ball said that a petition to close can be initiated by one person.

City Attorney Oast said that if Council chooses to close the alley, the last "Whereas" in the resolution will need to be amended (since there has been objections to the alley closing) to read: "Whereas, Council finds that the closing is not contrary to the public interest and that no individual owning property in the vicinity of the street or alley or in the subdivision of which it is located will be deprived of reasonable means of ingress and egress to their property." Vice-Mayor Newman and Councilman Smith agreed to amend the motion as stated by City Attorney Oast.

In response to Councilman Russell, Ms. Ball said if someone came in and were able to show proof that a paper alley allowed for the use of their property through their deed, (typically an opinion by an attorney), then we would approve a driveway permit from the street to allow that to occur.

In response to Councilman Bothwell, Ms. Tuch said that all properties could support at a minimum one accessory unit. However, whether or not it was most appropriately reached by alley or street would be up to the individual property owner.

The amended motion made by Vice-Mayor Newman and seconded by Councilman Smith carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 199

Closed Session

At 7:22 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: Jensen, et al; City of Asheville (Biltmore Lake Annexation Lawsuit). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); 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 7:49 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 5 WOODLAWN AVENUE FOR A BED & BREAKFAST INN

ORDINANCE NO. 4034 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 5 WOODLAWN AVENUE FOR A BED & BREAKFAST INN

Deputy City Clerk Kleisler administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast explained that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time.

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

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 7:50 p.m.

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

Ms. Fields said that the applicant, Fred Eggerton is requesting approval of a conditional use permit for property located at 5 Woodlawn Avenue (Location Map – Attachment to City Exhibit 3). The site contains the Rankin-Bearden House which was designated as a local historic landmark by the Asheville City Council on November 14, 2006. The parcel on which this historic home is located is zoned RM-8 (Residential Multi-Family Medium Density District) and is .43 acres in size (18,810 square feet). The home contains 4,180 square feet of living space with 1,280 square feet of porches/decks. There are five bedrooms in the structure.

The structure was originally constructed as a home circa 1848 and is believed to be the oldest intact frame house in Asheville and one of the few remaining antebellum houses in Buncombe County (Front Façade – City Exhibit 4). The property was in decline and being used as a boarding house when the applicant purchased it in 1993 and began restoration (Existing Condition – City Exhibit 5).

The applicant is requesting the issuance of a conditional use permit pursuant to Section 7-16-2(d)(1) of the City's Unified Development Ordinance (UDO). This section provides for historic landmarks to be issued a conditional use permit (in all residential districts) to make use of the property in a manner other than is allowed in the zoning district applied to the property. In this instance, the applicable zoning, RM-8, allows for Bed and Breakfast Inns as a Use by Right Subject to Special Requirements (USSR). However, because the existing property is less than 20,000 square feet in size (a USSR standard for Bed and Breakfast Inns; not variable) the applicant is pursuing the conditional use permit.

Conditional use permit applications for historic landmarks must show:

- That the property is designated as a historic landmark. This was done in 2006.
- That the current usage of the property is such that the property cannot be preserved and the granting of a conditional use permit enables its preservation. Mr. Eggerton has satisfied the Historic Resources Commission on this issue.
- That the use which may be permitted is not inconsistent with the design and or uses for which the structure had been designed or used during the life of the structure. The structure has been previously used as a boardinghouse and a single-family residence. Staff feels a bed and breakfast inn is not inconsistent with these uses and that the design of the home with many bedrooms and entrances is consistent with the use as a bed and breakfast inn.
- A written letter of recommendation must be submitted by the Historic Resources Commission.

The staff does propose that the following bed and breakfast standards for the RM8 district be applied as additional conditions:

- The owner/manager shall reside on the property.
- The maximum number of guest rooms provided by the bed and breakfast inn shall be eight.
- Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure.
- The length of stay of guests shall not exceed 14 days.
- Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.

- Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted.

This property meets the spacing requirement for bed and breakfast inns in residential districts that is found in the UDO.

While the property has a Woodlawn Avenue address it actually faces Elizabeth Place. Access to parking is off of Woodlawn Avenue. Six parking spaces (one handicapped) are proposed.

As this is a local landmark and located in the Montford Historic District, all improvements must be approved by the Historic Resources Commission of Asheville-Buncombe County.

At the October 3, 2011 meeting of the Technical Review Committee, this project was recommended to proceed to Council with the conditions as listed in the TRC report. She has received one call from a neighbor who inquired about parking and after being advised they had six spaces, expressed support.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c) of the UDO. Staff's review indicates that all seven standards are met as proposed in the site plan.

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

The proposed project has been reviewed by City staff and approved conditionally. The project must meet the technical standards set forth in the UDO, the City's Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards that protect the public health and safety.

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

The structure and improvements on the property are existing and no significant changes to the topography or natural features are proposed.

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

The ability to maintain this historic structure as a bed and breakfast inn, which is difficult to do as a single-family home, would likely assist in improving (not injuring) the values of adjoining or abutting properties. In the past the structure had been used as a boarding house.

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 structure is an existing one and has been in existence since the mid-1800s. It is a local historic landmark and any improvements will have to receive a Certificate of Appropriateness from the Historic Resources ensuring that such improvements are in keeping with the historic district.

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.

This application supports the strategy found in the *Asheville City Plan 2025* which encourages promoting the adaptive reuse of the City's valuable commercial and residential historic districts.

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 has been approved by the Technical Review Committee and was approved with conditions concerning all transportation, water, etc. provisions.

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

Although the streets abutting this property are narrow, the use of this structure as a bed and breakfast inn is not expected to cause undue traffic congestion or create traffic hazards. Six off-street parking spaces are provided.

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

Pros:

- The ability to use this historic structure as a bed and breakfast inn should allow for the generation of additional income for the maintenance and preservation of the structure.
- The use of this structure, believed to be the oldest intact frame house in Asheville, as a bed and breakfast inn, would provide for greater public appreciation of a significant historic landmark.
- This application supports the strategy found in the *Asheville City Plan 2025* which encourages promoting the adaptive reuse of the City's valuable commercial and residential historic districts.

Con: None noted.

Staff recommends approval of the Conditional Use Permit subject to the conditions listed in the TRC report, the standard conditions and the following additional conditions which apply to other bed and breakfast inns on residentially zoned properties:

- The owner/manager shall reside on the property.
- The maximum number of guest rooms provided by the bed and breakfast inn shall be eight.
- Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure.
- The length of stay of guests shall not exceed 14 days.
- Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit.
- Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties.
- Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed

and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted.

Mr. Fred Eggerton, owner of the house, said he bought the house when it was being condemned and began restoring it. He asked for Council's support for it to be used as a Bed & Breakfast Inn.

After rebuttal, Mayor Bellamy closed the public hearing at 7:56 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4034, granting a conditional use permit for property located at 5 Woodlawn Avenue, to permit it to be used as a Bed & Breakfast Inn, subject to the conditions recommended by City staff, and 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) The owner/manager shall reside on the property; (7) The maximum number of guest rooms provided by the bed and breakfast inn shall be eight; (8) Passive recreation-related outdoor activities, such as tea-time, are allowed outside the principal structure or any accessory structures, but all other activities and functions designed to serve and entertain guests shall take place within the principal structure; (9) The length of stay of guests shall not exceed 14 days; (10) Signage shall be limited to a single sign, not to exceed eight square feet, with a maximum height of four feet. The sign may be located in the front yard and must be indirectly lit; (11) Exterior lighting shall be residential in nature and shall not be directed towards adjacent properties; and (12) Activities and functions at the bed and breakfast inn shall be provided for overnight guests only and shall be limited to breakfast and an afternoon and/or evening refreshment. In addition to the functions for overnight guests, the bed and breakfast inn may have four social gatherings per year. No commercial activities other than providing lodging for registered guests shall be permitted. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

D. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR ELECTROLUX, LOCATED AT 1310 FANNING BRIDGE ROAD, FROM INDUSTRIAL DISTRICT AND AIRPORT DISTRICT TO INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A 304,000 SQUARE FOOT ADDITION TO AN EXISTING 400,000 SQUARE FOOT MANUFACTURING FACILITY, ALONG WITH A MODIFICATION REQUEST TO THE LOCATION OF SOME STREET TREES

ORDINANCE NO. 4035 - ORDINANCE TO CONDITIONALLY ZONE ELECTROLUX, LOCATED AT 1310 FANNING BRIDGE ROAD, FROM INDUSTRIAL DISTRICT AND AIRPORT DISTRICT TO INDUSTRIAL DISTRICT/CONDITIONAL ZONING FOR A 304,000 SQUARE FOOT ADDITION TO AN EXISTING 400,000 SQUARE FOOT MANUFACTURING FACILITY

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot

addition to an existing 400,000 square foot manufacturing facility. This public hearing was advertised on November 11 and 18, 2011.

Ms. Fields said that the applicant, Electrolux, currently has a warehouse/distribution facility located at 1310 Fanning Bridge Road in Asheville and is seeking conditional zoning approval to allow for a significant expansion and improved operations. The property is currently zoned Airport and Industrial and is owned by Minkles, LLC (existing operation) and the City of Asheville (currently under lease to the Airport Authority). It is proposed that the City-owned property will be leased (long term) or sold to Minkles, LLC, either of which would require FAA Approval (requested by the Airport Authority). The applicant is seeking rezoning to Industrial CZ (Conditional Zoning). The proposed expansion to the existing 400,000 square foot facility is for an additional 304,000 square feet.

The current facility has a single entrance for employee and truck traffic off of Fanning Bridge Road. The plans call for the demolition of the current parking and loading configuration and the creation of a new drive off of Airport Road for trucks entering a new loading dock area. The employee parking with continued access from Fanning Bridge Road will be reconstructed to provide for 260 spaces.

Due to the width of the rights-of-way of Airport and Fanning Bridge Roads, a modification would need to be granted to allow for some of the street trees to be located farther than 20 feet from the edge of the pavement.

The Technical Review Committee reviewed this proposal on October 17, 2011, and recommended approval with conditions. The applicant has submitted revised plans to staff addressing many of the issues in the report. At a meeting on November 2, 2011, the Asheville Planning and Zoning Commission considered this petition and unanimously (7-0) recommended it to you favorably. No one spoke at the meeting except representatives of Electrolux.

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 applicant is expanding an existing building to provide for improved function at their facility. The existing building has been in operation for many years now and is in a location with immediate access to major transportation corridors. It is surrounded by other major traffic generating uses.

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.

There will be loss of some of the existing wooded areas to the north and east of the proposed expansion due to needed grading; however, significant building impact and other landscaping will be planted as part of the project.

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

The use of the land is not changing; the operation is expanding to facilitate improved processes. The property is surrounded by other major traffic generating uses.

- 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 development is in an area with other very substantial buildings and operations.

- 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 supports the depiction in the City's comprehensive plan of the Asheville Regional Airport area as a regional node. It also supports the strategy of having Asheville's planning and zoning processes facilitate sustained and positive economic development. It supports the Council goal of supporting a strong local economy by continuing to implement sustainable growth and development.

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

There are no additional truck loading docks proposed in the expansion. The development is located just off of a major interstate highway and along a four lane state highway. The project has received approval from the City's Technical Review Committee concerning issues of water, fire, and police protection.

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

Although this is a major expansion, the intensity of the use will change little from existing operations.

Pros:

- Expansion of an existing major distribution facility supports many City goals concerning economic development.
- Provides for an improved traffic pattern for both employee and truck traffic.

Con: None noted

Staff recommends approval of this request subject to the conditions noted in the TRC report and with the landscape modification requested. At a meeting on November 2, 2011, the Asheville Planning and Zoning Commission considered this petition and unanimously (7-0) recommended it to you favorably. No one spoke at the meeting except representatives of Electrolux.

Mayor Bellamy opened the public hearing at 8:01 p.m.

Mr. Dennis Justice spoke in support of the conditional zoning.

Mayor Bellamy closed the public hearing at 8:03 p.m.

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

Mayor Bellamy said that this is a non-aviation use of City-owned property and she didn't feel like the Airport Authority should benefit from our property. Any revenue stream produced from this potential lease or sale should come back to the City. She felt that the City should be at the table when those discussions are going forward.

Councilman Russell moved for the adoption of Ordinance No. 4035, to conditionally zone Electrolux, located at 1310 Fanning Bridge Road to rezone from Industrial District and Airport District to Industrial District/Conditional Zoning for a 304,000 square foot addition to an existing 400,000 square foot manufacturing facility, with the landscape modification, 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; and (6) The issue of ownership or long-term lease of the property must be completed prior to any permit being issued. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE AVENTINE, LOCATED AT LONG SHOALS ROAD AND CLAYTON ROAD FOR A 312 APARTMENT COMPLEX

ORDINANCE NO. 4036 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS THE AVENTINE, LOCATED AT LONG SHOALS ROAD AND CLAYTON ROAD FOR A 312 APARTMENT COMPLEX

Deputy City Clerk Kleisler administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast explained that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time.

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

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 8:08 p.m.

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

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located at Long Shoals Road and Clayton Road.

The subject property consists of one parcel comprising 61.74 acres according to Buncombe County tax records and is located in the City's extra-territorial jurisdiction (ETJ). The property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange, although without any immediate proximity to the current city limits which terminate at the French Broad River. If approved, the subject property would be subdivided into four (4) tracts and the project would be built entirely on tract 3. Tract three is proposed to be 35.86 acres and would be developed at a total density of 8.7 dwelling units per acre. There are currently no plans for the development of the remaining parcels. The maximum density permitted in the CI zoning district is 16 units per acre.

The following list provides a breakdown of the proposed development:

- 7 apartment buildings would house the 312 apartment units
- 3 – 4 story configurations
- 152 – one bedroom units
- 115 – two bedroom units
- 45 – three bedroom units
- Clubhouse, leasing area, pool/cabana area, restrooms, mail kiosk located in vicinity of building #7
- 3 freestanding garage buildings located throughout the site and a maintenance/garage/car wash structure located in the vicinity of building #6

The site is heavily wooded with the exception of a large Progress Energy transmission line that splits the property in a northwest direction almost parallel to Clayton Road. Old soil roadbeds are located throughout the site. The property contains documented wetland areas, a stream, tributaries and regulated floodplain along the French Broad River.

The apartment project is proposed to be built in one phase with subsequent development of outparcels to occur in the future. Flournoy Development Company would retain ownership of tract 3 containing the apartments while the remaining outparcels would remain (for now) in the ownership of Biltmore Farms Inc.

Access to the site is proposed to be provided from both Long Shoals Road and Clayton Road via a series of meandering driveways that weave through the site.

According to the site plan, 490 parking spaces are provided. This amount of parking is well within the minimum/maximum parking threshold and is inclusive of required ADA spaces. 26 bicycle parking spaces are provided and this number is in compliance of the required 5% bicycle parking standard. Parking is dispersed throughout the site – located behind building #'s 1 – 6 and in the front and rear of building #7.

The site is heavily wooded and large areas of the property will remain as such in order to meet open space and tree save standards. Street trees will be required along the entire frontage of Long Shoals Road and Clayton Road. Building impact and retaining wall landscaping are dispersed throughout the site. Parking lot landscaping has been provided in applicable areas and no modification requests to landscaping standards are being sought.

The open space requirement for this type of development is 15% of the total site size; a total of 5.38 acres for this site. The site plan illustrates that more than adequate open space has been reserved to meet this requirement.

Sidewalk construction (or fee-in-lieu) is required along all street frontages along Long Shoals Road and Clayton Road. The City traffic engineer has indicated that a fee-in-lieu of option might be more ideal (future sidewalk maintenance issues) given the fact that this project is located in ETJ.

Large scale developments are required to provide an urban level of service to meet the needs of their residential and/or commercial tenants. While staff recommended that the applicant consider voluntary annexation to meet these needs, the applicant has elected to contract for services both privately (solid waste/recycling, etc.) and with Buncombe County (police and fire protection).

This proposal was recommended for approval with conditions by the Technical Review Committee on October 17, 2011.

At their regularly scheduled meeting on November 2, 2011, the Planning and Zoning Commission considered this project. The Commission heard from three members of the community with issues related to future commercial development on the proposed outparcels and appropriate development of the property in accordance with City goals and policies specifically related to sustainability and affordable housing.

After hearing from the public, the Commission discussed the project. Some members had concerns because the project offers no affordable housing, does not commit to a minimal standard of "green building" techniques (i.e. Energy Star Certification) and has a purely auto-oriented design. Other members appreciated the level of density the project proposes as well as the overall preservation of open space and vegetation; noting the difficulties associated with developing the site.

The Commission ultimately recommended approval of the project on a 6 to 1 vote; but also recommended the developer further consider City adopted goals and policies before City Council for review.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The subject property is appropriately zoned for the proposed residential development. The development was designed to preserve the existing riparian buffer along the French Broad River and development is being clustered outside of the regulated floodplain. The

development is fairly isolated from Long Shoals Road and Clayton Road and is bounded by a large electrical transmission line and the French Broad River. The only immediate neighbor is Biltmore Baptist Church to the north and is separated from the church by a very large parking lot.

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

As noted in Finding #2, the proposed development is compatible with surrounding uses and adjacent transportation corridors.

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.**

As noted in Finding #2, the development is setback from adjacent road frontages and is located in the vicinity of a very large church. The development is clustered in a way that keeps it isolated from residential development across Long Shoals Road. The proposed density is almost one-half of the permitted residential density for the CI zoning district.

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.**

Elements of the proposal are only partially aligned with the City's goals and objectives for "Green and Sustainable," but not for "Affordable" as noted in the Compliance with Comprehensive Plan and other Adopted Plans section. The most notable missing element, given past expectations from the Council, is that a project of this magnitude (312 residential units) provides no affordable units.

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 property is located along Long Shoals Road, Clayton Road and the French Broad River in south Asheville in the vicinity of the I-26 interchange. The nearest bus stop is approximately two miles from the subject site along Hendersonville Road. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

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

A traffic impact study has determined that the proposed use will not cause undue traffic congestion or create a traffic hazard along the existing street infra-structure. The existing street infra-structure, which was recently upgraded, is sufficient to handle the additional traffic from the proposed use. The location of the access points must provide adequate intersection and stopping sight distances required by NCDOT and/or City policies and guidelines. Since both access points are along state-maintained streets, the North Carolina Department of Transportation has final approval of the appropriate driveway permits.

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

Pros:

- Higher density development furthers the goals and objectives of the comprehensive plan.
- Clustered development provides for the preservation of dense vegetation along the French Broad River.

Cons:

- Applicant does not propose to reserve any units for affordable housing.
- Dense development is not in the vicinity of public transportation and will be fully auto dependent.
- At the Planning & Zoning Commission meeting, the representative for this Georgia based developer stated that they employ their own construction workers and management staff thereby limiting hiring of local construction workers.

Staff recommends that the City Council approve this request, with a few areas of concern. While the application meets the technical requirements of the underlying zoning district and other UDO standards, and it complies to a certain extent with goals for added density and green building standards, and the market rate housing it proposes generally meets current levels of affordability for “workforce” level housing; this project offers no affordable housing. We therefore believe that it falls short of compliance with that long range policy objective that has been preferred by the City Council in recent years.

Mr. Lou Bisette, attorney representing Flournoy Development, said the project is comprised of 312 units for a total capital investment of approximately \$20 Million. The property consists of approximately 36 acres in the City’s extra-territorial jurisdiction. The maximum density is 16 units per acre and this development is only 8.7 dwelling units per acre, which they believe is sustainable. Project includes 490 parking spaces, 26 bicycle parking spaces, parking is disbursed throughout the site, and the open space requirement is much more than required. He reminded the Council that it was recommended by the Planning & Zoning Commission and the Technical Review Committee, noting there are no variances requested. He asked that all of the information provided to the Planning Department be included in the record (Applicant Exhibit 1). He explained how all seven standards have been met as proposed in the site plan. He said all 312 residential units will rent for well below the City’s workforce housing maximum rates, e.g., Asheville’s workforce housing rate for a 1-bedroom is \$1,063 and their unit will begin at \$825. That is similar for the 2 and 3 bedrooms as well. They felt that this location, which is 10 miles from the City center in a semi-rural area outside of the City with no public transit, lends itself more to workforce housing than to the affordable housing units. The need in the area is for workforce housing. The Aventine is also committed to green and sustainable construction and in addition to the density and the buffering requirements will meet several components of Energy Star Version 2.5. The Energy Star based proposals, along with other green building techniques, including the installation of 2 electric car charging stations and a set-aside of a bus shelter space for future use, are also aligned with the City’s goals for green and sustainable housing. Although the nearest bus stop is approximately 2 miles from the project site along Hendersonville Road, the site has adequate access, water supply, fire and police protection, waste disposal and similar facilities. Mr. Bisette noted an error in the staff report which said that the developer was going to bring all of the construction forces here from Georgia. That is not the case. They have their own contracting firm but workers and the trades people will be bid out here. He requested Council’s approval of the project, subject to the conditions by staff.

Mr. Paul Szurek, representing the owner of the property Biltmore Farms, request Council’s approval of the permit. He explained how they need more workforce housing in south Asheville. Workforce housing needs to be nearby Biltmore Park so it can offer a low commute, low carbon lifestyle. We are fortunate to have a ready built project financed that will meet the needs for workforce housing and raise property values in this area.

Mr. Timothy Sadler supported the project and suggested solar panels to make them financially sustainable for the people who live in the apartments.

After rebuttal, Mayor Bellamy closed the public hearing at 8:25 p.m.

Councilman Bothwell felt that since there were so many jobs across the highway in Biltmore Park it would be nice for those people to have a sidewalk connection so they could walk to work.

Mr. Will Buie, Civil Engineer, responded to Councilwoman Manheimer by describing the proposed retaining walls. The walls will be as high as 40 feet; however, the walls will be terraced – 20 foot wall, terrace and then another 20 foot wall. Their goal will be to preserve the adjacent vegetation, in addition to the additional landscaping required.

Councilman Smith was curious of whether anyone would be able to see the high retaining walls from the river. Mr. Buie responded that it's hard to tell what you would see from the river; however, at the closest point there is a 55-ft buffer between the river and the retaining wall.

Upon inquiry of Councilman Smith, Mr. Buie explained how they will work with the City on erosion control measures. Councilman Smith felt 55 feet is not a lot of room to catch water.

Councilman Russell moved for the adoption of Ordinance No. 4036 to approve the Level III site plan for the project identified as The Aventine, located at Long Shoals Road and Clayton Road, for a 312 unit apartment complex, subject to the following conditions (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A minor subdivision application must be submitted for the creation of the outparcel lots before zoning permit issuance. This motion was seconded by Councilman Davis.

When Councilman Smith asked if the buildings themselves would be Energy Star certified, Mr. Buie said the owner elected to pursue the Energy Star 2.5 project. He said they will meet the components of Energy Star certification, however they will not go through the certification or inspection process as they cost double of what the actual infrastructure will cost to install. It is their preference to put those dollars into the actual buildings rather than into certification.

When Councilman Smith asked if the owners are open to adding a percentage of affordability, Mr. Ryan Foster, Vice-President of Flournoy Development Company, said that with the financing they currently have in place they are not sure they would get approval with an affordability component. Restricting rents and incomes will increase cost and will hinder the financial feasibility of the project. The approval they have is based on rents currently in the pro forma. They prefer to stay with workforce than an affordable housing component, noting their rents are lower than workforce housing.

When Councilman Smith asked if Mr. Foster has asked his financial partners about adding an affordable housing component, Mr. Foster replied that he hadn't because they have already run the financial feasibility of the project and felt they would not even consider it. They felt fortunate to have an equity partner who is committed to the project as it is.

Councilman Smith said that since this is Phase 1 of 4 phases, he was curious about the future phases if we can expect the future phases also not to rise to these same City goals.

Mr. Szurek said the remaining phases will be commercial development. There is a possibility for one of the parcels to be some kind of senior housing. With respect to the very valid goals of affordable housing, those are really community goals and at some point he questioned whether it's valid to impose them on individual members of the community as opposed to the

broader community. Mr. Foster is correct in that if you change the pro forma and constrain rents you will risk the project not being developed.

Vice-Mayor Newman understood that Council needs to base their decision on whether the seven conditional standards have been met. With that understanding, he asked if the developer or property owner would be willing to consider voluntarily annexing the property into the City of Asheville at some point. He explained that if this is a \$20 Million investment, it will reduce the City's share of sales taxes generated in Buncombe County by that amount. The City has done some creative things with development partners in the past about plans to come into the city.

Mr. Bissette said that at the Planning & Zoning Commission meeting it was mentioned and they have agreed to provide an urban level of service. He knew a number of projects have voluntarily annexed into the City, but those received some help or incentives from the City for coming in. This project has asked for no variances or special incentives of any kind.

Mr. Buie said the developers are open to that idea, outside of the bounds of this permit. There is a significant cost that they and Biltmore Farms will incur to extend utilities to the site, specifically sewer. There are other significant costs that go along with this. If there can be a discussion outside of the bounds of this that can make that pro forma work, he felt that is something they would consider. At this time, they don't know what that would be. He would be concerned about postponing this permit because their investor would need some certainty that things were moving forward with the project. They have a goal of breaking ground in April. He asked for Council to consider the permit at this meeting, but felt the developers would have a valid and honest conversation about this as we proceed forward with the project.

City Attorney Oast cautioned Council to not consider the response to the annexation question in making their decision.

Councilman Smith appreciated the efforts being made to build during these economic times. He was pleased the developers have made changes, specifically around the Energy Star pieces. He would not be able to support this project due to the lack of affordability. He also had concerns about the height and impact of the retaining walls on the river, as well as some of the stormwater components.

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

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it would be necessary to bring the ordinance back for a second and final reading at the next Council meeting.

City Attorney Oast said that because there will be a new seated Council at the next formal meeting, Council Members Elect Hunt and Pelly (both of who were in the audience) can review the record and be allowed to vote on the second and final reading.

Councilman Russell pointed out this project is in the extra-territorial jurisdiction area and the residents will not be City residents.

Councilman Smith said that he is still open to supporting the project if he can learn more about what will happen at the river and if his concerns around affordability can be addressed.

ORDINANCE BOOK NO. 27 - PAGE

V. UNFINISHED BUSINESS:

A. SPECIAL WATER RATE FOR WATER CONSUMPTION GREATER THAN 1,000 CCF PER MONTH BY LOCAL MANUFACTURES

Director of Water Resources Steve Shoaf said that this is the consideration of a special water rate for water consumption greater than 1,000 CCF per month by local manufacturers.

The cost of water service continues to increase based on the costs of energy, materials, chemicals, maintenance, personnel and capital improvements. Water treatment, system operation and capital costs are influenced by a global market, and we compete with other sectors for energy, materials, goods, and services.

The water rate study conducted by Raftelis Financial Consultants, Inc. in 2010 – 2011 indicated inequities between customer classes in the water rate structure. To be fair to residential customers who are currently subsidizing the other water customers, the study pointed to a need to adjust multi-family, small commercial, and large commercial water rates to a more equitable position.

Multi-family and small commercial water rates were adjusted to 85% of the residential rate beginning in Fiscal Year 2012. Small commercial water consumption is defined as consumption of less than 1,000 CCF per month. These were fairly minor adjustments and future increases will track the necessary increases in residential rates.

Large commercial water use (consumption after the first 1,000 CCF per month or 748,000 gallons per month) has traditionally been steeply discounted. In Fiscal Year 2011, the water rate for large commercial consumption (\$1.41 / CCF) was 37% of the residential water rate (\$3.77 / CCF). The consultants performing the water rate study could not justify the heavy discount based on the cost of service. Their recommendation is to raise the large commercial water rate over 5 years to 70% of the residential water rate. At that point, future increases will trend with the necessary increases in residential rates.

Over the next five (5) fiscal years, Water Resources is projecting that water rates for large commercial consumption will increase at an accelerated pace to narrow the gap between the residential and large commercial categories.

A survey was provided to 5 of the 6 manufacturers that would be impacted by this rate adjustment. The sixth manufacturer did not respond to voice mail messages requesting participation in the survey. Four of the 6 participated in discussions about the rate increase and two responded to the survey in writing after discussions with the Water Resources Department.

Survey Results: The four manufacturers indicated through discussion that they were not in favor of a rate increase, but all four did acknowledge that water rate increases are “inevitable”. Two manufacturers stated that water rate increases could affect where expansions in production might occur in the future. They are part of corporations with multiple locations and those decisions would be made at the corporate level. One manufacturer cited competition with similar businesses in other locations within the region as the need to control the proposed water rate increases. Another manufacturer stated that increased costs would impact employee hiring, training, and advancement. When discussing alternatives, one respondent pointed to the model used by MSD to spread out the increases over a longer time period. The MSD plan is to bring all sewer users to a single rate at the end of this program.

This study is part of City Council's strategic plan to improve job growth and community development by providing support to local businesses.

Pros:

- Approval of a special, 10-year manufacturing rate schedule will allow local manufacturers to manage their budgets and control operating costs.

- The City Council will be able to establish policy related to the water rates and local manufacturers.
- Approval of a special, 5-year manufacturing rate schedule (as opposed to a 10-year schedule) will reduce the gap between residential and commercial rate payers.

Cons:

- Establishing a special manufacturing rate will continue to extend the disparity between residential and commercial water rates.
- Establishing a special manufacturing rate will decrease revenue from customers in this class.

The following chart represents the proposed water rates (per CCF) for consumption greater than 1,000 CCF per month.

	<u>FY 10/11</u>	<u>FY 11/12</u>	<u>FY 12/13</u>	<u>FY 13/14</u>	<u>FY 14/15</u>	<u>FY15/16</u>	<u>FY 16-17</u>
5-Year	\$1.41	\$1.69	\$1.85	\$2.22	\$2.63	\$3.03	\$3.06
10-Year	\$1.41	\$1.69	\$1.86	\$2.05	\$2.23	\$2.43	\$2.65

The greatest impact will be on the largest commercial users because they will be using more water over the 1,000 CCF per month threshold. The 5-year rate schedule would mean an increase in expenditures for water at the end of five years ranging from 40% to 72% depending on the volume of water used. For the six manufacturers, creating a 10-year schedule for increasing the large user rate will result in \$250,000 savings or a similar decrease in revenue for the Water Resources Department over the next five years. If the 5-year schedule was maintained, Water Resources would propose keeping the capital improvement fee fixed for 3-inch and larger meters for FY 12/13. All other rates and fees would increase as outlined in the Raftelis rate study.

City staff is asking City Council for policy direction about an approach for rate setting as it relates to the six manufacturers.

Vice-Mayor Newman felt that commercial rates do need to be brought into closer to residential rates. He continued to believe that the manufacturing sector of the economy is uniquely vulnerable. He felt it makes sense, as part of our community's economic development strategy, to use this resource to preserve those vulnerable manufacturing operations. Even though he understood that rates will need to go up, but there are still dramatic increases over the 10-year period. He was in favor of a more gradual approach.

Councilman Bothwell felt we have a tremendous resource in our water and in this water-short world, any water intense business that chose to move away from our great water source will hurt themselves in the long run. He felt that raising the rates to a fair rate now and quickly makes more sense than stretching it out, especially since the residents are subsidizing businesses now. He would support the 5-year rate schedule.

Mayor Bellamy felt this needed further discussion the new Council. She asked for consideration of (1) scheduling our implementation of rate increases at the beginning of the year (opposed to the middle of the year) as most businesses have completed their budgets by the time we ask for a rate increase on July 1; and (2) voting one year in advance on our rate increases so businesses can anticipate increases in their budgets.

Councilman Smith agreed there needed to be further discussion on this issue. He also suggested further discussion with manufacturers to determine how they are going to be able to help support the water system that they depend on while at the same time we are meeting the needs without unfairly burdening the residential water users.

Councilman Davis liked the 10-year rate schedule model as it gives companies the opportunity to budget for increases.

Councilman Smith said that the Finance Committee has been discussing this issue since 2007 and liked the 10-year rate schedule model. He then moved to create a new class for the 10-year pricing program. This motion was seconded by Councilman Davis.

City Manager Jackson said that rates need to be in an ordinance format and we have not given any public notice, nor provided Council with pros and cons, or a fiscal impact statement. This is information only for Council showing a study with equity models. He understands that more discussion is necessary on this topic and that the newly formed Finance Committee will be reviewing this. Therefore, Councilman Russell moved to withdraw his motion.

It was the consensus of Council to have the newly formed Finance Committee review this issue.

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-228 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE THE NAMING RIGHTS AGREEMENT WITH U.S. CELLULAR CORPORATION FOR THE SPONSORSHIP OF THE ASHEVILLE CIVIC CENTER

RESOLUTION NO. 11-229 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDERS WITH BRANTLEY CONSTRUCTION COMPANY, GENERAL CONTRACTOR; IRWIN TELESCOPIC SEATING, SEATING RISER CONTRACTOR; CAPTURION NETWORK, SCOREBOARDS/VIDEO BOARDS; AND SPL INTEGRATED SOLUTIONS, SOUND REINFORCEMENT SYSTEM, FOR THE PURPOSE OF COMPLETING RENOVATIONS OF THE ASHEVILLE CIVIC CENTER

RESOLUTION NO. 11-230 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES WITH BETSCH ASSOCIATES/PBC+L FOR ADDITIONAL SCOPE OF DESIGN SERVICES FOR THE ASHEVILLE CIVIC CENTER RENOVATIONS

ORDINANCE NO. 4037 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER RENOVATIONS PROJECT BUDGET WITH REVENUE COMING FROM OUTSIDE FUNDING PARTNERS AND CIVIC CENTER FUND BALANCE

Economic Development/Civic Center Director Sam Powers said that this is the consideration of a resolution authorizing the Mayor to execute a License Agreement with U.S. Cellular Corporation for naming rights of the Asheville Civic Center complex city-owned property at 87 Haywood Street, Asheville, NC.

The Asheville Civic Center was constructed in the mid-1970s to serve as the major events and entertainment venue for Asheville and Western North Carolina. There have been numerous Civic Center studies over the past ten years; all had a common theme that major capital improvements are required to keep the facility viable as a major destination and economic development tool. Over the past 18 months, the facility has made tremendous strides to undertake major renovations to the facility. The City and several partner organizations led a successful bid to regain the Southern Conference Basketball Tournament, which has a significant tourism spending and Hotel Occupancy Tax generation impact. This success has served as a

catalyst to leverage significant funding of \$2 million from the TDA Product Development Grant fund, \$1 million from Buncombe County, plus current Civic Center CIP funds of \$1.3 million.

One of the key goals of the renovation process has been to seek additional partnerships, including private sector financial participation in the project, as a way to increase upfront equity and on-going assistance with capital improvements. Naming rights for event facilities has developed as a best-practice to enhance funding for the venues.

In the past, former civic center directors and city leaders have had discussions with local and regional companies to inquire about possible naming rights interest in the Asheville Civic Center. No companies were interested in either component parts or venue naming rights. After the announcement of the major renovation project and the renewed community partnerships that enabled the project, the city economic development director was contacted by U.S. Cellular Corporation with an expressed interest in naming rights for the venue. U.S. Cellular has been active in these public-private partnerships, including naming rights for the Chicago White-Sox Park, as well as the U.S. Cellular Arena in Milwaukee, Wisconsin, the U.S. Cellular Center in Cedar Rapids, Iowa, the U.S. Cellular Community Park in Medford, Oregon and the U.S. Cellular Coliseum in Bloomington, Illinois.

City staff researched other naming rights agreements in the public domain, and learned that there is a wide variation in the amounts of funding in naming rights agreements. New venue construction garnered substantially more naming rights fees. Major metropolitan media markets, professional sports facilities, and long term commitments were financially more substantial. Existing facilities, especially older facilities, generated less interest and financial commitment.

As a result of the consistent, long-term lack of interest from local or regional companies in any naming rights for the civic center, coupled with a proactive interest from a financially strong, nationally prominent technology-based company that has the ability to help with social media and market development for the venue, staff began negotiations with U.S. Cellular and reached an agreement in terms for a 5 year licensing agreement with a possible three year extension.

Other key components of the licensing agreement are: U.S. Cellular will receive Exterior Façade signage facing I-240, a Marquee Sign facing Haywood Street; Highway Directional signage/local way finding signage; Interior Signage/logo inclusion on marketing material, tickets; 2500 square feet of space for product displays; Event space on an annual basis. Additionally the agreement allows ExploreAsheville.com Arena, Banquet Hall, Museum, Exhibit Hall, Auditorium and Vendors (Soft Drink, Beer, Food, etc.) as continued and future sponsorship opportunities for the facility

The Notice of Intent to enter into a License Agreement with U.S. Cellular Corporation was published on November 11, 2011, in the Asheville Citizen-Times, in accordance with G.S. 160A-272.

This action complies with multiple City Council Strategic Operating Plan Objectives. The action supports current and prior Strategic Operating Plan Goals: Fiscal Responsibility, by leveraging internal and external partnerships for pursuing capital improvement projects and infrastructure projects; Green and Sustainable, by taking the City's sustainability program to the next level, which will include HVAC improvements to the Banquet Hall, increased recycling, and energy efficient lighting improvements; and the Job Growth and Community Development Focus Area, by creating more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

The action also complies with the Civic Center Commission's Strategic Plan, as well as recommendations of the 2006 Civic Center Task Force. The action supports the Downtown

Master Plan, which calls for a near-term action step to maintain and upgrade the existing Civic Center and Thomas Wolfe Auditorium to serve for at least the next five to ten years.

Pros:

- Utilize initial funding for support of current facility upgrades and continue discussions with key partners including County/TDA, while leveraging additional funding using private money as incentive.
- Plan for additional upgrades to facility, enhancing chances for additional events, etc
- Marketing and promotional assistance from U.S. Cellular.
- Reserves key venue components for other naming rights and sponsorship opportunities.

Con:

- None noted.

The agreement has a positive financial impact on the Civic Center for continuing capital improvements: a license agreement of \$750,000 over a five year period, plus \$60,000 in capital cost-sharing, totaling \$810,000; a five percent attendance incentive/deduction over four years totaling an additional \$32,000; and an additional three year license agreement extension that would increase the amount another \$511,310 for a total of approximately \$1,350,000 over eight years. A budget amendment to accept these funds is included in a separate staff report to include the funding in the Civic Center capital budget.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute a License Agreement with U.S. Cellular Corporation for naming rights of the Asheville Civic Center complex city-owned property at 87 Haywood Street, Asheville, NC.

Regarding the change orders, amendment to a contract and budget amendment, Mr. Powers said that this is the consideration of (1) a resolution authorizing the City Manager to execute change orders with Brantley Construction Company, General Contractor (contract amount: \$4,077,921.00); Irwin Telescopic Seating, Seating riser contractor (contract amount: \$775,746.00); Capturion Network, scoreboards/video boards (contract amount: \$254,715.00); and SPL Integrated Solutions, Sound reinforcement system (contract amount: \$418,461.03); up to the budgeted contingency of \$400,000 for the purpose of completing the current Civic Center renovations; (2) a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for design services related to the Civic Center renovations in the amount of \$295,720 for a total contract amount not to exceed \$825,705 for Phase II of the project; and (3) a budget amendment in the amount of \$357,000 to increase the Civic Center renovations project budget with revenue coming from outside funding partners and Civic Center fund balance.

City Council previously approved various contracts to renovate the Civic Center for the Southern Conference Basketball Tournament coming March 2012. These contracts include a general contractor as well as specialized contractors for the sound system, seating risers, and scoreboard/electronics. Staff is requesting that Council authorize the City Manager to execute change orders for these contracts up to the budgeted amount of \$400,000 in order to complete the project in time for the Southern Conference Basketball Tournament.

A standard procedure in construction contracts would authorize a contingency to cover potential routine project change order requests for unforeseen construction components related to the overall renovation of the arena, locker rooms, concourse, banquet hall, museum area and concessions areas, sound system, scoreboard, and seating risers. Due to an oversight in preparation of the staff report, staff did not request the approval for authorization of the construction contract contingency and authorization for the City Manager to execute the change orders.

Staff has been pleased with the progress of the work to date, and the project is currently on schedule for completion in accordance with the plans and specifications within the time specified in the contract. There are currently only approximately \$97,264 in pending change directives and change orders necessary to insure that the project is completed.

While staff does not expect the changes to be in the amount of \$400,000, there are some unknown factors that could increase the original contracts. Given the time constraints on the project, staff is requesting the ability to expedite the process by asking City Council to approve these changes.

Approval of the resolution authorizing the City Manager to execute change orders with the contractors up to \$400,000 and the resolution increasing the contract with Betsch Associates/PBC+L by \$295,720 also requires approval of a project budget amendment. There is available budget already in the Civic Center renovation project to cover a portion of these additional amounts; however the project budget needs to be increased by \$357,000 to fully fund them. Revenue to cover the \$357,000 budget amendment is coming from three sources: (1) US Cellular first year funding, (2) ABC contribution, and (3) Civic Center fund balance. This budget amendment will bring the total project budget for Civic Center renovations to \$7,332,000. The chart below shows the original budget for this project, the August budget amendment, and the proposed budget amendment before Council tonight.

FY 2012 CIVIC CENTER PROJECT BUDGET	
ORIGINAL BUDGET	
Funding Sources	Amount
Tourism Development Authority	\$ 1,750,000
Buncombe County	\$ 320,000
City of Asheville Capital Contributions	\$ 800,000
Total Original Budget	\$ 2,870,000
AUGUST BUDGET AMENDMENT	
Funding Sources	Amount
Civic Center Box Office Proceeds	\$ 580,000
Debt Proceeds	\$ 3,525,000
Total Budget Amendment Aug	\$ 4,105,000
TOTAL BUDGET AUGUST	\$ 6,975,000
NOVEMBER BUDGET AMENDMENT	
Funding Sources	Amount
US Cellular	\$ 132,000
Civic Center Fund Balance Transfer	\$ 200,000
ABC	\$ 25,000
Total Budget Amendment Nov	\$ 357,000
TOTAL BUDGET NOVEMBER	\$ 7,332,000

Funding Uses/Project Components	Amount
Design	\$ 825,705
Seating Replacement	\$ 775,000
Scoreboard Replacement	\$ 255,000
Sound System	\$ 418,461
Technology Upgrades and Asbestos Abatement	\$ 120,000
Construction	\$ 4,077,921
Chairs and other equipment	\$ 459,913
Contingency	\$ 400,000

TOTAL	\$	7,332,000
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This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. This request supports Council's strategic plan allowing for timely renovations to the Civic Center for the Southern Conference.

This action has been reviewed and recommended by the Civic Center Commission.

Pros:

- Allows for timely renovations to the Civic Center for the Southern Conference Basketball Tournament.
- Assures that the project will stay within budget as the change orders cannot exceed the budget of \$400,000.

Con:

- None.

The budget amendment will increase the total Civic Center renovation project budget by \$357,000. \$157,000 of this amount will come from outside project partners with the remaining coming from Civic Center fund balance. As reported in the FY 2010-11 audit presentation, Civic Center June 30, 2011 fund balance exceeded its 16% target amount by \$394,296. Staff is recommending that \$200,000 be appropriated from fund balance for the renovation project. The remaining \$194,296 will be held in fund balance to meet cash requirements at the Civic Center box office. This Civic Center fund balance appropriation has no impact on General Fund fund balance.

Staff recommends City Council authorize (1) a resolution authorizing the City Manager to execute change orders with Brantley Construction Company, General Contractor (contract amount: \$4,077,921.00); Irwin Telescopic Seating, Seating riser contractor (contract amount \$775,746.00); Capturion Network, scoreboards/video boards (contract amount: \$254,715.00); and SPL Integrated Solutions, Sound reinforcement system (contract amount: \$418,461.03); up to the budgeted contingency of \$400,000 for the purpose of completing the current Civic Center renovations; (2) a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for design services related to the Civic Center renovations in the amount of \$295,720 for a total contract amount not to exceed \$825,705 for Phase II of the project; and (3) a budget amendment in the amount of \$357,000 to increase the Civic Center renovations project budget with revenue coming from outside funding partners and Civic Center fund balance.

Regarding the naming rights, Mr. Powers said that everyone can agree that our Civic Center is an important economic development engine for Asheville. Our Downtown Master Plan recently reiterated that it is an important anchor for downtown. It is exciting to see passion and interest in the Civic Center. It builds on an overwhelming positive momentum that has been built by working together with numerous partners in the last 24 months, after years of frustration about how to bring new life and required capital improvements to the complex. City Council has specifically included the Civic Center as a City-wide priority in its strategic plans since at least 2007. He cited the following:

- Asheville City Council's goals and vision 2007-08 (1) Support a renovated Civic Center as a regional entertainment destination; pursue initiative to improve the customer experience at the Civic Center.

- Asheville City Council 2008-09 Strategic Plan (1) Support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility; (2) Develop a long-term plan to address the City's aging infrastructure including facilities and sidewalks; and (3) Take action, including addressing capital needs, to improve the customer service experience at the Asheville Civic Center.
- Asheville City Council 2009-10 Strategic Plan (1) Support a strong commitment to infrastructure maintenance, capital improvements, long-term planning and fiscal responsibility; (2) Develop a long-term plan to address the City's aging infrastructure including facilities and sidewalks; and (3) Take action, including addressing capital needs, to improve the customer service experience at the Asheville Civic Center.
- City of Asheville Strategic Plan 2010-11 (1) Explore alternatives for enhancing the City's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities; and (2) Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects.
- City of Asheville Strategic Plan 2011-12 (1) Leverage internal and external partnerships for pursuing capital improvements and infrastructure projects; and (2) Consider funding for Asheville Civic Center improvements by building on momentum with existing partners.

Much of the decision to specifically focus on the Civic Center in the Strategic Plan is due to the many studies and reports over the last 15 years devoted to the future of the Civic Center. He briefly reviewed some of the following key studies and their recommendations: (1) 1996-98 – Hunter Interest Report; (2) 2000 – Highland Group Report; (3) 2001 – Heery Study; (4) 2002-03 – Performing Arts Center Study by Westlake, Reed & Leskosky; (5) 2005-06 – Civic Center Task Force. The Task Force conducted 9 public meetings and looked at past reports and other funding models from centers around the state and in the southeast (including hotel occupancy and food & beverage taxes). They found that 67% of the current revenue generated by the Civic Center comes from the Arena. They also studied the Economic Impact Study by WCU – direct and indirect effects of the expenditures by the Civic Center created a total impact on the local economy over \$22 Million. Measuring the impact in jobs, the Civic Center creates 295 direct jobs and 73 indirect jobs for a total of 368 jobs in the local economy. The Civic Center Task Force brought their findings to Council: One finding was two options – One was to convert the Civic Center to Performing Arts Center and build a new arena on a new location; The other option was to renovate the Arena and build a new Performing Arts Center. The Civic Center Commission voted to support the second option to build a new Performing Arts Center at the Parkside site. The other finding is that there is no “silver bullet” for financing these options. There would need to be a combination of public and private money for any scenario. Way to finance included: a hotel occupancy tax of 1% generated \$1.3 Million a year (in 2006 numbers) – that current amount is now approximately \$1.6 Million a year; private contributions proposed at \$10 Million; seek a County contribution; ½% sales tax which would generate (at the time) \$15 Million/year; food and beverage taxes; other state and federal contributions; and a Tax Increment Financing District; (6) in 2008 City Council receives public input and passes a resolution committing to reserve space for five years for a performance center adjacent to Pack Square Park as part of a multiple use redevelopment project on the “Parkside” site with details included in a joint development agreement to be developed; (7) in 2009 City representatives are contacted about the possibility of bidding to host the Southern Conference College Basketball Tournament again; (8) in 2010, the Southern Conference awards the Men's and Women's SoCon Basketball Tournament to Asheville. The City applies and is successful in its application to the Tourism Development Authority for a \$2 Million Tourism Product Development Fund grant to be used for capital improvements. Buncombe County supports the partnership with a contribution of \$1 Million and the ABC Board provides \$25,000/year in educational support for an underage drinking prevention campaign. UNC-Asheville agrees to host the women's games in the new Kimmel Arena; (9) in late 2010 U.S. Cellular expresses interest and possible sponsorship opportunities at the Civic

Center; and (10) in 2011 staff conducts a project assessment, due diligence, confers with City Council and receives direction, announcement of a tentative agreement, which brings us to public comment at this meeting.

As the project continued to develop, one of the tasks that staff tried to do was benchmark other facilities to understand their agreements to use as a guide as the project moved forward in their due diligence. He then briefly talked about the following benchmark projects reviewed, along specifics in their naming rights: Bank of Kentucky Center in Highland Heights Kentucky; Bojangles' Coliseum in Charlotte North Carolina; Canada Inns Stadium in Winnipeg Manitoba; Carolina First Arena in Charleston South Carolina; RBC Center in Raleigh North Carolina; U.S. Cellular Arena in Milwaukee Wisconsin, Bancorp South Center in Tupelo Mississippi; and Bi-Lo Center in Greenville South Carolina.

Mr. Powers then reviewed the following key points of the tentative agreement: (1) Five-year agreement: \$750,000 over 5-year period, plus \$60,000 in capital cost-sharing, totaling \$810,000; (2) Five percent attendance incentive/deduction over four years totaling additional \$32,000; (3) additional three year extension would increase the amount of an additional \$511,310 for a total of approximately \$1,350,000 over eight years; (4) marking and promotional assistance from U.S. Cellular; (5) utilize initial funding for support of current facility upgrades; (6) exterior signage: façade facing I-240; (7) marquee sign: facing Haywood Street; (8) highway directional signage/local wayfinding signage; (9) interior signage/logo inclusion on marketing material, tickets, etc.; (10) 2500 square fee of space for product displays; (11) event space on an annual basis; (12) confirms that ExploreAsheville.com Arena, Banquet Hall, Museum, Thomas Wolfe Auditorium, Exhibit Hall and Vendors (soft drink, beer, food, etc.) are allowed as continued future sponsorship opportunities for the facility; and (13) the final action in the U.S. Cellular partnership is for City Council to receive public comment and vote on the licensing agreement at the next formal meeting scheduled for November 22, 2011.

Vice-Mayor Newman said there are a lot of good things happening at the Civic Center and a lot of people are working hard to see the facility reach more of its potential. There has been a genuine effort to solicit other private sector partners in recent years but until this partnership, the idea of private sector investments have not been very fruitful. While some organizations or businesses might not have been interested 3-5 years ago, they may be interested today.

Vice-Mayor Newman then moved (1) to affirm the use of a naming rights partnership as part of the overall financing strategy for the Civic Center improvements; (2) to accept the proposal from U.S. Cellular Corporation; and (3) to defer implementation of the current proposed partnership until December 31, 2011, and allow any other organization that wants to put forward a credible serious proposal for partnering with the City on a public/private partnership for investments in the Civic Center to put forward a proposal for consideration. If no credible proposal is presented during that time period that presents a superior value proposition to the City of Asheville, compared to the current proposal that we have received, then the current proposal would go into effect on January 1, 2012. If the City Manager does receive a credible proposal that presents a superior value proposition to the community of Asheville during that time, Council direct the City Manager and his staff to consider that and to bring this issue back to City Council for deliberation. This motion was seconded by Councilman Davis.

Councilman Bothwell felt there are two separate ideas and wondered if they should be voted on separately. A lot of comment he has received has been about not selling the naming rights. His sense of the citizenry is that we are in a different time than in 2001 when Council approved the naming rights for the Civic Center. We need to reconsider reducing the corporate influence in government. He understood the public/private partnership concept, but as far as naming the core civic institution for our City, he felt the citizens need to have a voice on whether or not we should put a corporate name on the building. The separate issue is if they do, then we should get the highest price for it.

Councilman Smith felt that what Mr. Power's presentation underscored was the 15-year history of trying to devise a strategy for improvements to the Civic Center. It also underscored the duration of public debate, input and studies and year after year Council commitment to public/private partnerships, including naming rights, in order to restore our Civic Center

Councilwoman Manheimer said it was ironic to hear comments about the Civic Center at this time because for years she has heard comments about why not tear the Civic Center down and build something different. She said the Civic Center is an economic engine for Asheville. It brings in tons of folks who dine in our restaurants, stay in our hotels, shop in our shops, and pay sales tax. One concern she has about the information being distributed about the sale of these naming rights is the omission of the subsidy that the citizens of Asheville pay to support the Civic Center. The Civic Center is supported solely by the citizens of Asheville and not Buncombe County. It is the Asheville residents' hard-earned property taxes and sales tax that fund our General Fund that in turn pay for the subsidy that is required to run the Civic Center. It is not a break-even business. For some years it has been subsidized by Asheville residents for several hundred thousand dollars. That is just in operational costs. That is money we can't spend on new sidewalk construction or whatever urgent need there is. That is just a flat General Fund subsidy. That piece of information has been missing. As Council members, we must make sure that we have all the services we need and we have clearly heard from residents not to raise property taxes. So, Council has to find solutions that combine those two things – provide services and don't raise taxes. So while she would like to say we don't ever need to engage in corporate partnerships and always preserve the name of Asheville, that seems unrealistic to her. There are cities in this country that are having to file bankruptcy, stop bus service, scale back police, etc., but Asheville is not going to be one of them because we are fiscally careful. The other issue raised is that if we are going to sell the naming rights, it should have been an open process and granted, perhaps it should have been. However, she did some research on the sale of naming rights and it does appear there are two ways to do it. You can put it out for bid (which is usually done for new construction) or you can do it as a negotiated economic development deal (which is done without much involvement by City Council at all other than to let them know its happening). In this case, that is the method used noting that it has been a very open dialogue that Council was interested in selling the naming rights for years but we didn't have any takers. She supported Vice-Mayor Newman's motion that would allow for other people to basically put in an upset bid. Now that everyone knows the offer on the table and all the components of it, let's invite someone else to try to upset that offer.

Councilman Davis said that he was a member of the Civic Center Task Force and what bothers him most are the omissions made along the way. This has been a very open process and we have been fighting very hard to develop partnerships for years. Before that we worked hard to try to get partnerships with the County, Tourism Development Authority, etc. to bring the building to where we are now. The building is now, through partnerships, finally being renovated. The fraction of money from the naming rights is needed to make a new concession area. The Civic Center has good structure and is being rehabbed. There have not been a lot of people stepping forward for partnerships even though this is an energy driver for downtown.

Councilman Bothwell felt the amount of money that this advertising deal (not a partnership) amounts to about \$5 on a tax bill for \$175,000 house each year. We would not be talking about a large tax increase. At the current rate, this agreement for \$1.3 Million over 8 years, would be .1% of the City budget. The operations cost for the Civic Center is over \$2.1 Million and this deal is just \$150,000 a year. He felt we could add \$1 to parking fees for events or add \$1 to ticket fees to make this money up, other than selling the name of our Civic Center. We have heavily invested in our name with advertising through the Tourism Development Authority, the Chamber of Commerce, etc. for years building up the reputation of Asheville as a cute town in the mountains, but now the Civic Center will have the same face at Atlanta and Charlotte. He noted that the possible extra money is also a possible loss if attendance revenues are lower. We are not just talking about a partnership to name an arena, we are talking about Asheville and we

are worth more than that. We are losing the value of the repetition of Asheville every time an ad is run, a ticket is printed at the Civic Center or at TicketMaster, etc. He wondered if the amount of advertising we are losing might be worth more than the amount of advertising we are selling. If Council adopts this resolution, he suggested we aggressively market to prove that there is any bidding going on.

City Manager Jackson said that City staff will make special efforts to market this and advise Council what those steps to market it would be.

The following individuals spoke in opposition of selling the naming rights of the Asheville Civic Center, basically citing there are other ways to rehabilitate the facilities and renaming it will take away from the unique quality of Asheville:

Mr. Timothy Sadler
Mr. Paul Van Heden
Mr. Mark Bloom
Ms. Amena Spangler
Mr. Matthew Byrd
Mr. Tim Ballard
Mr. Jim Aycock
Mr. Andrew Stevens

The following individuals spoke in support of selling the naming rights of the Asheville Civic Center due to the history outlined by Mr. Powers:

Mr. Mike Burke, Chairman of the Civic Center Commission
Mr. Lou Bisette
Mr. Dennis Justice

Councilman Smith said that Asheville has unique restrictions around using our water and the hotel occupancy tax. Our hotel occupancy tax is only 4% where the state average is between 6-7%. Of that 4%, 3% goes to the Tourism Development Authority and 1% goes to the Tourism Product Development Fund. They have been generous in that they are returning some of that tax money into public infrastructure that will fuel tourism. If our legislators in Raleigh were willing to allow Asheville to simply rise to the state average, and not single us out to have the lowest occupancy tax in the state of North Carolina, then we would have the dollars to repair and renovate our infrastructure, like the Civic Center. City Council has lobbied hard but we need more voices. He urged the public to contact our legislators and let them know you think this is important.

Vice-Mayor Newman said that the Civic Center is unique in that it is not a core function of the City government. In many ways it is a commercial facility – full of concerts, trade shows, etc. Whatever decision is made about naming rights does not automatically mean all City facilities are open for naming. This is a site specific question about this particular facility. We must seek out every opportunity we can to develop ways to pay for the infrastructure in the City because the mechanisms most cities have in our state are not at our disposal. If property taxes were raised, there would be a lost list of things that would be so important for Council to devote those resources to, chances are the Civic Center renovation would not be in the top 10.

Mayor Bellamy said that she cannot take credit for this partnership. Staff worked with U.S. Cellular on this opportunity. She did make the announcement, noting that staff had the consensus of Council to move forward. She heard no dissenting voices from City Council in closed session to not move this partnership forward. At this time, copies of those minutes can be obtained from City Clerk Maggie Burleson. She said that this is change to a lot of people and they felt they were not involved in the process because they felt the process was not as public as people would have liked. To them she apologized. She personally received a phone call from

the Mr. Freeman, CFO of Ingles, apologizing for their e-mail sent. Mr. Freeman said that was a surprise to him and others in the corporation to have the e-mail forwarded to the community in the way it was. He said that in the future Ingles would like to be at the table for other endeavors, acknowledging that Ingles in the past was not receptive to naming opportunities at the Civic Center. She noted that not only did the City have future naming opportunities but also UNC-Asheville and the Performing Arts Center. She said our legislators can help us and it was the consensus of Council to provide a link on the City's webpage to our state legislators. She thanked those who have come to the table to help with the Civic Center, noting there are other opportunities for partners in our community to help. She has been on City Council for 12 years and has never seen this level of desire to protect the Civic Center and she hoped it doesn't stop. From all the e-mails and conversations she has personally had, she felt this is a balanced conversation. The name of the Civic Center does not change the soul of who our community is. No one thing or name will stop Asheville from being Asheville and being celebrated for being different. As a native of Asheville, she has watched our community grow into being in a class by itself. She hoped that as we move forward we will gain more partners to help us with our bigger financial issues. She also hoped that we will look at this issue and learn from it. Like Councilwoman Manheimer, she too thought we need to look at this type of process for economic development issues in the future. She asked the City Attorney to see how we can meet the needs of our partners and also make sure the public is informed. She does not feel that any attendance at a graduation, or attendance at Moogfest will be diminished because the building is named the U.S. Cellular Center. She hoped our relationship with U.S. Cellular (noting that the City partnered with U.S. Cellular to bring Asheville cellular service) continues.

The motion made by Vice-Mayor Newman and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Bothwell voting "no."

RESOLUTION BOOK NO. 34 – PAGE 200

Councilman Smith moved for the adoption of Resolution No. 11-229. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 201

Councilman Smith moved for the adoption of Resolution No. 11-230. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 202

Councilman Smith moved for the adoption of Ordinance No. 4037. This motion was seconded by Councilman Russell and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

At 10:45 p.m., Mayor Bellamy announced a short recess.

B. RESOLUTION WAIVING THE STREET CLOSING FEE FOR THE CLOSING OF A PORTION OF COLLEGE STREET NECESSARY FOR THE BUNCOMBE COUNTY LIFE SAFETY ADDITION

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items "B", "C", and "D" until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MANAGEMENT AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION OF THE ASHEVILLE TRANSIT SYSTEM

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items “B”, “C”, and “D” until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

D. RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE’S PARTICIPATION IN THE N.C. STATE TREASURER’S OTHER POST EMPLOYEE BENEFIT FUND

RESOLUTION SUSPENDING RETIREE HEALTH CARE COVERAGE FOR CITY EMPLOYEES HIRED AFTER JUNE 30, 2012

Due to the length of the meeting, at the suggestion of Mayor Bellamy, Councilman Smith moved to delay action on New Business Items “B”, “C”, and “D” until the December 13, 2011, meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

E. RESOLUTION NO. 11-231 - RESOLUTION ADOPTING AN AMENDMENT TO THE 2010 CONSOLIDATED ANNUAL ACTION PLAN FOR GREEN OPPORTUNITIES WEATHERIZATION ASSISTANCE

Community Development Director Jeff Staudinger said that this is the consideration of a resolution authorizing an amendment to the City’s Consolidated Annual Action Plan for 2010-11 for the Green Opportunities Weatherization Assistance CDBG Grant.

Green Opportunities requests an amendment to their 2010-2011 Weatherization Assistance CDBG grant agreement. Their request is:

- 1) To modify the number of homes served from 65 to 45.
- 2) To expand the geographic service area to include all Asheville city.
- 3) To modify the per house reimbursement rate from \$830.77 to \$1,466.16 per home.

Two external conditions have led to this request. First, federal DOE Recovery Act (ARRA) funding requires that all persons performing DOE funded weatherization be paid Davis-Bacon wages. Green Opportunities had been paying their trainees a stipend, but to perform ARRA-funded weatherization activity were required to pay \$18 an hour. Davis-Bacon regulations allow for stepped wages to be paid for persons in a certified apprenticeship program. Green Opportunities designed an apprenticeship curriculum, and then applied for and received certification. However, this process took months, during which production essentially ceased. Second, the State Energy Office tightened their guidelines for prioritization of applications. As Community Action Opportunities implemented these guidelines in their four-county service area, the number of applications approved from the limited targeted geographic area served by Green Opportunities dwindled significantly. The proposed change will immediately increase the flow of homes to be weatherized. Community Action Opportunities indicates it has sufficient approved applications in the City to assign to Green Opportunities, which in turn has indicated it can ramp up its production levels to meet the proposed number to be served. The increase in the reimbursement rate will help Green Opportunities meet the increased production rate.

The proposed Action Plan Amendment directly relates to the Council’s Strategic Goal of “Affordable.”

The Housing and Community Development Committee agrees with this recommendation to approve the amendment.

Pro:

- The proposed amendment allows for efficient use of funds in a timely fashion, and will assist in meeting overall program goals. The funds will also assist the sponsoring organization's viability and ability to meet community needs.

Con:

- The production output will be decreased from 65 to 45 homes.

The proposed amendment uses funds already allocated to the specific program. There is no increase in administrative responsibility for the City. No City General Funds are allocated to this program.

Staff recommends that Council approve the amendment to the 2010-2011 Consolidated Annual Action Plan for Green Opportunities Weatherization Assistance program.

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

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

Vice-Mayor Newman moved for the adoption of Resolution No. 11-231. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Councilman Russell voting "no."

RESOLUTION BOOK NO. 34 – PAGE 203

F. RESOLUTION NO. 11-232 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT THROUGH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY DURING THE 2012 TOURISM DEVELOPMENT PRODUCT FUND FOR CIVIC CENTER RENOVATIONS

Director of Finance & Management Services Lauren Bradley said that this is review of potential projects for application to the Tourism Product Development Fund (TPDF).

The Buncombe County Tourism Development Authority's Tourism Product Development Fund (TPDF) was created by the State Legislature in 2001. This makes funding possible for tourism projects that will increase the number of overnight stays by visitors in Buncombe County lodging properties.

The City has previously received TPDF funding for the Wayfinding Partnership and Civic Center phase one upgrades. Additionally, the WNC Soccer Foundation received \$400,000 of funding for the City's John B. Lewis Soccer complex in 2002, 2004, and 2009.

She provided Council with a "Frequently Asked Questions" information sheet that outlines the criteria and funding process for the TPDF. This document answers many of the questions about the guidelines and eligibility for funding of projects.

In an effort to leverage resources and build on priorities in the City's strategic operating plan, develop partnerships with the Tourism Development Authority, and meet core funding criteria of the TPDF, staff has developed the following summary of possible projects for Council review:

Phase II Civic Center Improvements

The Tourism Product Development Fund (TDPF) grant application will continue to leverage the strong partnerships that have been built between the City, the Tourism Development Authority, Buncombe County, and other private and public sector partners, to take the Civic Center to the

next level as the region's premiere event and entertainment venue. The design team is currently reviewing the preliminary costs estimates.

The project will seek to prioritize the following items:

1. Completion of renovations for the upper seating bowl
2. Development of a Club Level amenity that is highly desirable for premium events
3. Create additional required storage for the new seating and risers
4. Build additional capacity for the new Asheville Craft Beer Garden feature
5. Provide renovations to the lobby area to aid the increased activity from events occurring in both the arena and auditorium concurrently

This action complies with the City Council Strategic Operating Plan of Job Growth and Community Development in that it considers funding for Civic Center improvements by building momentum with existing partners.

Future Funding Cycles

Greenway Development: Beaucatcher Overlook

Initial planning must occur prior to submitting a greenway project for possible funding. Staff has identified Beaucatcher Overlook as a candidate for a future Tourism Product Development funding cycle. The project is currently in the design phase and will not be completed in time for the January 2012 cycle. However, this project will be ready for submission for a TDPF grant in January 2013, with specific construction costs identified by mid-to-late 2012. The FY 11-12 CIP includes funding for construction of the Beaucatcher Overlook greenway and could be used as matching fund for a TPDF grant. Any TPDF funding would allow the City to extend the greenway or apply CIP funds to other projects.

Future greenway projects have also been identified below. The proposed five-year CIP includes a funding allocation for design work for the Town Branch Greenway project in FY 12-13 with construction funding contemplated in FY 13-14, making it a feasible candidate for TDPF consideration in the 2014 funding cycle. If funding were awarded for construction of the Town Branch greenway, CIP funding would be made available for additional greenway projects, as listed below.

Project	Funding Cycle Year	Cost for Land Acquisition	CIP Allocation for Land Acquisition	CIP Design Costs	CIP Allocation for Design
Town Branch Greenway	January 2014	\$350,000	FY 12-13	\$250,000	FY 13-14
Clingman Forest Greenway	January 2015	\$220,000	Not currently included in CIP	\$100,000	Not currently included in CIP
Nature Center Visitors Enhancement Project	January 2016	N/A	N/A	\$250,000	Not currently included in CIP

Pedestrian Trash Receptacles in the Central Business District (CBD)

There are approximately 136 pedestrian receptacles in the CBD that are serviced seven days per week. The overall condition of the metal receptacles is 'average' due to over 15 years of heavy

use in a public setting. Additionally, the existing containers are not optimal for cleaning beneath the receptacle and are designed such that trash can easily blow onto the sidewalk or street.

The Asheville Department of Public Works would like to partner with the Downtown Commission, Downtown Association and Downtown Asheville Residential Neighbors to replace these receptacles with new containers that include recycling capabilities. In addition to replacing the existing containers, the project would add approximately 60 containers in strategic locations. Replacing these old receptacles would improve downtown cleanliness, resulting in more visitors who stay in Asheville for longer periods of time.

The joint trash/recycling containers cost approximately \$2,200 each and can be artistically customized to coordinate with the Wayfinding signs.

We would propose to replace 136 trash cans and add an additional 64 trash receptacles. The project can be completed with the 24 months required by the TPDF Grant.

Benefits:

- Proposal includes recycling containers;
- Proposal adds 60+ trash/recycling receptacles;
- The design of the containers can be customized to fit Asheville;
- The design of the trash receptacles do not allow for trash to blow out or get stuck under the container;
- The trash receptacles can be solar powered;
- The receptacles have a sensor that can communicate to let staff know when they are full.

In order to make the project viable for TPDF funding, staff is seeking grant resources to use a matching funds for the City's share. Therefore, this project would not be a feasible candidate for consideration in the 2013 or 2014 funding cycle.

Staff identified a project for this year's funding cycle, in addition to possible projects for future cycles. Given that the TPDF does not fund design work, any preliminary work must be completed by the city. More detailed preliminary work will be completed prior to any project being selected for an application to the TPDF.

Each project summary includes the relationship to the strategic operating plan and fiscal information available at this time. It should be noted that fiscal impacts are preliminary. In some projects, local funding has been identified; however, some projects do not have sources of funds identified.

City staff recommends City Council review the project summaries and provide direction to staff.

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

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

Vice-Mayor Newman moved for the adoption of Resolution No. 11-232 to apply for grant funding from the Tourism Product Development Fund during the 2012 funding cycle for the Asheville Civic Center renovations. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 204

G. BOARDS & COMMISSIONS

Affordable Housing Advisory Committee

Vice-Mayor Newman said that Mr. Anthony Goodson, representing the Housing Authority, has resigned as a member of the Affordable Housing Advisory Committee, thus leaving an unexpired term until September 1, 2014.

The following individuals have applied for the vacancy on the Affordable Housing Advisory Committee: Richard Warren, Paul Reeves, Roger Hartley, Melissa Anne Bernard and Jayden Gurney.

Vice-Mayor Newman said that the Boards & Commissions Committee felt it was important to have representation from the Housing Authority on this Committee and recommended interviewing Jayden Gurney, as the representative from the Housing Authority.

Therefore, it was the consensus of Council to interview Mr. Gurney for a position on the Affordable Housing Advisory Committee.

RESOLUTION NO. 11-233 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Newman, Chair of the Boards & Commissions Committee, said that the terms of Charles Worley and Jim Ellis, as members on the Alcoholic Beverage Control (ABC) Board expired on November 13, 2010.

The following individuals have applied for the vacancies on the ABC Board: Genny Lynn Beville and Tim Flora.

Vice-Mayor Newman said that the Boards & Commissions Committee recommended reappointing Jim Ellis. It was also the Committee's recommendation to appoint William A. Russell Jr.; after he was no longer a member of Council to make that appointment and that action be taken on December 13, 2011.

Vice-Mayor Newman moved to reappoint Mr. Ellis to serve an additional three year term, term to expire November 13, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried on a 6-1 vote with Councilman Bothwell voting "no".

Councilman Bothwell voted against reappointment of Mr. Ellis because he felt the ABC Board should be held accountable to the citizens of Asheville for the things that went wrong on their watch. He thought all Board members should have resigned. The ABC Board is a fairly unique board and oversees a multi-million dollar business. Board members have a fiduciary responsibility.

Mayor Bellamy said it was brought to her attention that there have been some issues that have happened under Council's watch and wondered if Council should have to resign. She questioned how our policy-making boards (who are not there for day to day operations) are going to have to adhere to the criteria that every board/commission is responsible for staff action. She wondered how we should hold people accountable at this level or at our appointee level going forward.

Mayor Bellamy wondered if the Boards & Commissions Committee should review criteria of what every board/commission member is responsible for.

Councilman Davis understood Councilman Bothwell's persistent position, but felt he is continuing to cast doubt on the findings of the ABC report. The reality is the ABC Board does not

look at the individual receipts of the credit card expenses. In fact, the audit was received the same day Mr. Candy chose to resign.

RESOLUTION BOOK NO. 34 – PAGE 205

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Matthew Byrd, with Occupy Asheville, read a letter from the Occupy Asheville General Assembly which considered the request made by Councilman Smith and the Asheville Police Department to elect representatives from their group to communicate consistently with City staff and APD. This request was voted on at their General Assembly on Friday, November 11, 2011, and was unanimously rejected. He then stated the reasons for rejection in summary being (1) they seek to communicate with consensus through a structure that provides for direct audience with all interested members; and (2) their trust in the City has been diminished by recent actions by the Asheville Police Department.

Mr. Mark Bloom expressed concerns about (1) why the existing traffic signal turns red along Biltmore Avenue since Aston Street is closed for construction activities; and (2) the new traffic signal at the intersection of Hospital Drive and Victoria Road is not operating in an efficient manner. City Manager Jackson said that he would refer the concerns to our Director of Transportation.

Mr. Paul Choi expressed concern about the traffic pattern on Hospital Drive. City Manager Jackson said that this traffic-related concern would be referred to our Director of Transportation as well.

As this is Vice-Mayor Newman's last formal Council meeting, he said it has been a great pleasure to work with all of Council and wished the new Council all the best. He hoped their service would be as rewarding for them as it has been for him. It was been a privilege for him to be a part of it.

As this was also Councilman Russell's last formal Council meeting, he said it has been an honor and privilege to serve the citizens of Asheville.

**PRIMARY ELECTION RESULTS – CITY OF ASHEVILLE – OCTOBER, 11, 2011;
GENERAL ELECTION RESULTS – CITY OF ASHEVILLE – NOVEMBER 8, 2011; AND
GENERAL ELECTION RECOUNT RESULTS – CITY OF ASHEVILLE – NOVEMBER 8,
2011**

Attached hereto as Exhibit "A" is the abstract containing the number of legal votes in the Primary Election, City of Asheville, held on October 11, 2011. Also attached as Exhibit "B" is the abstract containing the number of legal votes cast in the General Election, City of Asheville, held on November 8, 2011. In addition, Exhibit "C" is the abstract of votes for the General Election Recount of November 8, 2011.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:25 p.m.

CITY CLERK

MAYOR