

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

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Manheimer gave the invocation.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

APD Officer Scott Muse; APD Sgt. Joseph Johnson; Special Agent Derek Wiles from the Secretary of State's Office, Enforcement Division; TFO Ray Richardson – Durham ABC Agent; Special Agent Renee Davis; Special Agent DeeDee Jones; SAC John Lynch, N.C. Secretary of State's Office; and SA Jahaira Torrens – ICE – Dept. of Homeland Security, Raleigh Office – For their work associated with an APD Counterfeit Ring of stereo equipment; (2) APD Sgt. Joseph Silberman – Awarded the Forensic Interviewer Certification; (3) Fire Marshal Wayne Hamilton – Achieved the designation as a Certified Fire Investigator; and (4) Michelle Massey-Smith – Awarded the 2011 N.C. American Water Works Association Water Distribution Operator of the Year.

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

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 22, 2011, AND DECEMBER 6, 2011**
- B. RESOLUTION NO. 11-234 - RESOLUTION AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT FOR VARIOUS CAPITAL PROJECTS AND ACQUISITIONS TO BE DELIVERED IN FISCAL YEAR 2012 AS WELL AS THE REFINANCING OF EXISTING DEBT AND SETTING THE PUBLIC HEARING FOR THE TRANSACTION ON JANUARY 10, 2012**

Summary: The consideration of resolution authorizing the negotiation of an installment financing contract for various capital projects and acquisitions to be delivered in FY 2012 as well as the refinancing of existing debt and setting the public hearing for the transaction on January 10, 2012.

On October 25, 2011, the Asheville City Council approved a resolution directing the City Manager and Finance Director to pursue debt financing for capital projects and refinancing existing debt in FY 2012, and to appoint bond counsel and the managing underwriter for the transaction. The components of the debt issuance include: (1) \$20.1 million in "new money" for Council approved capital projects authorized as part of the FY 2012 and FY 2011 Budgets, (2) \$14.1 million for the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) \$10.8 million for the refinancing of some existing debt to achieve financial savings.

The debt will likely be issued as Limited Obligation Bonds, also commonly known as Certificates of Participation. This form of obligation has been used previously by the City to construct and renovate the Municipal and Water Maintenance Buildings and Grove Arcade in 1997 and two fire stations in 2006. These types of obligations are limited obligations of the City, payable solely from currently budgeted appropriations of the City.

As a next step in the process, staff is seeking City Council consideration of a resolution authorizing the negotiation of an installment financing contract for the purpose described above. The resolution also authorizes the City to make application to the Local Government Commission for approval of the transaction, makes the necessary findings required by the Local Government Commission and sets the public hearing for the matter on January 10, 2012.

After the public hearing on January 10, staff anticipates returning to City Council for final consideration of the installment financing contract on February 28, 2012 and closing on the transaction in late March 2012.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Pros:

- Allows the City to move forward with the FY 2012 debt financing while complying with all applicable statutes and regulations.
- Refunding of existing debt results in financial savings and the reinvestment of those savings in the CIP.

Con:

- None noted.

The total amount projected for identified capital projects and refinancing is approximately \$45 million. The resolution authorizes the City to negotiate an installment financing contract in a principal amount not to exceed \$50 million in the event that project estimates change between the time the resolution is approved and the installment financing contract is executed.

The projected annual debt service costs associated with the transaction range from \$5.28 million to \$1.44 million through 2032. The General Fund portion of the debt service, including projects funded through the "Green CIP," ranges from \$3.64 million to \$550,000 during that same time. The range of annual debt service payments over the life of the transaction is a function of several factors - the final payoff in 2021 of the debt being refinanced and components of the "new money" projects that are being financed over their useful lives of 5, 10 and 20 years. The repayment of the "new money" debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt and a portion of the savings generated by the refunding. The refinancing of existing debt, at current market rates, is projected to produce about \$1 million in cash flow savings through 2021.

Staff recommends that City Council approve the resolution as proposed.

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C. RESOLUTION NO. 11-235 - RESOLUTION ADOPTING THE 2012 CITY COUNCIL MEETING SCHEDULE

RESOLUTION BOOK NO. 34 – PAGE 214

D. ORDINANCE NO. 4038 - BUDGET AMENDMENT FOR HARVEST HOUSE AND SENIOR OPPORTUNITY CENTER FROM THE STATE OF N.C. DEPT. OF HEALTH & HUMAN SERVICES THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING

Summary: The consideration of a budget amendment in the amount of \$12,205 for Senior Opportunity Center and \$12,205 for Harvest House for an appropriation from the State of N.C., Dept. of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) replace cabinets, countertops and flooring in kitchen, 2) upgrade facility lighting, and 3) purchase program and facility equipment. The allocation requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

Funds will be used at Harvest House to 1) replace windows, ceiling tiles and bathroom floor tiles, 2) install ADA accessible interior facility doors handles, and 3) purchase program and facility equipment. This allocation also requires a 25% local match which will be provided via in-kind services of staff time to manage the project.

This action complies with the City Council Strategic Goal of fiscal responsibility in that it provides an alternative for enhancing the city's infrastructure maintenance. This action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it will 1) increase the level of service for indoor facilities to bring older facilities up to date before building new facilities, 2) increase department funding with alternative funding via grants, and 3) enhance the department's means to respond to identified programming priorities.

Pros:

- Facility improvements will address existing maintenance projects and improve accessibility.
- Equipment purchases will enhance the customer experience and expand programming opportunities provided

Con:

- None

The allocation will increase the City's General Fund budget by \$24,410 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services of staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) \$12,205 for Senior Opportunity Center, and 2) \$12,205 for Harvest House for facility improvements and equipment.

ORDINANCE BOOK NO. 27 – PAGE

E. RESOLUTION NO. 11-236 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A STATE MATCH TO PURCHASE TWO

COMPRESSED NATURAL GAS REPLACEMENT BUSES FOR HENDERSON COUNTY'S TRANSIT SYSTEM

ORDINANCE NO. 4039 - BUDGET AMENDMENT TO PURCHASE TWO COMPRESSED NATURAL GAS REPLACEMENT BUSES ON BEHALF OF HENDERSON COUNTY'S TRANSIT SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the N.C. Dept. of Transportation (NCDOT) to provide a Section 5307 Capital Grant in the amount of \$39,052 to be used for the State match to purchase two Compressed Natural Gas (CNG) replacement buses for Henderson County's transit system; and an associated budget amendment, in the amount of \$390,523, to set up the project to purchase the subject buses.

As a result of the 2000 Census, the City of Asheville was reclassified from a non-urbanized area to an urbanized area with a population greater than 200,000 persons and now includes municipalities in Buncombe, Haywood, and Henderson counties. After the reclassification, Henderson County's transit system became part of the transit systems operating in the overall urbanized area. The Federal Transit Administration named the City of Asheville the designated recipient and as a result, the City of Asheville oversees all of the Federal funding administration. The City of Asheville and Henderson County have signed a sub-recipient agreement that specifies how the funds are disbursed. The City of Asheville is accountable to the Federal Transit Administration regarding the use of all Federal funds and owns all the capital items that Henderson County purchases with Federal funds.

The estimated total cost of the subject project is \$390,523. Federal funds will provide 80% of the cost, State funds will provide 10% of the cost, and Henderson County will provide 10% of the cost. The City of Asheville performs all of the administrative tasks including the bidding process, requests for funding, review of documentation, and reporting. A contract is in place and City staff will order the buses as soon as the subject agreement is fully executed by both parties.

This action complies with the current 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:

- The two new CNG buses will produce savings in maintenance and fuel costs.
- The Federal Transit Administration (FTA) provides 80% of the total estimated project cost.
- The North Carolina Department of Transportation (NCDOT) provides 10% of the total estimated project cost.
- Henderson County provides 10% of the total estimated project cost.
- There is **no** cost obligation for the City of Asheville other than administrative expenses.

Con:

- The City of Asheville is responsible for administrative expenses including staff time to oversee the project.

The total estimated project cost is \$390,523, with 80% or \$312,419 coming from Federal funds, 10% or \$39,052 coming from State funds, and 10% or \$39,052 coming from Henderson County. There is no direct fiscal impact to the City of Asheville, however the City's cost of administering the project is not recovered.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into an agreement with the NCDOT to provide a Section 5307 Capital Grant in

the amount of \$39,052 to be used for the State match to purchase two Compressed Natural Gas (CNG) replacement buses for Henderson County's transit system; and adopt the associated budget amendment.

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F. RESOLUTION NO. 11-237 - RESOLUTION ACCEPTING COOPERS HAWK DRIVE AS A CITY-MAINTAINED STREET

Summary: The consideration of a resolution to accept Coopers Hawk Drive as a city-maintained street in a recently annexed area of the City of Asheville.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The Coopers Hawk Drive Annexation area was approved by City Council on October 26, 2010, via Ordinance # 3911 with an effective date of November 30, 2011.

Coopers Hawk Drive from Ramble Way to its dead-end is a privately-maintained street that has an average width of 24 feet with 24-inch curb and gutter, a length of 0.57 mile, and a right-of-way width of 50 feet. A 5-foot back of curb sidewalk also exists along the entire length of the street.

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

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2011-12 Strategic Operating Plan by accepting street infra-structure to help support the healthy growth of the City. In addition, this action complies with the amended Annexation Services Plan that was approved by City Council on October 26, 2010 (Resolution # 10-233).

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the street.
- The street provides access and connectivity in a well-established residential community.

Cons:

- The initial cost to accept the street is about \$800 in needed repairs.
- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

The initial cost to accomplish needed repairs is about \$800 and the funds are included in the current operating budget of the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the street.

Staff recommends that City Council approve a resolution to accept Coopers Hawk Drive as a city-maintained street.

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G. ORDINANCE NO. 4040 - BUDGET AMENDMENT TO BUDGET U.S. DEPT. OF JUSTICE BULLETPROOF VEST PARTNERSHIP REIMBURSEMENT FUNDS

Summary: The consideration of a budget amendment, in the amount of \$9,037, to appropriate Department of Justice Bulletproof Vest Partnership reimbursement funds for the purchase of police patrol safety equipment.

The Asheville Police Department currently participates in the Department of Justice Bulletproof Vest Partnership reimbursement program. This program is designed to off-set the tremendous cost involved in purchasing bulletproof vests for police officers. During the current fiscal year, the City of Asheville has collected \$9,037 from the Department of Justice Bulletproof Vest Partnership reimbursement program. Adding these funds into the (police) Bulletproof Vest Partnership safety equipment budget line would assist in the purchase of additional bulletproof vests for Asheville Police officers.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pro:

- Reimbursement revenue to cover the rising cost of bulletproof vests for Asheville Police Officers

Con:

- None noted.

This budget amendment is fully funded by federal grant funds; therefore there will be no additional expense to the City's budget.

City staff recommends City Council adopt the budget amendment in the amount of \$9,037 to appropriate Department of Justice Bulletproof Vest Partnership reimbursement funds for the purchase of police safety equipment.

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H. RESOLUTION NO. 11-238 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

ORDINANCE NO. 4041 - BUDGET AMENDMENT TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE, EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds under the Edward Byrne Memorial Justice Assistance Grant (JAG) program local solicitation; and the associated budget amendment in the amount of \$71,706.

The City of Asheville has been awarded a grant from the Department of Justice in the amount of \$71,706 to be shared with the Buncombe County Sheriff's Department. The Asheville Police Department (APD) and the Buncombe County Sheriff's Department have signed a Memorandum of Understanding with the City of Asheville serving as the administering agency. There is no local grant match and the City of Asheville's portion of the grant is \$52,140. The purpose of the grant program is to replace outdated speed measuring devices and enhance traffic safety and speed enforcement efforts. The North Carolina Justice Academy, Speed Measuring Instrument Committee is systematically phasing-out the speed measuring devices currently used by APD. This decision has caused APD to seek grant funding to replace nearly \$140,000 in APD speed measuring equipment that will no longer be approved for use in North Carolina.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Grant revenue will assist in replacing outdated speed measuring devices.
- Enhanced community traffic safety and speed enforcement capability.
- No local match required.

Con:

- None noted.

This budget amendment is fully funded with grant revenue with no local match required.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the Department of Justice for the grant monies; and (2) the associated budget amendment, in the amount of \$71,706.

**RESOLUTION BOOK NO. 34 – PAGE 218
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**I. RESOLUTION NO. 11-241 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO ACCEPT GRANT FUNDS FROM THE U.S. DEPT. OF JUSTICE
COPS HIRING PROGRAM**

**ORDINANCE NO. 4042 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF
JUSTICE COPS HIRING PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to accept grant funds from the U.S. Department of Justice COPS Hiring Program (CHP) in the amount of \$711,255; and the associated budget amendment in the amount of \$118,543 to budget funds that will be spent and reimbursed in FY 2011-12.

The City of Asheville has been awarded a grant from the U.S. Department of Justice COPS Hiring Program (CHP) in the amount of \$711,255. This grant will allow the Asheville Police Department (APD) to hire 5 police officers to support ongoing crime prevention efforts at the walkover access to Hillcrest Apartments, suppress group and gang related violence in public housing areas in support of the Focused Deterrence strategy and engage youth through Police Activities League (PAL) activities. The grant amount will provide full funding for the salaries and fringe benefits for 5 police officers over three years. In the fourth year, the City will be responsible for absorbing this cost in its General Fund budget.

Between January and June 30, 2012, staff anticipates that the City will spend \$118,543 for these five additional police officers. Therefore, the City's General Fund budget is being amended to reflect this expense and the associated grant revenue. The grant revenue and the expenses associated with the 5 officers for subsequent fiscal years will be included in those years' adopted General Fund budgets.

This action conforms to the City Council's Strategic Operating Plan under Fiscal Responsibility. Goal I, Objective 1: Identify resources for strategic initiatives and create meaningful performance measures for programs and services; and Safe. Goal I, Objective 1: Implement strategies to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime.

Pro:

- Federal CHP monies to cover salary and fringe benefits for 5 police officers for three years.

Con:

- \$215,000 increase to COA operating budget at the beginning of the fourth year.

In hiring the 5 police officers, the City of Asheville will receive \$711,255 in salary and fringe benefits from the CHP over three years. The City will absorb \$215,000 in salary and fringe benefits for the 5 police officers beginning in the fourth year.

City staff recommends City Council adopt (1) the resolution authorizing the City Manager to enter into an agreement with the Department of Justice COPS Hiring Program for the grant monies in the amount of \$711,255; and (2) the associated budget amendment, in the amount of \$118,543 to budget funds that will be spent and reimbursed in FY 2011-12.

When Councilman Smith asked about how we will be able to sustain funding these new officers in the future, City Manager Jackson said that this is something that will have to be planned for and we must continue to build jobs and tax base to meet these needs. We will have to continue to be frugal and find ways to save money and plan to absorb this into our budget in the future.

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

III. PRESENTATIONS & REPORTS:

A. SISTER CITIES UPDATE

Mr. Rick Lutovsky, President of Asheville Sister Cities Inc. (ASCI), introduced Mr. Russ Martin, who presented the sign agreement from Valladolid and gifts from Mayor Gonzalo Escalante Alcocer. He then introduced Mr. Gwen Hughes, Special Projects Coordinator for ASCI. Mr. Martin introduced Ms. Karon Korp, Valladolid Chair, who provided a report on the Valladolid delegation trip.

Ms. Korp said that memories, new friendships and life changing experiences were brought back by the group of delegates who traveled to Valladolid the week of November 17-23rd, 2011. The timing could not have been more perfect, as all of Mexico celebrated their Revolution and independence with style, decorations and parades. The purpose of their visit was multi-faceted, and much was accomplished to further our sister city relations in many areas.

A highlight of the trip was the reaffirmation of our formal agreement with Valladolid Mayor Gonzalo Escalante Alcocer who warmly received the group, with details for the signing smoothly orchestrated by former Mayor Russ Martin, an official envoy of Mayor Terry Bellamy. In attendance at the reaffirmation, along with the delegation, were the Director of International Relations for the State of Yucatan, a representative of the American Consul General's office, and a representative from the Mexican Embassy.

A formal Proclamation from Mayor Bellamy was delivered, and gifts were exchanged. The speakers – which also included the Yucatan government representatives, Rick Lutovsky, ASCI President, and Tom Jones, Chair in Valladolid - emphasized to the large audience present the importance of the relationship between Valladolid and Asheville, and the concerns the two share in common: business development, education, tourism, and the vitality of our two cities. Later in the evening, the delegation was hosted by the City of Valladolid at an impressive dinner at the Casa de los Venados, given by John & Doriene Venator in their 18,000 sq. ft home, featuring the largest collection of Mexican folk art in the country. The evening continued with the crowning of the Revolution Queens, and once again, each speaker on the stage spoke of Asheville and our relationship, as thousands in the street waved and applauded, and our delegation sat front row, proud to represent our city.

Another highlight of the visit were the connections made between Shelley White, Senior Executive for Workforce Development at AB Tech, and Raul Mendoza, Director of ITSVA in Valladolid, along with his Senior Executives Gilberto Diaz and Hector Aguilar. Shelley presented Director Mendoza, Gilberto and Hector with gifts from AB Tech, and a personal letter from Dr. Hank Dunn, with new objectives for exchanges between the institutions. Two college students from our area accompanied the delegation, an initiative of ASCI's focus on youth: Angelica R. Adkins, from AB Tech, and Tykara Young, from Warren Wilson College. Earlier in the year, ASCI's board approved scholarships to assist the students with their expenses, making it possible for them to participate. At the Annual Meeting in January, you'll have the opportunity to hear their personal stories of the trip.

The Mexican Committee's support for the elementary school in Dzitnup made an incredible impact with this delegation: securing two laptop computers to donate to the school (they had none on premise) and bringing books, school supplies and Pen Pal letters from Isaac Dixon Elementary school, thanks to the help of Spanish Teacher Fania Franklin and her students. New member Louis Lieb visited Dzitnup for the first time, along with his friend Marilyn Cain, and was instrumental in getting the letters and books to bring along. Jennifer Hill donated supplies, and Lynn Eddy gave support for the purchase of new books also given to the school. While at Dzitnup, the group visited with each classroom and were enthusiastically greeted by the many students, in addition to being presented with 90 pen pal letters to bring back to students in western North Carolina. Before leaving, several of the students performed a traditional dance that had the whole group enchanted.

On the ground in Valladolid, Tom and Kathie Jones, along with the help of Jane Goldthwaite, put together a tremendous schedule of activities and events for the group. Committee members Francisco Mendoza and Harriet Rich were also instrumental in organizing the myriad details, and ITSVA provided transportation for the group's many endeavors. Home Hosts Byron and Rebecca Augustin, Ivan and Evelyn de Leon, and Hector and Yolanda Aguilar made their Asheville guests feel welcome, and took part in many activities. Luis Calcaneo, Director of Tourism, showed off the new Office of Tourism in the Palacio Municipal, and looks forward to hosting more visitors from our area!

Gwen and Carroll Hughes made their 6th trip to Valladolid, and enjoyed reconnecting with old friends. As Special Projects Coordinator for ASCI, Gwen was instrumental in the planning as well. Dona Chela, who visited us in August was thrilled to see her Asheville friends and show off her city. Most of the group stayed at Casa Hamaca (you'll recall the September auction item of three free days, which came in handy for Russ and Karon) and owner Denis Larsen could not have been more accommodating. A new English Library has been created in Valladolid, in space provided by Casa Hamaca, and many of the books brought by the group were donated to their ambitious efforts.

Several years ago ASCI partnered with LEAF to hold a fund raising event to purchase instruments for the X'ocen performance group, Laboratorios de Teatro Campesino e Indigena. With ongoing support by Tom and Kathie Jones, and a recent grant from the LEAF Foundation,

the group has grown by leaps and bounds, and now features as many as 200 performers from surrounding areas in the Yucatan: Dzitnup, Nohzuytun, Tikuch, Xuilub, X'ocen, and Valladolid, and from Quintana Roo: San Silverio, Yalchen, and Tulum. The outstanding performance illustrates a day in the life of a community, and the delegation was quite impressed with the breadth and scope of the presentation. It is a goal of the Valladolid committee to bring a portion of the group here in 2012 to participate in the October Lake Eden Arts Festival. At the closing of the performance, the actors gave a tribute to Tom and Kathie Jones for their support on behalf of the group.

It's impossible to visit the Yucatan without seeing the breathtaking sites of the ancient Mayan realm, and the delegation were guests of Raul Mendoza, from ITSVA, as they toured Chichen Itza and learned more about this incredible site. Author and ex-pat Byron Augustin, now living in Valladolid, served as tour guide of the site called Ek Balaam, which lies just north of the city.

Finally, in breakout sessions, the group gathered with their Valladolid counterparts to talk about our many joint projects, student and teacher exchanges, and our desire to host a delegation from Valladolid next year. The group spent their last night celebrating at the Hacienda Oxman, swimming in the deep cenote there, and dancing to a wonderful seven piece Mariachi band.

To say the delegation was a success would be an understatement. Whirlwind, definitely applies. The sights, people and culture of this marvelous colonial city weave their magic upon a visitor, leaving an indelible imprint.

On behalf of City Council, Mayor Bellamy thanked the delegation very much for their outstanding representation of Asheville

B. ONE-YEAR UPDATE ON OPENING OF HILLCREST PEDESTRIAN BRIDGE

Interim Police Chief Wade Wood outlined the following points regarding the one-year update on the opening of the Hillcrest Pedestrian Bridge: (1) The Hillcrest walkover bridge has been open for one year. The second six month period has shown a decrease in activity leading to fewer calls for service to police, and a decrease in fiscal impact from the first six month period; (2) 15 police calls for service from June to November 27, 2011, down from 75 during the first six months; (3) 11.3 hours of police service from June to November 27, 2011, down from 57.2 during the first six months; (4) \$282.50 for 11.3 hours, down from \$1,429.50 during the first six months; (5) NCDOT opened the bridge on December 2, 2010; (6) Progress Energy installed a street light at the bottom of the stairs at Roberts Street during July 2011; (7) Nuisance court participants performed major clearing around the sidewalks and stairs during August 2011; (8) City Council approved a vegetation removal agreement with the NCDOT during September 2011 (Resolution # 11-201); (9) Progress Energy installed street lights along the sidewalk during November 2011; (10) Target date to begin vegetation removal is January 2012; (11) Vegetation removal will only take place within public right-of-way; (12) The vegetation will be mulched and left on site; (13) City staff will verify boundaries during November and December 2011; (14) City staff will clearly mark the vegetation removal boundary and the trees that should **not** be removed; and (15) NCDOT will make additional repairs to the existing fencing when the vegetation removal process is completed.

Efforts to maintain cleanliness, adequate lighting, and secure fencing have added significantly to the positive outcomes relating to safety and access. It is imperative that these things continue in order to prevent the area from becoming problematic in the future. This has been a successful first year due to the partnership of the NCDOT, City Engineering and Police.

The fiscal impact as noted above, from June through November 27, police service totaled 11.3 hours at a cost of \$282.50.

Councilman Smith thanked Interim Chief Wood for their work on this re-opening.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

RESOLUTION NO. 11-242 - RESOLUTION TO APPROVE AMENDMENTS TO THE 2010 AND 2011 CONSOLIDATED ANNUAL ACTION PLANS

Director of Community Development Jeff Staudinger said that this is the consideration of three substantial amendments (Homeward Bound, Housing Assistance Corporation and Western Carolina Community Action) 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. The new total grant will be \$83,203.

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. The new total grant will be \$445,000.

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). There is no change proposed to the total grant amount.

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 Housing and Community Development Committee and Asheville Regional Housing Consortium agree with this recommendation.

The draft Action Plan amendments directly relate to the Council's Strategic Goal of "Affordable."

Pros:

- 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 approve the proposed amendments to the 2010 and 2011 Consolidated Annual Action Plans.

Mayor Bellamy opened the public hearing at 5:40 p.m.

Rev. Christopher Chiaronmonte spoke against providing funds to Homeward Bound as he felt they are taking away funds of those that need it.

When Rev. Lisa Landis wondered if these funds could go to different organizations, Mayor Bellamy responded that these organizations applied for funding.

Mr. John Spitzberg, former social worker for A-Hope, felt that some of the programs they provided are no longer in existence today and explained how the City should be funding one-day shelters.

Dr. Milton Byrd spoke about how this is structured vs. the flow of how you see that type of social environment move.

A man was opposed to funding any of the organizations as he felt the funds would be used for salaries.

A woman was concerned that some people do not know how to navigate the system to the extent needed to access these funds.

A man felt that there is no temporary housing in this community that is not religious based.

Mayor Bellamy closed the public hearing at 5:54 p.m.

Mayor Bellamy said that Homeward Bound has a commitment to housing people using the Housing First model and they have case managers to counsel people who are placed in homes. Even though the City does not fund the Salvation Army or the WNC Rescue Mission, they are partners in the need to house the homeless.

Councilman Bothwell said that the CDBG & HOME funds are intended to provide a certain type of housing and are not used for programming. While we do not have enough resources in the City to help the homeless, churches step forward to also put families in homes. They are organized and have many volunteers and donors to assist.

Councilmen Smith, Davis and Hunt spoke in support in Homeward Bound, noting a lot of people work closely together to address the needs of the homeless.

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

Councilman Hunt moved for the adoption of Resolution No. 11-242. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 34– PAGE 220

V. UNFINISHED BUSINESS:

A. SECOND READING OF 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

City Attorney Oast said that in the interim, between the November 22 Council meeting, where this matter was first presented and voted on, and the second reading scheduled for December 13 several questions have come up. The following memo will attempt to address them (City Exhibit 4):

Procedural Issues. The public hearing on this conditional use permit application was held at the November 22, 2011 meeting of City Council. The public hearing was quasi judicial, and was closed after receiving presentations and comments on November 22. A motion was made to approve the project as recommended by staff. The motion passed on a 4/3 vote.

North Carolina law provides that ordinances or actions having the effect of an ordinance must pass by a two-third's majority of Council in order to be finally adopted on the date on which they are introduced. Because the Aventine project failed to achieve this two-thirds majority, a second reading is required. By operation of the statute requiring the second reading, the matter is still pending before Council on the motion made at the last meeting. A motion to adopt on second reading may not be legally required, and the Mayor may simply call for a vote. However, a motion to approve the project would not be out of order.

Between the November 22 meeting when the matter first came before Council, and this December 13 meeting, two new members of Council have taken office. Similar issues have been addressed by the North Carolina courts. Based on those cases, it appears that the new board may vote on this matter, provided the new members have had an opportunity to review the minutes and any other material presented. In this case, both new members were present at the public hearing on November 22, and have had an opportunity to review the information presented, as well as to consult with staff as to procedural matters.

In connection with the second reading, Council may ask questions of staff or other witnesses who appeared at the public hearing. In fact, at the previous meeting, Council indicated that there were some aspects of the project as to which further information was desired, and we have asked the applicant and staff to be prepared. While it would be appropriate for the staff and/or applicant witnesses to respond to Council questions (especially since there are new members of Council), the public hearing has been closed without continuation, and reopening it for the receipt of additional substantive evidence may create some due process issues as to lack of notice.

Findings/Conclusions Based on Record. As he advises Council at every conditional use permit hearing, Council must base its decision on the information received at the public hearing, and must make its own findings as to the criteria applicable to conditional use permits. Accordingly, Council may not consider information not in the record, or not relevant to the required determinations. At the November 22 meeting, information was presented as to several issues that, in his opinion, is not clearly relevant to the matters that Council should consider. These include:

1. Voluntary Annexation. While certainly an issue of importance to Council, the willingness of the applicant for the Aventine project to pursue voluntary annexation of the property should not enter into Council's consideration.

2. Ownership of the Property/Developer. Conditional use permits run with the land, and will be binding on whoever owns it now or in the future. Council's deliberations should be without regard to the current or future ownership of the property, or who the proposed developer is.

3. Financial Ability. There was some information presented that the developer has obtained financing, and is able to proceed with the project upon approval. This should also not enter into Council's consideration. Not only does it not bear on any of the required findings, but circumstances could change such that the developer is not able to proceed. Under the UDO, the developer has up to two years to begin the permitted use, or the permit expires.

Proposed Order. The applicant has prepared a proposed order, which he provided to Council. This document may be viewed as the applicant's legal argument for why the conditional use permit should be approved. In the past, when there has been a second reading for conditional use permits, he has used the interval between the first and second readings to prepare and submit similar orders for Council's consideration. This serves the dual purposes of summarizing the evidence on each issue, and clarifies for Council what is being voted on. He has reviewed the proposed order and has no substantial disagreement with it, especially since there was no information presented in opposition to the project. However, Council is the decision-maker, and as with staff's recommended decision, Council may disregard some or all of the proposed findings and conclusions, and should make its own decisions as to each of the required findings. Procedurally, Council may discuss and vote on each determination separately.

Must Satisfy All Required Findings. Finally, in order for a conditional use permit to be issued, the applicant must meet each of the seven criteria outlined in the ordinance. If the application fails to meet one of those criteria, the conditional use permit fails.

When Councilman Davis moved for adoption of the 2nd reading of Ordinance No. 4036, City Attorney Oast said Council did not need a motion or a second but a motion is not inappropriate.

Mr. Will Buie, Civil Engineer, used an aerial (attached to City Exhibit 3) photograph to show the vegetative screen that would remain in place. Using a rendering of the proposed site plan, he showed the distance between the edge of the retaining walls and the edge of the river. He said it's about 300 feet at the southernmost portion and about 55 feet at the closest portion.

The precedent for the retaining wall is across the river at Biltmore Park Town Square. They have a retaining wall at that location which is a little over 60 feet high.

In response to Councilman Hunt, Mr. Buie said that the trees along the riverfront are much higher than their proposed retaining wall. He did not have a sense of how tall the many trees were along the proposed retaining wall.

Councilman Pelly said that he has reviewed the staff report, read the Planning & Zoning Commission minutes and was present for the public hearing on November 22. He understood that seven conditional use standards must be met; however, he noted (as staff did) that the missing element for conditional use standard five was no affordable units in the 312 residential development. At the Planning & Zoning Commission meeting, Mr. Buie said that the rents would range from \$1,100 for a one-bedroom apartment to \$1,700 for a four-bedroom apartment. At the Nov. 22 Council meeting, the developers said the needs of their investors preclude allowing for the inclusion of affordable units as this would cause the project financially unsustainable. At a time when (1) borrowing costs and interest rates are at the lowest they have been in generations; (2) land values and labor costs are depressed; and (3) another south Asheville apartment complex (Weirbridge Village) found it was possible to include affordable units, he felt that to allow this development without a commitment to affordable units injects unpredictability into this and future developments. We need to set an expectation standard for all who would develop on this scale that affordability has to be a part of the mix. By by-passing the wishes in the City's Comprehensive Plan, the express wishes of the Planning & Zoning Commission and of City Council, he felt the developer has not met all seven standards required. He could not support the project.

Councilman Bothwell was also concerned about the lack of affordable units, but in addition to that, he was unclear how the project met the green and sustainable goals of the City. He noted that the developer was planning to meet the Energy Star Version 2.5; however, after an extensive internet search he could not find that rating. He was also not clear that a land-locked development with no pedestrian egress and no transit connection can be green.

In response to Councilman Bothwell, Mr. Buie said that the energy star process relates more than just to the appliances, as it also relates to the type duct work in the ceiling to make the home as energy efficient as possible. The developer has made a commitment to meet all the requirements of that particular certification; however, they have asked they not go through the certification process as the inspection process is extremely expensive.

Councilman Hunt agreed with Councilman Pelly as he was interested in the development pattern for the City as well. The units are well clustered and it is proximate to a well-designed Urban Village but was disappointed the development is separated from that without a bicycle or pedestrian connection. If the project does not move forward, he would be concerned because there is a demand for rental units in this price range in this community. He said that rental housing, in the developer's committed range, is in high demand. Concerns he would have if we don't approve this project is (1) this project may move outside the City's zoning jurisdiction that would result in fewer requirements that are consistent with the City's standards; and (2) the demand for single-family and duplex housing might be developed further out on the rural landscape and further fragment and degrade our rural landscape. When the Biltmore Park vision came together he envisioned a walkability connection, with more green building, more affordability and more compactness in development. It's that kind of development pattern that makes Asheville stand out. He was concerned that this development is much like suburban residential semi-sprawl development that occurs typically in other places around the country. He felt we are missing an opportunity to add to Asheville's strength if we move forward with this development. However, in considering what our role is in this conditional use permit, he felt that the development meets the specific standards laid out, but there are subjective goals. He felt Council should adopt an ordinance that clarifies their goals in terms of affordability, green

building, perhaps visual screening, strong stormwater regulations, etc. for predictability for developers. He believed that predictability is a key component of smart growth.

In response to Councilman Hunt, Mr. W. Louis Bissette, attorney representing the developer, said that the developer has committed to rents that start at \$800 a month (noting that the City's workforce housing range starts at \$800, which is about \$200 below the maximum workforce housing range). City Attorney Oast said that commitment can and will be made a part of the conditional use permit.

In response to Mayor Bellamy, when Community Development Director explained the definition of affordable housing and workforce housing, Mr. Bissette said the figures from the City say the maximum workforce housing rate for a 1-bedroom is \$1,063, a 2-bedroom is \$1,390. The Aventine 1-bedroom starts at \$825; 2-bedroom starts at \$1,000; and a 3-bedroom starts at \$1,295. Mr. Buie said that there are 152 1-bedroom units, 115 2-bedroom units and 45 3-bedroom units.

Mr. Paul Szurek explained how workforce housing is needed in this area.

Councilman Davis appreciated the workforce housing rents; however, he wished the project was more pedestrian connected and transit oriented.

Councilman Smith felt that the Council's idea of affordability and sustainable are good questions to discuss at Council's retreat. Because of that, he was concerned about setting a precedent of defining "sustainability" and "exceptional" in Finding No. 7. He was pleased the developer was able to get the 1-bedroom units down to the \$800 price point.

In response to Councilman Smith, City Attorney Oast said that if Council would like the units to be in the workforce range, the Order can be re-drafted to accomplish that; however, he noted that incorporated in the Order is the site plan that contains information about the number of units that are 1, 2 and 3-bedroom.

There was a brief discussion, initiated by Councilman Hunt, regarding the duration of the commitment of workforce housing rents. Mr. Bissette said that the developer is committed to these initial rents as long as he can. Vice-Mayor Manheimer felt if we are going to require developers to commit to a certain rent for a certain period of time, then the developers need to know about that ahead of time.

Councilman Pelly was more comfortable with the workforce rent range starting at \$825 and would be able to support the project.

Councilman Davis moved to call the question. This motion was seconded by Vice-Mayor Manheimer and carried on a 6-1 vote, with Councilman Pelly voting "no."

On the original motion to approve the Level III site plan (subject to the conditions outlined on November 22 in the motion), and at the request of Councilman Smith, it was the consensus of Council to have Finding No. 7 be amended to read: "The Project as proposed, is consistent with developing the property by utilizing a number of green building techniques, including Energy Star components and providing recycling opportunities to tenants, water conservation and best management practices." With that amendment, the motion carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

B. CONSIDERATION OF A CHARITABLE CONTRIBUTION COMBINED CAMPAIGN FOR CITY OF ASHEVILLE EMPLOYEES

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a request to continue the consideration of charitable contributions combined campaign for City employees to the City Council meeting on February 14, 2012.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina (ESNC) requested that the City consider expanding its campaign to be a "combined campaign," or one that includes additional federations, which are "umbrella" organizations that have multiple independent, charitable agencies who all work on a specific area of focus as members.

The Finance Committee directed staff to gather further background information about a combined campaign, which was shared with City Council at its October 25, 2011, meeting. At that meeting, Council directed staff to work with representatives from the United Way of Asheville & Buncombe County and EarthShare North Carolina to develop a mutually acceptable proposal for a combined campaign in Asheville and to report back to Council on December 13, 2011.

Staff has been in communication with these two groups over the last several weeks to develop a proposal for further City Council consideration. The stakeholders involved in this process are requesting that consideration of this item be continued until February 14, 2012, to allow additional time to fully evaluate and develop a proposal. The group anticipates bringing forward any major policy issues to the Finance Committee at its January meeting, if necessary.

City staff recommends City Council continue the item to February 14, 2012.

Councilman Hunt moved to continue this matter until February 14, 2012. This motion was seconded by Councilman Bothwell and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-243 - RESOLUTION WAIVING THE STREET CLOSING FEE FOR THE CLOSING OF A PORTION OF COLLEGE STREET NECESSARY FOR THE BUNCOMBE COUNTY LIFE SAFETY ADDITION

Public Works Director Cathy Ball said that this is the consideration of a resolution to waive the street closing fee for the closing of a portion of College Street necessary for the Buncombe County Life Safety addition.

Buncombe County has petitioned City Council to permanently close a portion of College Street for the purpose of facilitating the Buncombe County Life Safety, and requests waiving the \$4,000.00 street closing fee.

City staff supports waiving the street closing fee as it supports a governmental public benefit.

This request supports Council's strategic plan improving public safety for our citizens and develop partnerships with the County. She noted that Buncombe County has contributed \$1 Million for renovation of the Civic Center.

Pro:

- Supports a benefit to the community in that the Life Safety addition to the Buncombe County Court House will provide safer access.

Con:

- Expenses are incurred by the City, for staff time, advertising and public notification.

The street closing fee, which includes public notification and advertising, is \$4,000. Approximately \$1,800 of this amount includes cost of advertising and notification required for the closing. The remaining amount covers staff time in processing the request.

City staff recommends City Council waive the street closing fees for a portion of College Street for the purpose of constructing the Buncombe County Life Safety addition.

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

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

Councilman Smith moved for the adoption of Resolution No. 11-243. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 221

B. RESOLUTION NO. 11-244 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE'S PARTICIPATION IN THE N.C. STATE TREASURER'S OTHER POST EMPLOYEE BENEFIT FUND

RESOLUTION NO. 11-245 - RESOLUTION SUSPENDING RETIREE HEALTH CARE COVERAGE FOR CITY EMPLOYEES HIRED AFTER JUNE 30, 2012

Director of Finance & Management Services Lauren Bradley said that this is the consideration of resolutions (1) authorizing the City of Asheville's participation in the North Carolina State Treasurer's Other Post Employment Benefit (OPEB) Fund and (2) suspending retiree health care coverage for City employees hired after June 30, 2012.

Employee compensation packages for active workers can sometimes include healthcare and similar benefits following the completion of active service. Generically, such benefits are described as other postemployment benefits (OPEB) to distinguish them from pensions.

For many years, employers have been required to recognize expenses for the cost of pension benefits as those benefits are earned by employees during their active service life. The Governmental Accounting Standards Board (GASB) extended this same requirement to OPEB effective fiscal year 2008. This change in accounting standards focused attention on the costs of OPEB. The real issue is not the accounting for OPEB, but rather the underlying budgetary and funding challenge that those accounting standards highlight. Meeting this challenge requires local governments to ensure that any such benefits they offer are sustainable over the long term.

State and local governments are required to determine the "actuarial accrued liability" (AAL), or the current value of future OPEB benefits that have been promised to and earned by employees to date. To measure future costs, several factors are taken into account including the number of employees that are expected to receive the benefit, length of time employees will work, life expectancy for employees after retirement, and health care cost increases. The City of Asheville completed this analysis in October 2011, which showed that as of December 31, 2009, the City's AAL was \$33,846,854.

State and local governments are also required to determine an "annual required contribution" (ARC) that is actuarially determined and includes amounts sufficient to cover the current year's OPEB costs and the accrued liability amortized over 30 years. By including payment for the amortized unfunded liability, the ARC will likely be substantially higher than annual pay-as-you-go payments. As of December 31, 2009, the City's ARC was \$2,995,947.

These accounting standards create an impetus for policy decisions surrounding how to fund the City's existing OPEB liability and how to address the City's benefits structure for future hires to reduce the growth of the liability over time. The policy decisions associated with this report do not entail changes to retiree health care coverage for existing employees or retirees.

OPEB Funding

The City has partially addressed the ARC in the past through pay-as-you-go funding for current retiree health care costs. The table below illustrates the City's pay-as-you-go employer contributions for OPEB costs for the fiscal year ending June 30, 2011, along with the net OPEB obligation at year end. The net OPEB amount represents the City's cumulative total OPEB obligation, including payments for the amortized unfunded liability.

Column 1	Column 2	Column 1 - Column 2	Column 4	Column 3 + Column 4
Annual OPEB Cost	Employer Contributions made for FY 11	Increase in Net OPEB Obligation	OPEB Obligation at Beginning of FY 11	Net OPEB Obligation at end of FY 11
\$ 3,008,762	\$ 2,316,990	\$ 691,772	\$ 2,334,093	\$ 3,025,865

Since FY 2009, the City has reserved a portion of its assets in the Internal Services Fund – the fund designated to account for its self-insurance programs – to “prefund” the current net OPEB obligation. As of June 30, 2011, the Internal Services Fund had enough cash to fully fund the net OPEB obligation in the amount of \$3,025,865.

If a local government chooses to fund in whole or in part its OPEB liability, GASB requires those funds to be deposited in an irrevocable trust fund. Legislation was approved in 2007 by the North Carolina General Assembly that allows local governments to invest OPEB funds with the State Treasurer in an irrevocable trust. Any monies placed in this trust can only be used for the purpose of the trust – retiree OPEB benefits – and the monies are free and clear from the City's creditors. These funds cannot be used for any purpose other than the purpose of the OPEB plan, even in emergencies.

Any OPEB monies invested with the State Treasurer will be allowed to be invested similarly to the Retirement funds, providing for a better return on investment than the City may be able to achieve on its own. This higher investment return positively affects the OPEB calculation by reducing the OPEB liability. For these reasons, it is staff's recommendation that the City of Asheville participate in the North Carolina State Treasurer's OPEB Fund with an initial deposit of \$3,025,865.

During FY 2012 and beyond, the net OPEB obligation will continue to grow. Currently, the City does not budget an appropriation to fund the ARC beyond current year expenses, as illustrated in the previous table. To address ongoing funding, staff is recommending that the City appropriate and incrementally increase a budget allocation to address the unfunded portion of the ARC over four years. For example, the City would budget \$200,000 in FY 12-13 for OPEB, \$400,000 in FY 13-14, \$600,000 in FY 14-15 and \$800,000 in FY 15-16 for the OPEB obligation. This step-up in annual appropriations over a four year period would place the City in the position at the end of the fourth year of fully funding the annual required contribution. The combination of increased annual contributions along with investment earnings from the trust will provide assets for paying OPEB costs and place the retiree health program on a sound, sustainable financial foundation.

Benefits Structure

Given the magnitude of OPEB obligations, many governments are exploring ways to modify health care options, including raising premiums, copayments, coinsurance rates, and the

like. Over the last two years, the City of Asheville has evaluated similar changes and will continue to bring forward options for City Council consideration during the FY 2013 budget cycle. For the purpose of this report, however, staff is not recommending changes to the health care plan for existing employees and retirees.

Instead, staff is recommending that City Council suspend retiree health insurance benefits for all employees hired after June 30, 2012. While this action may impact recruitment and retention of new employees, it would significantly limit the future growth of the City's OPEB obligation and provide an opportunity for the City to ramp up its annual funding allocation. The City could consider reinstating the OPEB benefit for employees hired after June 30, 2012 at a later date.

The City Council Finance Committee reviewed this item at its meeting on September 13, 2011, and recommended that it move forward for consideration by the full Council.

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

Pros:

- Prefunding the OPEB liability tends to substantially reduce long-term costs as the investment of fund assets produces earnings that help finance OPEB obligations.
- Prefunding mechanisms promote intergenerational equity because they set aside funds for benefits earned today but not payable for many years into the future.
- Prefunding could have a positive impact on the City's credit worthiness as measured by rating agencies.
- Provides a phased plan for addressing the City's unfunded portion of the OPEB liability.

Cons:

- Restricts the use of funds so that they can only be used for OPEB.
- This action will move assets from the city's government-wide financial statements to a trust, which will result in a decrease in net assets; however, this action has no impact on the General Fund's unrestricted fund balance.
- Eliminating retiree health care coverage for future hires may impact the City's ability to recruitment and retention efforts; this decision could be revisited at a later date if and when economic conditions improve.

As of June 30, 2011, the Internal Services Fund had enough cash to fully fund the net OPEB obligation in the amount of \$3,025,865. After funding the net OPEB liability, as of June 30, 2011, the Internal Services Fund will have \$933,466 in unrestricted net assets. Staff recommends that this amount remain in the Internal Services Fund to fund unplanned expenses in the City's self-insurance programs.

In order to address the growing OPEB liability and the resulting potential long-term impact on the City's credit worthiness and financial sustainability, staff is recommending the following actions: (1) Approval of a resolution authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with a contribution of \$3,025,865; (2) Consensus to direct staff to recommend an annual OPEB contribution to the trust fund in the annual budget cycle such that the City reaches the full annual required contribution in the next four years, and; (3) Approval of a resolution to suspend retiree health insurance benefits for employees hired after June 30, 2012.

Mayor Bellamy stressed that this does not affect current or current retirees. If approved, it would go into effect for employees hired after June 30, 2012.

In response to Councilman Hunt regarding the suspension of retiree health insurance benefits for employees hired after June 30, 2012, Ms. Bradley said that once we have caught up on being fully funded, Council would have the flexibility of applying the benefit retroactively or staff could provide Council with a menu of options or other benefits that Council might wish to consider in its place.

In response to Councilman Bothwell, Ms. Bradley said that would not affect the City being a living wage employer. She said the value of the benefit is not realized by the employee until they actually retire. It's not part of their take home pay or part of their health care coverage they are presently receiving.

Councilman Smith hoped we would be able to restore these benefits after we are fully funded in order to remain an employer of choice in the area.

In response to Councilman Pelly, City Manager Jackson said that the City averages 80 new employees a year. Councilman Pelly hoped we could restore the benefit sooner than later because the longer we wait to reinstate it, the tougher it will be to restore the benefit. He felt it was important for Council to revisit this item in one year to see whether we're in a position to re-establish it.

When Vice-Mayor Manheimer asked if the state has suspended retiree health insurance benefits for new hires, Ms. Bradley did not know; however, she did know that many city and county governments have taken this step to address the unfunded liability that they have already incurred.

Mayor Bellamy noted that this Council cannot bind future Councils so when this is revisited in one year, Council will have an opportunity to see how the payments are being made along with best practices. Ms. Bradley responded that the OPEB contribution will have to become a part of the annual budget discussion to talk about the step-up plan and the City's progress in meeting it.

Councilman Davis moved for the adoption of Resolution No. 11-244, authorizing the City's participation in the State Treasurer's investment trust for local government OPEB funds and related Trust Agreement beginning with a contribution of \$3,025,865. This motion was seconded by Councilman Smith.

When Rev. Lisa Landis asked if City Council participated in the retirement program for the City of Asheville, Mayor Bellamy replied that they do not.

Mr. Don Lillfeld did not support the City turning over their funds to the State as he did not think we can trust the State to safeguard those funds.

Mr. Matthew Byrd did not support trusting the State with the City's mass fund that we could control as a City.

In response to Mr. Karl Katterjohn, Mayor Bellamy said that the City would not be tied into the State's bond rating.

The motion made by Councilman Davis and seconded by Councilman Smith carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 222

Councilman Smith moved to adopt Resolution No. 11-245, to suspend retiree health insurance benefits for employees hired after June 30, 2012, and that this issue be revisited after one year. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 224

C. RESOLUTION NO. 11-246 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MANAGEMENT AGREEMENT WITH FIRST TRANSIT INC. TO MANAGE THE OPERATION OF THE ASHEVILLE TRANSIT SYSTEM

Director of Transportation Ken Putnam said that this is the consideration of a resolution authorizing the City Manager to enter into a management agreement with First Transit, Inc. to manage the operation of the Asheville Transit System.

Since North Carolina law prohibits municipalities from engaging in collective bargaining, the City of Asheville must hire a management company to operate the transit system. The management company is a party to a 13(c) Labor Agreement with the Amalgamated Transit Union Local 128 covering all hourly employees. A collective bargaining agreement between Transit Management of Asheville, a subsidiary of First Transit, Inc., and the ATU Local 128 is in place until December 31, 2011.

The three-year contract with First Transit expired on June 30, 2011. This contract was extended twice and it will expire on December 31, 2011. During these extensions staff released a Request for Proposals with the intent to modify the conditions in the current management contract. The city decided to pursue a new contract to incorporate new insurance and liability protections and improvements to current procedures.

The City issued a Request for Proposals (RFP) on June 9, 2011 and it closed on July 18, 2011. Three proposals were received from the following firms:

- MV Transportation, Inc., Fairfield, California
- McDonald Transit Associates, Inc., Fort Worth, Texas
- First Transit, Inc., Cincinnati, Ohio

The proposals were evaluated by a committee that included four members of staff from various City departments and a member of the Transit Commission. The committee individually evaluated and scored the proposals, then combined the scores. The evaluation process took about four months and numerous meetings to ensure that all aspects relevant to the RFP were considered. During the process, the firms were asked to provide additional information to help clarify questions posed by the committee. The committee received much support from the Legal and Risk Management Departments to help the committee understand the legal, insurance, and liability aspects of the RFP.

The parameters to evaluate the proposals, as delineated in the RFP, were based on the following items:

- Vendor organization including history of the company, organization structure, types of services offered, location of offices, etc.
- Qualifications of the company including number of systems managed, number of contracts, management philosophy, training, procedures, and policies.
- Re-engineering options that would potentially make transit operations more efficient.
- Qualifications of the resident general manager as well as central staff that will provide support to the general manager.
- Additional services, references, legal actions, and fee.

After careful review and consideration of all the evaluation factors and the information provided, the committee recommends First Transit, Inc. to provide management services to the City of Asheville.

If approved by City Council, the City will enter into a three-year contract with the management company that can be renewed for another three periods of one year after agreement between both parties. The project cost will be \$243,869 for the first year with increments of approximately 4% per year.

Base Management Fee	Errors and Omissions Liability Policy	Employment Practice Policies Cost	Worker's Comp. and Employer's Liability cost	Total
\$132,000	\$0	\$9,825	\$102,044	\$243,869

The base fee of \$132,000 and the Employment Practice Policies cost of \$9,825 are already allocated in the FY 2011-12 Transit Administration budget. The Workers Compensation and Employer's Liability costs are allocated in the FY 2011-12 Transit Operations budget. The Errors and Omissions Liability Policy is part of the base management fee.

First Transit, Inc will furnish, through its subsidiary, all management and supervisory services required and necessary for the efficient and economical operation of ATS services under the policies, standards, and procedures established by the City of Asheville.

First Transit, Inc. will provide a resident General Manager and a management support team who shall be responsible for the day-to-day operations of the ATS transit system and have supervisory experience in the following services:

- General transit operations and policies; the management firm is responsible for the day to day operation of the transit system and for developing the policies and procedures to guide transit operation and employees.
- Labor relations; the management firm is responsible for negotiating agreements with the local union, including but not limited to the Collective Bargaining Agreement, day to day labor relations, etc;
- Employment, and training; the management company is responsible for hiring all the employees that operate the transit system, according to their internal policies. The company is also responsible for preparing and implementing a training plan for all the drivers, mechanics, dispatchers, and supervisors. These expenses are part of the operational budget.
- Assistance to city staff with Federal regulations, processes and reporting.
- Routing and scheduling; the company will work very closely with the City of Asheville transportation planning staff to determine the best routes and schedules. The company is responsible for implementing all the operational improvements in the Transit Master Plan Implementation – Phase I.
- OSHA regulations; the company is responsible for complying with the Department of Labor regulations.
- Office management, finance and accounting; the company is responsible for administering and keep all the records related to the pass-through funds that pay for operations and for the day to day administration.
- Risk management, insurance, and claims; the company is responsible for providing timely and accurate information to the COA Risk Management office.
- Equipment and facility maintenance; the management company is responsible for the operation of all equipment and facilities involved in the daily operation, owned by the city.

- Stores and purchasing; the company is in charge of keeping all the parts and inventory owned by the city, in adequate and safe places. In addition, the management company provides its expertise preparing technical specifications for all the equipment bought for transit operations.
- Specialized services under the Americans with Disabilities Act, including specific training to be able to help customers with disabilities.
- Provision of legal counsel in all legal affairs, suits, pleas, and litigation in which the provider has an interest.

The RFP process has given the City the opportunity to include substantial improvements to current procedures, as recommended in 2010. The following improvements will be part of the new contract:

- Improved and enhanced hiring methods according to the procedures established by the city.
- Enhanced training system, including but not limited to: Federal, state and local safety rules and regulations, system policies and procedures, route training, vehicle inspections, safe driving, emergency procedures, passenger assistance techniques, equipment operation, drug and alcohol use policy, preventive maintenance procedures, etc.
- The Resident General Manager is required to complete the Transportation Leadership Development course, which is offered by the Institute of Transportation Research and Education.
- First Transit will perform an environmental audit every three years to ensure that the Environmental Management System has continuity.

New insurance and liability provisions have been added to the contract, and First Transit, Inc will be responsible for providing the following items:

- Employment Practices Liability policy, which provides coverage for employment related claims, such as harassment, discrimination, wrongful terminations, etc.
- Errors & Omissions Liability policy, which is also referred to as “professional liability” and provides coverage for wrongful acts from professional services that might cause a financial loss.
- Worker’s Compensation/Employers Liability policy, which provides coverage to injured workers; paying medical bills and lost wages.

At their December 6, 2011, meeting, the Transit Commission endorsed this action.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- First Transit, Inc. will provide the management services required to keep the transit system functioning properly and efficiently, managing all the aspects related to the operation.

Con:

- None.

The project cost will be \$243,869 for the first year with increments of approximately 4% per year.

Management fee	Errors and Omissions Liability Policy	Employment Practice Policies Cost	Worker's Comp. and Employer's Liability cost	Total
\$132,000	\$0	\$9,825	\$102,044	\$243,869

The base fee of \$132,000 and the Employment Practice Policies cost of \$9,825 are already allocated in the FY 2011-12 Transit Administration budget. The Workers Compensation and Employer's Liability costs are allocated in the FY 2011-12 Transit Operations budget. Staff will request a budget amendment to include this cost in the Transit Administration budget at a future date. The Errors and Omissions Liability Policy is part of the base management fee.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into a transit management agreement with First Transit, Inc. to manage the daily operation of the Asheville Transit System.

Mayor Bellamy said that safety must be the top priority and that the drivers are given the training they need.

In response to Mayor Bellamy, Mr. Putnam said that the contract has been re-written and throughout the process there were many meetings and information sharing between all bidders and staff to make sure we were getting the most important things in the contract, and to also give the City the ability to hold the management company more accountable than we have in the past.

Mayor Bellamy stressed they need to hire the best people available and training them. Mr. Putnam said that provisions relating to that are also in the contract (especially a lot more training opportunities) and the hiring process mirrors our own hiring practices.

Mayor Bellamy urged staff to look at providing bus service to serve MAHEC's new building and the area as whole.

When Councilman Bothwell hoped that we are not pushing our bus drivers to speed to meet schedules, Mr. Putnam responded that safety is the number one concern. In all training sessions, safety is number one and we are trying to be proactive by doing spot checks.

Mr. John Spitzberg urged Council to initiate bus service on Sunday.

Mr. Don Lillfeld was glad to hear safety is the number one priority for the bus drivers and the passengers.

Mr. Alan Ditmore hoped for bus service on Sundays and holidays.

Mr. Charles Rawls relayed an incident where it took someone 2 hours to get to work and 2 hours to return home. He wondered what has been done to address that issue. City Manager Jackson said he would make transit staff available to go over the route schedule with Mr. Rawls.

Ms. Marion Patton felt that if you address the riding needs of a broader population, the people who really depend in it would benefit.

In response to Mr. Matthew Byrd, Mr. Putnam said that the FY 2011 contract with First Transit was \$254,000 and the FY 12 contract with First Transit is \$243,000.

Councilman Bothwell said that because the City receives federal transportation funding, the City must employ union drivers. Because the State prohibits cities from employing union drivers, we have to hire a management company to hire the drivers to drive the buses.

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

Councilman Smith moved for the adoption of Resolution No. 11-246. This motion was seconded by Councilman Bothwell and carried unanimously.

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D. ORDINANCE PROHIBITING CAMPING ON CITY PROPERTY

ORDINANCE PROHIBITING ENCLOSED SHELTERS ON CITY PROPERTY

ORDINANCE PROHIBITING STORAGE ON CITY PROPERTY

City Attorney Oast said that this is the consideration of three ordinances clarifying the use of City property for camping and related purposes.

Recent activities on City property, including parks and right of ways, have revealed issues and uncertainties regarding the use of those areas in certain circumstances. These concerns relate to the actual uses permitted (or not permitted) in those areas, as well as concerns regarding public safety and security.

Most of these issues and uncertainties have arisen in the context of the “Occupy Asheville” movement, which is similar to “Occupy” movements occurring in cities across the country. The movements typically involve a 24/7 presence on public property, or public areas on private property, like Zuccotti Park in New York City. The “Occupy Asheville” group started out in a parking lot on Lexington Avenue, moved from there to the sidewalk in front of the Federal building on Patton Avenue, then to the park area in front of the Biltmore Building, and is now located on City property in front of the City Building.

City parks are subject to a closing time of 10 p.m., by ordinance. Pursuant to City policy, camping is not allowed in City parks. However, the area in front of the City building, while immediately adjacent to a park, is not regularly programmed as a park. Thus, the park closing time and no camping rules do not clearly apply. In other cities, encampments have been forcibly dismantled and there have been confrontations with police, and legal actions with mixed results. The experience in Asheville has been generally cooperative and respectful, with no serious confrontations.

However, concerns have arisen with some activities, notably the use of enclosed tents, proximity of the encampments to business/public entrances for nearby buildings, and presence on or near public right of way. These concerns would exist with any similar use of City property. The concerns relate to the safety and security of members of the public who use the buildings adjacent to the encampments for business purposes such as visiting offices within the building, or using City parks for recreational activities. Special concerns have been expressed by those who must use the buildings at times other than normal working hours, especially employees who work late or on weekends. Concerns have also been expressed regarding damage to vegetation in City parks, and the lack of sanitary facilities.

The ordinances are intended to address these concerns, while recognizing and respecting the rights of assembly and speech, and the right to use public forums for that purpose.

- (a) The first ordinance, Sec. 12-46, clarifies that camping is not permitted on City property, and defines camping to include certain specific activities.
- (b) The second ordinance, Sec. 11-39, prohibits the erection of enclosed structures on public property, and defines enclosed structures to include tents or makeshift shelters that have more than one side.
- (c) The third ordinance, Sec. 11-40, prohibits the storage or leaving of equipment, bags, parcels, or other personal items on City property, and allows the City to remove them.

These ordinances do not prohibit: (a) overnight presence on or occupation of City properties that are not parks, or the public right of way; (b) the use of pop-up tents, umbrellas, or other equipment, as long as that equipment is not left unattended; (c) sleeping on public property, as long as the property remains available for its primary intended use.

In essence, what the ordinances do is clarify that public properties, including parks, remain available for free speech or assembly purposes, but that other activities not essential to the free speech or assembly use do not occur in such a way as to interfere with the use and enjoyment of these properties by others. Unpermitted activities must yield to activities for which a permit has been obtained. As drafted, these ordinances provide that they may be enforced through criminal penalties, a Class 3 misdemeanor.

This action complies with the City Council strategic operating plan in that (1) it promotes safety and security of the public; and (2) it promotes availability of parks and recreational facilities for use by all.

Pros:

- Clarifies permitted activities on public property and right of way.
- Respects rights of assembling and speech.
- Promotes public safety and security.

Cons: None noted.

Adoption of the ordinances is recommended.

Councilman Smith said that since Council has not had time to consult with the homeless service providers to understand better the ramifications of what these ordinances might mean and to allow time for community consideration and review by a Council Committee, he moved to refer these ordinances to the City Council Public Committee for further review. This motion was seconded by Councilman Bothwell.

Councilman Smith noted that the regularly scheduled Public Safety Committee is the 3rd Tuesday of each month; however, new Committee members (which will be appointed later during this meeting) may wish to set a special meeting to review these ordinances. He did note that the Committee meeting is open to the public.

Nine individuals supported referring these ordinances to the Public Safety Committee. Rev. Lisa Landis said that the Detention Center has closed their 24-hour restrooms and asked for approval to locate a Port A Potty on City property in the immediate area.

Nine individuals spoke against referred these ordinances to the Public Safety Committee in that the people need to be heard today and the issues need to be dealt with today.

Councilman Bothwell said that the normal way that changes to our ordinances come to Council is through a City Council Committee. The Committee that oversees policy issues in the

Police and Fire Departments is the Public Safety Committee. He noted that question have been raised by Council about constitutional issues, application of some of the ordinances, definitions of city property, etc. that should be debated at the Public Safety Committee meeting (which is open to the public).

Councilman Hunt explained that the City Council Public Safety Committee is an open meeting made up of three City Council members only. He noted that public comment is allowed.

If this matter is referred to the Public Safety Committee, Councilman Pelly questioned what assurances the Occupy Asheville people would have to continue their current status and would the City consider providing a space for a Port A Potty on City property. Mayor Bellamy responded that by delaying this issue, City staff will continue to use their best judgment and best case scenarios as there is no clear policy direction from Council. Without Council direction and clear expectations of the policies, staff will do conservative enforcement of their interpretation of existing ordinances. Regarding the Port A Potty, there is already a procedure in place giving staff clear direction.

Councilman Davis felt we are selectively enforcing our ordinances, recalling that the homeless have requested space for camping in the City and also recalling that we have had to go to other public properties in the City breaking up homeless camp sites.

Vice-Mayor Manheimer felt that this issue needed a more thorough vetting of the implications of the ordinances before voting, noting that she has been in contact with the City Attorney for clarification of the definition of City property.

In response to Vice-Mayor Manheimer, City Manager Jackson explained what he meant by status quo, i.e., if we are uncertain whether or not the land that is being camped upon is park land, we would not enforce the park curfew.

The motion made by Councilman Smith and seconded by Councilman Bothwell to refer these ordinances to the Council Public Committee carried on a 5-2 vote, with Mayor Bellamy and Councilman Davis voting "no."

Councilman Pelly said that if we do not allow the placement of a Port A Potty on City property for the use by Occupy Asheville until after the Public Safety Committee addresses the issue, we are criminalizing them because there are no restroom facilities for them. He felt we need a short term response until there is a resolution.

Vice-Mayor Manheimer felt it was important for Council to make the rules and apply them equally to everyone.

After a brief discussion, City Attorney Oast said that it's not possible in our ordinances (Section 16-97) to have a Port A Potty on public property except in connection with a permitted event.

Councilman Bothwell said that the restrooms in the Detention Center were open 24/7, with a key from the Magistrate; however, it is now not open after hours. It was the consensus of Council to direct the City Manager contact the appropriate staff to convey Council's question about the possibility of re-opening the public restroom facilities at the Detention Center.

Mayor Bellamy asked for a representative from Occupy Asheville to make contact with City Manager Jackson in order to be advised of the response regarding the Detention Center restroom facilities.

Because the regularly scheduled meeting of the Public Safety Committee would not be held until January 17, Councilman Bothwell, Chair of the Public Safety Committee, called for a

special meeting on Tuesday, January 3, 2012, at 3:30 p.m. in the 4th Floor Training Room in the Municipal Building. He asked Council that if they have other questions they would like brought up at that meeting to forward them to him.

At 8:18 p.m., Mayor Bellamy called a short recess.

E. ASSIGNMENT OF BOARDS & COMMISSIONS MEMBERS/LIAISONS FOR 2012-13

Discussion and appointments were made for the City Council liaison and mandatory seats for Council on the various boards and commissions. City Clerk Burleson has a complete listing of all appointments made.

City Manager Jackson said that he would work with Councilman Pelly in drafting the scope of a new Neighborhood Advisory Committee.

F. RESOLUTION NO. 11-247 - RESOLUTION APPOINTING A MEMBER AND CHAIR TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the term of Charles Worley, as a member and Chairman on the Alcoholic Beverage Control (ABC) Board expired on November 13, 2010.

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

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing William A. Russell Jr. as a member and Chairman.

Councilman Davis moved to appoint William A. Russell Jr. to serve a three-year term, term to expire November 13, 2014, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

Mayor Bellamy said that she has talked with Mr. Ellis about becoming Chairman as he has seniority on the ABC Board.

Councilman Hunt moved to appoint Jim Ellis to serve as Chairman until his term expires on November 13, 2014, or until City Council appoints a replacement. This motion was seconded by Mayor Bellamy and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Scott Owen asked that Occupy Asheville receive the same police protection as other citizens.

Mr. Kayvon Kazemini felt that the land where Occupy Asheville is currently located should be for the use of the public unrestricted.

Mr. Jonathan Geller felt that the Police Department is selectively enforcing the ordinances, citing an arrest for someone handing out flyers.

Mr. James Lawrence Smith asked for a copy of a 911 recording on October 8, 2011. City Attorney Oast said that the City has provided the transcript to Mr. Smith and it was his opinion that we have abided by the law.

Dr. Milton Byrd spoke about the need for public trust.

Rev. Lisa Landis spoke about the distribution of wealth and the many different options for economic development.

Mr. Tim Sadler asked for a complete listing of all the City's boards & commissions be placed on the City's website calendar.

Mr. Alan Ditmore explained why he supported Occupy Asheville's action.

Mr. Barry Summers felt the City should take more of an aggressive position with our legislators regarding the possibility of privatizing our drinking water.

In response to a questions raised by a member of the audience, City Attorney Oast said that the public property ordinances were proposed because there were issues that have come up that staff did not have clear means to deal with.

Mr. Martin Ramsey said that Occupy Asheville is not a lobby organization but a direct action organization.

Mr. Reid Thompson felt that City Council is restricting First Amendment rights when they only allow the public three minutes to speak and that presentations must be provided to staff prior to the meeting. He asked the new Council revisit these rules and give the citizens rights to express themselves in certain ways.

Councilman Bothwell appreciated some of the civic engagements that Occupy Asheville has been involved with.

Annexation Petition Certification – December 12, 2011

City Attorney Oast said that "Pursuant to Session Law 2011-173 ("Law"), the Buncombe County Board of Elections ("BOE") certifies to the City of Asheville ("City") that 399 petitions signed by landowners as identified on the list ("List") provided to BOE by the Buncombe County Tax Assessor containing 464 parcels proposed for annexation pursuant to the Law have been received. Pursuant to SL 2011-173 (S27), Section 2 (6), 1 unsigned petition for one property parcel was mailed twice, once by mail and returned undeliverable, and once by mail, return receipt requested and returned again; therefore, the number of parcels used for calculating the percentage should be 463. BOE is unable to determine the validity of 27 petitions received when compared to the List. The petitions received are attached to this Certification and hereby delivered to the City pursuant to the Law." City Clerk Burleson signed for the petitions on December 12, 2011.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:00 p.m.

CITY CLERK

MAYOR