

Tuesday – June 25, 2013- 5:00 p.m.

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Hunt gave the invocation.

I. PROCLAMATIONS:

A. RESOLUTION NO. 13-125 - RESOLUTION OF APPRECIATION TO ROBERT W. OAST JR.

Resolution No. 13-125 was adopted by acclamation.

Mayor Bellamy spoke kind words of City Attorney's Oast's service to City Council and the citizens of Asheville and presented him with the resolution, his name plate and a City pen.

City Attorney Oast thanked the public and his family for allowing him to serve. He also thanked City staff and City Council for their professionalism and dedication to the citizens of Asheville.

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II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 2013

B. ORDINANCE NO. 4200 - TECHNICAL BUDGET AMENDMENT FOR U.S. CELLULAR CENTER AND GOLF FUND

Summary: The consideration of (1) a technical budget amendment, in the amount of \$170,000, from US Cellular Center operating revenue, to appropriate sufficient budget to cover event settlement expenses previously netted against operating revenue; and (2) a technical budget amendment, in the amount of \$500,000 from General Fund restricted fund balance, for the purpose of transferring resources to the Golf Fund to close the fund out and eliminate the interfund liability.

US Cellular Center Fund Settlement Expenses

As a part of its promotional agreement with AC Entertainment (AC), the US Cellular Center shares certain revenues and expenses with AC. In prior fiscal years, when staff completed show settlements for AC events, settlement charges were netted against gross

revenues. Beginning in FY 2012-13, Finance Department staff changed the accounting procedure for these events such that settlement charges are now reflected in the US Cellular Center Fund budget as true expenses, which resulted in both higher revenues and expenses. This change in accounting procedure occurred after the FY 2012-13 budget was adopted, so no appropriation was included in the budget for the settlement expenses. The technical budget amendment will provide authorization for this expense by increasing the revenue and expense budget for the US Cellular Center Fund.

As noted above, US Cellular Center Fund operating revenues will be used to cover this technical budget amendment.

Golf Fund Close Out

In FY 2005-06, the City of Asheville assumed operation of the Municipal Golf Course from Buncombe County. In that fiscal year, the City established the Golf Enterprise Fund on its financial statements in order to account for the revenues, expenses, assets, and liabilities associated with operation of the course. During the current fiscal year, City Council approved a lease of the municipal golf course to Pope Golf, Inc. With Pope Golf assuming every day operation of the course, the City no longer needs to maintain the Golf Enterprise Fund on its financial statements beyond the current fiscal year.

As previously discussed with Council, there were several fiscal years in which expenses in the Golf Fund exceeded operating revenues and formal transfers in from the General Fund. As a result, a negative cash and investment position developed in the Golf Fund. When this situation occurs, the negative cash and investment position is reflected as an interfund liability (due to other funds) on the City's financial statements. As of June 30, 2012, the due to other funds liability in the Golf Fund totaled \$523,831.

Because accounting and financial reporting regulations require negative cash and investment positions to be offset in other funds, the General Fund's cash and investment position was reduced by the amount above in the FY 2011-12 Comprehensive Annual Financial Report (CAFR). This amount was reflected on the General Fund balance sheet as "due from other funds" and in fund balance as "restricted Stabilization by State Statute". Since cash and investments represent the beginning point for the calculation of fund balance, the General Fund's FY 2011-12 unassigned fund balance position already reflected the impact of the negative cash position in the Golf Fund. Therefore, the close out of the Golf Fund and the elimination of the interfund liability will have no impact on the General Fund's unassigned fund balance.

City staff believes that the financial performance of the Golf Fund in FY 2012-13, which includes the first quarter of operations on the City's books as well as the lease payments received from Pope, will be slightly positive so the due to other funds liability will decrease from the \$523,831 amount that was reported at the end of FY 2011-12. Therefore, in order to close out the Golf Fund, staff is requesting Council approval of a budget amendment in the amount of \$500,000 in order to formally transfer resources to the Golf Fund to eliminate the interfund liability described above.

As noted above, General Fund unassigned fund balance at June 30, 2012 already reflected the financial impact of the interfund receivable from the Golf Fund, therefore this amendment has no impact on the General Fund's available fund balance. The leasing of the Municipal Golf Course to Pope Golf had a positive financial impact of approximately \$210,000 by eliminating the General Fund subsidy to the Golf Fund and providing for a lease payment to the city. The proposed FY 2013-14 budget includes a lease payment of \$75,000 from Pope Golf to the City of Asheville, which will be accounted for in the General Fund. All capital assets of the Municipal Golf Course will also be transferred from the Golf Fund to the General Fund.

City staff recommends City Council approve (1) a technical budget amendment, in the amount of \$170,000, from US Cellular Center operating revenue, to appropriate sufficient budget to cover event settlement expenses previously netted against operating revenue; and (2) a technical budget amendment, in the amount of \$500,000 from General Fund restricted fund balance, for the purpose of transferring resources to the Golf Fund to close the fund out and eliminate the interfund liability.

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C. RESOLUTION NO. 13-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ROGERS GROUP INC. FOR THE ASPHALT PAVING IMPROVEMENTS - PHASE 1 PROJECT

ORDINANCE NO. 4201 - BUDGET AMENDMENT FOR ASPHALT PAVING IMPROVEMENTS - PHASE 1 PROJECT

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$1,061,272 plus a contingency of 3.6% (\$38,728) with Rogers Group, Inc. for the project known as Asphalt Paving Improvements – Phase 1, City of Asheville Project # ENG-12-13-017; and (2) a budget amendment in the amount of \$418,595 from prior and current year overlay and degradation fees and unspent capital reserve funds.

A number of roads in the City are beyond their time to be resurfaced. A list of warranted streets was put together to be addressed by this contract. This contract also marks the first use of the restructuring of the Public Works Department in contracting out work formerly done in-house. The project was advertised and on May 8, 2013, and due to an insufficient number of bids, advertised again on May 30, 2013. Bids were opened with Rogers Group, Inc. of Nashville, TN, being the lowest responsible bidder with a bid of \$1,061,272. This unit price contract bid presents the City with potential savings compared with our Engineer's Estimate of \$1,912,037. The City did its due diligence in establishing that this was a responsible bid. A 3.6% contingency (\$38,728) has been added to allow payment for any unforeseen costs that typically arise during construction. The work produced from this contract would fix a number of roads that are in drastic need of repair and satiate an unhappy group of citizens.

Streets to be repaired in this contract include: Pebble Creek Dr., .T. Weaver Blvd., King St., Woodfin St., Coleman Ave., Montview Dr., Asheland Ave., Hanover St., Ravena St., and Dunkirk Rd.

The total budget for this project, including contingency, is \$1.1 million. There is currently \$681,405 available in the Streets Division's contracted services budget for this project. The remaining \$418,595 will be appropriated via budget amendment from two sources. The first source is overlay/degradation fees collected in FY 2011-12 and FY 2012-13 through the City's Street Cut Utility program. To date, the City has collected \$227,952 from these fees. The fees collected in FY 2011-12 were included in assigned fund balance in last year's audit report, so their appropriation will have no impact on the City's unassigned fund balance percentage. The remaining \$190,643 needed for this contract will be appropriated from unspent capital reserve funds. City accounting staff has recently closed a number of completed capital projects, and as of June 17, the City had approximately \$350,000 in unexpended capital funds. Staff has already recommended that \$75,000 from this balance be allocated to next year's Capital Improvement Program, leaving an available balance of \$275,000. If Council approves this additional appropriation of \$190,643 for the paving contract, there will be approximately \$85,000 remaining in unspent capital funds (i.e. capital reserve).

City staff recommends City Council adopt: 1) the resolution awarding the contract to Rogers Group, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville

a contract in the amount of \$1,061,272 plus a contingency of 3.6% (\$38,728) with Rogers Group, Inc. for the project known as Asphalt Paving Improvements – Phase 1, City of Asheville Project # ENG-12-13-017; and 2) a budget amendment in the amount of \$418,595 from prior and current year overlay and degradation fees and unspent capital reserve funds.

When Councilman Bothwell asked if the contractor pays a living wage, Streets & Engineering Manager Greg Shuler said that he was not sure. However, he said that provision was not part of the contract when it was negotiated.

Councilman Bothwell said that when we let contracts for jobs that are saving the City money, we should make sure that they adhere to our living wage policy.

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D. ORDINANCE NO. 4202 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL SUCH THAT RENTAL FEE FOR ANY ADDITIONAL MUNICIPAL SOLID WASTE ROLL-OUT CARTS IS THE SAME PRICE AS THE STANDARD MUNICIPAL SOLID WASTE FEE

Summary: The consideration of an ordinance amending the Fees and Charges Manual such that the rental fee for any additional municipal solid waste roll-carts is the same price as the standard municipal solid waste fee.

Currently solid waste customers can pay a rental fee of \$6.90 per month per cart to have additional an 96-gallon rolling garbage cart. In March 2013, Asheville City Council changed the sanitation fee structure to \$7.00 per household per for standard garbage collection and removed the cost for recycling service. The new fee structure supports Council's strategy to reduce the amount of waste going into the landfill by connecting the fee to solid waste collection instead of recycling. The currently proposed ordinance amendment would change the fee for additional solid waste roll carts from \$6.90 per month per cart to \$7.00 per month per cart. This adjustment is recommended to remove the price signal that the more you throw away the less you pay for the service.

The \$1,642 increase in revenue would occur in the general fund. This additional revenue will support expanding the long term strategy to reduce city-wide solid waste.

City staff recommends City Council adopt an ordinance to amend the Fees and Charges Manual.

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E. RESOLUTION NO. 13-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANTS VIA THE N.C. DEPT. OF COMMERCE SMART GRID PROGRAM

ORDINANCE NO. 4203 - BUDGET AMENDMENT TO ACCEPT GRANTS FOR ENERGY EFFICIENCY PROJECTS

Summary: The consideration of (1) a resolution authorizing the City Manager to accept grant funds via the N.C. Dept. of Commerce Smart Grid Program Grant; and (2) a budget amendment, in the amount of \$6,352, in revenue from the fuel monitoring grant, and \$1,203 from Duke Energy Progress, for energy efficiency rebates.

The Smart Grid Program Grant is an initiative led by the NC Department of Commerce to increase their understanding of state and municipal government fuel consumption trends by

installing smart grid technology at municipal fuel stations and analyzing the data across North Carolina. The grant funds will be used by the City of Asheville to supplement the Energy Analyst's time spent analyzing and reporting the data to the state. The funds received from Duke Energy Progress are for the ongoing energy efficiency retrofits across the city such as lighting and will be used to supplement the Energy Analyst's time project managing those retrofits.

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept grant funds via the N.C. Dept. of Commerce Smart Grid Program Grant; and (2) a budget amendment, in the amount of \$6,352, in revenue from the fuel monitoring grant, and \$1,203 from Duke Energy Progress, for energy efficiency rebates.

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**F. RESOLUTION NO. 13-127 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO ENTER INTO A CONTRACT WITH R & W INC. FOR THE
RENOVATION OF THE ASHEVILLE POLICE DEPARTMENT HVAC SYSTEM**

**ORDINANCE NO. 4204 - BUDGET AMENDMENT FOR THE ASHEVILLE
POLICE DEPARTMENT HVAC SYSTEM**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into a contract with R & W Incorporated for the renovation of the HVAC system serving the Police Department evidence rooms located in the Municipal Building; and (2) a budget amendment in the amount of \$100,000 from previously budgeted funds and savings in other capital projects that came in under budget.

The HVAC system for the evidence rooms in the Municipal Building is not a dedicated system. Changes and additions have been accomplished over the years and a HEPA filtration system is currently in place.

A dedicated HVAC system for the evidence rooms will meet the specific requirements of the Asheville Police Department Accreditation standards and create a safer environment for employees. The new system will be interconnected to the controls for the building, maintaining Facility staff's ability to manage and supervise the equipment remotely. The HEPA filtration system will be incorporated into this new system.

R & W Incorporated was the low responsible bid. The project has the potential for unknown conditions making additional work and cost a possibility. The contractor and facility staff are committed to reducing these by working as a team. The base bid for the HVAC system is \$94,767.

Due to the uncertainty in utilizing existing system parts and building components staff recommends Council authorize \$100,000 for the project. The FY 2013-14 Police Department operating budget includes \$50,000 for this project. The remaining \$50,000 will be taken from the McCormick Field resurfacing capital project, which came in under budget. The budget amendment will provide authorization to create a \$100,000 project in the City's General Capital Projects Fund.

The cost of the base bid for the renovation of the evidence rooms HVAC is \$94,767. Unknowns are present and could increase the project cost. The total cost of the project including the unknowns is anticipated not to exceed \$100,000. As noted above, the Police Department FY 2013-14 operating budget already includes \$50,000 for this project. The remaining \$50,000 will come from the McCormick Field resurfacing capital project, which came in under budget.

City staff recommends that City Council (1) adopt a resolution authorizing the City Manager to sign the contract with R & W Incorporated and future change orders associated with the project not to exceed the total approved budget amount; and (2) adopt a budget amendment in the amount of \$100,000 from previously budgeted funds and savings in other capital projects that came in under budget.

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**G. RESOLUTION NO. 13-128 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH
RIVERLINK INC. TO RECEIVE FUNDS FROM THE CLEAN WATER
MANAGEMENT TRUST FUND**

Summary: The consideration of a resolution allowing the City Manager to enter into a Memorandum of Understanding with RiverLink, Inc to receive funds from the Clean Water Management Trust Fund (CWMTF) and to sign any necessary documents that may be required by CWMTF.

This City of Asheville is currently in the design phase of the Craven Street improvement project. This project consist of a complete street design which includes bike lanes, sidewalk, on street parking, a greenway associated with the project, a Low Impact Parking Lot, stream restoration and stormwater quality best management practices (BMP's). The city has been working with RiverLink, Inc. on an application for CWMTF. The trust fund has awarded RiverLink, Inc. \$400,000 for work associated with water quality improvements in the Craven Street sub water shed. RiverLink plans to make available for the city's stormwater BMP's \$365,000 for these improvements. The remaining portion will be used by RiverLink for public outreach and water quality testing in the project area.

The primary goal associated with these CWMTF funds are to reduce the stormwater pollutants through the installation of a stormwater BMP's and also to provide additional storage in the project area. The city's project will also provide a much needed stream bank restoration through the New Belgium Property. The stream restoration will not be funded through the CWMTF.

Successful implementation of this project will protect and enhance water quality of the French Broad River Basin by reducing typical runoff pollutants that are released into the river.

The City of Asheville must provide assurance to the North Carolina Clean Water Management Trust Fund that it understands the functions and obligations to which the City is committing itself in order to carry out the work described in this grant contract, and also commit that the City of Asheville will proceed with diligence to perform those functions and obligations to accomplish the work described in any grant contract that may result from the original application. This can be performed by entering into a Memorandum of Understanding with RiverLink for this work.

The City had the opportunity to assist in the application of this grant in which RiverLink was granted funding through the CWMTF for the implementation of this project. The City of Asheville will receive \$365,000 toward the implementation of this project in which the funding will be transferred through RiverLink. The City will be responsible for the implementation of the grant contract and will be required to provide documentation associated with the project cost and other information to both RiverLink and the CWMTF. The City will be responsible for in kind match and also cash match for the CWMTF project of \$717,800. The city will be responsible to secure the necessary easements through our willing partner New Belgium Brewery for the stormwater BMP's, which will be included as part of this match. Other grant sources can be used as part of

the cash match. The City's out of pocket cash match for this partnership will be \$200,000 of which funding will be coming from the Stormwater Utility fee.

A budget amendment to appropriate this grant funding, along with all of the other revenue sources for the Craven Street/New Belgium project, will be forth coming at the same time the construction contract is brought forth for approval.

Staff recommends City Council to authorize the city manager to enter into a Memorandum of Understanding with RiverLink, Inc. on behalf of the City of Asheville for the work associated with this project and also authorizes the city manager to sign all other application or contract documents required to carry out the City's obligations.

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H. RESOLUTION NO. 13-129 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE ASHEVILLE GRIZZLIES HOME FOOTBALL GAMES ON JULY 20 AND AUGUST 3, 2013

RESOLUTION NO. 13-130 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE FRENCH BROAD CYCLING CLASSIC MID-RACE MIXER ON JULY 20, 2013

RESOLUTION NO. 13-131 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE NEW BELGIUM CLIPS BEER & FILM TOUR ON SEPTEMBER 6, 2013

RESOLUTION NO. 13-132 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG LOVE FEST ON SEPTEMBER 15, 2013

RESOLUTION NO. 13-133 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE DOG DAY AFTERNOON ON SEPTEMBER 22, 2013

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Home Football Games on July 20 and August 3, 2013; the French Broad Cycling Classic Mid-Race Mixer on July 20, 2013; the New Belgium Clips Beer & Film Tour on September 6, 2013; The Big Love Fest on September 15, 2013; and Dog Day Afternoon on September 22, 2013.

- Asheville Grizzlies has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Grizzlies Home Football Games and allow for consumption at this event.

The Asheville Grizzlies Home Football Games will be held on Saturday, July 20 and August 3, 2013, from 5:00 p.m. – 10:00 p.m. within the boundaries of Memorial Stadium, as referenced on the accompanying site map.

- Asheville Bicycle Racing Club has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at the French Broad Cycling Classic Mid-Race Mixer and allow for consumption at this event.

The French Broad Cycling Classic Mid-Race Mixer will be held on Saturday, July 20, 2013, from 6:00 p.m. – 9:00 p.m. within the boundaries of Town Square Blvd. between Schenck Parkway and Barnack Way, as per the event area limits referenced on the accompanying site map.

- New Belgium Brewing Company in conjunction with Asheville on Bikes has requested through the City of Asheville Development Services Department that City Council permit them to serve beer and/or unfortified wine at the New Belgium Clips Beer & Film Tour and allow for consumption at this event.

The New Belgium Clips Beer & Film Tour will be held on Friday, September 6, 2013, from 7:00 p.m. – 10:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green and Reuter Terrace, City Hall/Courthouse Parking Lot and Spruce Street between the intersections of South Pack Square and College Street, as referenced on the accompanying site map.

- The Asheville City Schools Foundation has requested through the City of Asheville Development Services Department that City Council permit the sale of beer and/or unfortified wine at The Big Love Fest and allow for consumption at this event.

The Big Love Fest will be held on Sunday, September 15, 2013, from 12:00 p.m. – 8:00 p.m. within the boundaries of Pack Square Park's Roger McGuire Green, Reuter Terrace, Vance Median and Raised Lawn areas including South Spruce Street between the intersections of South Pack Square and College Street, North Pack Square between the intersections of Biltmore Avenue and South Pack Square, South Pack Square between the intersections of Biltmore Avenue and South Market Street and within the City Hall/Courthouse Parking Lot as per the area limits referenced on the accompanying site map.

- Brother Wolf Animal Rescue has requested through the City of Asheville Development Services Center that City Council permit them to serve beer and/or unfortified wine at Dog Day Afternoon and allow for consumption at this event.

Dog Day Afternoon will be held on Sunday, September 22, 2013, from 12:00 p.m. – 4:00 p.m. within the boundaries of Carrier Park, as per the event area limits referenced on the accompanying site map.

City staff recommends City Council adopt the resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Asheville Grizzlies Home Football Games, French Broad Cycling Classic Mid-Race Mixer, New Belgium Clips Beer & Film Tour, The Big Love Fest, and Dog Day Afternoon

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RESOLUTION NO. 13-133 - RESOLUTION BOOK NO. 35 - PAGE 343**

- I. **RESOLUTION NO. 13-134 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF 0.23 ACRES OF REAL PROPERTY FROM DUKE ENERGY PROGRESS TO SUPPORT THE CRAVEN STREET TRANSPORTATION IMPROVEMENT PROJECT**

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of 0.23 acres of real property from Duke Energy Progress for the purpose of implementing the Craven Street Improvement Project.

Duke Energy Progress (formerly known as Progress Energy of the Carolinas, and Carolina Power & Light) owns approximately 0.23 acres of unimproved land at the intersection of Haywood Road and Craven Street. This property is located along French Broad River and adjacent to the New Belgium Brewery site. As part of the Craven Street Improvement Project, a section of the greenway will travel through the 0.23 acre area currently owned by Duke Energy Progress. At this time, Duke Energy Progress has offered to donate the 0.23 acre property to facilitate the installation of the greenway.

City will be responsible for all due diligence associated with the transfer, including title research and boundary survey. These minimal costs will be absorbed within the existing project budget for the Craven Street Improvements Project.

City staff recommends that City Council adopt the resolution authorizing the Mayor to accept a donation of real property from Duke Energy Progress for the purpose of implementing the Craven Street Improvement Project.

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J. RESOLUTION NO. 13-135 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT BY DONATION OR OTHERWISE ANY AND ALL LEGAL INTERESTS IN REAL PROPERTY NEEDED FOR THE IMPLEMENTATION OF THE CRAVEN STREET IMPROVEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to accept by donation or otherwise, any and all legal interests in real property needed for the implementation of the Craven Street Improvement Project.

The Craven Street Improvement Project consists of several public infrastructure improvements, including (1) widening and resurfacing of the existing roadways, (2) adding bike lanes and greenways to the Craven St. corridor, and (3) installing new sidewalks, regional stormwater infrastructure and other related improvements. A majority of the work will be performed within the existing right-of-way of Craven Street. The remaining work will require the acquisition of interest in private property to include but not limited to: easements for greenway, storm water and streets. Most of the permanent easements are planned within the New Belgium property and will be donated to the City. Staff has been in contact with other property owners impacted by the improvements, and anticipates donation or modest in-kind services (such as repaving a driveway) in exchange for the easements. To streamline the process, staff is requesting that City Council authorize the City Manager to accept all legal interest in real property associated with this project, through donation or otherwise.

The City's internal real estate and legal team will be responsible for obtaining all legal interest in real property associated with this project. Modest costs for in-kind services, nominal consideration, deed recording fees, surveys, etc. have been budgeted within the existing project budget for the Craven Street Improvements Project.

City staff recommends that City Council adopt the resolution authorizing the City Manager to accept all legal interest in real property through donation or otherwise for the purpose of implementing the Craven Street Improvement Project.

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K. RESOLUTION NO. 13-136 - RESOLUTION AUTHORIZING THE DONATION OF AN OBSOLETE MAGNESIUM CHLORIDE TANK AND RESIDUAL MATERIALS TO THE TOWN OF BLACK MOUNTAIN

Summary: The consideration of a resolution donating an obsolete magnesium chloride tank and residual material to the Town of Black Mountain.

Public Works Department has an old magnesium chloride tank and residual material that is no longer of any use to the City of Asheville for snow fighting efforts, which the Town of Black Mountain has requested.

N.C. Gen. Stat. sec. 160A-280 allows municipalities to donate surplus, obsolete or unused equipment, materials and supplies to other governmental entities, provided public notice is provided five (5) days prior to adoption of a resolution approving the donation. The Department is eliminating the magnesium chloride in its snow fighting operation due to the noncompliance of the tank, and replacing same with an equivalent that is more modern. The Town of Black Mountain will be solely responsible for all costs associated with transferring the asset to their location.

City staff recommends City Council adopt a resolution approving the donation of the magnesium chloride tank and residual materials to the Town of Black Mountain.

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L. RESOLUTION NO. 13-137 - RESOLUTION REPLACING THE CITY'S SELF-INSURED MEDICAL PLAN FOR RETIREES WITH ACCESS AND/OR ENROLLED IN MEDICARE TO A FULLY INSURED MEDICARE CARVE OUT PLAN

Summary: The consideration of a resolution to adopt changes regarding retiree health benefits under the City of Asheville self-insured health plan for retirees or retiree spouse that gain access to Medicare and update the Resolutions section related to retirees' failure to make timely payments of premiums.

As the City continues to monitor the health insurance fund and benefit programs, we have identified an option for a City sponsored fully insured health plan for all retirees with access to Medicare. This change would move retirees that have access and/or are currently enrolled in Medicare from the City's self insured plan to this new fully insured plan. In order to make this change, Council would need to amend prior resolutions regarding retiree benefits.

The City of Asheville has since 1993 provided retirees with access to Medicare, through age and/or disability, the opportunity to remain on the City's retiree medical plan by paying the full cost of the coverage and enrolling in Medicare. The retiree's benefits remain the same as that of active employees, except that Medicare pays claims as primary and the City's insurance plan pays secondary.

Most retirees that gain access to Medicare drop the City's Retiree Medical coverage in favor of individual Medicare Supplement plans because the monthly premium is typically lower than remaining on the City's medical plan. The current number of Retirees with Medicare who remain covered on the City's plan is fourteen. With such a small number of members in this category, the actual cost for these retirees is unpredictable because their claims vary dramatically from year to year. Because the claims are unpredictable, and rates must be set for an entire year; if claims plus expenses/fees are significantly higher than the premiums charged to these retirees, the City may inadvertently be subsidizing the retirees; or if the claims plus expenses/fees are significantly lower than the premiums charged to the retirees, the City may be collecting more

than is necessary. The recommended change will allow the City to ensure that retirees are paying the full cost for the insurance.

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 to review fully insured insurance alternatives for Retirees with Medicare.

AmWINS provided a fully insured quote for a Medicare carve out plan that offers the retiree lower premiums (\$369-\$460 per month) with similar benefits and out of pocket cost for medical expenses. The current premium paid by these retirees range from \$549-\$708 per month for the City's Retiree medical insurance.

The other change relates to a change made in July 2012 to the Retirees billing and collection process. This change was made to better align premium collection with the benefit period, minimize the Plan's exposure, and to take advantage of technological improvements in billing/collection methods. Staff is recommending approval of a change to the resolutions to refer to the City's billing policy, rather than specific processes that may change over time. In addition it would reflect the billing policy for the fully insured provider administering the Medicare Carve out plan.

Pros:

- Retirees with Medicare would see a reduction in their monthly premium for similar benefit coverage.
- AmWINS would assume all billing, premium collection, customer service and renewal communication for this group of retirees.
- The claims and expenses/fees would be insured and would no longer impact the City's self-funded medical experience.
- The City would have no liability for claims that take place after 7/1/13 through the self insured medical plan or in financial accounting of OPEB (Other Post Employment Benefits).

Cons:

This action is not expected to have an overall financial impact on the Health Insurance Fund; however it will eliminate the year-to-year volatility that can be present in retiree health care claims.

City staff recommends City Council adopt a resolution to amend the retiree health benefits for those eligible for Medicare, under the City of Asheville self-insured health plan for retirees or retiree spouse that gain access to Medicare and update the resolutions to allow City staff and Insurance Company to manage Retiree billing consistent with their internal billing policy.

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M. ORDINANCE NO. 4205 - FIRST READING OF AN ORDINANCE REVISING A FRANCHISE AGREEMENT FOR THE OPERATION OF A TROLLEY BIKE TOUR SERVICE (PUB CYCLE) WITHIN THE CITY OF ASHEVILLE IN ORDER TO BEGIN ON DATE OF COMMENCEMENT OF OPERATIONS

Summary: The consideration of an ordinance revising a franchise agreement for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

City Council approved ordinance # 4149 on December 11, 2012 (first reading) and on January 8, 2013 (second and final reading) granting a franchise agreement for the operation of a trolley bike tour service (pub cycle). Amazing Pubcycle (the grantee) is getting close to starting operations and is asking that the one-year franchise term be changed from beginning on March 1,

2013, to beginning on date of commencement of operations. At this time, it is anticipated that the service will begin during August 2013. The change is needed to help ensure the success of the service by providing a full year of operations and to ease any concerns from the lender.

Staff recommends that City Council approve an ordinance revising a franchise agreement to Peech Development, Inc. d/b/a Amazing Pubcycle for the operation of a trolley bike tour service (pub cycle) within the City of Asheville.

ORDINANCE BOOK NO. 28 - PAGE

N. RESOLUTION NO. 13-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RECEIVE GRANT MONEY FROM THE STATE OF N.C. DEPT. OF PUBLIC SAFETY HOMELAND SECURITY GRANT PROGRAM FOR RECONSTRUCTION AND UPGRADE OF A REGIONAL WIRELESS COMMUNICATIONS TOWER

Summary: The consideration of a resolution authorizing the City Manager to receive a grant in the amount of \$47,335 from the Fiscal Year 2011 Homeland Security Grant Program administered by the N.C. Dept. of Public Safety for reconstruction and upgrade of a regional wireless communications tower.

The City of Asheville and the North Carolina State Highway Patrol have long been partners in developing and maintaining regional communications resources for Emergency Responders in the WNC region. This relationship has created efficiencies and opportunities for cost savings by eliminating duplication of resources and collaborating on regional communications related projects. On October 30, 2012, the High Windy tower in east Buncombe County experienced a catastrophic failure as a result of high winds related to Hurricane Sandy. Grant funds from the Fiscal Year 2011 Homeland Security Grant Program have been identified to rebuild the tower. Reconstruction will enhance the ability of City of Asheville Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions. This grant is 100% reimbursed by the N.C. Dept. of Public Safety.

These funds are a reimbursement grant from the Department of Homeland Security and once received will be re-assigned to the NCSHP for project management. There is no impact to the City's General Fund budget.

City staff recommends City Council authorize the City Manager to receive grant money from the State of North Carolina Homeland Security Grant Program.

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O. RESOLUTION NO. 13-139 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2013 INGLES 4TH OF JULY CELEBRATION

RESOLUTION NO. 13-140 - RESOLUTION AUTHORIZING THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 2013 BELE CHERE FESTIVAL

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2013 Ingles 4th of July Celebration and the 2013 Bele Chere Festival.

The Benevolent Patriotic Order of the Does has requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer at the 2013 Ingles 4th of July Celebration and allow for consumption at this event.

The 2013 Ingles 4th of July Celebration will be held at Pack Square Park on Thursday, July 4, 2013, from 4:00 p.m. to 10:00 p.m. The sale of malt beverages will end at 9:30 p.m. However, the possession of open containers of malt beverages or consumption of malt beverages would be allowed during the festival hours of 4:00 p.m. to 10:00 p.m.

The following organizations: Wild South, Asheville Ski Club, Asheville Area Paralegals, BPO Does, The Mediation Center, Cataloochee Ski Patrol, PBL –AB Tech, St Johns Episcopal Church, Green Opportunities, Asheville Breakfast Rotary Club, and Engineers without Borders, Blue Ridge Roller Girls, and Sigma Nu have requested through the Asheville Parks, Recreation & Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the 2013 Bele Chere Festival and allow for consumption at this event.

The 2013 Bele Chere Festival's Festival Area will be open on Friday, July 26, 2013, from 12:00 noon to 10:00 p.m., Saturday, July 27, 2013, from 10:00 a.m. to 10:00 p.m. and Sunday, July 28, 2013 from 12:00 noon to 6:00 p.m.

The sale of malt beverages and/or unfortified wine will occur only on Friday, July 26, 2013, and Saturday, July 27, 2013, and will end at 9:45 p.m. in both instances; however, the possession of open containers of malt beverages and/or unfortified wine or consumption of malt beverages and/or unfortified wine would only be allowed during the periods as follows:

Friday, July 26, 2013, from 12:00 Noon to 10:00 p.m.
Saturday, July 27, 2013, from 10:00 AM to 10 p.m.

There will be no sales and/or consumption of malt beverages and/or unfortified wine permitted on Sunday, July 28, 2013.

City staff recommends City Council adopt resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 2013 Ingles 4th of July Celebration and the 2013 Bele Chere Festival.

**RESOLUTION NO. 13-139 - RESOLUTION BOOK NO. 35 - PAGE 356
RESOLUTION NO. 13-140 - RESOLUTION BOOK NO. 35 - PAGE 358**

P. RESOLUTION NO. 13-141 - RESOLUTION SETTING A PUBLIC HEARING ON JULY 23, 2013, FOR A SUBSTANTIAL AMENDMENT TO THE 2013-14 CONSOLIDATED ANNUAL ACTION PLANS FOR CDBG AND HOME TO CONSIDER A SECTION 108 LOAN TO EAGLE MARKET STREETS DEVELOPMENT CORPORATION FOR THE EAGLE MARKET PLACE COMMERCIAL DEVELOPMENT

Summary: The consideration of a resolution setting a public hearing on July 23, 2013, for a substantial amendment to the 2013-2014 Consolidated Annual Actions Plan for CDBG and HOME to consider a Section 108 Loan to Eagle Market Streets Development Corporation for the Eagle Market Place commercial development.

Eagle Market Streets Development Corporation (EMSDC) has requested that the City loan \$718,000 from an existing HUD Section 108 loan for the Eagle Market Place commercial development. This loan was received by the City in 2004 for the purpose of assisting in the financing of a mixed-use development in the Eagle-Market Streets area. EMSDC proposes to rehabilitate and develop approximately 10,000 square feet of commercial rental space in the Del Cardo, Ritz and Dr Collette buildings located on Eagle and Market Streets in downtown Asheville.

The substantial changes to the project funded by HUD in 2003 and the proposal under consideration include:

- Development Partners: EMSDC originally was partnered with the MT Zion Development Corporation, Enterprise Foundation and Historic Acquisitions, Inc. EMSDC is now partnering with Mountain Housing Opportunities.
- Square footage of project by uses: The total leasable building area of 13,000 square feet included five residential units encompassing approximately 3,000 square feet and approximately 10,000 square feet of commercial space. The current project includes 62 residential units, and 10,000 square feet of commercial space.
- Sources, types and funding levels: The original project's estimated total development cost was \$2,413,514. Sources included the Section 108 loan (\$800,000), Grants, including CDBG and HUD EDI grant funding (\$870,000) and equity of \$743,514. The current commercial-only project estimated total development cost is \$2,351,678, and includes HUD Section 108 funding (\$718,000); NeighborWorks Capital loan (\$1,509,172) and grant or deferred loans of \$124,506.

The proposed amendment uses funds already available through the CDBG program. The program advances CDBG funds to the City. These funds must be repaid to HUD, either from program proceeds or by using future CDBG allocation to the City. The City has been asked by the developer to provide sufficient collateral to allow HUD to approve the release of these funds for the stated purpose.

Staff recommends that Council set a public hearing on July 23, 2013, for consideration of amendments to the 2013-2014 Consolidated Annual Action Plans.

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Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

Mayor Bellamy said that members of Council have been previously furnished with a copy of the resolutions and ordinances on the Consent Agenda and they would not be read.

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

III. PRESENTATIONS & REPORTS:

A. AFFORDABLE HOUSING ADVISORY COMMITTEE UPDATE

Ms. Lindsey Simerly, Chair of the Affordable Housing Advisory Committee, briefed Council on their activities of the past year and goals for the upcoming year.

After Mayor Bellamy suggested some additional partners, on behalf of City Council, Mayor Bellamy thanked Ms. Simerly for her leadership and the entire Committee for their dedication.

B. LEGISLATIVE & WATER UPDATE

Deputy City Manager Jeff Richardson highlighted for Council some following legislative issues of interest: House Bill 488 - Transfer Control of the City of Asheville's Water System to a Regional Entity; House Bill 252 - Asheville Transfers; House Bill 418 - Park Authority; House Bill 224 - Asheville Extraterritorial Jurisdiction and Annexation; House Bill 568 - Asheville Deannexation; House Bill 708 - Study Public Enterprise Systems/Use of Funds; House Bill 998 -

Tax Simplifications and Reduction Act; House Bill 94/Senate Bill 112 - Amendments to Environmental Laws 2013; Senate Bill 612 - Regulatory Reform Act of 2013; House Bill 813/Senate Bill 724 - Ban Synthetic Cannabinoids; House Bill 937 - Amend Various Firearms Laws; and House Bill 714/Senate Bill 443 - Disposition of Abandoned Firearms.

In response to Mayor Bellamy, Mr. Richardson said that the fiscal impact of ratified legislation on Asheville revenue for this fiscal year was House Bill 224 (ETJ Elimination); and House Bill 252 (Water Contribution to Capital).

Regarding House Bill 252, Mayor Bellamy noted that the only year the City spent more than \$145,000 was this fiscal year for Azalea Road. Other than that, we have not been using the 5% to the fullest extent of our abilities.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER PERMANENTLY CLOSING AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES

RESOLUTION NO. 13-143 - RESOLUTION TO PERMANENTLY CLOSE AN UNOPENED RIGHT-OF-WAY BETWEEN TARPON AND CRAGGY AVENUES

Mayor Bellamy said that the public hearing to consider a resolution to permanently close an unopened right-of-way between Tarpon and Craggy Avenues was held on May 28, 2013, and continued until this date in order to give the property owners sufficient time to discuss a requested pedestrian easement.

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

Pursuant to this statute, all of the adjoining property owner's (Bob and Caryn Hanna, Jody Guokas, Isaac Savage, Jim and Nancy Herrig, James and Martha Roberson, and Michael Kohnle and Deidre Duffy) have requested the City of Asheville to permanently close an unopened right-of-way between Tarpon and Craggy Avenues.

The Metropolitan Sewer District has identified a sewer line crossing mid-way in the right-of-way. An approved easement would need to be included in the revised property configuration.

The initial closure request included a provision to retain a pedestrian easement through the space; however, based on site constraints and a recommendation from the Traffic Engineering, a retained easement would not make for a viable pedestrian connection due to insufficient space to construct said facility.

The Greenway Commission reviewed this closure request at their meeting on May 9, 2013 and concurred with the initial request to include a pedestrian connection.

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

City staff recommends City Council adopt the resolution to permanently close the unopened right-of-way between Tarpon and Craggy Avenues.

Mayor Bellamy opened the public hearing at 5:34 p.m. to ask for public comment on any of the new information.

Ms. Caryn Hanna, property owner, said that the adjoining property owners asked for Council's support to close the right-of-way without the pedestrian easement, as recommended by the Traffic Engineer.

Mayor Bellamy closed the public hearing at 5:35 p.m.

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

Councilman Smith moved for the adoption of Resolution No. 13-143. This motion was seconded by Councilman Davis and carried unanimously.

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B. PUBLIC HEARING TO CONSIDER REZONING 42 OLD COUNTY HOME ROAD FROM HIGHWAY BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 4206 - ORDINANCE TO REZONE 42 OLD COUNTY HOME ROAD FROM HIGHWAY BUSINESS DISTRICT TO RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 42 Old County Home Road from Highway Business District to RM-8 Residential Multi-Family Medium Density District. This public hearing was advertised on June 14 and 21, 2013.

Mr. Esselstyn said that the subject site for this rezoning petition is a 1.3-acre parcel near New Leicester Highway. The property fronts on Old County Home Road, and is near commercial and industrial uses, but the majority of the length of the road is residential in character. The property is currently zoned Highway Business, but owing to constraints such as the flood hazard areas shown at right, the development potential is limited.

Normally, when examining a standard rezoning petition, the applicant's plans for development do not figure prominently in the staff report (as all possible development scenarios should be considered), but in this case, the plans are pertinent to understanding the nature of the request. The applicant would like to develop four or five single-family homes on the property. The existing zoning allows single family dwellings, and a residential density of 32 units per acre, but the standards for lot width and front setback would not allow the traditional single-family configuration desired by the applicant. Similarly, the RM-6 zoning classification to the west could theoretically allow for eight units, but the 70-foot minimum lot width would preclude the familiar single-family configuration desired. (The flood hazard areas also necessitate locating the structures closer to the road, eliminating any practicality for a flag-lot type configuration.) Staff also discussed the possibility of a Board of Adjustment variance or conditional zoning with the applicant, but his preference would be to not have the land encumbered with special conditions outside of what is normally allowed in the zoning district.

While the property's current zoning would allow for a wide range of commercial, office, and public uses, the most recent use was a single-family home. Analysis of the site and its constraints, in conjunction with the requirements imposed by the Highway Business development standards, indicate that the current zoning could invite a highly incongruous design—flood hazards pushing structures towards the street and suburban setbacks pushing structures away from the street could result in a relatively tall structure on a small footprint. Further, the character of the area does not fit the description of a "highway business" environment.

The UDO (7-8-16(a)) states, "The Highway Business District is established to address the needs of commercial development along major thoroughfares. Automobile oriented development

is prevalent within this district and a wide range of commercial uses is permitted. Due to the dominance of the automobile, a major objective within this district is to preserve the traffic capacity of the thoroughfare." While New Leicester Highway qualifies as a major thoroughfare, this section of Old County Home Road is removed enough from the corridor that the objectives of the HB district are much less applicable.

By contrast, the UDO's stated intent for the RM8 district (from 7-8-6(a)) is "to permit a full range of medium density multi-family housing types along with single-family detached and attached residences. This district is intended to provide a transitional area between high density single-family and multi-family areas, and to permit medium density multi-family development in areas where existing conditions make higher density development inappropriate. Non-residential development normally required to provide the basic elements of a balanced and attractive residential area is also permitted."

The question of spot zoning was raised during the staff analysis, as the proposed zoning would be creating a relatively small single-parcel zoning district. However, counsel from the Legal Department as well as Planning staff investigation of precedents indicate that when the proposed district is as similar to its neighbor as RM-8 is to RM-6, the validity of such a zoning decision is fortified. In addition, spot zoning challenges are typically aroused when a proposed rezoning would increase the potential development intensity, not from a downzoning such as this petition is requesting.

In addition to the flood hazard constraints mentioned above, it should be noted that there are other characteristics of the site which could be characterized as challenges for residential development. There is an active rail line less than 90 yards from the southeast property boundary, and the section of Old County Home Road to the west, while City-maintained, does not meet current City standards such as pavement width, gutters, and lighting. That said, the current zoning would allow for a multi-story multi-family residential development at a significantly higher density than would the proposed zoning.

At their June 5, 2013, meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning. During the public hearing for this item, one neighboring property owner spoke in favor of the rezoning request. In addition to this neighbor, staff has been contacted by one other property owner who was seeking additional information.

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

Staff's analysis indicates that the proposed zoning district would support appropriate development and prevent incompatible development more effectively than the existing zoning, and, accordingly, staff recommends approval.

Mayor Bellamy opened the public hearing at 5:38 p.m., and when no one spoke she closed the public comment at 5:38 p.m.

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

Councilman Hunt 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. 4206. This motion was seconded by Councilman Pelly and carried unanimously.

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C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR ADJUSTMENTS TO THE MOBILE FOOD VENDING ORDINANCE AND TO REMOVE LIMITATIONS ON THE NUMBER OF PERMITS ALLOWED TO OPERATE IN THE DOWNTOWN CENTRAL BUSINESS DISTRICT AREA

ORDINANCE NO. 4207 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE MINOR ADJUSTMENTS TO THE MOBILE FOOD VENDING ORDINANCE AND TO REMOVE LIMITATIONS ON THE NUMBER OF PERMITS ALLOWED TO OPERATE IN THE DOWNTOWN CENTRAL BUSINESS DISTRICT AREA

Urban Planner Alan Glines said that this is the consideration of an ordinance to amend the Unified Development Ordinance to provide minor adjustments to the mobile food vending ordinance and to remove limitations on the number of permits allowed to operate in the downtown Central Business District area. This public hearing was advertised on June 14 and 21, 2013.

The mobile food vending ordinance was adopted late in the summer of 2011 and has been in place for over a year and half. An amendment was brought forward at the end of 2012 that added limitations on the number of truck permits in Biltmore Village and provided other small changes to the ordinance. The current amendment seeks to:

- Remove the limit on the number of trucks allowed in the downtown area (currently limited to ten trucks) but maintain the limit of a single truck per an individual in Biltmore Village and in the downtown national register district area;
- Allow dining areas (with furniture) if a mobile food site is able to meet NC State Building code requirements for dining uses; and
- Adjust the language in the ordinance to maintain a prohibition of temporary facilities such as tents and restroom facilities at a mobile food site.

By the end of 2012 there were nine truck renewals in the downtown CBD for the 2013 operating year and the tenth permit was quickly applied for and approved. There are no permits available now and truck operators asked the Downtown Commission to consider expanding the number allowed. After numerous discussions with the mobile food vending subcommittee, it was noted that truck permits are naturally limited by the number of suitable mobile food sites. Locations are difficult to secure because it usually means displacing some other income-generating use on a lot such as surface parking. Given those intrinsic limiting factors, the proposal is to maintain the recently passed Biltmore Village limitation of two trucks but remove the downtown limit of ten. Related to this, the code would receive a minor amendment to maintain the current limit of a single truck permit allowed for an individual (or corporation) in Biltmore Village and in the downtown historic district (corresponding to the adopted map '*Traditional Downtown Core*'). In other areas an individual could be approved for more than a single truck permit. This amendment is felt to maintain the variety and diversity of mobile food vendors.

The second proposed change was a discussion to allow dining areas at mobile food sites. Since dining uses are allowed under the regulations of the NC State Building code it was thought that if a site could comply with those rules, then dining should not be prohibited by the ordinance. One of the compliance issues for a mobile food site will be access to restroom facilities by dining patrons. Some sites may be able to meet this requirement now or in the future with access to or proximity to restroom facilities either sharing a facility with a building on the same site or by agreement with an adjacent building. Compliance will be reviewed with the application and site plan for the mobile food site.

Finally the mobile food vending subcommittee also felt that temporary facilities such as tents and temporary restroom facilities should not be allowed at the mobile food site since this

could negatively affect the look and character of the downtown area. These clarifications require additional changes to some general provisions of the ordinance.

Summary of Changes:

- Number of permits in the downtown area- Remove language that limits truck permits in the downtown area but maintain the limit of two in Biltmore Village. An individual would not be allowed to operate more than a single truck in either Biltmore Village or the downtown national register district area.
- Dining Areas- Allow dining areas and related furniture at a mobile food site if requirements of the NC State Building Code can be met including access to restroom facilities.
- Temporary Facilities- Temporary facilities will continue to be prohibited at the mobile food site including temporary restrooms.

After extensive review and a recommendation from the mobile food vending subcommittee, the proposed changes were reviewed at the May 10, 2013, meeting of the Downtown Commission. After this date additional changes were clarified with the mobile food vending subcommittee and the design review subcommittee and shared with the entire Commission. The Commission supports the proposed changes to the mobile food vending ordinance.

The Planning and Zoning Commission reviewed the amendments to the ordinance at their meeting on June 5, 2013. There was a question that mobile food vending may be working against stated goals of adding density in the downtown area. Further discussion provided a perspective that this ordinance provides the opportunity for dense business growth and development at a food truck lot. It was also noted that the activity may be temporary in nature since there is redevelopment potential for most surface parking lots in downtown and surface lots are where mobile food vending is operating. The Commission voted unanimously to endorse the amendment to the ordinance.

City staff concurs with that recommendation because the amendments are reasonable and consistent with the Comprehensive Plan and other adopted plans based on information presented in the staff report and as presented in the staff recommendation.

City staff recommends City Council approve the UDO amendment for changes to the Mobile Food Ordinance as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation

Mayor Bellamy opened the public hearing at 5:41 p.m., and when no one spoke, she closed the public hearing at 5:41 p.m.

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

Councilman Pelly 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. 4207. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

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D. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF CURRENT SIGN REGULATIONS

ORDINANCE NO. 4208 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF CURRENT SIGN REGULATIONS

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance regarding clarifications to and modifications of current sign regulations. This public hearing was advertised on June 14 and 21, 2013.

Ms. Daniel said that over the past several months, the staff has determined that some adjustments to the sign regulations should be considered. These changes primarily allow more flexibility for businesses and developments from a practical perspective, without allowing a substantial increase in signage. They also reflect evolving community standards for certain types of signs. The rationale for each change is noted in the summary of changes below.

Summary of Changes

Sec. 7-9-5(c)(1)(c): Signage for Manufactured Housing Communities

The proposed modification is primarily a technical change to remove a requirement that seems duplicative. It would remove signage requirements from the manufactured housing community overlay section and instead refer back to the applicable language for subdivision and multi-family development signs in Article 13. The change is proposed because the requirement duplicates the requirements for other multi-family developments and it seems unnecessary for there to be a separate signage requirement for this use. The language change also simplifies some antiquated terminology.

Sec. 7-13-2-b-1: General sign requirements

The proposed change relates to general sign requirements, adding a provision requiring old sign structures to be removed before a new sign permit can be issued. This has sometimes been a problem in the past and this change will clarify intent.

Sec. 7-13-4(b)(2)(j): Menu boards for fast food restaurants

The proposed change reflects general acceptance of the use of two menu boards for many fast food restaurants. The Board of Adjustment has approved this provision several times and it is becoming an industry standard. The Planning Commission recommended a modification to the originally proposed language, clarifying that there may be no more than two menu boards per restaurant, and reducing the size allowed per menu board to reflect what seems to be the industry standard for these signs.

Sec. 7-13-5(c): Second Tier Signs

The change proposed would allow an expansion of the use of second tier signs for properties that have no direct access on a major public thoroughfare. The code already allows sharing a sign, and this change would allow an independent sign if the property with the thoroughfare frontage does not have a sign and is willing to allow the use.

Sec. 7-13-8(b)(4): Sign amortization

These changes would modify the city's amortization standards for recently annexed areas. The impetus for the change comes from a large commercial center opened just a year or so before it was annexed a few years ago. The current five year amortization created an understandable hardship for this business given the large size of its sign, and their only recourse would be to request relief from the Board of Adjustment. Further, the five year amortization requirement has long been a source of substantial concern to many annexed properties – commercial, residential, and institutional uses. A check of a range of other cities reveals that longer amortization periods are not unusual, and a special provision for properties recently annexed seems to be a fair consideration. This change also deletes language related to the city's ETJ.

Staff introduced these and other changes to the Planning and Zoning Commission at their June 5, 2013, meeting. The Commission supported some of these changes and requested staff to get additional information about others. The Commission requested additional research, examples, and clarification from staff on proposed changes to the standards for off-premise signs, residential development signs, and signage for multi-tenant businesses. Staff is presenting the changes that were supported by the Commission to Council as we believe Council might wish to consider them now. Staff will return with the remaining proposals and the recommendation from the Commission later this summer.

The Planning and Zoning Commission voted unanimously to recommend approval of the ordinance changes presented and city staff concurs with that recommendation.

Staff recommends City Council approve the UDO amendment for changes to the Sign Regulations as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy opened the public hearing at 5:47 p.m., and when no one spoke, she closed the public hearing at 5:47 p.m.

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

Councilman Hunt 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. 4208, with the minor amendment to the ordinance outlined by Ms. Daniel. This motion was seconded by Councilman Bothwell and carried unanimously.

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E. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATION TO AND MODIFICATIONS OF REGULATORY STANDARDS FOR INDUSTRIAL USES

ORDINANCE NO. 4209 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CLARIFICATIONS TO AND MODIFICATIONS OF REGULATORY STANDARDS FOR INDUSTRIAL USES

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance to amend the Unified Development Ordinance regarding clarifications to and modifications of regulatory standards for industrial uses. This public hearing was advertised on June 14 and 21, 2013.

The proposed amendments pertain to development regulations and review processes for industrial uses. The impetus for these proposed changes came from recent questions regarding development of a potential industrial site. The proposals would modify the review thresholds for projects in the Industrial and Commercial Industrial districts.

Review Process for Industrial Uses - The language of the current regulations (found in Article 5) that govern site plans for industrial uses are confusing. The code currently states that a Level II site plan review is required for industrial uses “*with a gross floor area of 100,000 sf to an industrial development containing more than 15 acres*”. Yet there are no provisions in the Level III site plan standards for industrial uses with gross floor areas of over 100,000 square feet.

Upon reflection the staff has come to believe that these standards need further refinement as well as clarification. They affect several zoning districts with substantially different characters including Industrial, Commercial Industrial, Light Industrial, and River.

Summary of Changes

Sec. 7-5-9: Review Processes for Industrial Uses - The proposed changes separate the processes for site plan review of industrial uses in the Industrial district from the review of these uses in the Commercial Industrial and River districts, and clarify the standards for both.

Level III Reviews - The proposed changes to Sec. 7-5-9(a)(1)a(1) first make a technical change for consistency of wording with the same section in the Level II reviews, stating the section purpose and application. The second and more substantive change adds a provision requiring Level III review for very large industrial projects (over 100,000 sf) when they are located in the Commercial Industrial or River districts. Staff proposes this change since there are many types of uses allowed in those districts in the City, and we felt the Council might wish to review large industrial uses proposed in the vicinity of those commercial or residential uses.

Level II Reviews - The proposed changes to Sec. 7-5-9(b)(1)(a)(1) amend the Level II site plan review process to remove what we believe to be an unnecessary acreage threshold and clarify that Level II review will be the final approval step for industrial uses of 100,000 square feet or more in the Industrial district. The modification also establishes that a Level II review will be the final approval step for industrial uses in the Commercial Industrial and River districts for projects of 50,000 to 100,000 square feet. Any industrial projects below these thresholds would remain a Level I review.

The staff report to the Planning and Zoning Commission at their June 5, 2013, meeting included the process modifications outlined above and a proposal for changes to the Open Space standards affecting industrial uses in the Industrial and Commercial Industrial districts. Those changes would reduce the requirement in the Commercial Industrial district (from 15% to 5%) and eliminate the requirement in the Industrial district. The Commission supported both these proposed changes in theory, and recommended approval of the process change requirements.

The Commission deferred final consideration of the open space changes, and requested additional input from the SACEE Committee regarding the potential for incentives for reduction of open space requirements. The Commission recommended approval of the proposed review thresholds unanimously.

City staff and the Planning and Zoning Commission recommend City Council adopt an ordinance incorporating the changes to the City Code of Ordinances as outlined in the staff report.

City staff recommends City Council approve the UDO amendment for changes to the regulatory review processes for industrial uses as outlined in the staff report and find that the amendments are reasonable and are consistent with the Comprehensive Plan and other adopted

plans, based on information provided in the staff report and as stated in the staff recommendation.

Mayor Bellamy opened the public hearing at 5:50 p.m., and when no one spoke, she closed the public hearing at 5:50 p.m.

At Mayor Bellamy's request, it was the consensus of Council to ask Planning & Development Department to look at possible revisions to the overall parking standards, in particular the parking standards as they regulate to industrial uses.

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

Councilman Hunt 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. 4209. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE

V. UNFINISHED BUSINESS:

A. ORDINANCE NO. 4210 - ORDINANCE ADOPTING THE FISCAL YEAR 2013-14 ANNUAL OPERATING BUDGET

Mayor Bellamy said that the public hearing on the budget was held on June 11, 2013.

Deputy City Manager Jeff Richardson said that this report presents the Fiscal Year 2013/2014 Annual Budget for adoption by City Council.

The Fiscal 2013/2014 Proposed Annual Operating Budget was presented to City Council on May 28, 2013. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 31 and June 7, 2013. City Council conducted a public hearing on the Proposed Budget on June 11, 2013. The Fiscal Year 2013/2014 Proposed Budget that was presented on May 28 was balanced with a revenue-neutral Ad Valorem tax rate of \$0.43 per \$100 of assessed value. The General Fund budget also included no appropriation from the City's fund balance. All essential City services are continued in the Budget.

Balancing the General Fund Operating Budget – Revised Revenue Estimates

The Proposed Budget assumed that a Regional Cultural and Recreation Authority (CRA) would be created, and that the City would join the CRA in January 2014. On June 18th, House Bill 418, which authorized the formation of the CRA, was amended to include language that excluded municipalities from joining the CRA for 24 months after its enactment, which means that the City will not join the CRA in January. As discussed with City Council at the June 11th public hearing, if the City, for whatever reason, did not join the CRA in January, then a \$1.5 million General Fund budget gap would exist in FY 2013/2014. Staff indicated to Council on June 11th that a property tax rate increase may be necessary to overcome this \$1.5 million budget gap.

Since the June 11th meeting, staff has also received updated information that indicates that the tax reform legislation being considered by the North Carolina General Assembly will not have an impact on the City's FY 2013/2014 General Fund budget. Earlier in the spring, staff was concerned that the negative financial impact in FY 2013/2014 could be as much as \$1.0 million, and thus built this assumption into the FY 2013/2014 Proposed Budget. Staff now feels confident that this \$1.0 million in revenue can be budgeted in the General Fund in FY 2013/2014. It should

be noted, however, that the impact of tax reform will continue to be a significant issue for cities to monitor in future years. Estimates recently released by the North Carolina League of Municipalities indicate that the City of Asheville may lose up to \$1.3 million in revenue in FY 2014/2015 from state tax reform legislation, and that this loss may grow to \$2.4 million by FY 2018/2019.

In addition to the \$1.0 million revenue adjustment associated with the updated tax reform plan, staff also has received revised revenue estimates for several other General Fund revenues, most notably motor vehicle licenses. Based on these updated revenue projections, staff is submitting to Council a balanced General Fund operating budget that: 1) reflects a full year of continued City operation of its Parks and Recreation facilities and programs; and 2) does not include a property tax rate increase above the revenue neutral rate of 43 cents per \$100 of assessed value or a fund balance appropriation. It should be noted that the FY 2013/2014 Parks and Recreation Department budget does still include plans to restructure the City's role in producing special events and festivals, and that plan assumes that the City will produce its last Bele Chere festival in summer 2013.

Enhanced Capital Improvement Program

Executive Director of Public Works and Multimodal Transportation Cathy Ball said that as staff indicated at the May 28 Proposed Budget presentation and at the June 11 public hearing, the Proposed Budget recommended that a portion of the savings from the City's participation in the CRA be redirected to the City's Capital Improvement Program (CIP) beginning in FY 2014/2015. Specifically, staff recommended in the Proposed Budget that \$1.1 million in CRA-produced savings (equivalent to 1-cent on the property tax rate) be added to the city's regular CIP; and that \$2.2 million in CRA-produced savings (2-cents on the tax rate) be directed to the City's new comprehensive Community and Economic Development CIP (EDCIP). The Economic Development and Community Investment strategy, as envisioned in the EDCIP, focuses on putting more money into job creation, infrastructure and other capital projects in targeted areas where tax base growth is most promising. Tax base growth in these target areas would then help fund additional improvements that leverage private investment and economic growth.

With the City's participation in the CRA now no longer an option in FY 2013-14, staff is recommending that City Council increase property taxes by 3 cents above revenue neutral, to \$0.46 per \$100 of assessed value, to fund the enhanced capital improvement program. The 1-cent or \$1.1 million that will be added to the City's regular CIP will fund an additional \$5.5 million in deferred maintenance projects over the next five years. This additional funding will provide for greater investment in both street improvements and facility maintenance. With this additional funding, the City will be able to improve its street resurfacing schedule from the current cycle of once every 65 years to once every 35 years (20 years is the benchmark recommended cycle).

The additional 2-cents or \$2.2 million for the EDCIP (along with proceeds from land sales) will provide the initial seed money to leverage a potential \$59 million in capital investments over the next five years. Staff recommends launching this program by issuing debt in FY 2013/2014 to begin such cornerstone projects as the River Arts District Transportation Improvement Project (RADTIP), multi-modal and pedestrian improvement projects, transformational affordable housing developments, and enhanced funding for critical capital maintenance like street and sidewalk repairs. Many of the transformational projects proposed in the EDCIP could have been eligible for the 5% funding from the Sullivan Act that was repealed by the General Assembly earlier this year in HB 252.

This action complies with the Fiscal Responsibility focus area of City Council's Strategic Operation Plan: Operate the City of Asheville's organization to the highest levels of fiscal responsibility.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.
- General Fund operating Budget is balanced with no property tax rate increase or fund balance appropriation and all essential City services are continued.
- Includes funding for enhanced five-year Capital Improvement Program.

Cons:

- A revenue shortfall could occur in FY 2013/2014 if the N.C. General Assembly alters the current tax reform proposal prior to its final adoption.
- Based on the current financial forecast, the EDCIP may require additional resources in FY 2017/2018.

As noted above, the Proposed FY 2013/2014 General Fund budget is balanced with no property tax rate increase for operations and no fund balance appropriation. The Budget does include a 3-cent property tax rate increase to enhance the City's five-year Capital Improvement Program. The chart below shows the impact of the 3-cent increase for various property values. For example, the owner of a \$250,000 home will see an annual increase of \$100.

| Home Value | Current Bill | 3 Cents | |
|------------|--------------|--------------|-------------|
| | | Revised Bill | \$ Increase |
| 150,000 | \$630 | \$690 | \$60 |
| 250,000 | \$1,050 | \$1,150 | \$100 |
| 350,000 | \$1,470 | \$1,610 | \$140 |

If Council approves the Budget as currently proposed by staff, the adopted General Fund budget for FY 2013/2014 will be \$95,861,764. The table below highlights the changes between the May 28 Proposed Budget and the Budget that staff is recommending tonight.

| | Proposed Budget |
|--|--------------------------|
| General Fund Budget from May 28 | 90,512,514 |
| <u>Expense Adjustments:</u> | |
| Restore Parks & Recreation Expense Budget to full year | 3,049,250 |
| Reduce Contingency | (1,000,000) |
| Increase Contribution to Regular CIP & EDCIP | 3,300,000 |
| Net Expenditure Changes | <u>5,349,250</u> |
| <u>Revenue Adjustments:</u> | |
| Restore Parks & Recreation Revenue Budget to full year | 549,250 |
| Budget State Tax Funds | 1,000,000 |
| Adjusted Revenue Estimates (e.g. motor vehicle tax) | 500,000 |
| 3-Cent Property Tax Rate Increase | 3,300,000 |
| Net Revenue Changes | <u>5,349,250</u> |
| General Fund Budget June 25 | <u>95,861,764</u> |

Staff requests that Council review the FY 2013/2014 Annual Budget, including the changes noted above, and make necessary recommendations or adjustments followed by adoption of the Budget Ordinance, which will establish an Ad Valorem tax rate of \$0.46 per \$100 of assessed value.

Councilman Hunt was appreciative of the 5-year view of the CIP. He felt the tax increase sets the stage for us to strategically plan and accomplish some very important projects going forward. He did note that even though we are calling it the EDCIP, it is actually a community & economic development CIP.

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

Councilman Hunt moved for the adoption of Ordinance No. 4210, which establishes an ad valorem tax rate of \$0.46 per \$100 assessed value. This motion was seconded by Councilman Bothwell.

When Councilman Smith noted that there is still a lot of financial uncertainty at the state level, City Attorney Oast said that City Council can always amend their budget throughout the fiscal year; however, they cannot change the tax rate, which must be set by June 30. Councilman Smith noted that if the City gets hit with another unplanned financial hit from the State, City Council can shift the funds from the 3-cents for the CIP maintenance and EDCIP for a buffer in what may happen.

Councilman Smith asked if we make the investments in the River Arts District and in the South Slope, will the revenue growth be able to match the expenditure growth. Ms. Ball said that we would not expect to see revenues until 3-4 years out. Through those years, we will continue to watch our expenditures and look for opportunities to find other ways for service delivery, etc., but at the 5-7 year period we expect there will be money available to pay back debt service for this community & economic development CIP, as well as have additional funding for our maintenance needs as well.

Councilman Bothwell explained the tax structure for the CRA, if the legislature passes that bill. He noted that even though we are getting more efficient vehicles, the fuel costs have doubled over the past 10 years. He supported staff's recommendation as we will be building for the future.

Ms. Ball responded to Councilman Pelly regarding the contribution to the Asheville Art Museum. She said that the Asheville Art Museum is a City-owned building. While they are doing major renovations, the City is proposing to contribute \$2 Million which will be debt financed. That is directly tied back to the cost of some major building maintenance requirements, such as the HVAC system. The total projected cost for the total improvements is roughly \$22 Million.

Vice-Mayor Manheimer highlighted that the budget includes an increase in pay for City staff in order to keep the salaries competitive. This budget takes the first major step towards self-sustainability, which is going to be our reality going forward. We have identified different areas to shore up the City, but if you can't count on the cooperation of the legislature in doing that, we are limited in our options. This budget recognizes that if we invest in the infrastructure in our own community, it will pay dividends so that we can continue to grow our own revenue base to sustain our own community in a way that we will enjoy. This budget is a sound budget that attempts to leverage what we have to assure our fiscal sustainability going forward

Councilman Davis agreed with Vice-Mayor Manheimer in our need to become self-sustained. He was amazed that we have not had a tax increase in years.

Councilman Smith felt that this budget doesn't reduce our service levels, but let's up catch up on some deferred maintenance. The community & economic development CIP is about the future and becoming a more dependent and resilient city.

Mayor Bellamy recalled asking Council not to approve the Business Improvement District because she felt sure we would have to consider a tax increase. Council was able to weather tough times through the years without a tax increase because we kept a healthy fund balance. Just in one week alone, the City had several job announcements. This year is a new dynamic where we don't have a state government that is willing to work with us. She believed that our regional assets should be paid by the regional users and to be cut out of the CRA "just because" is not good public policy. She will vote for the 4-cent tax increase, however, she would have preferred it be a 3-cent increase (1 for revenue neutral; 1 for CIP maintenance; and 1 for community & economic development CIP). She is concerned that the 5-year CIP may not happen because of the fractured relationship at the state level. She was concerned that we may be using the CIP funds just to do basic operational services. She would support the increase because (1) we have cut down our savings to the bare minimum of what is Council's policy; (2) there has been no increase in many years; (3) the investments that we make are really needed; and (4) the investments we make will provide an increased tax base for our community that will ensure that people who live in our community can also work in our community.

The motion made by Councilman Hunt and seconded by Councilman Bothwell and carried unanimously.

Mr. Ken Michalove, former member of the Pack Place Board, provided Council with the following overview of his concerns (1) City allocating \$2 Million to the Asheville Art Museum renovations; City proceeding with separating the lease between the City and Pack Place Education Arts & Science Center into two leases - one for Pack Place and one for the Art Museum; City agreeing to physically separate the Pack Place building into two buildings; issues of having two leases and building separation issues have created an atmosphere of distrust towards the Art Museum among Pack Place Board members; there is limited information available about the Art Museum project and their day to day operations; there is the potential of destroying the Pack Place as an institution; and, there has been limited opportunity for public input and information sharing regarding all of these issues.

Mr. Adrian Vassallo, President of the Asheville Downtown Association, said there is a recognition that downtown is vibrant and that it continues to need attention from our City leaders. The downtown is also recognized for its impact on the City. A top issue the Association has every year for downtown is cleanliness and safety. Those are basic City services. He questioned the \$30 Million investment in the River and a less than \$2 Million investment in downtown. He said this is not about the River, but about recognition of the impact that investment can have in downtown. If we can get a 3,000% return on the south slope vs. a 2,000% return on the river, we should be spending more in downtown. In the coming fiscal year, this budget allocates nothing for recycling and trash cans in downtown. He encouraged Council to look at ways to allocate funding to some of those services that are needed in downtown.

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Closed Session

At 7:09 p.m., Councilman 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: State of North Carolina, City of Asheville; and Metropolitan Sewerage District. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3); (2) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee, and to hear or investigate a

complaint, charge, or grievance against an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); and (3) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Smith and carried unanimously.

At 7:54 p.m., Vice-Mayor Manheimer moved to recess 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.

B. RESOLUTION NO. 13-144 - RESOLUTION ADOPTING A LIVING WAGE FOR FULL- AND PART-TIME CITY EMPLOYEES AND GENERAL SERVICE CONTRACTS \$30,000 AND ABOVE

Administrative Services Manager Brenda Mills said that the purpose of this staff report is to provide an update on the Living Wage Policy and recommended action for the Fiscal Year 2013-14 which is (1) Set the living wage rate at \$11.85/hour without employer provided health insurance and \$10.35/hour with employer provided health insurance; and (2) Increase the contract threshold for General Services subject to the living wage at \$30,000 and above with no limits.

The City of Asheville's Living Wage Policy is considered annually as part of the budget process. Over the last two years, the City Council has adopted a living wage for full- and part-time employees while incrementally applying the requirement to general service contracts within specific dollar thresholds. Those actions included:

- In April 2011, City Council approved a resolution setting a living wage for City of Asheville full, part-time, and contract employees working on general service contracts \$30,000-\$90,000 in value. The resolution set the living wage for Fiscal Year 2011-2012 at \$11.35/hour without employer provided health insurance and \$9.85/hour with employer provided health insurance.
- In March 2012, City Council approved a resolution setting a living wage for City of Asheville full, part-time, and contract employees working on general service contracts \$30,000-\$200,000 in value. The living wage remained the same as in the previous year.

For FY 2013-2014, City Council is being asked to consider (1) increasing the living wage rate based on a defined formula and (2) extending the living wage requirement to all general service contracts, including those with a value above \$200,000. The living wage does not apply to volunteers, to full-time or part-time students who are working for the city in positions designed to further the students' education, or to temporary/seasonal employees as this type of employment is typically secondary to the employee.

(1) Living Wage Rate

Just Economics recommends that the City of Asheville calculate the living wage rate using the "Universal Living Wage Formula." This Universal Living Wage formula is based on the premise that for an individual the cost of housing should make up thirty percent or less of his or her income. The formula takes the Fair Market Rent for a one bedroom apartment in the local area (as determined by HUD) at the fortieth percentile and divides that by .3 to determine monthly income; monthly income is then multiplied by 12 months and divided by 2080, the annual number of working hours for a full-time employee (assuming a 40 hour work week, 52 weeks a year); the number is then rounded to the

nearest nickel. A worker may be paid an amount equal to \$1.50 less than the living wage rate if the employer provides for 50% or more of the cost of an employees' healthcare coverage.

It is recommended that the City of Asheville adjust the wage rate annually by using a four year average of the Fair Market Rent at the fortieth percentile, so as to mitigate any volatile changes in the Fair Market Rent. If the change in the living wage rate is 3% or greater from the current living wage, the wage rate will be adjusted.

Based on this recommended formula, the living wage rate for Fiscal Year 2013-2014 would be \$11.85/hour without employer provided health insurance and \$10.35/hour with employer provided health insurance, representing a 4% increase over the previous two years.

(1) Living Wage application to General Service Contracts

General services contract information is collected and reviewed each quarter for living wage review and compliance. Data collected since July 2012 shows the following impact of the living wage policy on the city's general services contracts:

- Total of 100 general services contracts were let through March 1, 2013
- Number of general services contracts by dollar thresholds:
 - Between \$30,000 and under \$90,000 (15 total) – 9 were subject to living wage and vendor complied with living wage requirements per the City's current policy.
 - Between \$90,000 and under \$200,000 (2 total) – Only 1 contract in this threshold would have been subject to living wage with the current policy including contracts up to \$200,000.
 - Over \$200,000 (3 total) – Only one contract in this threshold would have been subject to living wage if the current policy had included contracts above \$200,000.

For the data above, contracts not subject to the living wage would have been those that did not include a labor services (i.e., software licensing purchases, Interlocal agreements, etc.). For the most part, contracts executed in the \$90,000-\$200,000 and above range included services where living wage rates are already paid (audit services, Development Services software implementation, IT infrastructure maintenance, radio infrastructure maintenance, etc.).

Employee Costs: Increasing the living wage to 11.85/hour without employer provided health insurance and \$10.35/hour with employer provided health insurance for city employees would have a nominal impact on costs associated with future salaries and benefits (less than a fraction of 1 percent). The most significant change the City would implement is with newly hired firefighters, who currently make less than \$10.35 an hour during their first six months ("Step A" in the step plan) after rookie school. If adopted, the City would move these firefighters to \$10.35 an hour ("Step B" in the step plan) directly after rookie school. If the City had made this change with the last class of 25 newly hired firefighters, the cost impact would have been approximately \$7,500 in base salary.

Contract Costs: Data from contracting in the current fiscal year shows that when the City contracted for services above \$200,000, the vendor typically already paid a living wage. Based on the City's current year performance, the impact of adjusting the General Services contract threshold from \$30,000 and above with no limit will have limited financial impact. However, if the City executes large contracts for labor intensive services (i.e., security services, landscaping and mowing services), there may be a more significant impact, possibly ranging from 10-30%.

Staff recommends adoption of a Living Wage resolution that:

- (1) Sets the living wage rate at \$11.85/hour without employer provided health insurance and \$10.35/hour with employer provided health insurance;
- (2) Increases the contract threshold for General Services subject to the living wage at \$30,000 and above with no limits;
- (3) Directs staff to continue to monitor the impact of an adjustment with data provided to City Council as part of the quarterly financial reports, and;
- (4) Brings the policy back to City Council for official review as part of the FY 14-15 budget process to look at impact and make recommendations for adjustment to the wage level.

When Councilman Bothwell asked why the policy doesn't include construction contracts, Ms. Mills said that construction and procurement contracts have specific General Statutes that govern award of them.

Councilman Smith hoped that other employers will strive to adopt a living wage policy also.

The following individuals spoke in support of the resolution and thanked City Council for being a leader:

Ms. Vicki Meath, Executive Director, Just Economics WNC
Ms. Lottie Myers, Member of the original Steering Committee for Living Wage
Mr. James Sheeler
Mr. Mark Hebbard, Living Wage Certification Program Coordinator for Just Economics WNC (provided Council with a list of businesses with living wage policy)
Mr. Timothy Sadler
Rev. Amy Cantrell

Mr. Alan Ditmore was concerned of the implication that the living wage can be used as a substitute for housing affordability.

Councilman Smith moved for the adoption of Resolution No. 13-144. This motion was seconded by Councilman Bothwell and carried unanimously.

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VI. NEW BUSINESS:

A. RESOLUTION NO. 13-145 - RESOLUTION AMENDING THE 2012-13 CONSOLIDATED ANNUAL CDBG AND HOME ACTION PLAN FOR THE RESIDENCES AT GLEN ROCK HOME PROJECT

Community Development Director Jeff Staudinger said that this is the consideration of a resolution amending the 2012-2013 Consolidated Annual CDBG and HOME Action Plan to provide the balance of the cancelled East Riverside HOME project to the Residences at Glen Rock HOME project.

In 2008, Mountain Housing Opportunities (MHO) was awarded \$264,734 in HOME funds for the development of an 80-unit condominium development in the East of the Riverway neighborhood. The proposed project was never completed; however, \$229,595 was expended in pre-development, and the balance of the award was returned to the Consortium for reallocation.

In 2011 and 2012, MHO brought forward Housing Trust Fund and HOME requests for the Residences at Glen Rock, a 22 units affordable housing development created through the rehabilitation of the old Glen Rock Hotel on Depot Street in the City's River Arts District. To date,

the City has approved a total of \$387,000 in Housing Trust Funds and \$140,000 of HOME funding to the project. Granting this request to place the \$35,139 balance from the East Riverside project into this project would make the total HOME investment in the Residences at Glen Rock \$175,139. The HOME commitment of 11 units (affordable to households earning less than 60% of median income) which was required in the East Riverside project will be fulfilled in the Glen Rock Hotel. An additional 11 units affordable to households earning less than 80% of median income will also be created. MHO made this request to offset higher than expected construction costs.

The Asheville Regional Housing Consortium considered this request in January of 2013, and supported this request.

The proposed use of funds would grant federal funds already allocated to the City. No City general funds are affected.

The Asheville Regional Housing Consortium recommends that the 2012-2013 Action Plan be amended to allocate the \$35,139 of HOME funds originally allocated to the East Riverside project to the Residences at Glen Rock.

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

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

Vice-Mayor Manheimer moved for the adoption of Resolution No. 13-145. This motion was seconded by Councilman Pelly and carried unanimously.

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B. ORDINANCE NO. 4211 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL TO REDUCE FEES FOR SUMMER PROGRAMS

Parks, Recreation & Cultural Arts Director Roderick Simmons said that at Mayor Bellamy's request, he provided the following summary of the fee structure and cost recovery of the program cost for summer and afterschool.

The current summer camp fee is \$40 per week for the first child + \$10 weekly registration fee, \$30 per week for each additional sibling + \$10 weekly registration fee. The summer program is a 10 week program.

Last summer, we served 341 program participants. The cost to provide the program was \$120,000 and we had revenue of \$21,000. We subsidize the program in the amount of \$98,000. This equates to \$289.16 per participant.

If all projected fees were collected per participant the total realized revenue would have been \$136,000 for the 10 week program.

Mr. Roderick said that in Fiscal Year (FY) 2013-14, the Fees & Charges Manual has been amended that if a family is on a reduced or free lunch program they will receive the program at a discounted rate. For the current Fiscal Year (2012-13), City Council adopted the Fees & Charges Manual with no fee waiver or scholarship program. He asked Council for policy direction to waive the fees for the current summer program which started on June 17.

Vice-Mayor Manheimer clarified that if a child qualifies for a free or reduced lunch during the regular school year, they would receive summer camp for free. Mr. Simmons said that in FY 2013-14 the fee is going up to \$50/week for the first child. If the child qualifies for free or reduced

lunch, it will be \$30/week for the first child. The summer camp program runs from 8:00 a.m. - 5:30 p.m.

When Councilman Hunt felt there needs to be written documentation for reduced fees kept on file at the City, Mr. Simmons said that the parents have to fill out a form with the school system that allows them to have a free or reduced lunch. Currently we don't have a scholarship program in place, but that documentation will be required for next FY 2013-14.

In response to Vice-Mayor Manheimer, Mr. Simmons said that parents can register at anytime and they may not register for the full 4-week or full 5-week session. Parents can sign up on a week by week basis. If there is a fee reduction for this fiscal year, staff would let the parents know of that reduction prior to the next week's registration. It was noted that some parents may be required to pay a fee if they do not qualify for the reduced or free luncheon, unless Council waives the fees.

In response to Councilman Davis, Mr. Simmons said there are approximately 123 children at our sites. Last year they served approximately 341 children. An assumption of the drop is because the City is now charging for the program with no waivers or scholarship program.

Councilman Hunt moved to amend the Fees & Charges Manual for the current Fiscal Year (2012-13) as follows: fees for families that qualify for free and reduced lunches be \$25.00 per week for the first child + \$10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for free and reduced lunches be \$35.00 per week for the first child + \$10 weekly registration fee.

Mayor Bellamy questioned the \$15 reduction and felt it would be more appropriate to let staff determine the reduction, taking into account the income of the families that use our programs. She pointed out that a free lunch is different than a child with a reduced lunch.

Councilman Hunt moved to amend his motion to amend the Fees & Charges Manual for the current Fiscal Year (2012-13) as follows: (1) fees for families that qualify for reduced lunches be \$30.00 per week for the first child + \$10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for reduced lunches be \$40.00 per week for the first child + \$10 weekly registration fee; and (2) fees for families that qualify for free lunches be \$20.00 per week for the first child + \$10 weekly registration fee, effective Fiscal Year 2012-13; and for Fiscal Year 2013-14 fees for families that qualify for free lunches be \$30.00 per week for the first child + \$10 weekly registration fee. This motion was seconded by Councilman Bothwell.

At Vice-Mayor Manheimer's suggestion, it was the consensus of Council to have the Finance Committee review the summer program fees, service delivery systems, performance measures, comparable rates and best practices in other cities.

Mayor Bellamy felt we need to look at the income of the families who actually use our system and on average it's the lowest of the lowest income people in our community. We need to make sure that kids are safe in the summer and have the ability to use the facilities that their parents are paying for.

Councilman Smith asked that in the future we would see some outcome measures around these programs and what we are doing around the achievement gap.

Mr. Alan Ditmore felt that large scale child care funding needs to go hand in hand with contraception funding.

Mr. Timothy Sadler hoped that long-term the City's goal should be to get local organic food to children in their programs.

With a friendly amendment by Councilman Smith, Councilman Hunt moved to amend his motion for the current Fiscal Year 2012-13, based on documented evidence provided by parents and presented to City staff (which will be retained centrally and verified by the City staff) (1) children of families that qualify for free lunch be waived for the first child + \$10 registration fee (per week); and (2) children of families that qualify for reduced lunch be \$20 per week for the first child + \$10 registration fee (per week). This amended motion was agreed to by Councilman Bothwell and carried unanimously.

Mayor Bellamy asked Mr. Simmons to provide a report to Council on the income levels associated with eligibility for free and reduced rate school lunches.

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

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RESOLUTION NO. 13-146 - RESOLUTION APPOINTING A MEMBER AND CHAIR TO THE CIVIL SERVICE BOARD

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civil Service Board. In addition, City Council must appoint a Chair annually.

The terms of Mr. Larry Harris (current Chair) and Ms. Jacquelyn Hallum expire on May 21, 2013.

The following individuals have applied for the vacancy: Carolyn Worthington, Elizabeth Franks and Lynn Moffa.

On June 11, 2013, City Council instructed the City Clerk to arrange interviews for Ms. Worthington, Ms. Franks and Ms. Moffa.

After Council spoke highly of the candidates, Carolyn Worthington received 7 votes; Elizabeth Franks received 2 votes, and Lynn Moffa received 5 votes. Therefore, Carolyn Worthington and Lynn Moffa were appointed as members of the Civil Service Board to each serve a two year term respectively, terms to expire May 21, 2015, or until their successors have been appointed.

Councilman Hunt moved to appoint Marvin Rosen as Chair to the Civil Service Board to serve at the pleasure of Council. This motion was seconded by Councilman Bothwell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Due to the claims of Lt. William Wilke, Mr. Timothy Sadler felt that the public's trust has been betrayed by the Chief of Police Anderson and encouraged him to resign.

At the suggestion of Councilman Smith, City Manager Jackson explained the process underway for the claims made by Lt. William Wilke concerning the handling of Chad Anderson's investigation. In summary, an internal administrative investigation is underway and he expects said report to be received in 30-45 days; however, findings of his report will not be made public.

Administrative reviews look at facts and findings to determine if policies and procedures were followed. Information related to an administrative review, including any action taken related to the findings of the review, is part of an individual's personnel file. NCGS 160A-168 denies public access to most items in a public employee's personnel file with some exceptions. He stressed that every aspect will be looked at and thoroughly reviewed to see if any policies were violated.

Mayor Bellamy said that if anything was inappropriately handled, there are two avenues of investigations - internal process and the District Attorney investigation (both of which are ongoing). The City has over 200 sworn individuals who protect and serve the City of Asheville, and was disappointed about some of the blanket statements made about the entire Police Department. She has not lost her trust in the Police Department. She wished that the results of the administrative internal investigation could be seen by the public so the public's trust will be restored. She stressed that City Council has no control over the District Attorney.

Lawsuit

The City was served with a Complaint on or about May 31, 2013, which is generally described as follows; James L. Smith vs. William Hogan, et al. Complaint involves police brutality and conspiracy to violate Plaintiff's civil rights. This matter will be handled by an attorney outside the City Attorney's Office.

Closed Session

At 9:06 p.m., Mayor Bellamy announced Council would go back into closed session to continue discussion of the items previously announced.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 9:52 p.m.

CITY CLERK

MAYOR