

Tuesday – February 14, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding (excused from meeting at 8:05 p.m.); 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**

Councilman Bothwell gave the invocation.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 14, 2012, AS THE “FIFTH ANNUAL UNITED SERVICES CREDIT UNION SCHOLARSHIP DAY”**

Mayor Bellamy read the proclamation proclaiming February 14, 2012, as the “Fifth Annual United Services Credit Union Scholarship Day” in the City of Asheville. She presented the proclamation to Esteve Coll, Business Development/Marketing Manager; Bill Carrington, Chief Executive Officer; and Tom Muncy, Chairman of the Board, who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 24, 2012; THE CITY COUNCIL COMMUNITY MEETING HELD ON JANUARY 31, 2012; AND THE CITY COUNCIL RETREAT HELD ON FEBRUARY 3, 2012**

**B. RESOLUTION NO. 12-34 - RESOLUTION DECLARING IT A PUBLIC PURPOSE FOR THE CITY TO PARTNER WITH AND PROVIDE FOR THE PROCUREMENT, STORAGE, AND ALLOCATION OF SNOW FIGHTING MATERIALS TO EMERGENCY FACILITIES**

Summary: The consideration of a resolution finding the procurement of snow fighting materials for emergency facilities to constitute a public purpose and authorizing the City Manager to develop a policy for such procurement.

The City of Asheville has over the years partnered with public and private entities to procure snow fighting materials to include the Town of Black Mountain, UNC-Asheville, AB-Tech and Mission Hospital. The partnering with these entities benefits the City, primarily from a health and safety perspective, but also financially as the cost to the City is less. In order to more efficiently and effectively provide this service so as to minimize concerns of favoritism and unfair competition, staff will develop a policy consistent with Council’s directions. Potential partners may include other nearby municipalities and towns, schools, hospitals and other similar type of emergency entities.

This action complies with the City Council Strategic Operating Plan in creating more collaborative and effective working partnerships between the City of Asheville and other key organizations.

Pros:

- Create common goal partnerships with other key organizations.
- Increase in bid quantities could potentially leverage overall reduced costs of materials.
- More boots on the ground in spreading materials along public thoroughfares leading into key facilities.

Con:

- Mid-storm deliveries would necessitate sensitive communications to sort out needed logistics.

There would be an additional cost in procuring the additional material(s); however, agreements would be structured to be cost neutral, and any expense would be offset by corresponding revenue in materials reimbursements.

City staff recommends City Council declare the procurement of snow fighting materials to be a public purpose and authorize the City Manager to develop and administer a policy to regulate its procurement.

#### **RESOLUTION BOOK NO. 34 – PAGE 265**

#### **C. RESOLUTION NO. 12-35 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO BE THE LOCAL GOVERNMENT PARTNER FOR THE ASHEVILLE ART MUSEUM GRANT APPLICATION TO THE NATIONAL ENDOWMENT FRO THE ARTS 2012 OUR TOWN GRANT**

Summary: The consideration of a resolution authorizing the City of Asheville to be the local government partner for the Asheville Art Museum grant application to the National Endowment for the Arts 2012 *Our Town* grant.

The National Endowment for the Arts (NEA) offers numerous grants in a variety of art and design categories. For the second year, the NEA has offered the *Our Town* grant for creative placemaking projects that contribute toward the livability of communities and help transform them into lively, beautiful, and sustainable places with the arts at their core.

*Our Town* grants will invest in creative and innovative projects in which communities, together with their arts and design organizations and artists, seek to improve their quality of life, encourage creative activity, create community identity and a sense of place, and revitalize local economies.

Through *Our Town* projects, the NEA intends to achieve the outcome of *Livability: American communities are strengthened through the arts*. The anticipated long-term results for livability projects are measurable community benefits, such as growth in overall levels of social and civic engagement; arts- or design-focused changes in policies, laws, and/or regulations; job and/or revenue growth for the community; and changes in in-and-out migration patterns.

The NEA anticipates awarding grants in the amount of \$25,000, \$50,000, \$75,000, \$100,000, or \$150,000 which also requires a nonfederal dollar for dollar match. The grant applicant, not the local government partner, is responsible to provide the match. The grant deadline is March 1, 2012.

According to the NEA, the key to the success of creative placemaking involves the arts in partnership with a committed governmental leadership and the philanthropic sector. These

partnerships must involve two primary partners: a nonprofit organization and a local government entity.

This year the City of Asheville in the Parks, Recreation and Cultural Arts Department accepted proposals from eligible non-profit cultural (arts or design) organizations in Asheville who need a local government partner as part of the NEA *Our Town* Grant application. The following five organizations submitted proposals:

Asheville Art Museum: \$150,000

To support the next phase of the project development for the Museum's much needed renovation and expansion plans: the design development phase. The Museum will meet the required 1:1 match out of existing funds. The expansion and renovation project aligns with four vision principles as outlined in the Downtown Master Plan and is listed explicitly as a priority of the Downtown Master Plan in Strategy 1.

Asheville Design Center: \$25,000

To support a community-driven process to develop a series of prototype bus shelters that meet the Transit Department's design standards and train community members in the design-process and construction methods. The ADC will meet the required 1:1 match through in-kind professional design services. The project addresses four sections of the Transit Master Plan.

Center for Craft, Creativity & Design: \$25,000

To engage the community in a series of lectures, charrettes and discussions that will foster interaction among community members, arts organizations, artists and the different sectors (public, private, non-profit). The CCCD will match \$15,000 and partners will be asked to provide the remaining \$10,000 funds in cash and in-kind contributions. The project supports the Parks, Recreation, Cultural Arts and Greenways Master Plan and the Downtown Master Plan.

Montford Park Players: \$75,000

To support design cost for improvements at the Hazel Robinson Amphitheatre which includes a guest services facility, accessible paths, upper stage house, and improvements to audience seating area. The Montford Park Players will meet the required 1:1 match out of existing funds. The project supports the Parks, Recreation, Cultural Arts and Greenways Master Plan.

YMI Cultural Center: \$25,000

To support Asheville Wordfest and to help make the festival a nationally and globally recognized and attended poetry festival. The YMI will raise money to meet the required 1:1 match.

The proposals were reviewed by the Public Art and Cultural Commission at its meeting on January 26, 2012. The Commission was asked to recommend one proposal to City Council. Three Commission members recused themselves from the process due to conflict of interest. Representatives from each applying organization were invited to speak about their proposals. The Commission motioned to recommend the Asheville Art Museum proposal which passed with a 3-2 vote. A second motion was made to support the Asheville Design Center proposal which failed 2-3.

Pros:

- The grant provides support for a variety of projects and activities;

- The arts are an integral part of Asheville;
- Provides additional funding for a project or activity.

Con:

- None

There is no direct financial impact but staff time and resources will be required.

The Public Art and Cultural Commission recommends City Council to approve the City of Asheville to be the local government partner for the Asheville Art Museum's NEA's 2012 Our Town grant application.

#### **RESOLUTION BOOK NO. 34 – PAGE 266**

#### **D. ORDINANCE NO. 4053 - ORDINANCE REDUCING THE SPEED ON MEADOW ROAD FROM AMBOY ROAD TO VICTORIA ROAD TO 35 MILES PER HOUR**

Summary: The consideration of an ordinance concurring in a speed limit change on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, when an engineering and traffic investigation determines that a speed limit other than the statutory 35 mph speed limit would be reasonable and safe along a state-maintained street that is inside municipal corporate limits, a concurring ordinance from the municipality is needed. Typically, these investigations are done by municipal staff but it is not unusual for the N.C. Dept. of Transportation (NCDOT) to do the investigations along their streets.

The Division 13 Traffic Engineer for NCDOT recently completed an engineering and traffic investigation and determined that the existing 45 mph speed limit on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road should be changed to 35 mph. It has been concluded that a 35 mph speed limit would be reasonable and safe for the current traffic conditions. City traffic-engineering staff agrees with the recommended action.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the "street experience" for all users including pedestrians, bicycles, and motorists in a medium commercial corridor.

Pros:

- The North Carolina Department of Transportation did the engineering and traffic investigation to determine the reasonable and safe speed limit.
- Since the subject street is a state-maintained street, the North Carolina Department of Transportation will install and maintain the appropriate signs.

Con:

- There are no known cons with the subject action.

There is no fiscal impact with the subject action. The NCDOT will be installing and maintaining the appropriate signs.

City staff recommends that City Council approve an ordinance concurring in a speed limit change on SR 3556 (Meadow Road) from SR 3556 (Amboy Road) to Victoria Road from 45 mph to 35 mph.

**ORDINANCE BOOK NO. 27 – PAGE**

**E. MOTION APPROVING ANCILLARY PERMITS AND PERMISSIONS ASSOCIATED WITH THE SOUTHERN CONFERENCE BASKETBALL CHAMPIONSHIPS**

Summary: The consideration by Council to approve ancillary permits and permissions associated with the Southern Conference Basketball Championships as is consistent with City policy to ensure a safe and successful tournament experience.

The Southern Conference Basketball Championships will be held in Asheville March 2-5, 2012. Various permits and permissions as is consistent with City policy will be necessary to ensure a safe and successful event. These include permits and permissions for the following:

- Street banners: approximately 70 street banners paid for and provided by the Asheville Buncombe Regional Sports Commission (ABRSC) placed in strategic locations in the central business district and other major corridors; the application fee has been processed, so no fee waiver is requested.
- A fan village in the empty lot across from the Civic Center, to include two City-approved food trucks; no fees will apply to city services and permits.
- Miscellaneous non-advertising wayfinding to direct both vehicular and pedestrian traffic for which there is no associated fee, so no fee waiver is requested.
- Miscellaneous non-commercial tournament welcoming banners placed at the Asheville U.S. Cellular Center for which there is no associated fee, so no fee waiver is requested.
- Use of designated City parking lots and portions of City parking garages for parking for officials and staffing for the tournament: parking services will receive a lump sum in the amount of \$6000 from the ABRSC to offset costs associated with reserving designated public parking for tournament use.
- The City Transportation Department, in conjunction with APD and the Public Works Department, intends to close several streets adjacent to the Asheville U.S. Cellular Center in a pattern developed to address public safety concerns at high attendance events held at the Center. No fees will apply.

This action supports the City's Strategic Plan to make Asheville a safe city and expand partnerships to achieve common economic development goals.

Pro:

- Public safety component of holding a high attendance event in downtown Asheville.

Con:

- Street closures on Friday and Saturday may affect access to the rear parking lot of the Basilica.

There is a substantial positive net economic impact for the City associated with hosting the championships. Highlights include:

- Number of Visitors: 8,000
- Number of Room Nights: 4,000
- Economic Impact: \$4,000,000
- Largest Sporting Event in Asheville's History
- National Television Exposure

Staff recommends Council approve the ancillary permits and permissions associated with the Southern Conference Basketball Championships as is consistent with City policy to ensure a safe and successful tournament experience.

**F. ORDINANCE NO. 4054 - BUDGET AMENDMENT FROM THE FRIENDS OF THE NATURE CENTER FOR CAPITAL PROJECTS AT THE WNC NATURE CENTER; AND TECHNICAL BUDGET AMENDMENT MOVING PREVIOUSLY BUDGETED CONTRIBUTIONS FROM THE FRIENDS OF THE NATURE CENTER**

Summary: The consideration of 1) a budget amendment in the amount of \$66,036, from contribution provided by the Friends of the WNC Nature Center to support the design and installation of a playground and other visitor enhancements at the WNC Nature Center, and 2) a technical budget amendment in the amount of \$75,000 to move previously budgeted contributions from the Friends of the WNC Nature Center from the City's Capital Projects Fund to the Special Revenue Fund.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received a contribution from the Friends of the WNC Nature Center to support the design and installation of a playground and other visitor enhancements at the WNC Nature Center.

The Friends of the WNC Nature Center, a 501c3 non-profit charity, is a community group of individuals, businesses and grantors who together support the WNC Nature Center with funding to provide an enriching and educational experience for the Center's visitors.

The action complies with the City Council 2011-2012 Strategic Plan Goal of fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding and ensuring a high level of service in parks and facilities by addressing capital maintenance of existing parks and facilities to meet community standards.

Pro:

- Provides additional funds to support capital improvements and the strategic plan at the Nature Center

Con:

- None

These expenditures will be fully funded with a donation from the Friends of the Nature Center in the amount of \$66,036 that has been received; thus, there is no net fiscal impact to the City's operating budget. In addition, to more accurately reflect the nature of the contributions received from the Friends of the WNC Nature Center, accounting staff is requesting to move previously budgeted contributions from the City's Capital Projects Fund to the Special Revenue Fund. There is no fiscal impact to this technical change.

City staff recommends City Council to approve 1) the budget amendment authorizing the City Manager to accept the donation from the Friends of the WNC Nature Center in the amount of \$66,036.00; and 2) the technical budget amendment in the amount of \$75,000 to move previously budgeted contributions from the Friends of the WNC Nature Center from the City's Capital Projects Fund to the Special Revenue Fund.

**ORDINANCE BOOK NO. 27 – PAGE**

**G. ORDINANCE NO. 4055 - BUDGET AMENDMENT TO FUND CITY'S CONTRIBUTION FOR N.C. STATE TREASURER'S OTHER POST EMPLOYEMENT BENEFIT FUND**

Summary: The consideration of a technical budget amendment in the amount of \$3,025,866 from General Insurance Service Fund Reserves and Enterprise Funds' reserves to fully fund the City's initial contribution to the North Carolina State Treasurer's OPEB Fund.

On December 13, 2011, City Council approved 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 an initial FY 2011-12 contribution of \$3,025,866. In order to make that contribution, however, Council must approve a budget amendment to provide authorization for the appropriation of the cash and the subsequent payment to the North Carolina State Treasurer's OPEB Fund. The \$3,025,866 contribution is being funded as follows: \$2,565,529 for the governmental fund liabilities is being appropriated from unassigned internal service fund reserves and \$460,337 for the proprietary fund liabilities is being appropriated from each respective enterprise fund (e.g. water, stormwater, parking, etc.).

Pros:

- Provides budget authorization for the December 13, 2011 Council-approved 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 \$3,025,866.

Cons:

- None.

After funding the net OPEB liability, as of June 30, 2011, the Health Care Internal Services Fund will have \$1,393,802 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. The reserves that are being appropriated from the City's Enterprise Funds will not significantly impact the fund balance levels in any of those funds.

City staff recommends City Council approve the technical budget amendment in the amount of \$3,025,866 from General Insurance Service Fund Reserves and Enterprise Funds' reserves to fully fund the City's initial contribution to the North Carolina State Treasurer's OPEB Fund.

#### **ORDINANCE BOOK NO. 27 – PAGE**

#### **H. ORDINANCE NO. 4056 - TECHNICAL BUDGET AMENDMENT FOR ACCOUNTING CHANGES FROM EXTERNAL AGENCIES FOR FUEL AND FLEET REPAIRS PROVIDED BY THE CITY**

Summary: The consideration by City Council of a technical budget amendment to reduce the General Fund budget by \$1,221,594 to reflect accounting changes related to the recording of revenue received from external agencies for fuel and fleet repairs provided by the City.

The City's Fleet Maintenance Division provides fuel and limited repair services to certain governmental units and non-profit agencies, including Mission/St. Joseph's Hospital and the Metropolitan Sewerage District. The City charges these agencies for the cost of the fuel and repair parts along with a 5% markup for fuel, sublet repairs, and, non-stock parts; and a 30% markup for stock parts.

In previous years, the purchase of fuel (approximately \$1 million annually) for external agencies was reflected as a general government expense; thereby over inflating the City's cost of general government activities. The funds received from these charges were recorded in the General Fund as revenue. At the end of FY 2010-11, the City changed its method of accounting for these funds such that these monies are now being recorded as an offset against the expense

of providing the service so that these external agency activities are not reflected in City government expenses.

This change was finalized after adoption of the current budget, therefore the FY 2011-12 General Fund budget needs to be revised downward. The technical impact of this change is a reduction in the FY 2011-12 General Fund revenue and expense budget of \$1,221,594.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Aligns the budget with current accounting procedures.
- Provides an apples-to-apples comparison with FY 2010-11 financial results and the upcoming FY 2012-13 proposed budget.

Con:

- None.

As noted above, the FY 2011-12 General Fund budget will show a reduction of \$1,221,594

City staff recommends City Council approve the technical budget amendment in the amount of \$1,221,594 to reflect accounting changes related to the recording of revenue received from external agencies for fuel and fleet repairs provided by the City.

### **ORDINANCE BOOK NO. 27 – PAGE**

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

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

#### **A. ASHEVILLE-BUNCOMBE REGIONAL SPORTS COMMISSION**

Mr. Ben VanCamp, Executive Director of the Asheville-Buncombe Regional Sports Commission, explained their mission, vision, history and funding.

They (1) work with existing events on growth, i.e., Carolina Day Holiday Basketball Classic; (2) incubate new events from within our community, i.e., Gala Gymnastics Event; and (3) recruit new events to our community, i.e., Friends of Mission Charity Classic Symetra Tour.

Their impact for previous events from November 2011 to January 2012 include: 5 events, 2,500 room nights, 3,000 out of town visitors, and an estimated economic impact of \$1,500,000. Upcoming planned events from February 2012 to June 2013 include: 9 events, 14,300 room nights, 20,000 out of town visitors, and an estimated economic impact of \$14,930,000.

He provided statistics on the Southern Conference in which the City will be host in June 2010 for the 2012 – 2014 Championships, and recognized the SoCon local organizing committee.



They receive community-wide support from community partnerships, financial support, volunteer support and educational partnerships. The SoCon Basketball Championships estimated impact consists of 8,000 visitors, 4,000 room nights, and an estimated economic impact of \$4,000,000. It is the largest sporting event in Asheville's history and will have national television exposure on ESPN on Monday, March 5. The Big South Basketball Championships estimated impact consists of 1,500 visitors, 1,311 room nights, and an estimated economic impact of \$1,100,000. It will also have national television exposure on ESPNU on March 1, and ESPN on March 3.

Mr. VanCamp responded to Councilman Bothwell when he asked how the numbers of the economic impact were reached.

On behalf of City Council, Mayor Bellamy thanked the Sports Commission for their hard work, and City staff Sam Powers and Janet Dack who have done a wonderful job in this on-going effort.

Councilman Davis urged the public to attend the Southern Basketball Championships and the Big South Basketball Championships for an exciting time in March.

## **B. UPDATE ON LAKE CRAIG/AZALEA ROAD PROJECT**

Stormwater Services Manager McCray Coates said that this is an update on the Lake Craig/Azalea Road Project.

One of the largest projects the Public Works Department has currently underway is the Lake Craig/Azalea Road project. Through this project, the City of Asheville has the opportunity to provide improved access to city facilities along Azalea Road, provide a much needed water connection to the John B. Lewis Soccer Complex and to provide additional flood protection to Biltmore Village. McGill Associates, a local engineering firm, is the lead consultant for this project.

Azalea Park is a large attraction that hosts a regional soccer complex along with the Nature Center. This complex draws visitors from throughout the region which increases the traffic along Azalea Road. The City is proposing to widen and improve the roadway in this section. The City proposes to combine flood control recommendations and utilize material from floodplain fill removal for the roadway improvements. The plan also includes a bike and pedestrian facility.

The City also plans to provide a much needed water supply connection to the soccer complex. Currently, the pavilion does not have a potable water source.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. Through a previous study performed by Brown and Caldwell, the Lake Craig Project has shown potential to provide significant flood reduction benefits. The flood control features of phase I of this project include stream relocation and restoration, removal of floodplain fill and flood bench restoration. Phase II would include the rehabilitation or replacement of an existing dam. Phase II is currently not funded, the City will look for future funding through the Corps of Engineers and NC Division of Water Resources for Phase II of this project.

On May 26, 2009, by Resolution No. 09-108, the City Manager was authorized to enter into a Feasibility Cost Share Agreement for the Swannanoa Flood Risk Management Project with the Army Corps of Engineers to provide professional services for a feasibility study for reducing flood damage in the Swannanoa River Watershed. That resolution allows the City Manager to modify the existing agreement with the US Army Corps of Engineers allowing engineering services performed by McGill Associates to be utilized as matching work in kind funds for the Corps Feasibility Cost Sharing Agreement.

The Corps of Engineers has been very involved with the flood reduction component of this project. Federal funding delays has caused a loss of time on the review efforts of the Corps. City staff along with McGill Associates have worked diligently with the Corps to insure that all possible matching work in kind funds can be granted to this project.

City staff has been involved with discussions with the Corps of Engineers to try to identify ways to utilize any excess work in kind credits for current and past city flood reduction efforts that may be remaining from the Feasibility study. In order for this to take place, congressional language will need to be drafted and approved. The work in kind matching funds will be important to maximize local and state funds necessary for Phase II of this project.

This action complies with the City's plans and commitments to administer the remaining \$2.1M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 1, 2007. In addition, this project has complied with the Council's Strategic Plan to provide a safe community for our citizens.

Pros:

- Implements the priority objective of the Swannanoa Flood Risk Management Project
- Provides safe access for the local residents along with the citizens that visit these important city facilities
- Provides water to the soccer complex
- Provide bike and pedestrian linkages that connect the soccer complex with the Nature Center
- Priorities are set for expending the remainder of state flood mitigation funding and for pursuing future state and federal grant funding for this project.

Con:

- The City of Asheville currently does not have the funding to complete the construction and final design of Phase II of project. Construction/rehabilitation of the dam will require the involvement and funding of the US Army Corps of Engineers or the North Carolina Division of Water Resources.

Staff has budgeted \$1,263,206 for the engineering services necessary to complete Phase I of the Lake Craig Project. The total estimated cost for Phase I of this project, which includes the engineering services as well as the roadway, utilities, and river relocation construction, is \$4.15 million. Phase I is currently fully funded. City staff is working with the Army Corps of Engineers as well as the North Carolina Division of Water Resources to identify future funding for the completion of the Dam construction which will be associated with Phase II of this project. These sources would require matching contributions from the City in order to secure these funds.

No action is requested at this time.

Mr. Coates responded to questions raised by Councilman Hunt, stating that this will not prevent flooding, but will mitigate flooding; and the City is trying to build in different elements in this project, i.e., bike lanes and greenways.

### **C. RESOLUTION NO. 12-36 – RESOLUTION SUPPORTING ASHEVILLE'S RETENTION OF ITS WATER SYSTEM**

Vice-Mayor Manheimer provided Council with an overview of the process to date (1) Study Bill introduced in the 2011 legislative session to study the history and current operational aspects of the Water System. There are three possible outcomes: (a) City of Asheville continues to operate the System (i.e. no change); (b) Water System is transferred to the Metropolitan Sewerage District; or (c) An independent authority is created to manage the system; (2) January

23, 2012: First Study Committee meeting; (3) Late February: Public meeting in Asheville; and (4) April: Possible decision made.

She provided Council with some general information of the current system as follows: (1) The Water System, currently operated by the City of Asheville, covers the entire City; ~27% of Buncombe County outside the City; and ~2% of Henderson County; (2) Water System Bond Rating: Aa3, AA; (3) 20,000 acres of protected watershed in Buncombe County; (4) Two reservoirs holding roughly 7 billion gallons of stored water; (5) Two water treatment facilities treating water from those reservoirs; (6) One "run of river" water treatment facility located along the Mills River in Henderson County; (7) Permitted treatment capacity of 43.7 million gallons per day; (8) Average daily demand of about 21 million gallons per day; (9) System Service Area – 183 square miles; and (10) 1661 miles of water lines.

Using a graph, she showed the City's population from 1940 to 2010. Some statistics include (1) Asheville supports a larger population than its residential population suggests; (2) Asheville has the highest daytime to nighttime population ratio in NC; (3) Asheville takes more calls for fire and emergency services per capita than 17 other major NC cities; (4) Asheville would need to add 51,000 more people to its population to bring its call volume more in line with the state average; and (5) From 1950-2000, Asheville captured 10.75% of the population growth in the county; state average of 53.33% for the nine largest cities in NC. Over the last 50 years, Asheville has been the most inelastic city of all major cities in NC. During that time, Asheville captured just 10.75% of population growth in the county. The state-wide average was 53.33%. This means that the burden to pay for usage and the demands and the vision for Asheville that's shared by 150,000 people is being shouldered by the 79,000 who actually live within our jurisdictional lines.

Using a graph, she showed the City's fiscal responsibility (tax rate), compared to the tax rates in North Carolina.

She also used graphs of other cities to show the (1) Fiscal Year 2010-11 Monthly-Equivalent Residential Water Bills (5,000 gallons consumption); (2) Fiscal Year 2010-11 Monthly-Equivalent Commercial Water Bills (25,000 gallons per month); and (3) Fiscal Year 2010-11 Monthly-Equivalent Commercial Water Bills (500,000 gallons per month).

Regarding the City's management of the system, (1) Enterprise Fund for Water Operations Department of the City of Asheville; (a) Utility Fund Forecast (Rate Model) For 5 Years; (b) Utility Fund capital plans based on: required NCDOT Projects, City Council; (c) Initiatives, Brown and Caldwell's 2006 Capital Improvement Plan, JJ&G's 2009; and (d) Water Master Plan, and needs prioritized by the Computerized Maintenance Management System; and (2) City Operations Consistently Recognized for Excellence; (a) Water Resources ISO 14001 Environmental Management System; (b) Accredited Fire, Police and Parks & Recreation Departments; (c) Outstanding Planning Award for Open Space and Historic Resources; and (d) GFOA National Recognition for Budget and Comprehensive Financial Reporting.

She shared with Council some third party assessments, as follows: (1) "The staff of Asheville's Water Resources Department has been proactive in planning for their future financial needs to pay for capital investment in their system as well as to operate and maintain those assets that are currently in place in order to continue to provide high quality service. Equitable recovery of costs has been a key objective in their proactive financial planning." *Raftelis Financial Consultants*; (2) "They stand out for their excellent stewardship of the water resources of the Asheville, Buncombe and Henderson County region. Their industry leading practices include a fully developed asset management program that has resulted in a stable rate structure and high reliability—two factors that are key to economic development of the area." *Rick Carrier, Vice President, Brown and Caldwell*; (3) "As I worked with the City of Asheville on a Water System Master Plan, the City's goal was apparent -- provide a high level of service to customers, while keeping rates affordable for all. Asheville staff strived with enthusiasm to meet that goal."

*Jacobs Engineering (formerly Jordan, Jones & Goulding), Eric Nease, P.E.;* (4) "The Asheville Water Resources Department continues to maintain a highly effective environmental management system under the ISO 14001 International Standard. The recent audit of the system confirms a high level of competence and commitment to environmental excellence throughout the department." *Charles Lee, NSF Lead Auditor, following our 2011 ISO 14001 annual audit;* and (5) "Employees possess high levels of certification and have been recognized for excellence." "Confidence in the Utility's ability to use resources wisely, to cut costs and provide quality service has gained support within the business and commercial community for funding infrastructure replacement." *QualServe Peer Review Team.*

In closing, she said that (1) we have an appropriate and experienced management team in place; (2) consistent Moderate Growth of Water System Demand; (3) excellent financial condition; (4) consistent investment in water system infrastructure; and (5) manageable capital needs with a comprehensive Capital Improvement Plan.

Next steps include (1) Consideration of the resolution below; (2) Continue to provide input to the Study Committee; (3) Educate citizens on the process; and (4) Continue cooperation with the Metropolitan Sewerage District.

The resolution before Council reads: "WHEREAS, the City of Asheville has operated a public water system in the City of Asheville since as early as 1900; and WHEREAS, water provided by the system remains plentiful, safe, and among the cleanest and purest available anywhere; and WHEREAS, said water system currently serves all of the City of Asheville, approximately 60 percent of Buncombe County, and a portion of Henderson County; and WHEREAS, the water system includes a pristine 20,000 acre watershed which Asheville has diligently protected for decades and will continue to do so, two reservoirs and three treatment plants with a capacity of over 40 million gallons per day, over 1,600 miles of transmission and service lines, 24 pump stations, 21 storage reservoirs, and associated equipment; and WHEREAS, through operation of the water system Asheville has supported and will continue to support growth and economic development for the region; and WHEREAS, since 1991, the City has issued over \$100 million in revenue bonds and other financing for the repair, maintenance, and improvement of the water system, including \$39 million in 2007; and WHEREAS, the water system and the City's Water Resources Department are recognized by State and national organizations as being well run and financially sound; and WHEREAS, the development and operation of the water system in Asheville and Buncombe County is similar to other systems across the State; and WHEREAS, there is no compelling reason to transfer responsibility for the operation or control of the water system from Asheville to another entity. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE AS FOLLOWS: (1) Through leadership and sound governmental practice, the City of Asheville has developed a water system that is well run, financially sound, and able to meet water demand in the area for the foreseeable future; (2) The City is committed to continuing to maintain and improve the water system, and to provide water to its customers at fair and reasonable rates and in accordance with recognized best practices for the industry; and (3) The water system is a public asset held by the City of Asheville for the benefit of its citizens and regional customers. The City operates the water system as a public enterprise pursuant to North Carolina law. Ownership and operational control of the water system should remain with the City of Asheville."

In closing, the City doesn't have an opportunity of financial gain because we are running this water system. The reason that it's important that a city, like Asheville, run this water system is because these are valuable assets from an environmental and resource prospective and we need to protect them. She felt the citizens of Asheville trust City Council do to just that. We all have grave concern about another entity owning these assets and running this system without the input from the elected officials of the City of Asheville.

Councilman Hunt said that Senator Nesbitt highlighted how since 1930 when the financial crash hit Asheville especially hard disrupting the financing of our water system, we have had

fighters about our water system. He felt one interest of Rep. Moffitt in moving this forward is to try to get the fighting over the water system behind us. He hoped that what comes of this is that Asheville retains its system and we all move forward. A very important part of all this is we have been unable to charge differential rates, thus prohibiting us to incentivize outlying areas to come into the City. Asheville is a relatively small city with a lot of development outside our boundaries. Our taxpayers are unduly burdened to provide services and infrastructure for people who come in by day and to visit. In addition to not having the advantage of annexation which would help us afford to provide these necessary services in infrastructure, the fighting has made it so that our other local government partners and state legislators have found it difficult to support Asheville's fiscal life. He hoped that we can get fighting over water behind us, and ask Rep. Moffitt, others in the state legislature, and partners in other local governments to help us look also at the fiscal plight Asheville faces so we can be a better regional capital in western North Carolina.

Councilman Pelly was pleased to support the resolution. In addition to consideration of the resolution before Council, he hoped Council will, in two weeks, support a second water system related resolution. Given that (1) proposed state legislation opens the very real possibility of seizure of this irreplaceable asset, owned by the City of Asheville for the benefit of customers in Buncombe and Asheville; (2) three of the four state-sponsored public hearings regarding this legislation will take place 250 miles away from Asheville (in Raleigh), limiting the possibility of local participation; (3) the only local hearing will be held 15 miles away from our City center at the WNC Agricultural Center; (4) two of Asheville's three representatives in the General Assembly (representing 69% of the affected water customers) have not been invited to serve on the committee considering this issue; and (5) the fundamental importance safe, clean and affordable water plays in the lives of each of us, it is imperative the City of Asheville conduct an independent public hearing, designed to let all customers of the water system, Buncombe and Asheville alike, express their opinion on this matter of vital public importance. In two weeks he will present a resolution calling for a public hearing designed for this purpose and am hopeful that his fellow council members will support this measure.

Mayor Bellamy said that in order to make sure that she was well informed on the original Bill that was proposed (House Bill 925), she found another bill (House Bill 708 – A Bill to be Entitled An Act to Direct the Environmental Review Commission to Study the Reduction and Consolidation of the Statutory Models for Establishing, Operating, and Financing Certain Organizations that provide Water and Sewer Services in the State) is still active. The places impacted are Asheville and Wilmington. She contacted the Mayor of Wilmington to make sure that he was aware that a Bill had been entered to study their water system. She stressed the importance of City Council staying abreast of these issues. House Bill 708 has not been assigned to a study committee, and her concern is what else is out there. We must educate the public on these bills that are being created without letting the affected local governments know. She was also concerned that we are not at the table on the bills that affect our system and systems like ours. It is imperative that we stay informed.

Councilman Smith said that when the Study Committee decided to convene, he started doing homework around the water system as well, and was reintroduced to the excellence that the City of Asheville has been practicing with regard to its water resource since taking full management of that since the dissolution of the water agreement in 2005. This Study Committee has introduced an ambiguity about the future of the water system. The present state of the system is excellent. We know we have an aging system that we have to invest in and City Council has chosen to do that in 2007 with the \$40 Million investment. We know it won't be our last investment. When we have 1,661 miles of pipes in the mountains, we will be fixing them on-going for as long as they are in the ground. Should something change, he didn't feel guaranteed that we will have that same state of excellence that we have found with our current management system. This water system was the first in the state to get an ISO 14001 Certification for its environmental management practices. This water system has been running lean and mean and efficiently. We have some of the best water in the country and we are richly blessed with an abundance that is the envy of most other communities in the nation. That is where we are at now

and if there is a call to change that, then he can understand why our customers, whether they live in or outside of the City, are nervous.

Councilman Davis felt that it was the intent of Council in 2005 that we retain the water system and we have consistently invested in our system. He was pleased to support this resolution.

Mr. Alan Ditmore spoke to the issue of using water to incentivize people to be annexed.

Mayor Bellamy hoped that Council will also be open to a resolution supporting Asheville's retention of our Airport as there is also a Bill to take Asheville's Airport away and make it into an independent authority.

Councilman Davis moved for the adoption of Resolution No. 12-36. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

#### **RESOLUTION BOOK NO. 34 – PAGE 267**

#### **IV. PUBLIC HEARINGS: None.**

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

Councilman Hunt moved to consider the discussion regarding a charitable contribution combined campaign prior to the discussion on regulating the use of City property. This motion was seconded by Councilman Davis and carried unanimously.

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

Vice-Mayor Manheimer moved to recuse Mayor Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously. At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Manheimer to preside over the meeting and left the Council Chamber.

Director of Finance and Management Services Lauren Bradley said that this is the consideration of a motion to accept the combined campaign proposal and approve the standard operating procedure for a combined campaign for City of Asheville employees.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina 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, City 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 at the City of Asheville.

Representatives from the United Way of Asheville & Buncombe County and EarthShare North Carolina presented a combined campaign proposal to the City Council Finance Committee at its January 24, 2012, meeting. While these agencies worked together to develop the proposal, it was presented to the Finance Committee with reservations expressed by the United Way of Asheville & Buncombe County.

The Finance Committee directed staff to bring the proposal and a revised Standard Operating Procedure forward for full City Council consideration. Staff has drafted a standard procedure that is consistent with the proposal that was submitted.

The biggest change in the criteria from our current policy to what is proposed is that all of the agencies participating in Federation must have offices in Asheville and Buncombe County and provide services that benefit the people of Asheville and Buncombe County. What is being proposed is that the criteria be changed so that half of the agencies in the Federation have an office in the local area and that they all provide services that benefit the local area or have some tangible impact on the quality of life in Asheville and Buncombe County.

In 2010 City employees gave about \$75,000 through the charitable campaign through the United Way.

If City Council is interested in implementing a combined campaign, staff is seeking a motion to accept the combined campaign proposal and approve the standard operating procedure. The proposal requests that the United Way of Asheville and Buncombe County be named as the campaign administrator. Applications to participate in the campaign would be taken in July, and the campaign would take place at the end of calendar year 2012 for payroll deductions in calendar year 2013.

The City of Asheville's charitable giving campaign supports its strategic goals to be an "employer of choice" that encourages a stronger, more prosperous community.

Pro:

- Expands charitable giving campaign to include additional federations, providing a formalized mechanism for City employees to consider giving to a wider range of charitable organizations.

Cons:

- Concerns have been expressed that a combined campaign may decrease overall giving to the United Way of Asheville and Buncombe County agencies.
- Proposal does not address how other Federations might be added in the future. Staff anticipates requests from additional Federations, which would require changing the proposed criteria.
- There is uncertainty about employee participation and giving results in a combined campaign. There is a 10% minimum participation requirement in the standard operating procedure.

Staff recommends City Council consider a motion to accept the combined campaign proposal and approve the standard operating procedure for a combined campaign. If approved, staff further recommends that results from the first year of the combined campaign be reviewed by City Council in early 2013.

Councilman Hunt, member of the Finance Committee, said that he voted to advance this to the full Council to be considered. He said there has been a tremendous amount of high quality input from both sides on this issue, and personally he has been involved with both environmental and United Way agencies. After hearing all the input, he did not feel there was enough support by Council to change the existing policy. One piece of information he received is that through the election by City employees, any individual employee can elect to have their payroll deduction donation made to any non-profit 501 (c) (3) charity. Therefore, the employees have the opportunity to support local environmental organizations. Staff at United Way has expressed their willingness to be open and allow for those contributions to flow through the existing mechanism.

Councilman Bothwell also reviewed all the input from both sides of the issue as well. Some say there is a limited pool of donations available from City employees and that if they are given other options, they will divert their money elsewhere and reduce giving to the United Way. He noted that employees don't have to participate in a planned giving payroll deduction program as there are many other opportunities to give directly to an organization. Therefore, he didn't see the inclusion of EarthShare doing any appreciable harm to United Way. He also felt offering more options to the employees would actually increase giving generally.

Councilman Bothwell moved to approve the standard operating procedure for a combined campaign and re-evaluate the policy after one year. This motion died for lack of a second.

At this time, Mayor Bellamy re-entered the meeting and continued to preside over the meeting.

**B. RESOLUTION NO. 12-37 - RESOLUTION TO ELIMINATE CORPORATE PERSONHOOD**

The resolution to eliminate corporate personhood reads as follows: "Whereas, natural human beings are entitled to citizenship and the rights, privileges, and benefits thereof; and Whereas, corporations, while generally constructive and providing important benefits, are not human beings, but "artificial immortal beings," as defined by Chief Justice John Marshall; and Whereas, the 2010 Supreme Court decision, Citizens United v. the Federal Election Commission, declared corporations to be persons and eliminated legal limits on corporate political spending; and Whereas, corporate money may be spent limitlessly to influence elections at the federal, congressional, state, county, and municipal levels thereby diluting the power of the people; and Whereas, the United States Constitution has been amended many times in response to a groundswell of public opinion, it is the responsibility of local representatives to give voice to the concerns of its citizenry and advise Congressional representatives of these concerns; and Whereas, a growing number of people and municipalities across the nation have joined together to call for an Amendment to the United States Constitution to abolish corporate personhood. NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: On behalf of the citizens of our municipality, calls on our elected representatives in the United States Congress to initiate the process to amend the Constitution of the United States to abolish corporate personhood; BE IT FURTHER RESOLVED THAT: The City of Asheville calls on other communities and jurisdictions to join with us in this action by passing similar Resolutions."

Councilman Smith said that the groups Move to Amend and Asheville Growing Business Alliance asked him to move forward the resolution to eliminate corporate personhood. He said that one of Council's responsibilities is to protect electoral integrity and to make sure that the electoral process and your vote counts. We have seen that there have been different legislative pieces that have sought to restrict voting rights and restrict voting choices. He was proud to say that here in Asheville we voted to retain early voting, which is one way to maximize access to the ballot. Currently there is a movement underway to amend the US Constitution, in the light of the Citizens United ruling which allows for unlimited corporate donations, that don't have to be disclosed, to campaigns. The effect is already being seen in some of the bigger races. It's his fear that eventually we will end up facing some of the same issues here at our local level. He felt it was important for City Council to take a stand as far as our values as a City regarding electoral integrity and maximum transparency in the electoral process.

The following individuals spoke in support of the resolution eliminating corporate personhood; rejecting the US Supreme Court's ruling in Citizens United that corporations are people; and move to amend our US Constitution to firmly establish that money is not speech and that human beings, not corporations, are persons entitled to constitutional rights:

Ms. Anne Craig, representing Move to Amend Buncombe County and the Meet, Talk, Act



Non-Violent Infinity Group of Occupy Asheville, presented Council with petitions containing approximately 233 signatures, a CD with the signatures, and a valentine

Mr. Curry First, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville

Mr. Alan Ditmore

Mr. Victor Ochoa, Occupy Asheville participant

An Occupy San Francisco and Occupy Oakland participant

Mr. John Penley, Occupy Wall Street participant

Ms. Kendall Hale, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville

Ms. Cathy Scott, member of the Meet, Talk, Act Non-Violent Infinity Group of Occupy Asheville

Mayor Bellamy said that she would send the petitions to Representative Donna Edwards who is leading the effort to draft the amendment to the US Constitution.

Mr. Rod Hudgins, President of the Council of Independent Business Owners, said that he did not oppose or endorse the resolution. However, "in this national occupy process, corporations, at time, have been villanized. I am here to speak on behalf of their positive contribution to our community. Since October 2010, corporations that are located here have added almost 1500 new jobs and they have invested almost 351 million dollars in the community. We find this good news astonishing especially during this time of economic stress. These corporations hire local citizens, pay excellent wages, provide great benefits, give financial contributions to support local charities, and they encourage their employees to volunteer in all kinds of community activities – even the pint of blood that one of us here may need someday could come from these companies' participation in a Red Cross blood drive. This valuable list could go on and on. For local businesses, these corporations mean the acquisition of homes, the building of facilities, the opportunity to provide services and products, the patronage of local restaurants, the addition of employees, the opportunity to expand, and a future. As you all know, you are not only Asheville City Council members, you are also sitting as the Board of Directors of one of the largest corporations in the region. We appreciate your corporation along with all the other corporations both large and small. Corporations are vital to our continued success and sustainability. We need them and we need to create a positive environment for their growth and prosperity."

Councilman Bothwell gave a brief history of the Citizens United decision, noting it is not something new in the larger sense. This is now the latest and most abusive use of the law in that regard.

Councilman Bothwell moved for the adoption of Resolution No. 12-37 to eliminate corporate personhood. This motion was seconded by Councilman Pelly and carried unanimously.

#### **RESOLUTION BOOK NO. 34 – PAGE 269**

#### **RESOLUTION NO. 12-38 - RESOLUTION DESIGNATING PACK SQUARE AND CITY-COUNCIL PLAZA AS CITY PARKS, AND DESIGNATING CERTAIN AREAS AS PUBLIC FORUM PURPOSES**

#### **ORDINANCE NO. 4057 - ORDINANCE REGULATING CERTAIN USES OF CITY PROPERTY**

City Attorney Oast said that following up on Council's discussion at the January 24 City Council meeting, the resolution and ordinance are submitted for Council's consideration regarding Pack Square and City-County Plaza.

1. Resolution Designating Park Property. Pursuant to City Code Sec. 12-27, City parks are defined in the City Code to include areas designated by the City Council. The resolution designates substantially all of the area known as Pack Square and City-County Plaza as park property. The area's use as a park is long-standing and may predate Sec. 12-27, and no previous action by Council was found making this designation. The designation makes clear the areas that are considered park property, to which the City's park regulations and ordinances, including the closing time, would apply. With the recent completion of the renovations to the park, consideration of this designation is appropriate at this time.

The resolution also designates two areas - - the western extremity of the Vance Monument oval and the area immediately in front of the City Building - - as public forums. The effect of this is to recognize as public forums two areas that would likely be recognized by courts as having acquired that status through custom and usage. Parts of those public forum areas are encompassed within the designated park. These are areas to which the closing time applicable to parks would not apply. However, even though the public forum areas would be available for use on a 24 hour basis, if the ordinance prohibiting camping on City property is adopted, camping in those public forum areas would not be allowed.

2. Ordinance Regulating Camping and Other Uses of City Property. The ordinance prohibits camping on all City property, not just parks property. The ordinance contains relevant definitions, including "camping," "tent," and "City property." The definition of camping is drawn from federal regulations upheld by the U.S. Supreme Court and, more recently, state regulations upheld by the federal district court for South Carolina, and we have reviewed the ordinances of other cities around North Carolina, including the recently adopted Charlotte ordinances. Note that sleeping (not associated with camping) is regulated pursuant to another section of the City Code Sec. 11-16, adopted in 2002. This ordinance formalizes an existing Parks Department policy that permits will not be issued for camping in City Parks.

The resolution and ordinance are changed from the resolution and ordinance presented on January 24 in the following significant ways:

- (a) The part of the resolution establishing a location for camping has been removed, and the area of the public forum in front of the City Building has been reduced.
- (b) The part of the ordinance establishing regulations for camping has been removed.
- (c) The ordinance now makes a specific reference to the previously adopted ordinance regarding sleeping on public property (City Code Sec. 11-16).
- (d) The ordinance provides it will not be enforced during emergency situations when facilities to house the public are not available.
- (e) The ordinance prohibiting storage on City property does not apply to offices and other spaces assigned to employees.
- (f) The effective date of both the resolution and ordinance is Friday, February 17, 2012, at noon.

Mayor Bellamy said that public comment will be combined for the purpose of both the resolution and the ordinance.

The following individuals spoke in opposition of the resolution designating certain areas as City parks and the ordinance regulating use of City property for various reasons, some being, but are not limited to: just because the City has the right to regulate Occupy Asheville participants doesn't mean it's the right thing to do; the people have a right to free speech, freedom of

assembly and their ability to redress the government with their grievances when something needs to be changed in their communities; need to give the homeless a safe haven; we should not criminalize poverty and people who have fallen below the standard of living that most of us enjoy; the homeless will be arrested just trying to survive; not all homeless programs are accessible to the homeless and there are many homeless needs that are not met; even if Asheville moves the Occupy movement from in front of City Hall, the movement wouldn't exist if there wasn't something wrong in our communities; the homeless, inequities and activities of our corporations will just be moved somewhere else; request council to offer Occupy Asheville another space where they can organize; and Occupy Asheville does not want to be a burden but wants critical issues addressed; and if Council closes the encampment many homeless will be without a place to live:

Ms. Naomi Archer

An Occupy Asheville participant

Mr. John Spitzberg, President for Veterans for Peace and the Secretary/Treasurer of the Asheville Homeless Network

A man who identified himself as Dan  
Brother Christopher Chiaromonte

Ms. Clara Harahan

An Asheville resident

Ms. Faith Ryan, Asheville resident

Mr. Steve Norris

Ms. Amber Williams

Mr. Victor Ochoa, Occupy Asheville participant

Mr. Don Lilendorf

Mr. George Ingle felt it was time for the Occupy Asheville to move on. He was opposed with them telling the City what to do and asking the City to find them a place to live. His patience has run out, as well as other Asheville residents' patience. As a City resident for 83 years and a taxpayer, he felt City Council should be representing him and not those who come here from other states to participate in the Occupy Asheville movement.

When Mayor Bellamy asked if Council would like to extend the time period for additional comments, no motion was made.

Councilman Smith could not support the motion as he still had a lot of uncertainty about whether this is speech we are doing away with and he didn't know the answer. He did know that in regard to the homeless, we have reduced chronic homeless in Asheville by 75% over the last 5 years. As far as working together with Occupy Asheville, the City works with hundreds of organizations who deal with deep rooted problems in our community – we have a model for working together. The organization would create a viable model, gain broad-based support and then move it forward with that support.

Councilman Hunt urged members of the Occupy Asheville camp to help the homeless adjust before the Friday deadline. He also hoped that the camp would move without a confrontation.

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-38. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Councilman Smith voting "no."

**RESOLUTION BOOK NO. 34 – PAGE 270**

Councilman Bothwell was opposed to the ordinance regulating camping and other uses on City property because being able to camp around in the City in places is an essential "release valve" for the fact that we don't have sufficient facilities for everyone.

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4057. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilman Bothwell and Councilman Smith voting "no."

## **ORDINANCE BOOK NO. 27 – PAGE**

### **Closed Session**

At 7:20 p.m., Councilman Pelly moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including possible litigation, and to consider and give instructions to the attorney concerning the handling or settlement of a claim involving the following parties: Estate of James David Stroupe and the City of Asheville. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:57 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

### **A. RESOLUTION NO. 12-39 - RESOLUTION DIRECTING STAFF TO PREPARE A REPORT ON A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE**

#### **MOTION SETTING A PUBLIC HEARING ON MAY 22, 2012, TO CONSIDER A MUNICIPAL SERVICE DISTRICT FOR DOWNTOWN ASHEVILLE**

Downtown Master Plan Project Manager Sasha Vrtunski said the Downtown Management Subcommittee and an Interim Board of Directors is planning to bring a proposal forward for a Municipal Service District (a Business Improvement District) for downtown Asheville in late spring, 2012. They are asking that City Council give the direction to staff to prepare a report that details the needs, services and boundaries of the district. This direction is required by state statute.

Ms. Susan Griffin, Chair of the Downtown Management Subcommittee and downtown resident, made the presentation. The Subcommittee was charged with implementing Strategy 7 of the Downtown Master Plan. They have been studying how the Municipal Service District would be a good management tool for downtown. To avoid confusion, she explained that a Business Improvement District in North Carolina is called a Municipal Service District (MSD).

For the past six months they have been sharing what they have learned about MSDs with downtown property owners and have been encouraged by the support they have been getting as well as receiving encouragement from the positive economic forecast study they had commissioned about the impact of a MSD. Over the past 6 weeks they have been working with the Interim Board who are actually working to finalize the details of what a MSD downtown would look like, e.g. what the actual district would be, the services to be offered, what the Board would look like and what the assessment would be. The interim Board is made up of 13 property owners who would also be paying the additional tax if a MSD is formed. They proportionately represent the different types of property owners within the Central Business District.

The Downtown Management Subcommittee and the interim Board asked for Council to adopt a resolution directing staff to prepare a report for an MSD for downtown Asheville and to also adopt a motion setting a public hearing on an MSD for downtown Asheville on March 22, 2012.

In response to Vice-Mayor Manheimer, City Attorney Oast believed there is no statutory requirement that the proposed ordinance go through any other body other than City Council.

Councilman Davis said that there is a feeling amongst many downtown businesses that there would need to be a significant buy-in from the business community. He suggested that once this takes real shape, it should be reviewed again by the Planning & Economic Development Committee and the Downtown Commission. He wondered if it would be something we should add to a ballot for a referendum.

Ms. Griffin said that once the details are finalized, which they expect will be completed in the next two weeks, they will go back to the property owners and whatever other bodies the Council would like them to receive further input.

Councilman Hunt agreed with Councilman Davis on the need to be assured that an MSD downtown is broadly supported. He felt the burden needs to be on the advocates making sure the MSD is defensible and well executed.

Councilman Davis said that this will be a considerable amount of money and a considerable change to an important district.

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

Councilman Davis moved for the adoption of Resolution No. 12-39, with the proposed ordinance being reviewed by the Planning & Economic Development Committee prior to review by the Downtown Commission before the May 22 public hearing. This motion was seconded by Councilman Hunt and carried unanimously.

#### **RESOLUTION BOOK NO. 34– PAGE 272**

Vice-Mayor Manheimer moved to schedule a public hearing on May 22, 2012, to consider a Municipal Service District for downtown Asheville. This motion was seconded by Councilman Smith and carried unanimously.

At 8:05 p.m., Councilman Smith moved to excuse Mayor Bellamy from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously. At this time, Mayor Bellamy handed the gavel over to Vice-Mayor Manheimer to preside over the remainder of the meeting.

#### **B. ORDINANCE NO. 4058 - ORDINANCE ADOPTING THE 2012-13 FEES & CHARGES**

Budget Manager Tony McDowell said that this is the consideration of an ordinance adopting fee adjustments for the Fiscal Year 2012-2013.

The major types of revenue available to North Carolina counties and municipalities are local taxes (including property taxes); local fees, charges and assessments; and intergovernmental and miscellaneous revenue. Local governments have increasingly looked for appropriate opportunities to implement local fees and charges because they generally have the

advantage of aligning service provision directly with payment; therefore, the person or entity receiving the benefit of a service pays for the service.

In Asheville, these fees make up about 10% of the City's General Fund revenue and 36% of city-wide revenue. These fees generally fall into three major categories: general user fees and charges; regulatory fees, and; public enterprise fees and charges.

- **General User Fees & Charges:** User fees are available feasible for any service that directly benefits individual users and generally are placed in the General Fund to support any general fund activity or program. User fees typically only cover a portion of the cost of the services for which they are assessed. Charges for parks and recreation services would fall into this category.
- **Regulatory Fees:** Regulatory fees cover costs associated with certain regulatory activities such as issuing building permits, performing inspections, reviewing development plans, and enforcing local ordinances. Case law requires regulatory fees to be reasonable and prohibits them from exceeding the average costs of funding the regulatory service.
- **Public Enterprise Fees & Charges:** A public enterprise is an activity of a commercial nature that could be provided by the private sector (water, sewer, electric service, solid waste collection and disposal, stormwater, airports, off-street parking, public transportation, etc.). Many public enterprises are self-supporting, meaning revenue generated from fees and charges is sufficient to cover the cost of providing the service.

Staff recommendations for adjustments to fees and charges for FY 2012-13 consist of relatively minor increases to regulatory fees that either have not been adjusted in three or more years or have never been assessed for a specific service.

In the Public Enterprise category, staff is setting fees for the new Biltmore/Lexington Avenue Parking Garage that will be opening in the coming fiscal year. In addition, based on favorable financial performance in the Water Resources Fund last year, staff has concluded that a water rate increase will not be necessary for FY 2012-13.

The proposed FY 2012-13 fee adjustments were reviewed by the City Council Finance Committee on January 24, 2012. He provided Council with a full summary and analysis of the proposed fees and charges, which would take effect on July 1, 2012.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides additional revenue to help balance the FY 2012-13 General Fund budget.
- Provides staff will time to begin communicating fee changes to citizens, customers and stakeholders so they are aware of changes that will be implemented on July 1.

Con:

- None.

General Fund fee changes recommended by the Finance Committee would produce approximately \$160,000 in additional revenue. These fees are designed to more fully recover the expenditures associated with providing specific services. Establishment of the Biltmore/Lexington Avenue Parking Garage fees will provide revenue to help offset the cost of operating the garage and paying the debt service on its construction.

Staff recommends that Council adopt the proposed FY 2012-13 fee proposals.

Councilman Smith understood that we are trying to keep up with the cost of doing business; however, he asked that the home occupation permit fee (current \$50 fee; proposed \$75 fee); and the A-Frame Sign fee (currently \$25 fee; proposed \$30 fee) not be increased. Both of these fees affect small and emerging businesses and asked that those fees not be increased.

Discussion occurred, upon inquiry of Councilman Davis, about studying parking garage rates in other comparable cities. Director of Transportation Ken Putnam said that they are trying to keep on-street metered parking higher than the rates in the parking garages to entice people to park in the garages. In summary, it was the consensus of Council to ask the City Manager to begin the study and report back to Council with staff's findings. Councilman Davis felt that the Downtown Commission and the Asheville Downtown Association will want to provide input into the study as well, due to their disadvantage of other areas of the City not having on-street parking meters, i.e., Biltmore Village, Biltmore Park, Haywood Road in west Asheville, etc. Vice-Mayor Manheimer also felt it might be worthwhile to look at placing on-street parking meters in the other areas of the City, which enforcement could be recoverable through the fees collected.

In response to Councilman Smith, Mr. Putnam said that in addition to the pay-by-space stations, staff is currently pursuing the idea of credit cards for on-street meters.

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

Councilman Smith moved for the adoption of Ordinance No. 4058 with the amendment that the home occupation permit fee remain \$50 and the A-Frame Sign fee remain \$25. This motion was seconded by Councilman Hunt and carried unanimously (Mayor Bellamy was excused).

## **ORDINANCE BOOK NO. 27 – PAGE**

### **C. BOARDS & COMMISSIONS**

Regarding the Alcoholic Beverage Control Board, the following individuals have applied for the vacancy: Genny Lynn Beville, Tim Flora, Mark W. Cates, Guadalupe Chavarria, Randall C. Hall, Judy Kuhne, Fred Cooke, Charles Larrick, Melissa English and John Menkes. It was the Boards & Commissions Committee recommendation and the consensus of Council to interview Guadalupe Chavarria, Randall C. Hall, Melissa English and John Menkes.

Regarding the Board of Adjustment, the following individual has applied for the vacancy: Dimi Kulakov. Because there are two alternate openings and one applicant, it was the consensus of Council to re-advertise.

Regarding the Community Relations Council, the following individuals have applied for a vacancy: Charles Rosenblum, Kathryn Liss, Itiyopiya Ewart, and Christopher Bradford. It was the recommendation of the Boards & Commissions Committee and the consensus of Council to (1) postpone any appointments until after the Community Relations Council has made a presentation to City Council in March; and (2) re-advertise.

Regarding the Historic Resources Commission, the following individuals have applied for a vacancy: Jay Lively, Jay Marino, Anne Harrell, Frank Hallstrom, Deanna Reeder, Michael Bragg and Tracey Rizzo. It was the recommendation of the Boards & Commissions Committee and consensus of Council to interview Jay Lively, Tracey Rizzo and Deanna Reeder.

## **RESOLUTION NO. 12-40 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that former Vice-Mayor Brownie Newman currently serves as a member on the Airport Authority.

Vice-Mayor Manheimer said that it has been the practice of Council to appoint a seated member of Council to the Airport Authority.

The following individual has applied for a vacancy on the Airport Authority: Heather Hunter.

Councilman Hunt moved to appoint Vice-Mayor Esther Manheimer to fill the unexpired term of Brownie Newman, term to expire June 30, 2012, or until her successor has been appointed. This motion was seconded by Councilman Smith and carried unanimously (Mayor Bellamy excused from meeting).

#### **RESOLUTION BOOK NO. 34 – PAGE 273**

##### **RESOLUTION NO. 12-41 - RESOLUTION APPOINTING A CHAIR TO THE CIVIL SERVICE BOARD**

Vice-Mayor Manheimer said that Larry Harris currently serves as Chairman of the Civil Service Board. The Civil Service Law for the City of Asheville, Section 2, Chapter 303 of the 1999 Session Laws of the North Carolina General Assembly provides that the Chair of the Civil Service Board shall be appointed annually by the City Council.

Current members of the Civil Service Board include: Chairman Larry Harris, Jacquelyn Hallum, Alan Coxie, Virginia Robinson and Marvin Rosen.

Upon inquiry of Vice-Mayor Manheimer, City Attorney Oast said that Councilwoman Manheimer did not have a disqualifying conflict of interest just because Mr. Harris works at the same law firm.

Councilman Hunt moved to reappoint Larry C. Harris Jr. as Chair of the Civil Service Board for a one-year term or until his successor is duly and annually appointed by the City Council, as provided by law. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

#### **RESOLUTION BOOK NO. 32 – PAGE 274**

##### **RESOLUTION NO. 12-42 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE DOWNTOWN COMMISSION**

Vice-Mayor Manheimer said that the term of Kitty Love, as a member on the Asheville Downtown Commission, expired on December 31, 2011.

The following individuals have applied for a vacancy on the Downtown Commission: Edward Loewe, Patric Mullen, Karl Katterjohn, Dean Pistor, Andrew Montrie, Byron Greiner and Laurie Miller.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing Byron Greiner, but would be open to any interviews suggested by Council.

Councilman Davis moved to appoint Byron Greiner to serve a three-year term, term to expire December 31, 2014, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously (Mayor Bellamy excused from meeting).



Vice-Mayor Manheimer also noted that the Boards & Commissions Committee reviewed the recommendation of the Asheville Downtown Association (ADA). Said recommendation was to amend the Downtown Commission's ordinance to allow their seat be a seated Board member and not specifically the President of the ADA. The Asheville Downtown Commission supports this amendment as well. It was the consensus of Council to instruct the City Attorney to prepare an ordinance for the next meeting to make this change in membership.

**RESOLUTION BOOK NO. 34 – PAGE 275**

**RESOLUTION NO. 12-43 - RESOLUTION APPOINTING A MEMBER TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that the terms of Stephen Bolden and Wanda Lanier expired on November 1, 2011. There also exists a vacancy from the passing of Gerald Hixson, whose term will expire on November 1, 2013.

The following individuals have applied for the vacancies: Debbie Metcalf, Micheal Woods, Michael Akers, Marcie Walker, Timothy Sadler, John Spears and Charles Barber.

The Homeless Initiative Advisory Committee (HIAC) recommended appointing Tim Sadler to fill the unexpired term of Mr. Hixson and appointing Marcie Walker. They asked that the remaining seat be re-advertised. There was a brief discussion on whether City Council is required to appoint the HIAC's recommendations. Councilman Smith, liaison to the HIAC, will confer with the HIAC to see what their understanding is regarding recommendations for appointments; and if need be, the resolution establishing the HIAC will be amended to give Council the discretion on making appointments, with consideration of their recommendation. It was the consensus of Council to continue advertising.

Councilman Smith moved to appoint Marcie Walker to serve a three-year term, term to expire November 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 276**

**RESOLUTION NO. 12-44 - RESOLUTION APPOINTING A MEMBER TO THE HUB COMMUNITY ECONOMIC DEVELOPMENT ALLIANCE**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that there currently exists a vacancy on the HUB Community Economic Development Alliance, left by Kim MacQueen. The term will expire August 22, 2012.

The following individual has applied for a vacancy on the HUB Community Economic Development Alliance: Edward Hay.

Vice-Mayor Manheimer said that the Boards & Commissions Committee recommended appointing Edward Hay.

Councilman Bothwell moved to appoint Edward Hay to serve the unexpired term of Ms. MacQueen, term to expire August 22, 2012, and then a full three-year term, term to expire August 22, 2015, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 277**

**RESOLUTION NO. 12-45 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE RIVERFRONT AREA REDEVELOPMENT COMMISSION**

Vice-Mayor Manheimer, Chairman of the Boards & Commissions Committee, said that there currently exists a vacancy on the Riverfront Area Redevelopment Commission, left by Mr. Robert Camille. The term will expire January 1, 2014.

The following individuals have applied for a vacancy on the Riverfront Area Redevelopment Commission: Phillip Ellis and Cindy Weeks.

Vice-Mayor Manheimer said that Riverfront Area Redevelopment Commission recommended appointing Ms. Cindy Weeks and the Boards & Commissions Committee agreed with their recommendation.

Councilman Hunt moved to appoint Cindy Weeks to serve the unexpired term of Mr. Camille, term to expire January 1, 2014, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously (Mayor Bellamy excused from meeting).

**RESOLUTION BOOK NO. 34 – PAGE 278**

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

Brother Christopher Chiaromonte spoke about how Asheville treats the homeless.

Mr. Charles Rawls spoke about his disappointment in Asheville's decision to designate the area around Pack Square Park as a Park.

**VIII. ADJOURNMENT:**

Vice-Mayor Manheimer adjourned the meeting at 8:44 p.m.

---

CITY CLERK

---

MAYOR