

Tuesday – August 28, 2012 - 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 Deputy City Clerk Philip Kleisler

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Davis gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 14, 2012**
- B. RESOLUTION NO. 12-191 - RESOLUTION AUTHORIZING THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES TO INSTALL FLEET GPS TRACKING EQUIPMENT AND ROUTING SOFTWARE**

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from the N.C. Dept. of Environment and Natural Resources (DENR) in the amount of \$32,000 to install fleet GPS tracking equipment and routing software.

The City of Asheville is committed to carbon footprint reductions in municipal operations, recently the highest priority in this effort is focused on vehicle fuel reductions. Two strategies to achieve these goals focus on operational management of routing and driver behavior change relating to idling. Receiving funds through this grant will allow staff to work on both strategies by installing GPS units on 43 fleet vehicles to better understand the travel patterns and routing needs as well as having diagnostic information about engine idling patterns.

This action complies with City Council's Strategic Operating Plan to continue to identify strategies and costs for maintain the city's annual energy reduction goal of 4%.

Pro:

- Reduce municipal carbon footprint

Con:

- Requires City matching funds of \$25,000

As noted above, the City match for this grant is \$25,000. CIP funding that was approved during the annual budget process for fleet replacement will serve as the City match. The City would be responsible for replacement of the tracking equipment and software at the end of its useful life.

City staff recommends City Council adopt a resolution authorizing the City Manager to apply for a grant from the N.C. Dept. of Environment and Natural Resources to install fleet GPS tracking equipment and routing software to improve fuel efficiency of sanitation and snow plowing activities.

**RESOLUTION BOOK NO. 35 – PAGE 52**

**C. RESOLUTION NO. 12-192 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE TANGERINE BALL**

**RESOLUTION NO. 12-193 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE AVL CX**

**RESOLUTION NO. 12-194 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST**

**RESOLUTION NO. 12-195 - RESOLUTION AMENDING RESOLUTION NO. 12-167 MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Tangerine Ball on September 15, 2012, AVL CX on November 3, 2012, Oktoberfest on October 13, 2012; and an amendment to Resolution No. 12-167, due to a reduction in the event boundaries and hours of operation for the Lexington Avenue Arts & Fun Festival on September 1 and 2, 2012.

- The Asheville Area Arts Council has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at The Tangerine Ball and allow for consumption at this event.

The Tangerine Ball will be held on Saturday, September 15, 2012, from 6:00 p.m. – 9:00 p.m. on Walnut Street between the intersections of Broadway and Carolina Lane, and on Buxton Avenue between the intersections of Collier Avenue and Millard Avenue as per the event area limits referenced on the accompanying site maps.

- Trips for Kids WNC has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at the AVL CX and allow for consumption at this event.

The AVL CX will be held on Saturday, November 3, 2012, from 2:00 p.m. – 8:00 p.m. within Carrier Park, as per the event area limits referenced on the accompanying site map.

- The Asheville Downtown Association has requested through the City of Asheville Development Services Center that City Council permit the sale of beer and/or unfortified wine at Oktoberfest and allow for consumption at this event.

Oktoberfest will be held on Saturday, October 13, 2012, from 12:00 p.m. – 6:00 p.m. on Wall Street and extending through a one-lane portion of Battery Park Avenue, as per the event area limits referenced on the accompanying site map.

- Arts2People has requested through the City of Asheville Development Services Center that City Council amend Resolution No. 12-167 due to a reduction in the event hours and designated event boundary pertaining to the sale and consumption of beer and/or unfortified wine at the Lexington Avenue Arts & Fun Festival.

The Lexington Avenue Arts and Fun Festival will be held on Saturday, September 1, 2012 from 5:00 p.m. to 10:00 p.m. within the boundary of the Rankin Avenue Monthly Parking Surface Lot East and again on Sunday September 2, 2011 from 11:00 a.m. to 9:00 p.m. within the boundaries of Lexington Avenue between the intersections of College Street and the I-240 overpass, Walnut Street between Carolina Lane and Rankin Avenue, Rankin Avenue between Walnut Street and Hiwassee, Hiwassee between Rankin Avenue and Carolina Lane, the Rankin Avenue Monthly Parking Surface Lots East and West on Rankin Avenue between Walnut and Hiwassee, and the metered parking lot at Lexington Avenue and the I-240 Underpass, as per the event area limits referenced on the accompanying site map.

These actions have no direct connection with the City of Asheville Strategic Operating Plan.

Pro:

- Allows fundraising opportunities for Run Amok Productions, Asheville Area Arts Council, Trips for Kids WNC and the Asheville Downtown Association.

Con:

- Potential for public safety issues

There is no fiscal impact.

City staff recommends City Council amend Resolution No. 12-167 for the Lexington Avenue Arts & Fun Festival as requested, and adopt new resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Tangerine Ball, AVL CX, Oktoberfest.

**RESOLUTION NO. 12-192 - RESOLUTION BOOK NO. 35 – PAGE 53**  
**RESOLUTION NO. 12-193 - RESOLUTION BOOK NO. 35 – PAGE 57**  
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**RESOLUTION NO. 12-195 - RESOLUTION BOOK NO. 35 – PAGE 63**

**D. RESOLUTION NO. 12-196 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE METROPOLITAN PLANNING PROGRAM, SECTION 5303 OF THE FEDERAL TRANSIT ADMINISTRATION**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation (NCDOT) to fund the Metropolitan Planning Program, Section 5303 of the Federal Transit Administration (FTA).

The FTA Section 5303 Metropolitan Planning Program is part of the annual Unified Planning Work Program (UPWP) of the French Broad River Metropolitan Planning Organization (FBRMPO), which outlines transportation planning tasks to be performed by the FBRMPO. The Metropolitan Planning Program is designated to pay exclusively for transit planning activities, such as grants administration and reporting activities, short range and long range transit planning, transportation improvement program preparation, Title VI and DBE programs, and planning and operational analyses. The funds are used to supplement the Transit Projects Coordinator position (90% of the grant) and a portion of the Transportation Manager position (the remaining 10%) for time spent on transit planning.

FY 2012-13 funding totals \$57,610. The subject grant will provide 80% of the anticipated funding (\$46,088), the North Carolina Department of Transportation will provide 10% (\$5,761), and the City will provide the remaining 10% (\$5,761). The grant funding and the City's local match in the amount of \$5,761 are currently budgeted in the Transportation Department's approved budget for the current fiscal year.

This action complies with the current City Council's Strategic Operating Plan in the fiscal responsibility focus area by operating the City of Asheville to the highest levels of fiscal responsibility.

The Transit Commission supports the subject action.

Pros:

- The subject grant supplements funding for two existing positions.
- The subject grant enables the City of Asheville to use \$51,849 in Federal and State funds for transit planning activities.

Con:

- A 10% local match in the amount of \$5,761 is required.

The total grant funding for Fiscal Year 2012-13 is \$57,610. The City is required to provide a 10% local match in the amount of \$5,761. The anticipated grant funding and the City's local match in the amount of \$5,761 are currently budgeted in the Transit Services fund.

City staff recommends that City Council adopt a resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Transportation to fund the transit planning program, Section 5303 Metropolitan Planning Grant of the Federal Transit Administration for FY 2012-13.

#### **RESOLUTION BOOK NO. 35 – PAGE 66**

#### **E. RESOLUTION NO. 12-197 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPORTS FIELD INC. FOR THE REPLACEMENT OF THE TURF, THE RESTORATION AND REPAIR OF THE IRRIGATION AND DRAINAGE SYSTEMS TO MCCORMICK BASEBALL FIELD**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Sports Field, Incorporated for the replacement of the turf, the restoration and repair of the irrigation and drainage systems to McCormick Baseball Field.

McCormick Field has been a professional baseball venue since construction in 1924. It is recognized as one of the premier minor league ballparks in the nation. The Tourists are the Single A affiliate of the National League Colorado Rockies.

In an effort to meet the specific needs of the minor league baseball and to maintain the field in superior condition the scope of work required the successful bidder to have and supply at least the following:

- Built or renovated three professional National Association affiliated fields;
- Prefer member of American Sports Builders Association;
- STMA National Membership required;
- References required.

Sports Field, Incorporated was the low responsible bid. The project has unknowns such as making the necessary amount repairs and improvements to the irrigation and drainage systems, the number of quick connects to be modified to one-inch, the amount of 100% golf green sand, and the amount to raise or lower the infield to meet the new playing surface. The base bid with alternatives is \$170,929. Unit prices were included for additional golf green sand at \$43.00 per ton.

Due to the age and unknown condition of the drainage and irrigation systems, an amount of uncertainty exists for additional change orders. Due to the potential for change orders, staff recommends Council authorize change order up to the approved budget.

This project supports the City's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities.

Pros:

- McCormick Baseball Field is a premier location for minor league baseball and an asset to the City and community.
- The approval of the resolution authorizing the contract for construction allows the replacement, repair, and restoration work to begin.
- Funding for the project is currently in the CIP budget at \$300,000.

Con:

- A delay will allow the irrigation and drainage system to continue being less than totally effective, affect the playing field, and could cause issues with Professional Baseball.

The cost of the base bid with alternates for the construction to repair the drainage and irrigation systems and to replace the turf is \$170,929. Additional costs have been identified for specific conditions that include a fixed cost with unknown quantities. Additional unknown conditions are anticipated in the irrigation and drainage systems. The total cost of the project including the unknowns is anticipated not to exceed \$225,000 of the \$300,000 already approved in the CIP budget for the project.

City staff recommends that City Council adopt a resolution authorizing the City Manager to sign the contract with Sports Field, Incorporated and future change orders associated with the project not to exceed the total approved budget amount.

Vice-Mayor Manheimer and Councilman Davis responded to Ms. Judy Strong when she urged City Council to apply to the Tourism Development Authority for use of the Product Development Funds for McCormick Field renovation, and not use her tax dollars.

At Mayor Bellamy's request, it was the consensus of Council to instruct City Manager Jackson to report at the November 13, 2012, agenda staff's prioritization of projects for use of the Product Development Funds.

#### **RESOLUTION BOOK NO. 35 – PAGE 67**

- F. MOTION APPROVING THE BOARD OF ALCOHOLIC BEVERAGE CONTROL'S TRAVEL POLICIES ADOPTED JUNE 28, 2011**
- G. RESOLUTION NO. 12-198 - RESOLUTION DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION AND IMPROVEMENT OF VARIOUS CAPITAL PROJECTS AND THE ACQUISITION OF VEHICLES AND EQUIPMENT FROM THE PROCEEDS OF AN**

**INSTALLMENT FINANCING CONTRACT TO BE EXECUTED AND  
DELIVERED IN FISCAL YEAR 2013**

Summary: The consideration of a resolution declaring the intent of the City to reimburse itself for capital expenditures incurred in connection with the acquisition, construction and improvement of various capital projects and the acquisition of vehicles and equipment from the proceeds of an Installment Financing Contract to be executed and delivered in FY 2013.

The City of Asheville plans to issue debt in FY 2013 to fund Council approved capital projects authorized as part of the FY 2013 budget. These projects include the construction and improvement of streets and sidewalks in the vicinity of Craven Street; the purchase and installation of LED streetlights, and; the purchase of vehicles and equipment. The City reasonably expects the maximum principal amount necessary to fund these projects is \$4,000,000.

The purpose of the Reimbursement Resolution is to provide the City with the ability to move forward with the projects and reimburse its accounts upon the issuance of the debt. The Resolution does not specifically authorize the issuance of the debt. Those resolutions will be drafted in connection with the debt issuance in early 2013. Additionally, as a number of the projects, vehicles and equipment are bid, the actual size of the new money financing can be further refined.

Pro:

- Enables the City to begin spending money on the Council's approved capital projects, vehicles and equipment that were to be financed from debt proceeds.
- Proceeding with the construction projects now, in a 'soft market' may result more aggressive bidding and lower costs.

Con:

- Lost opportunity to earn interest (although at very low interest rates in the range of 1/10 of 1% to 1/4 of 1%) on the City's unrestricted cash and investments which are temporarily diverted to pay for the capital projects pending reimbursement from the debt issuance.

The Reimbursement Resolution will result in some minimal loss of interest income. Bidding and proceeding with the authorized capital projects may result in better pricing thus lower the actual amount of the debt financing. The repayment of the debt issuance is incorporated in the debt management plan through the capacity being generated by the retirement of existing debt.

Staff recommends City Council adopt the resolution.

**RESOLUTION BOOK NO. 35 – PAGE 68**

**H. RESOLUTION NO. 12-199 - RESOLUTION SETTING A PUBLIC HEARING ON SEPTEMBER 11, 2012, TO CONSIDER AUTHORIZING THE SALE OF PROPERTY LOCATED AT HAYWOOD STREET AND PAGE AVENUE IN DOWNTOWN ASHEVILLE TO MCKIBBON HOTEL GROUP FOR ECONOMIC DEVELOPMENT PURPOSES**

Summary: The consideration of a resolution setting a public hearing on the question of approving the sale of property located at Haywood Street and Page Avenue in downtown Asheville to McKibbon Hotel Group for economic development purposes.

The City is considering selling several parcels of property it owns at 68 and 76 Haywood Street, 33 Page Avenue, and at the intersection of Page Avenue and Battery Park Alley in downtown pursuant to N.C.G.S. 158-7.1 for economic development purposes. That statute authorizes the conveyance of property by private negotiation and sale, but requires that a public

hearing be held first. In addition, notice of the public hearing must be published 10 days in advance, and the notice must contain certain information required by statute. The proposal under consideration is to sell the property to McKibbon Hotel Group for development of a hotel. The conveyance may be subject to conditions to ensure that the purposes of the statute are met. Council's rules provide that public hearings be scheduled by special order, which is the purpose of this resolution.

Adoption of the resolution is recommended.

City Attorney Oast said that in this resolution setting a public hearing Council is also directing the City Clerk to publish a notice. In that notice it states that the City Council intends to convey the property. He said that City Council is not bound to do that, but it is a statement we are required to put in by statute.

In response to Councilman Bothwell regarding the appraisal value of the Haywood Street properties vs. the land at 51 Biltmore Avenue, Finance and Management Services Director Lauren Bradley said that there are several characteristics about the transaction that occurred at 51 Biltmore Avenue that make it not an easy comparable for the land on Haywood Street. Among those considerations is that the City did pay a premium for the 51 Biltmore Avenue land because they determined it would cost us less to pay a premium for land than to dig down further for another layer of parking and it was more cost effective for us to do that. Also there was a premium associated with the cost of the 51 Biltmore Avenue land because we were assembling many parcels of land in order to have enough land to do a project of that size. A third thing that makes it a difficult comparable to 51 Biltmore Avenue is that because the transaction was complicated (multiple purchasers and different parts of land that were converted into a condominium) and it was very different than a straight land sale on Haywood Street.

Councilman Bothwell didn't see any argument that the property across from the US Cellular Center can possibly be a lower value piece of property than 51 Biltmore Avenue.

#### **RESOLUTION BOOK NO. 35 – PAGE 70**

##### **I. RESOLUTION NO. 12-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN FOR PHYSICIAN SERVICES THROUGH THE CITY'S HEALTH SERVICES DIVISION**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for physician services provided through the City's Health Services division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2012-13. By offering city employees clinic hours and complimentary health services for non-critical issues, Health Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits

- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This is a one year \$120,000 contract, and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

#### **RESOLUTION BOOK NO. 35 – PAGE 71**

#### **J. RESOLUTION NO. 12-201 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BLUE CROSS/BLUE SHIELD OF NORTH CAROLINA FOR SPECIFIC STOP LOSS INSURANCE COVERAGE**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance with Blue Cross Blue Shield of North Carolina.

The City of Asheville is self-insured for medical and prescription drug expenses less than \$150,000 paid during a contract year on behalf of all participants in the City's medical plan. The City purchases Specific Stop Loss Insurance to cover the cost of large or catastrophic claims paid during the contract period that exceed \$150,000.

Premiums for Stop Loss Insurance are based on the Medical and Prescription Drug Benefits, demographic make-up of the participants, prior claims experience, industry standards, medical trends / inflation, the claims accumulation period and any known on-going medical conditions.

In an effort to promote Council's employer of choice strategic goal by providing the best and most cost effective insurance, the City of Asheville requested that our brokerage firm, The Ferguson Employee Benefit Agency, initiate a formal bidding process for Specific Stop Loss Insurance. The City received 6 proposals in response to our Request for Proposals. The Ferguson Employee Benefit Agency worked with staff to review these proposals.

After a thorough review the vendor selected is Blue Cross Blue Shield of NC.

This action aligns with City Council's Strategic Operating Plan in that it is an effort to promote Council's employer of choice strategic by providing the best and most cost effective benefit plan for our employees.

Pros:

- Specific Stop Loss insurance rates and terms were the most competitive when compared to additional fees charged by BCBSNC for utilizing an outside stop loss insurance carrier.
- Reduces the length of time between the City's payment of claims and Stop Loss Carrier reimbursement for claims that exceed \$150,000 during the contract year.

Con:

- None.

This is a one year \$725,000 contract and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.



City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for Specific Stop Loss Insurance with Blue Cross Blue Shield of North Carolina.

**RESOLUTION BOOK NO. 35 – PAGE 72**

**K. RESOLUTION NO. 12-202 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH A&D ENVIRONMENTAL INC. FOR ENVIRONMENTAL REMEDIATION OF CONTAMINATED SOILS AT THE FORMER ASHEVILLE POLICE DEPARTMENT FIRING RANGE AT 82 WESTFELDT ROAD IN FLETCHER, N.C.**

**ORDINANCE NO. 4110 - BUDGET AMENDMENT TO COVER PROJECT COSTS**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$35,000 with A&D Environmental, Inc. for environmental remediation of contaminated soils at the former Asheville Police Department Firing Range at 82 Westfeldt Road in Fletcher, NC for a total contract cost of \$128,060.00, and the associated budget amendment in the amount of \$63,000 from General Capital Reserves to cover project costs.

Since the 1970s, the Asheville Police Department has operated a small arms firing range near the Asheville Airport for the purposes of police training and small arms certifications. Per the lease agreement between the City of Asheville and the Asheville Regional Airport Authority, this continued use was subject to long range planning and future development of the Asheville Airport. In early 2010, the City was notified that the west side taxiway and runway construction project would impact the firing range, and at that time, the City undertook the process to formally close the small arms firing range.

The N.C. Dept. of Environment and Natural Resources (NCDENR) regulates the closure of gun firing ranges due to the fact that remnants of bullet casings and shell fragments in concentrated areas contain levels of lead and other heavy metals that present hazards to human health. This case being an outdoor firing range, the concentrations of contaminants were found at large soil berms that served as the target practice areas.

The City initially established a budget of \$200,000 to provide clean closure of the firing range. In establishing this initial budget, the following project management cost factors affected final project costs:

- At the time of project start up, there was no data attainable to accurately identify the depth and breadth of the soil contamination. For example, initial consultant estimates suggest as much as 2800 tons of soil would require remediation. As the technical analysis continued, that initial scope was refined significantly.
- Optional disposal sites could not be identified until the later part of the process, once final testing determined the final levels of applicable contaminants. Assumptions were initially made that a local/regional approved landfill would be able to accept the soil.
- Initial cost estimates included the City provide some level of in-kind support, to include: site preparation and soil transport. This was not an option once all options were fully studied and soil testing was completed.
- Initial cost estimates assumed normal DENR process steps to adequately treat soil. Once testing was completed, DENR required the use of roll-off containers, as a precautionary step to insure appropriate handling/treatment of affected soil. Roll-off containers significantly increased the cost and limited the City's options on in-kind operational support.

At this point, those funds have been allocated to: (1) Assess and delineate the areas of the firing range that demonstrated high levels of lead and other heavy metals, and provide full documentation to NCDENR to that effect, (2) Based on feedback from NCDENR, develop a method of containing and chemically treating the impacted soils in order to encapsulate the lead and prevent the possibility of lead leachate or chemical runoff, (3) Excavate and mix soils with chemical treatment, (4) Load soils into rolloff containers for storage, and perform rounds of confirmation testing to ensure the chemical treatment was effective, (5) Perform soils testing in former range area to ensure that all lead impact had been removed, (6) Enter into a contract with the Republic Landfill in Enoree, South Carolina for the final disposal of the treated soils as non-hazardous special waste.

The various contracts for these tasks have been within staff's threshold to execute according to the City's Procurement, Purchasing and Contracting Policy. It is the subject of this particular staff report and resolution to address a specific contract that exceeds staff's contracting threshold and therefore requires Council action to approve.

On May 1, 2012, the City of Asheville via the City Manager entered into an informal construction contract in the amount of \$93,060 for the excavation and environmental remediation of contaminated soils at the former Asheville Police Department Small Arms Firing Range. A&D's current contract consists of: (1) Perform an initial treatability study on a representative soil sample to determine the amount of chemical reagent needed to encapsulate the existing lead and heavy metals present in the contaminated soils, (2) Excavate and screen impacted soils to remove large debris and generate a consistent soil basis, (3) Divide soil into 20 ton lots and mix in chemical reagent treatment, (4) Store soil in rolloff containers until final testing is completed and soils are ready for transport to a subtitle D approved sanitary landfill.

During the due diligence discussion with A & D, the estimated amount of treated soil was 820 tons, which would require 48 leased rolloff containers for storage. It was also estimated that the soils would be ready for transport in 30 days, implying that all approvals from NCDENR would be completed in that timeframe and that the City would have a contract with a sanitary landfill to accept and properly dispose of the special waste.

Three issues arose during the course of the work that have resulted in additional costs; namely, the soil had to be packed lightly in each container to achieve adequate mixing, and as a result 55 rolloff containers were leased versus the initial 48. Second, of the 55 rolloff containers of soil, 15 of the rolloff boxes did not pass the first round of lab analysis and required a second round of testing therefore delaying transport. Finally, once lab data was collated and discussed with area WNC landfills, it was determined that the closest landfill that would accept the soils was in Enoree, South Carolina. A local disposal solution would have resulted in less transport cost for the City.

In order to accommodate for the delays in the timeline, plus the need for 55 total rolloff containers, and the associated weekly rental on the rolloff containers, a change order is needed in the amount of \$35,000 with A&D Environmental, Inc. for a total contract cost of \$128,060.00.

This project complies with City Council's strategic plan by supporting the following goals: (1) Safe – the proper mitigation of an environmental issue supports safety and public health, (2) fiscal responsibility – effectively mitigating the City's exposure to an environmental liability through a formal clean closure process with NCDENR prevents future issues associated with this contamination.

Pros:

- Once the project is complete, the City will receive a statement of "No Further Action" from NCDENR, certifying that the cleanup has been completed according to stringent and specific environmental standards.

- Clean Closure is required under the terms of the Airport Lease Agreement, as discussed previously, and the city's successful attainment of clean closure is contributing to the successful completion of the Airport's runway widening project.

Cons:

- Reduction of the Capital Reserve Fund from \$400,000 to \$337,000.
- From an internal operational perspective, the City Police Department no longer manages its own small arms firing range, which has served to provide significant flexibility to the department's ability to meet and maintain applicable training standards for sworn personnel.

Staff initially budgeted a total of \$200,000 for the remediation project - \$100,000 in FY12 (from unused CJIS budget) and a new \$100,000 in FY13. The final total for the project is estimated at \$263,000 and requires a \$63,000 budget amendment to cover the proposed change order amount and the tipping fees association with the Republic Landfill in Enoree, South Carolina. Staff recommends that the additional funding come from the Capital Reserve Fund, which there is approximately \$400,000 balance, and can be used for unplanned project cost overages.

City staff recommends City Council to (1) adopt the resolution authorizing the City Manager to execute a change order in the amount of \$35,000 with A&D Environmental, Inc. for environmental remediation of contaminated soils at the former Asheville Police Department Firing Range at 82 Westfeldt Road in Fletcher, NC for a total contract cost of \$128,060.00; and (2) adopt the associated budget amendment in the amount of \$63,000 from General Capital Reserves to cover project costs.

**RESOLUTION BOOK NO. 35 – PAGE 73  
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.

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

**III. PRESENTATIONS & REPORTS:**

**A. REPORT ON 445 BILTMORE AVENUE FIRE**

Fire Chief Scott Burnett said that on July 28<sup>th</sup>, 2011, the City of Asheville suffered a tremendous loss while operating at a six story medical office building structure fire located at 445 Biltmore Ave. Captain Jeff Bowen died in the line of duty and 9 other firefighters were injured while fighting this fire. Over the past 12 months the Fire Department has conducted a Post Incident Analysis to identify areas of improvement for the department. The results of this analysis are included in this report and are organized into two sections: "Contributing Factors" and "Areas for Improvement".

Contributing factors identified by the fire department are:

- The fire was intentionally set
- The building was not protected by an automatic sprinkler system
- The extreme weather conditions that were present

- The standpipe system did not provide water adequately
- Incident command span of control was not optimal

There are 16 areas for improvement identified by the fire department. These areas are within three focus areas:

- Training
  - Rapid Intervention Training
  - SCBA Emergencies Training
  - Incident Command Training
- Span of Control
- Deployment Strategy
  - Current deployment is 17 operational companies, 3 supervisors and 1 support personnel
  - Proposed deployment is 16 operational companies, 4 supervisors and 3 support personnel

The fire department began implementing these improvements in the fall of 2011. The continuous improvement model that has been followed will perpetually facilitate even more enhancements to firefighter safety and levels of service to the community.

Councilman Bothwell noted that during the Public Safety Committee there was considerable discussion about the failure of the standpipe. It appears that one of the valves that should have been permanently open was partially closed.

Fire Chief Burnette responded to various questions from Council related mainly due to the standpipe system.

## **B. QUARTERLY REPORTS**

### **Finance Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Finance Committee, provided Council with a brief update on some major accomplishments during this quarter.

### **Housing & Community Development Committee Chair Report**

Councilman Davis, Chair of the Housing & Community Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

### **Planning & Economic Development Committee Chair Report**

Vice-Mayor Manheimer, Chair of the Planning & Economic Development Committee, provided Council with a brief update on some major accomplishments during this quarter.

### **Public Safety Committee Chair Report**

Councilman Bothwell, Chair of the Public Safety Committee, provided Council with a brief update on some major accomplishments during this quarter.

## **Strategic Operating Plan**

Assistant City Manager Jeff Richardson provided to Council a report which outlined key operational updates during July 1, 2011 – June 30, 2012. He then provided Council to speak about certain points in detail.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 50 couples have registered.

Mr. Richardson responded to various questions from Council, some being, but are not limited to: the maintenance of the public restrooms at Pack Square Park, what has been the highest allocation to the Housing Trust Fund, what happens to the old ammunition, and are there are ideas to decrease tagging in West Asheville.

Police Chief William Anderson provided a brief update regarding the Police Department's on-going operational efforts and progress in the day to day management of the Evidence and Property Room. He said they are doing a nationwide search for a property manager and have reviewed 167 applicants for the position. He hopes to make a job offer soon with the goal of having that person in place by the end of September. Operationally, they are researching a ventilation system for that space and they are also working with the District Attorney's Office to research disposal of long-term bulky narcotics evidence.

### **C. UPDATE ON TEMPORARY USE STANDARDS**

Assistant Planning & Development Director Shannon Tuch said that on January 10, 2012, the Asheville City Council considered several small amendments to the section of the *Unified Development Ordinance* (UDO) regulating temporary uses. Among those amendments considered and adopted, was a new standard that would allow fruit and vegetable stands to operate on institutional properties (i.e., churches and schools) located in residential districts – before that evening, no temporary use of any kind was permitted in residential districts.

During the hearing there was some discussion regarding a proposed standard that would limit the operation of these produce stands to hours that did not overlap with the main operating hours of the primary use. This standard was proposed in an effort to limit potential traffic congestion issues that may arise during the busiest times. This limitation concerned some because it appeared contrary to the goal of connecting the greatest number of people with the opportunity to access fresh food, and it was asked that the issue continue to be studied and examined and return in 6 months with an update.

To date, three (3) applications for fruit & vegetable markets in residential areas have been permitted and are in operation. These sites include:

Oakley Farmer's Market  
Oakley United Methodist Church  
607 Fairview Rd.

Grace Farmer's Market  
Grace Baptist Church  
718 Haywood Rd.

East Asheville Tailgate Market  
Groce United Methodist Church  
954 Tunnel Rd.

Staff has contacted the managers of all three markets to discuss specifically whether there was any interest in overlapping with the primary use's hours and whether they believed this to be beneficial or practical considering potential traffic issues. Additionally, staff also asked other general questions in an effort to determine whether there were other obstacles that should be considered. Two of the three managers did not express any interest in overlapping in hours of operation, primarily because they didn't believe it would work since their market covered the very large majority of the parking lots. One of the market managers, who also occupied the parking lot of the church property they occupied, expressed an interest in potentially collaborating with the church on a special event or function but not necessarily to operate the full market during the church service hours. This would suggest that there is little interest in the farm community to overlap with the primary use's hours; however, it should be noted that these managers operate larger tailgate style markets and there could be interest or value in having one or two vendors operate during peak church/school hours – or operate in areas that do not take up parking.

Other items of note:

- All three managers felt that the markets were going well and would likely return next year.
- All three managers felt that the patrons of the market travelled by both foot and car. Only the Oakley market felt that the majority of patrons travelled by foot, or were within walking distance of the market.
- One manager stated that they would like to see food trucks allowed to be permitted as part of the market so they could have ready-to-eat foods (food trucks are allowed in markets but not those that occupy residentially zoned property).
- One manager stated that they felt the permit fees were high (approximately \$300) and would like to see the fees reconsidered.
- Surveying standards in other cities revealed that all of those surveyed did not allow temporary uses in residential districts (with some exceptions, such as fundraisers or charity events). However, in non-residential areas, there were no restrictions on hours of operation.

Analysis: Neighborhoods have benefited from the code change permitting fruit & vegetable stands in residential districts, allowing for the operation of several small, neighborhood-scaled tailgate markets. All three markets do not overlap in hours of operation with the primary use, and don't express interest in doing so except on occasion for special events (one manager). The lack of interest may be a result of the scale of the market where the managers recognize the inability to occupy the parking lots at the same time as the primary use. A smaller number of vendors may not have the same limitation. Recognizing this, it seems reasonable to allow fruit and vegetable markets to overlap in hours of operation with the primary uses provided parking requirements are maintained and traffic properly managed. Given the scale of these uses, it is expected that the vendors and property owners will self regulate and manage traffic and congestion so as not to be a detriment to each other.

Staff recommends that an update to the previous code amendment be considered removing the restriction on hours of operation, and provided that sufficient parking is left available and an undue traffic hazard is not created. That wording amendment will go through the Planning & Zoning Commission first before coming before City Council. It is also recommended that the question about food trucks in residentially zoned areas should be reviewed as part of the one-year food truck update, expected sometime this fall.

A related concern that was not part of the earlier amendment to temporary uses but has arisen in other contexts is the UDO's restriction to accessory structures in residential areas when no primary structure exists. In the interest of supporting the goal to improve access to locally grown produce, staff also recommends an amendment that would allow small, residential scale structures (greenhouses & storage sheds) to be permitted on vacant residential property when in conjunction with a private or community garden. This wording amendment will also go through the Planning & Zoning Commission prior to City Council. These structures should be limited in size and not include permanent foundations.

It was the consensus of Council to support a wording amendment (1) removing the restriction on hours of operation, provided that sufficient parking is left available and an undue traffic hazard is not created; and (2) amendment that would allow small, residential scale (greenhouses & storage sheds) to be permitted on vacant residential property when in conjunction with a private or community garden.

#### **D. WATER RESOURCES UPDATE**

Water Consolidation Project Manager Phil Kleisler said that from the August 14, 2012, City Council meeting the Water Resources Director provided updates on the Council action up to that point, key dates relating to MSD and City analysis, and the structure of the City's internal analysis teams.

City of Asheville workgroups consist of (1) MSD merger study relations; (2) governance models; (3) asset value/fair market compensation; (4) internal financial analysis; and (5) internal and external communications.

Internal financial analysis team: (1) project team to complete first phase of internal analysis in approximately two weeks; and (2) at October 16 City Council worksession there will be a presentation of analysis for three scenarios (a) Water Resources being absorbed by MSD; (b) MSD being absorbed by Water Resources; and (c) a functional collaboration between the City and MSD.

Regarding governance models, asset management (1) consideration of a contract for such services at this meeting; and (2) representative from Raftelis Financial Consultants will be available.

He said that an alternate date has been proposed for the joint City Council/legislators meeting. That date is September 18, 2012, at 1:00 p.m. in the U.S. Cellular Center Banquet Hall.

Regarding internal/external communications (1) management meeting with employees; (2) informational presentations to neighborhood groups; and (3) Project Webpage: [www.ashevillenc.gov/projects](http://www.ashevillenc.gov/projects).

Vice-Mayor Manheimer said that MSD designated Al Root to be the MSD/City liaison to comply with the negotiation element of the Legislative Study Committee report.

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

##### **A. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF RECENTLY ANNEXED PROPERTY IN UNC-ASHEVILLE AREA TO INSTITUTIONAL DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

##### **ORDINANCE NO. 4111 - ORDINANCE TO INITIALLY ZONE RECENTLY ANNEXED PROPERTY IN UNC-ASHEVILLE AREA TO INSTITUTIONAL DISTRICT AND RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT**

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone recently annexed property in the UNC-Asheville Area to Institutional District and RS-4 Residential Single-Family Medium Density District. This public hearing was advertised on August 17 and 24, 2012.

Mr. Esselstyn said that as a result of NCGA Session Law 2012-119, roughly 119 acres of the UNC Asheville campus were brought into the City of Asheville jurisdiction effective June 30 of

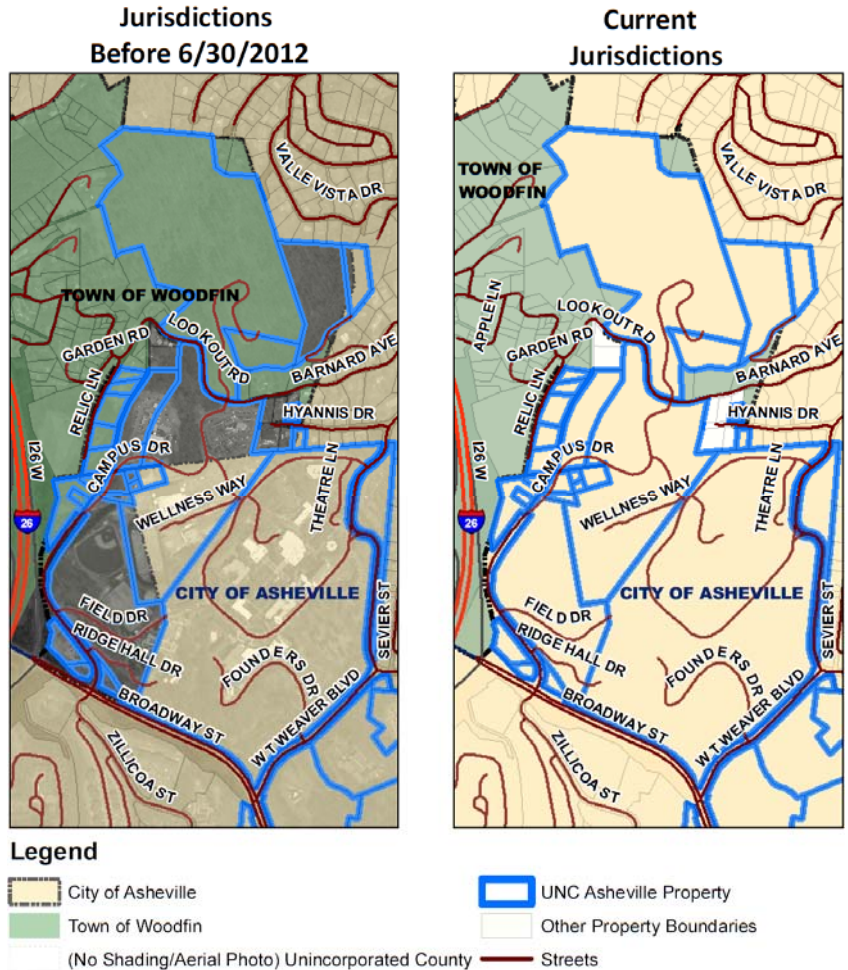
this year. As a result the City is required to assign zoning districts to these areas. The maps on the following page show the jurisdiction changes, and the Exhibit A and B maps show the areas where an “initial zoning” will be required.

Just as the bulk of the University property that was already in the City’s jurisdiction is under Institutional zoning, the staff proposal is for the bulk of the newly annexed University property to be zoned Institutional. The Unified Development Ordinance states that “The Institutional District is established to reserve land for the development of major educational facilities, major medical facilities and other complementary and supporting uses such as health related developments, office developments, and public services. Development standards for uses in this district are established to minimize conflict with adjacent land uses.” This district represents the obvious choice for the contiguous campus parcels.

There are one and a half parcels, however, representing roughly half an acre, for which staff is recommending RS4 (Residential Single-Family Medium Density) zoning. These parcels, each with a building constructed as a residence, both front on Hyannis Drive. The portion of Hyannis Drive that had already been in City Limits has been zoned RS4 for 15 years, including half of one of the parcels under consideration for this initial zoning. The dominant use on the street is single-family residential, though there is a condominium development at the end of the street, in the Buncombe County jurisdiction. At one time, there was a day care business, but that appears to no longer be in operation. The University has owned the two properties on Hyannis since the mid-nineties, and has at times used the residential-style buildings for offices for faculty or for operations such as the Interfaith Campus Ministry.

While staff recognizes the University’s interest in being able to use these properties for non-residential purposes, and also the University’s past record of having been able to do so without disrupting the neighborhood, concerns remain that an (unconditional) INST zoning designation could lead to incompatible development there, especially if a third party were to acquire the property. Under the proposed RS4 zoning, continuation of existing non-residential uses, provided they did not switch to a higher impact, could be permitted as grandfathered “existing non-conformities.”

Further, were these one and a half parcels to be zoned Institutional, staff feels that the isolated geometry could legitimately be challenged as spot zoning. Staff is of the opinion, however, that a conditional zoning would be appropriate for these parcels, and that such a petition from the University would be likely to receive staff support.





Also on the eastern edge of the subject area, but north of the Hyannis parcels, are two portions of parcels between Barnard Avenue and Valle Vista Drive. Portions of these parcels were already in the City Limits and were zoned RS4. The proposed initial zoning for the currently unzoned areas here is Institutional, which will result in a split-zoned situation for these two parcels. If the initial zoning is approved, however, staff intends to proceed with a rezoning of the RS4 slivers, which will rectify the split zoned situation. (The rezoning has to be undertaken separately from the initial zoning.)

The University has indicated acceptance of the staff recommendation. City staff, in communication with University staff, has indicated that small scale non-residential uses on Hyannis could likely be accommodated as existing non-conformities, or through conditional zoning, if necessary. In addition, in the future, if the University were to acquire a larger fraction of the properties on Hyannis with plans for expansion, staff would likely support a rezoning to Institutional.

At their August 1, 2012, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the initial zoning. One neighboring property owner spoke, and this citizen, along with staff and the commissioners, agreed that the proposed zoning would ensure greater scrutiny of future development compared to the previous situation.

As of this writing, staff has received 15 communications from neighboring property owners, all seeking additional information, with none expressing opposition to the proposed zoning.

Based on the above findings and the analysis provided in the report, staff finds this action to be reasonable and consistent with the Comprehensive Plan and other adopted plans.

Pro:

- Zones property in consideration of the surrounding zoning and land use and the City's Comprehensive Plan.

Con:

- Would create a split-zoned situation on two parcels (which staff intends to later rectify).

Staff recommends approval of the initial zoning.

Mayor Bellamy opened the public hearing at 6:39 p.m.

Mr. Alan Ditmore objected to the establishment of new single-family zoning as he felt it is a major cause of both homelessness and sprawl, in addition to burdening the school system.

Mayor Bellamy closed the public hearing at 6:42 p.m.

In response to Councilman Hunt, City Attorney Oast said that he didn't think that the inclusion of the property within the City's zoning jurisdiction makes it any more or less likely that the property will be developed than it was before.

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

Councilman Smith found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4111. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

**V. UNFINISHED BUSINESS:**

**A. RESOLUTION NO. 12-203 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION**

Vice-Mayor Manheimer said that the terms of Mark Brooks and Holly Shriner, as members on the Planning & Zoning Commission, expired on August 14, 2012.

On August 14, 2012, City Council instructed the City Clerk to arrange interviews for Mark Brooks, Holly Shriner, Abigail Emison and Joe Minicozzi.

After Council spoke highly of all the candidates, in particular current Chairman Mark Brooks, Mark Brooks received 3 votes, Holly Shriner received 4 votes, Abigail Emison received 2 votes and Joe Minicozzi received 5 votes. Therefore, Holly Shriner was reappointed and Joe Minicozzi was appointed as members of the Planning & Zoning Commission to each serve three-year terms respectively, terms to expire August 14, 2015, or until their successors have been appointed.

**RESOLUTION BOOK NO. 35 – PAGE 74**

**B. NC LEAGUE OF MUNICIPALITIES LEGISLATIVE AGENDA**

At the request of Mayor Bellamy, and after a short discussion, Councilman Hunt moved to ask the NC League of Municipalities to support a clarification of the intent of the indecent exposure bill, along with moped regulation. This motion was seconded by Councilman Davis.

Mr. Alan Ditmore was opposed to regulating mopeds.

Mr. Steve Rasmussen said if we outlaw toplessness, people will be looking for ways to protest, and secondly he felt it was a First Amendment issue.

Mr. Barry Summers agreed with Mr. Rasmussen and also felt that the topless rally attendance would be down from last year. He hated City Council, the League or the legislators wasting their time on an issue with such a low impact.

The motion made by Councilman Hunt and seconded by Councilman Davis carried on a 6-1 vote, with Councilman Bothwell voting “no.”

**Closed Session**

At 7:10 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 litigation involving the following parties: The Institute of Southern Studies, Inc., d/b/a Carolina Public Press, Gannett Pacific Corporation, d/b/a Asheville Citizen-Times, Green Line Media, Inc., d/b/a Mountain Xpress, Western North Carolina Public Radio, Inc., d/b/a WCQS, and Sinclair Broadcast Group, Inc., d/b/a WLOS TV, the City of Asheville; and the Buncombe County District Attorney’s Office. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3). This motion was seconded by Councilman Smith and carried unanimously.

At 7:50 p.m., Councilman Smith moved to recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilman Bothwell and carried unanimously.

## **VI. NEW BUSINESS:**

### **A. RESOLUTION NO. 12-204 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE HOUSING AUTHORITY TO FUND AND CREATE A PUBLIC HOUSING POLICE UNIT**

### **ORDINANCE NO. 4112 - BUDGET AMENDMENT TO FUND AND CREATE A PUBLIC HOUSING POLICE UNIT**

Police Chief William Anderson said that this is the consideration of a (1) resolution authorizing the City Manager to enter into an agreement with the Asheville Housing Authority to create a dedicated unit of sworn officers to provide direct law enforcement services to the 11 public housing communities in the City of Asheville; and (2) budget amendment in the amount of \$217,000 from Housing Authority funds to add 4 full-time employees Patrol Officers.

The Asheville Housing Authority (AHA) currently hires public safety officers from both the City of Asheville and Buncombe County on a secondary employment basis. While this has been effective, a dedicated team of officers assigned to Asheville's public housing neighborhoods as their primary assignment should provide a more sustained and effective level of community safety to these neighborhoods through a variety of community policing techniques.

The Public Housing Unit would be responsible for criminal enforcement, crime prevention, community policing and enforcement of Housing Authority regulations in public housing. The unit would partner with the Housing Authority and its residents to foster an atmosphere focusing on community policing to create a safe environment and improve the quality of life in public housing, while simultaneously reducing crime. Preliminary discussions have occurred with Gene Bell, Chief Executive Officer of the Authority who is supportive of the concept.

General benchmark crime data suggests that all public housing neighborhoods combined have 24.3 per 1000 crime rate, whereas the entire City has a 5.1 per 1000, respectfully.

Over the first three years of implementation, the Police Department will track a number of performance metrics in an effort to improve the safety in these neighborhoods. These metrics include:

- Reducing crime in public housing neighborhoods by 10%.
- Reducing law enforcement calls for service by 5%.
- Increasing resident involvement and communication with APD by revitalizing resident associations and starting community watch groups in public housing.
- Partnering with public housing residents and community organizations to implement Police Activities League (PAL) activities for youth in public housing.
- Satisfaction survey of residents and Housing Authority Staff to measure effectiveness of new Public Housing Unit.

This action complies with the City Council Strategic Operating Plan in SAFE – Asheville will be one of the safest and most secure communities when compared to similar sized cities. The enhanced interactions and community policing activities in conjunction with the partnering with AHA will increase safety for the community and officers.

Pros:

- Establish a dedicated number of sworn officers to provide direct law enforcement services to the 11 public housing developments in the City of Asheville, which have a higher crime rate than other areas of Asheville.
- Foster an atmosphere focusing on community policing to create a safe environment and improve the quality of life in public housing.
- Improve lines of communication and cooperation between the residents, staff and the police in public housing.

Con:

- None identified.
- A.) **COPS Grant Staffing**—On September 28, 2011, the City of Asheville was awarded a COPS Hiring Program Grant to fund the addition of five full-time officers. The grant covers the cost of salaries and benefits for a period of three years. The City is responsible for funding the cost of uniforms and equipment for these officers at an annual cost of \$27,600 which is included in the FY 13 budget. At the beginning of the fourth year, the City's General Fund will be responsible for funding the full cost of salary and benefits. The revenue and expenses associated with this grant are already included in the FY 13 budget. It is staff's recommendation that these five positions be assigned to the proposed Public Housing Unit.
- B.) **APD Staff Reassignment**—In addition to the five grant-funded positions, staff recommends reassigning an existing full-time employee from the Patrol Division to supervise this unit. The estimated cost of this position is already included in the FY 13 budget.
- C.) **Housing Authority Contribution**—Staff anticipates the Housing Authority will fund an additional four full-time officers for the unit at an estimated cost of \$217,000, bringing the total staffing of the unit to ten full-time officers

Public Housing Unit Staffing Plan

<u>Staffing Costs</u>	<u>Amount</u>	<u>Revenue Source</u>	<u>Included in FY13 Budget</u>
5 FTE Officers	\$237,086	COPS Hiring Grant (Years 1-3)	Yes
1 FTE Unit Supervisor	\$69,000	General Fund	Yes
Uniform and Equipment (1 year)	\$27, 600	General Fund	Yes
4 FTE Patrol Officers	\$217, 000	Housing Authority	No- Budget Amendment Needed

Staff recommends that City Council approve a (1) resolution entering into an agreement with the Asheville Housing Authority to fund and create a public housing policing unit; and (2) a budget amendment in the amount of \$217,000 from Housing Authority funds to add 4 FTE Patrol Officers.

Mayor Bellamy supported this initiative and felt that past performance in this type of initiative has been successful in different areas; however, looking at the Weed & Seed model that had 5 years of success, she felt we may be missing an opportunity to include some of the "seeding" portion back into the program. What made the Weed & Seed program so successful was there was one coordinator making sure residents were meeting, access to services, and

letting the residents know they are just as equal as the police officers in helping solve crimes and address issues in their community. She felt there should be one person dedicated to this process to move it forward. She felt some of the successes of the Weed & Seed program be included in this process so we can see some sustainability. She also asked that during this 3-year process that we get a continuation plan to sustainably address some of these issues that continually pop up.

In response to Councilman Davis, Mr. David Nash, Deputy Executive Director of the Housing Authority, said that the \$217,000 is the money they spend for security. He used a graph showing crime rates in the public housing units, noting that this is the reason for an increased , police security presence and community policing presence in our communities. They are contributing funds because they want an increased community policing presence in their neighborhoods so they will be safer.

Mr. Gene Bell, Executive Director of the Housing Authority, said they do not want to lose the momentum of the Weed & Seed program. Their objective is clearly to improve neighborhoods, not to put people in jail.

Ms. Dawa Hitch, Community Relations Division Head and Public Information Officer, reinforced the commitment to this relationship between police community relations and the Housing Authority. Although the Weed & Seed position is no longer funded, the philosophy behind it still exists and they are looking at addressing that through resources that we currently have.

In response to Mayor Bellamy, Ms. Hitch said that she would have an update to Council in a 4-6 week timeframe.

Mr. Alan Ditmore felt the job of the Housing Authority is to provide housing and the City should be seeking grants to fight the drug war.

Mr. Fred English felt the Asheville Police Department is sufficient to police public housing communities.

Ms. Judy Strong said that we already subsidize the rent and maintenance of homes through various agencies to those identified as needing public assistance. She wondered at what point will accountability be asked of those residents.

Mr. Bell explained how they do hold criminals accountable, including the ones who may happen to be their residents.

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

Councilman Bothwell moved for the adoption of Resolution No. 12-204. This motion was seconded by Councilman Davis and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 75**

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4112. This motion was seconded by Councilman Davis and carried unanimously.

#### **ORDINANCE BOOK NO. 27 – PAGE**

- B. RESOLUTION NO. 12-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH PROPERTY OWNERS ALONG BLAIR STREET TO CONSTRUCT A NEW STORM DRAINAGE PIPE**

**ALONG BLAIR STREET TO REPLACE A FAILING STORM DRAINAGE PIPE ON PRIVATE PROPERTY**

**ORDINANCE NO. 4113 - BUDGET AMENDMENT FOR THE BLAIR STREET NEW STORM DRAINAGE PIPE**

Stormwater Services Manager McCray Coates said that this is the consideration of (1) a resolution authorizing the City Manager to execute an Agreement with property owners along Blair Street to construct a new storm drainage pipe along Blair Street, which will new pipe will replace a failing storm drainage pipe located on private property; and (2) a budget amendment for the project in the amount of \$155,720.

On April 17, 2012, a private storm drainage pipe collapsed under the home located at 17 Blair Street causing significant structural failure to the home. The home was declared uninhabitable. Continued rain events expanded the void under the home and jeopardize the remaining properties. Further, the commercial structure located at 171 Charlotte Street has received significant flood damage as a result of the pipe failure in a separate location further downstream. The existing pipe appears to have been installed in the early 1900's and is made of terra cotta.

Since inception, City staff has diligently worked with the affected property owners, being: 36 Albermarle Place; 15 Blair Street; 17 Blair Street and 171 Charlotte Street to address this private nuisance, jeopardizing not only property but life as well.

Staff recommends that a new pipe be installed along the publicly maintained Blair Street. Once installed, the stormwater currently flowing into the failed storm drainage pipe will then flow into the new pipe.

The engineers estimate for the project, including a 5% contingency, is \$155,720. The linear footage of pipe to be installed is 359 feet. Staff is proposing to cost share with the private property owners in a 75/25 split, with the City paying 75% of the cost. Staff originally considered a 50/50 cost share but reevaluated the split due to the cost the property owners will incur to abandon the failing pipe under their respective structures. There is currently no estimate for these costs, but the costs are expected to be significant.

Staff proposes that the cost be distributed based on linear footage of property owned by each property as is consistent with a statutory Special Assessment. The estimated cost for each property is displayed in the table below. The property owners will pay their portion of the actual cost but no more than the costs shown below. The City's cost of the project is estimated at \$123,079

<b>Property</b>	<b>Linear Foot</b>	<b>Cost per LF (25%)</b>	<b>Total Cost</b>
171 Charlotte Street	158	\$108.44	\$17,134
15 Blair Street	46	\$108.44	\$4,988
17 Blair Street	49	\$108.44	\$5,314
36 Albermarle Place	48	\$108.44	\$5,205

The public purpose of the project is to eliminate standing water from flash flooding on Charlotte Street and protect life and property, as there exist more than the possibility that Albemarle Place will collapse if the existing pipe is not repaired/replaced.

This action meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

Pro:

- If this recommendation is approved, staff would be able to move quickly on the constructing the new pipe, minimizing future damage to property.

Con:

- The City Stormwater Utility is paying a large portion of the cost of the project.

This engineer's estimate for the project with a 5% contingency is \$155,720. Twenty-five percent (25%) of the cost of the project, or \$32,641, will be paid by the four private property owners. The remaining \$123,079 will be funded from Stormwater Utility Enterprise Fund fund balance reserves. Based on the City's fund balance policy, the Stormwater Fund should maintain reserves equal to 8% of the operating budget. After the appropriation for this project, staff estimates that the Stormwater Fund's fund balance will exceed the 8% target amount by \$750,000. The project will be completed by City crews.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to execute an Agreement with property owners along Blair Street to construct a new storm drainage pipe along Blair Street to replace a failing storm drainage pipe on private property with a 75%/25% city/private cost share; and (2) a budget amendment for the project in the amount of \$155,720.

The property owner of 17 Blair Street showed pictures to Council of the gravity of the storm drainage pipe collapse underneath her home. She explained the extensive work necessary on her home to make it livable again. She urged Council to accept the 75/25 agreement in addition to asking Council to consider waiving future permitting and dump fees associated with the demolition and reconstruction of the residences.

The following property owners urged Council to pay 100% of the costs in addition to waiving the permitting and dump fees:

Property owner of 36 Albemarle Road  
Property owner of the house at the bottom of the hill  
Property owner of 15 Blair Street

In response to Vice-Mayor Manheimer, Mr. Coates explained the cost sharing with the property owners. City Manager Jackson also noted that we are trying to get to a point (in consultation with Risk Management) that as other private lines fail, we will look at them on a case by case basis.

Ms. Tressa Hayes, from the City's Risk Management Division, responded to Councilman Pelly regarding homeowner insurance.

City Attorney Oast said that he would report back to Council on the costs associated with waiving future permitting and dump fees associated with the reconstruction of the homes.

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

Councilman Bothwell moved for the adoption of Resolution No. 12-205. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 76**

Vice-Mayor Manheimer moved for the adoption of Ordinance No. 4113. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

**C. RESOLUTION NO. 12-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MANAGEMENT AGREEMENT WITH POPE GOLF LLC FOR THE OPERATION OF THE ASHEVILLE MUNICIPAL GOLF COURSE**

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a seven (7)-year management agreement with Pope Golf, L.L.C. for the operation of the Asheville Municipal Golf Course.

In January 2012, the City Council Finance Committee supported a staff recommendation to issue a Request for Proposals (RFP) for management of the Asheville Municipal Golf Course, and to bring back a recommendation on the best management options for the City.

Staff issued the RFP in March 2012 which was advertised locally, state-wide and nationally. In addition, it was posted on the City website and social media tools including Facebook and Twitter. Staff also conducted several community meetings with stakeholder groups and individuals to inform them about the process and get feedback.

A total of eight (8) firms responded to the RFP. Those responses were reviewed by three committees. One was composed of citizens and stakeholders participating in the Muni Alliance and the other two were composed of City staff. Each of these committees ranked the proposals and made recommendations to the final review team.

The final review team, consisting of staff and community volunteers, reviewed the recommendation and narrowed the proposals down to two (2) finalists. The two (2) finalists were invited to Asheville to discuss their proposals with the final review team.

The final review team met on July 19, 2012, to develop a recommendation on the type of management plan to recommend to the Finance Committee. The final review committee selected Pope Golf as the firm with the strongest proposal for management of the Municipal Golf Course.

The Pope Golf proposal presented to the City outlines a contract agreement to create a Public/Private Partnership. This provides several advantages to the City:

1. **Elimination of financial risk for the City:** The contractor will be committed to pay the municipality a performance payment, pay all operating expenses, supply equipment, and likely provide some capital funds for investment in the golf facility. The City is guaranteed positive income from performance payments.
2. **Protection of and accessibility of the asset:** While contractual arrangements are typically associated with less municipal control over golf course operations, staff is confident the City can protect the quality of and accessibility to the asset by carefully developing an agreement with clear operational and maintenance standards, as well as performance measures and provisions that address pricing, programming, capital improvements and service.

The Pope Golf proposal addresses the following items that were major concerns of community members:

**Q: Will the City lose control of the rate structure?**

*A: No. The City will include language in the contract to retain control of the maximum rates charged for all goods and services. Pope Golf seeks only the ability to offer discounts to*



customers to increase volume at off peak times. Pope has agreed not to increase rates during the first two years of the contract. Thereafter, rates may not increase more than the CPI for the southeast region.

**Q: Will current tournaments continue to operate at the golf course?**

A: Yes. Pope Golf will continue to allow current tournaments that have a 10+ year history to operate at the golf course. The dates and times will be protected.

**Q: Will the public have access to the golf course?**

A: Yes. The course will remain open to the public. It will not be a private course. It will continue to be a City asset and open to all citizens who want to participate.

**Q: Will current employees be retained?**

A: Under a contract arrangement, all golf course employees will be employed by the management company. Pope Golf understands the importance of local jobs and the relationship between current employees and the customer base, and recognizes that dedicated, quality employees are a valued asset. Pope has retained over 95% of all employees wishing to continue employment at the facilities Pope Golf manages. Pope is committed to interviewing all employees currently employed at the golf course.

**Q: How will the City ensure that the golf course stays in good shape?**

A: Specific course maintenance standards negotiated and agreed upon becomes part of the management contract. Pope Golf will provide management and maintenance programs to ensure that these standards are exceeded. It is in the City's and Pope Golf's mutual best interest to provide top quality playing conditions to increase rounds and revenue. The aforementioned efficiencies typically allow Pope Golf to increase expenditures on the golf course.

**Q: How can the City provide for much needed capital investment to enhance and protect the course?**

A: Pope Golf is committed to comprehensive capital expenditure programs to protect assets, and make continued improvements to increase revenues, customer satisfaction, and the asset value. During contract negotiations, an agreed upon percentage of revenues will be set aside to fund capital improvements.

**Q: What is Pope Golf's position on junior golf and community programs?**

A: Pope Golf will develop and support programs for juniors, families, women, seniors and individuals with special needs, which will increase playing opportunities to build a foundation for the future of the game.

City Council Finance committee reviewed the management terms on July 24, 2012, and recommended this item to the full City Council. The Recreation Advisory Board reviewed the management recommendation and terms of the agreement at its meeting on August 13, 2012.

The proposed timeline is as follows, if Council approves the management agreement at this meeting: (1) the City will meet with golf course employees tomorrow and share with them Pope Golf's benefits and their operating; (2) on September 17 Pope will conduct on-site interviews with staff, working with our Human Resources Department; (3) on September 24 Pope

Golf will make job offers to employees; (4) on September 25 City Council to approve lease agreement; and (5) on October 1 Pope Golf will be ready to start operations.

This action complies with the City Council Strategic Operating Plan of Fiscal Responsibility in that it supports a stronger, more prosperous community by making smart investments that accomplish lasting, tangible returns. It leverages an external partnership to enhance the City's financial commitment to master plan implementation, infrastructure maintenance, capital improvements and public facilities. This action also complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it maximizes the level of service available to the community by using partnerships.

Pros:

- Eliminate the general fund subsidy for golf course operations.
- Elimination of financial risk for the City.
- Provide a reliable funding stream to support maintenance and operation of the Municipal Golf Course.
- Sets the standards of operation to assure quality maintenance practices and meet community expectations.

Con:

- None

Through the RFP process, staff concluded a public-private partnership offers the best opportunity for the City to maximize financial performance at the golf course while improving the asset and continuing to offer an affordable public recreational amenity. Staff further concluded a private company was in the best position to maximize financial performance by:

- Increasing the number of rounds played;
- Cutting overhead costs, particularly related to the costs of benefits;
- Purchasing materials and supplies in volume;
- Improving golf-course management techniques;
- Improving course conditions;
- Actively marketing programs and cooperative arrangements with golf associations;
- Reaching out to local high schools, youth groups, and community groups;
- Reinvesting revenues in capital improvements; and
- Increasing productivity by applying industry best practices and efficiency.

While the City could independently pursue some of these strategies, it is limited in some key areas including staffing costs and the economies of scale achieved by management companies that operate multiple facilities.

Over the last six (6) years, staff has worked to identify creative ways to reduce operating expenses at the golf course. As a result, the operating budget was reduced by almost \$200,000 by eliminating personnel, supplies and materials; and by re-negotiating lease payments for golf carts and equipment. These strategies have helped to limit the expense budget, but the downturn in the economy has affected the annual number of rounds played, which impacts revenue projections. The effect of not achieving the projected number of rounds per year is an increase in the general fund subsidy to cover the loss of projected revenue.

Under this partnership model, the operational risk is shifted away from the City and to the contractor. This includes the risk associated with rising expenses, as well as downturns in rounds played and revenues. The only expenses remaining with the City will be those associated with administering the contract, oversight and compliance, along with the long-term capital needs of the asset.

In the six (6) years of operating the Municipal Golf Course, the City has not invested in much needed capital projects. This is due to the ongoing subsidy of the operating losses each year. There have been two (2) capital projects completed during this time period, (1) netting along Swannanoa River Road to prevent golf balls from damaging vehicles, and (2) the irrigation system on the front nine. The fence along Swannanoa River Road was replaced via a project funded by PSNC Energy to relocate the fence away from an underground gas line.

The City and Pope Golf will develop a separate Memorandum of Understanding (MOU) for the following areas:

- a. **Capital Improvement Agreement** – The Capital Improvement Agreement will include specific projects to be implemented over a seven (7)-year period. This will be developed by the management company and approved by the City no later than six (6) months after the contract is approved by both parties.
- b. **Capital Funding Schedule**- The City and Pope Golf will agree on a seven (7)-year Capital Funding Schedule for the Capital Improvement Agreement no later than six (6) months after the contract is approved by both parties.

The City currently budgets the golf course annual operating expenditure at \$924,554. If City Council approves this agreement, Pope Golf will assume this expenditure and provide the daily operations and maintenance of the facility. Operational standards will be defined with a stated mission statement, hours and days of operation, and an addendum that specifies agronomic condition standards and other operational expectations.

Part of the structure of this management agreement will be to lease the municipal golf course property to Pope Golf. As consideration for the lease agreement, Pope Golf will make an annual contract payment to the City. For the first three years of the contract, Pope will pay the City a flat fee of \$72,000. After the initial three years, the flat fee will be calculated as 10% of the average gross revenues earned during the first three years of the contract (minus golf shop and food and beverage sales). Pope Golf will pay the City an additional 1% if annual gross revenues (minus golf shop and food and beverage sales) are \$1,200,000 or less than \$2,199,999. Pope Golf will pay the City an additional 2% if annual revenues (minus golf shop and food and beverage sales) are \$2,200,000 or greater. Payments will be due quarterly. The lease term would be for a period of seven (7) years with an option to renew one (1) three year period. The request to authorize the lease will be brought to City Council at its regularly scheduled meeting on September 25, 2012.

If Council authorizes Pope Golf to operate the golf course under a management agreement, the City will implement a Reduction in Force in accordance with the City's Personnel Policy Section 35. The reduction in force will eliminate ten (10) full-time positions allocated to the Golf Course effective October 1, 2012. The City requests the authorization to offer a severance package to impacted employees who do not obtain employment in either another City position and/or a position with Pope Golf. The request is to provide a lump sum payment equivalent to eight (8) weeks of pay for those employees. In the unlikely event that none of the impacted employees obtain employment with either the City or Pope, the maximum amount that the City would pay out under this reduction in force agreement (including vacation and compensatory time payouts) would be approximately \$92,000. This payment would come from the existing FY 2012-13 Golf Fund budget.

Staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter into a seven (7)-year management agreement with Pope Golf, L.L.C to manage the operation of the Asheville Municipal Golf Course; (2) authorize staff to offer a severance package to impacted employees who do not obtain employment in either another City position and/or a position with Pope Golf. The request is to provide a lump sum payment equivalent to eight (8)

weeks of pay for those employees; and (3) authorize the lease to be brought before City Council at its September 25, 2012, meeting.

Mr. Alan Ditmore felt that golf is not in the preview of government and the City should not be involved in something that is obviously suitable for private enterprise.

The following individuals spoke in opposition to the public-private partnership of the Municipal Golf Course and in support of the City properly maintaining management the course with professional leadership:

Golfer at the Municipal Golf Course since 1969 and current President of the Men's Club  
Golfer and former Golf Course employee at the Municipal Golf Course since 1945  
(presented Council with a petition to reject the outsourcing of the Municipal  
Golf Course and noted they only met with a few people who played golf)

The following individuals spoke in support of the public-private partnership of the Municipal Golf Course, noting that the City has met with numerous groups on this issue:

Mr. Robert Green, member of the Muni Alliance Citizens Group  
Ms. Brenda Dunlap, member of the Muni Alliance Citizens Group

Councilman Smith noted that the land which is golf course is located on is deed restricted to the purpose of a golf course only and it's the responsibility of the City to make sure that it's a good golf course.

In response to Councilman Smith, Director of Finance and Management Services Lauren Bradley said that Pope Golf will probably utilize more temporary seasonal labor positions; however, they have agreed to comply with the City's living wage policy for the employees that they would have as Pope Golf full-time and part-time employees.

In response to Councilman Hunt, Ms. Bradley said that the Capital Improvement Agreement would outline the responsibilities of both the City and Pope Golf. The City would maintain some responsibility for capital improvements and that responsibility would be for those that would not be related to the course of operating a business there, but those that were more related to the long-term life of the asset.

Councilmen Bothwell, Hunt and Pelly all agreed that at the beginning of the process they felt the City should manage the asset of the Golf Course in-house; however, they now believe that the Golf Course can be better managed by Pope Golf.

In response to Mayor Bellamy, Ms. Bradley explained the 7-year management agreement by saying that Pope Golf's proforma showed a better window of time to recoup their investment, opposed to a five-year period (with a 2-year extension) that the City originally proposed.

In response to Mayor Bellamy regarding the termination language, Ms. Bradley said there will be several performance clauses and addendums to the lease and among those will be very specific maintenance standards. Also there will be customer service standards and if those measures are not met it could be a reason for termination. She said Pope Golf will operate concessions and food service at the Golf Course and there will be expectations built in for what the City's expectations are for provision of those types of services. Pope Golf has agreed to purchase any inventory that we have on hand in the Pro Shop.

In response to Mayor Bellamy about the generous volunteer program we now have, Ms. Bradley said that the standard in the industry is to not have a volunteer program because data shows that you lose money on providing free golf vs. the value of the labor that you are getting in return.

When Mayor Bellamy asked about the Golf Course budget, Ms. Bradley said that we budgeted \$924,000 in expenses, about \$700,000 in revenue and about \$140,000 in the General Fund operating subsidy. What we would be left with the \$140,000 General Fund subsidy, plus the \$70,000 lease payment. However, in Year One we will have the expense of the severance package for employees and thought Council might want to apply that General Fund subsidy toward any type of pay-out for that.

Mayor Bellamy felt it was clear by the number of people who signed the petition that we need to have at least one more meeting (before September 25) with the community to talk about the specifics of what will happen, specifically mentioning that the property is deed restricted for a golf course only. It's clear that some people feel disenfranchised in this process.

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 12-206. This motion was seconded by Councilman Pelly and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 77**

**D. RESOLUTION NO. 12-207 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE GROVE ARCADE PUBLIC MARKET FOUNDATION INC. FOR A DOWNTOWN ENGAGEMENT SITE FOR THE RENAISSANCE COMPUTING INSTITUTE OF UNC-ASHEVILLE (RENCI)**

**ORDINANCE NO. 4114 - BUDGET AMENDMENT FOR THE LEASE AGREEMENT WITH GROVE ARCADE PUBLIC MARKET FOUNDATION INC. FOR ONE PAGE AVENUE, SUITE 116 IN THE GROVE ARCADE BUILDING**

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the City Manager to execute a Lease Agreement between the Grove Arcade Public Market Foundation, Inc. and the City of Asheville for real property located at One Page Avenue, Suite 116, Asheville NC within the historic Grove Arcade building; and the associated budget amendment in the amount of \$36,096 with funding provided by the Renaissance Computing Institute at UNC Asheville (RENCI).

Since June 2009, the City of Asheville has leased Suite 116 at the Grove Arcade from the Grove Arcade Public Market Foundation, Inc. This space, measuring approx. 2,209 square feet, is utilized by the Renaissance Computing Institute at UNC Asheville (RENCI) for a Downtown Engagement Site. At this time, the existing lease has expired and the City has the opportunity to re-establish the lease based on the following terms:

- Initial term of 2 years with the option to renew for an additional 2 year period
- Proposed monthly rental rate of \$3,007.40, with no annual increase
- All maintenance and care of premises is the responsibility of the Grove Arcade
- All utilities are separately metered and are the sole responsibility of RENCi

RENCi will fully reimburse the lease cost to the City throughout the duration of the lease and will be responsible for any and all costs related to the occupancy and operation of the Downtown Engagement Site, including utilities. The budget amendment in the amount of \$36,096 includes rental payments for year one of the proposed lease.

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

Pros:

- Optimum location for Downtown Engagement Site
- Supports RENCI at UNC Asheville partnership
- All rent payments are fully reimbursed by RENCI

Con:

- None

There is no financial impact to the City. RENCI will reimburse the City for the full cost of the lease.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Grove Arcade Public Market Foundation, Inc. on behalf of the City of Asheville, and the associated budget amendment in the amount of \$36,096 for year one of the lease.

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

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

Councilman Smith moved for the adoption of Resolution No. 12-207. This motion was seconded by Councilman Hunt and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 78**

Councilman Smith moved for the adoption of Ordinance No. 4114. This motion was seconded by Councilman Bothwell and carried unanimously.

#### **ORDINANCE BOOK NO. 27 – PAGE**

#### **E. RESOLUTION NO. 12-208 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBLEASE WITH THE STATE OF NORTH CAROLINA FOR A DOWNTOWN ENGAGEMENT SITE FOR THE RENAISSANCE COMPUTING INSTITUTE AT UNC-ASHEVILLE**

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the City Manager to execute a Sublease Agreement between the City of Asheville and the State of North Carolina for real property located at One Page Avenue, Suite 116, Asheville NC within the historic Grove Arcade building for the Renaissance Computing Institute at UNC Asheville (RENCI).

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

At this time, the master lease between the Grove Arcade Public Market Foundation, Inc. and the City of Asheville has expired and the City seeks to re-establish the lease based on the following terms:

- Initial term of 2 years with the option to renew for an additional 2 year period
- Proposed monthly rental rate of \$3,007.40, with no annual increase
- All maintenance and care of premises is the responsibility of the Grove Arcade
- All utilities are separately metered and are the sole responsibility of RENC I

The State of North Carolina has requested a formal sublease between the City and the State, under the same terms and conditions as set forth in the master lease. The State of NC will be responsible for costs related to the occupancy, including rental at a rate of \$3,007.40 per month, utilities, and janitorial services.

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

Pros:

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

Con:

- None.

There is no immediate financial impact to the City. The State of NC (RENC I) will continue to reimburse the City for the full cost of the rental.

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

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

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. 12-208. This motion was seconded by Councilman Bothwell and carried unanimously.

#### **RESOLUTION BOOK NO. 35 – PAGE 79**

#### **F. ORDINANCE NO. 4115 - ORDINANCE REPEALING ORDINANCE NO. 1876 CREATING THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION**

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to eliminate the Asheville Buncombe Fair Housing Commission.

When the Asheville Buncombe Community Relations Committee was certified by HUD to investigate federal fair housing complaints, an Asheville Buncombe Fair Housing Commission was established by joint ordinance of the City and Buncombe County. The sole purpose of this Commission was to act as the adjudicating body if complaints with merit could not be resolved voluntarily or through mediation. In 2011, HUD decertified the Asheville Buncombe Fair Housing Program as being substantially equivalent to the Federal Fair Housing Program, and the City agreed that fair housing investigations would be conducted by the North Carolina Human Relations Commission. The County agreed likewise. The local Commission therefore no longer has authority to hear fair housing cases.

This action supports the City's Strategic Operating Goal of *Affordable* by supporting citizen access to safe, sufficient and affordable housing by ensuring that all residents have access to fair housing services that are HUD certified.

This recommendation has been reviewed and is supported by the Housing and Community Development Committee.

Pros:

- This ordinance will eliminate any confusion regarding jurisdiction in fair housing cases.
- Fair Housing cases needing adjudication will be addressed by a HUD certified body.

Con:

- There has been some concern expressed about the loss of local fair housing investigation capacity. Staff continues to work with both the ABCRC and NCHRC to ensure proper attention to fair housing issues in our community.

No City funds are requested to support this program.

Staff recommends that Council approve the ordinance eliminating the Asheville Buncombe Fair Housing Commission.

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

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

Councilman Bothwell moved for the adoption of Ordinance No. 4115. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

**G. RESOLUTION NO. 12-209 - RESOLUTION AUTHORIZING THE CITY MANAGER EXECUTE A CONTRACT WITH RAFTELIS FINANCIAL CONSULTANTS INC. FOR ADDITIONAL SERVICES – WATER UTILITIES MERGER/CONSOLIDATION ANALYSIS**

**ORDINANCE NO. 4116 - BUDGET AMENDMENT FOR RAFTELIS FINANCIAL CONSULTANTS INC. FOR ADDITIONAL SERVICES – WATER UTILITIES MERGER/CONSOLIDATION ANALYSIS**

Director of Water Resources Steve Shoaf said that based on the July 31<sup>st</sup> City Council work session, Raftelis Financial Consultants, Inc., has submitted a scope of work and cost estimate for additional services to assist the City of Asheville in performance of an analysis of the parameters and impacts of various merger/consolidation scenarios. The City Manager is authorized by council to enter into general service contracts between \$30,000 and less than \$90,000 without council approval. However, Staff recommends that the City Council give approval to the City Manager to enter into a contract with Raftelis to provide additional expertise to City staff during the internal impact analysis; and the consideration of a budget amendment in the amount of \$67,200.00 from savings in capital projects that were completed under budget.

The City of Asheville previously engaged the services of Raftelis Financial Consultants to assist with the City's response to requirements of the legislative study report related to the merger / consolidation of the water system with MSD. Specifically, the City is interacting with MSD as MSD pursues a study of the impacts of merger / consolidation on MSD rate payers. The City of



Asheville staff, as due diligence, is now conducting an analysis of the impacts of various scenarios related to a potential merger/consolidation of the water system with one or more entities. This impact analysis includes a review of financial information, a review and fair market valuation of assets associated with the water system operation, and a review of governance options.

Raftelis has identified two separate scopes of work associated with the due diligence process:

- Task 1 is provision of Financial Analysis and Support. This includes meeting with City staff, updating the water rate model, providing guidance on asset valuation methods, reviewing the City analysis results, and presentations of results to the Council and other stakeholders.
- Task 2 is provision of Governance Analysis of Regional Approaches to Utilities. This includes meeting with City staff, research and analysis of successful North Carolina governance structures of regional utility organizations, development of governing body criteria associated with successful North Carolina regional utility organizations, and development of findings and recommendations with presentations of results to the Council and other stakeholders.

Cost estimates by Raftelis are \$35,270.00 for *Task 1: Financial Analysis and Support* and \$24,593.00 for *Task 2: Governance Analysis of Regional Approaches to Utilities* for a proposed total of \$59,863.00. A 12% contingency will be added for a total budget amount of \$67,200.00.

The Water Resources Department will develop a contract between the City and Raftelis Financial Consultants, Inc., to cover the proposed work and for the amounts estimated.

Pros:

- Raftelis has experience reviewing financial and governance models.
- Raftelis will provide guidance related to recognized methodologies for asset valuation.
- Raftelis will be able to provide benchmarking to recognized practices related to merger / consolidation of utility organizations.

Con:

- The services provided by Raftelis were not part of the approved Water Operating budget and require the use of capital project savings.

The Water Resources Department has not budgeted for this project. The \$67,200.00 for this one-time expense will come from unexpended capital funds that have accumulated in the Water Capital Projects Fund as projects have been completed and come in under budget. In order to use these funds, a budget amendment is necessary.

Current Amount Budgeted for RFC Contract	\$ 0.00
<u>Budget Amendment Amount Needed</u>	<u>\$67,200.00</u>
Total Amount	\$67,200.00

The City Manager is authorized by council to enter into general service contracts between \$30,000 and less than \$90,000 without council approval. However, Staff recommends that the City Council give approval to the City Manager to enter into a contract with Raftelis to provide additional expertise to City staff during the internal impact analysis; and the consideration of a budget amendment in the amount of \$67,200.00 from savings in capital projects that were completed under budget.

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

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

Councilman Bothwell moved for the adoption of Resolution No. 12-209. This motion was seconded by Councilman Hunt and carried unanimously.

**RESOLUTION BOOK NO. 35 – PAGE 80**

Councilman Bothwell moved for the adoption of Ordinance No. 4116. This motion was seconded by Councilman Pelly and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

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

Ms. Teddy Jordan, President of the Kenilworth Residents Association, Inc., said that they are concerned about the steep slopes, unstable soil conditions and limited sight distances in roadways and on old driveways south of and to the east of the Kenilworth Inn Apartments. She provided Council with a map of the requested area. They understand that a new application has been recently filed for the portion of the area but they have not seen the plans. Therefore, they request City Council immediately initiate rezoning on any property that is owned by Caledonia LLC zoned Institutional in this area that is not associated with a current pending project or an existing building and if any opportunity presents itself in this process to also include the Finlee property, we request that as well. It was the consensus of Council to place this request on an upcoming City Council agenda.

**Continuance of Closed Session**

It was the consensus of Council to go into closed session and then come back out into the formal meeting to continue the formal meeting until Thursday, August 30, 2012, at 4:00 p.m. in the Council Chamber for consideration of revisions to the language of the referendum on the sale or lease of the City's water system.

At 10:45 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**Continuance of Formal Meeting**

It was the consensus of Council to continue this formal meeting until Thursday, August 30, 2012, at 4:00 p.m. in the Council Chamber for consideration of revisions to the language of the referendum on the sale or lease of the City's water system.

Thursday – August 30, 2012 - 4:00 p.m.

Continuance of Regular Meeting of August 28, 2012

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 Deputy City Clerk Philip Kleisler

Absent: None

**Consideration of revisions to the language of the referendum on the sale or lease of the City's water system**

At 4:00 p.m., Councilman Pelly moved to go into closed session 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. The statutory authorization is contained in G.S. 143-318.11 (a) (3). This motion was seconded by Councilman Davis and carried unanimously.

At 4:29 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

After hearing from City Attorney Oast in closed session, there was no interest in changing the language of the referendum.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 4:32 p.m.

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CITY CLERK

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MAYOR