

Tuesday – February 14, 2017 - 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Cecil Bothwell; Councilman Brian D. Haynes; Councilwoman Julie V. Mayfield; Councilman Gordon D. Smith; Councilman W. Keith Young; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Manheimer led City Council in the Pledge of Allegiance.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING MARCH 1-7, 2017, AS "SOUTHERN CONFERENCE BASKETBALL CHAMPIONSHIP WEEK"

Councilman Smith read the proclamation proclaiming March 1-7, 2017, as Southern Conference Basketball Championship Week" in the City of Asheville. He presented the proclamation to Mr. Greg Duff, representing Glory Hound Events, and Mr. Demp Bradford, Sports Commission Executive Director, and others, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

At the request of Vice-Mayor Wisler, Consent Agenda Item "P" was removed from the Consent Agenda for discussion and/or individual vote.

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 24, 2017; THE BOND WORKSESSION HELD ON FEBRUARY 7, 2017; AND THE JOINT CITY/COUNTY MEETING HELD ON FEBRUARY 7, 2017

B. MOTION APPROVING THE BOARD OF ALCOHOLIC BEVERAGE CONTROL'S TRAVEL POLICIES ADOPTED JANUARY 26, 2016

Summary: In order to meet the requirements of Chapter 18B-700, Article 7 (g) (2), the Asheville ABC Board seeks to continue to use the travel policies of its appointing authority, the City of Asheville. Section (g) (2) states, "The local board shall annually provide the appointing authority's written confirmation of such approval ..." The ABC Board approved the current policy on January 26, 2016. Last year the ABC Board incorporated all the elements to changes in the City's Travel Policy, and no changes were made to the current policy.

The Asheville ABC Board is requesting formal written confirmation of the approval of the Asheville Board of Alcoholic Control Travel Policy.

C. RESOLUTION NO. 17-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF ASHEVILLE, BELL ATLANTIC MOBILE OF ASHEVILLE INC (D/B/A VERIZON WIRELESS), AND NEW CINGULAR

**WIRELESS, LLC (D/B/A AT&T) FOR THE TOWER REPLACEMENT PROJECT
AT 166 RESERVOIR ROAD**

**ORDINANCE NO. 4552 - BUDGET AMENDMENT ASSOCIATED WITH THE
TELECOMMUNICATIONS TOWER REPLACEMENT PROJECT ON CITY-
OWNED REAL PROPERTY AT 166 RESERVOIR ROAD**

Summary: The consideration of a resolution authorizing the City Manager to enter into a Memorandum of Understanding between the City, Bell Atlantic Mobile of Asheville, Inc. (dba Verizon Wireless), and New Cingular Wireless, LLC (dba AT&T) for the tower replacement project at 166 Reservoir Road; and a budget amendment in the amount of \$300,000 to establish a project budget in the City's General Capital Projects Fund with proceeds from the AT&T contribution.

The City of Asheville owns approximately 7.42 acres of real property at 166 Reservoir Road. Because of the property's elevation and location, the property has exceptional range for telecommunications with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers were built at this location in the 1980s.

The lower tower has reached equipment capacity and due to changes in the building code that governs telecom towers, the City-owned tower is no longer serviceable in its present form. T-Mobile, AT&T and the City have equipment on this tower, but equipment upgrades or changes are not possible without significant investment in the structure. That being the case, the cost associated with a total replacement of the tower is more financially feasible than trying to renovate the existing tower. In 2015, the City analyzed the public safety communications system and determined that the City should maintain this tower as a redundant or back up source of communication. With this recommendation, staff researched options for replacing the tower and engaged the tenants on the tower in the process.

With no designated City capital funding for a tower replacement, staff sought to leverage the relationships with the private tenants to provide funding. AT&T, an existing tenant, came forward and expressed interest as the sole funder on the construction project, in exchange for rent abatement. At this time, the following terms have been discussed and agreed upon in principle as a project concept:

- City will serve as project manager for the engineering, design, and construction of this project.
- City agrees to pay all expenses for engineering and permitting costs associated with the tower construction.
- AT&T agrees to pay for the total construction costs of the new tower and demolition of the existing tower. The current estimate is \$275,000 and will be determined by final bids and true costs. AT&T contribution is due prior to the City's execution of a construction contract as a lump sum payment.
- In consideration of AT&T's contribution, the City would agree to rental abatement for the full construction amount. The rental abatement will be set forth in a license agreement wherein AT&T is granted a 15 year term of occupancy (structured as 3 - 5 year terms.) and rental abatement is calculated at the current fair market value (\$37,500 per year), plus a 3% escalation rate of each year. No rent is paid until construction costs are abated. Current estimates indicate that AT&T will commence paying rent sometime in year seven of the agreement at a graduated rate of approximately \$44,700 per year.
- Construction completion is expected before the end of the calendar year 2017.

As a new tenant to the tower, Verizon has been consistent in expressing their desire to co-locate on the new tower once complete. Terms have been set forth, as follows:

- Verizon requests a 15 year term (structured as 3 - 5 year terms.)
- Verizon's rent will commence once the tower construction is complete, at the established fair market value of \$37,500 per year with annual increases of 3% per year.
- The City has verified that this rate is consistent with municipal tower rates across North Carolina and is considered fair market value.
- Verizon must also execute the MOU acknowledging the construction project and process.

The location of the new tower is proposed as close to the existing tower as possible in order to maintain the existing coverage and reach. The new tower will be the same height as the old tower at 180 feet. The existing tower and the new tower are of similar design – a self-support, lattice structure rather than a monopole design. This design is necessary to support the requirements of public safety equipment. As soon as the new tower is operational, the tenants will have 60 days to relocate their equipment to the new tower, and thereafter the old tower will be decommissioned and demolished. At the base of the tower, each of the tenants will maintain an equipment area enclosed by chain link fencing.

This property has also been considered for a future park area. A spur trail off of the Beaucatcher Greenway was designed on this property to offer expansive views of Downtown Asheville. A community group, known as the Friends of Overlook Park, in partnership with Asheville Greenworks, established an agreement with the City to begin the vision and master plan process for recreational use of the property. Existing conditions, including the presence of two telecommunications towers and an abandoned and filled reservoir are acknowledged as part of the site constraints. With a planning process currently underway to improve the area for a park, it is likely that landscape buffering or screening around the tower and the ground lease areas will be needed in the future.

In May 2015, City Council approved a wording amendment to the Unified Development Ordinance to allow the replacement of existing permitted cell towers where they are located. The proposed tower replacement project is designed to be in compliance with this provision.

The City Council Finance Committee reviewed this item on January 24, 2017, and provided a recommendation to approve.

Pros:

- Capital improvements - tower construction costs - fully funded by AT&T.
- Long term commitment from the tenants will secure revenue stream for the City.
- Dedicates a portion of the site to long term public safety communications use.
- New tenant (Verizon) contributing rent to the general fund; AT&T will commence paying rental once construction costs have been abated.

Cons:

- Future recreational use will need to accommodate public safety telecommunication towers into the design.
- Uncertain if the existing tenant, T-Mobile, will seek to relocate to the new tower or will move to a different location. T-Mobile's existing lease will end once new tower is completed.

Replacing the existing tower benefits the general fund through continued tower lease revenues and supports upkeep of the City's public safety communications infrastructure with minimal capital expenditures from the City. The Capital Projects budget will be amended to include the one-time revenue from AT&T to fund the tower replacement project.

Staff recommends that the Council adopt the resolution authorizing the City Manager to enter into a Memorandum of Understanding between the City, Bell Atlantic Mobile of Asheville, Inc. (dba Verizon Wireless), and New Cingular Wireless, LLC (dba AT&T) for the tower replacement project at 166 Reservoir Road and the associated budget amendment.

**RESOLUTION BOOK NO. 38 - PAGE 318
ORDINANCE BOOK NO. 31 - PAGE 71**

D. RESOLUTION NO. 17-22 - RESOLUTION PROPOSING APPROVAL OF A LICENSE AGREEMENT WITH NEW CINGULAR WIRELESS, LLC (D/B/A AT&T) FOR ANTENNAS AT 166 RESERVOIR ROAD, DIRECTING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LICENSE AGREEMENT IF NO ALTERNATE BIDS ARE RECEIVED

Summary: The consideration of a resolution proposing to accept/approve a license agreement with New Cingular Wireless, LLC (dba AT&T) for antennas at 166 Reservoir Road, directing the City Clerk to advertise for upset bids, and authorizing the City Manager to execute the license agreement if no alternate bids are received.

The property at 166 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

The lower tower has reached equipment capacity and due to changes in the building code that governs telecom towers, the City-owned tower is no longer serviceable in its present form. Based on a proposed Memorandum of Understanding (MOU), AT&T has offered to pay for the construction costs associated with replacing the existing tower in exchange for total rent abatement. AT&T is an existing tenant on the lower tower and has had a long-standing relationship with the City as a tenant on the tower. The proposed License Agreement is based on the following terms:

- Per the proposed MOU, AT&T agrees to pay for the total construction costs of the new tower and demolition of the existing tower. The current estimate is \$275,000 and will be determined by final bids and true costs. AT&T contribution is due prior to the City's execution of a construction contract as a lump sum payment.
- Per the proposed license agreement, the City would agree to rental abatement for the full construction amount. The rental abatement will be set forth in the terms of the a license agreement wherein AT&T is granted a 15 year term of occupancy (structured as 3 - 5 year terms) and rental abatement is calculated at the current fair market value (\$37,500 per year), plus a 3% escalation rate of each year. No rent is paid until construction costs are abated. Current estimates indicate that AT&T will commence paying rent sometime in year seven of the agreement at a graduated rate of approximately \$44,700 per year. The City has verified that this rate is consistent with municipal tower rates across North Carolina and is considered fair market value.

Since the license agreement proposal is for a total period longer than ten (10) years, the North Carolina General Statutes state that Council may authorize a lease longer than ten (10) years, but to do so the lease must be administered as a sale in that the process must include an upset bid process or other competitive bid process.

If City Council approves the following resolution, the City Clerk will be directed to publish an advertisement for upset bids for a period of 10 days, in which any interested party may upset

the current bid of \$37,500 per year at 3% annual increases. The statutes require that a qualifying bid must increase the current offer by 10% of the first \$1,000 and 5% of the remainder. As set forth in the resolution, if no qualifying upset bids are received, then City Council agrees to further authorize the City Manager to execute the license agreement with AT&T.

The City Council Finance Committee reviewed this item on January 24, 2017, and provided a recommendation to approve.

Pros:

- Capital improvements - tower construction costs - fully funded by AT&T.
- Long term commitment from AT&T will secure a future revenue stream for the City.

Con:

- None noted.

License fee revenue is budgeted in the City's General Fund Operating budget. The future revenue for this license agreement will be programmed in the annual operating budget once the rent abatement period ends.

Staff recommends City Council adopt the following resolution proposing to accept/approve a license agreement with New Cingular Wireless, LLC (dba AT&T) for antennas at 166 Reservoir Road, directing the City Clerk to advertise for upset bids, and authorizing the City Manager to execute the license agreement if no alternate bids are received.

RESOLUTION BOOK NO. 38 - PAGE 319

E. RESOLUTION NO. 17-23 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FROM THE OFFICE OF NATIONAL DRUG CONTROL AND POLICY THE 2016 HIGH INTENSITY DRUG TRAFFIC AREA (HIDTA) GRANT FOR THE ASHEVILLE AREA HIDTA TASK FORCE

ORDINANCE NO. 4553 - BUDGET AMENDMENT FOR THE 2016 HIGH INTENSITY DRUG TRAFFIC AREA

Summary: The consideration of a resolution authorizing the City Manager to accept from the Office of National Drug Control and Policy the High Intensity Drug Traffic Area (HIDTA) 2016 grant as a fiduciary for the Asheville Area HIDTA Task Force; and the associated budget amendment, in the amount of \$25,000.

The mission of the HIDTA program – authorized by the Anti-Drug Abuse Act of 1988 and administered by the Office of National Drug Control Policy – is to reduce drug trafficking in the most critical areas of the country, thereby reducing the impact of illegal drugs in other areas. Asheville has for many years been designated as a HIDTA site. Asheville HIDTA serves as a key drug trafficking reduction effort, critically positioned between the Atlanta HIDTA and the Appalachia HIDTA. The Asheville HIDTA is comprised of members of the United States Drug Enforcement Administration (DEA), Asheville Police Department, Buncombe County Sheriff's Office, Henderson County Sheriff's Office and McDowell County Sheriff's Office. The Asheville HIDTA is a component of the Asheville DEA Task Force. The HIDTA task force primarily concentrates on high volume, high value drug trafficking. As an example the task force was recently involved in a case involving the large seizure of several controlled substances to include Methamphetamine, Ecstasy, etc. with tie to local and national gangs involved people trafficking narcotics in this regional and beyond.

The City of Asheville serves as the fiduciary for the Asheville HIDTA. The allotted funds from the federal government will go for investigative purposes. The expenditure of all funds are tracked and audited by both local and federal authorities.

Pros:

- Federal HIDTA monies will be used for investigative purposes.
- Continues to foster partnerships with Federal and Local Law Enforcement Agencies.

Con:

- None noted

There is no impact to the City's General Fund budget. The grant funds will be received and disbursed through the City's Special Revenue Fund.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept from the Office of National Drug Control and Policy the High Intensity Drug Traffic Area (HIDTA) 2016 grant as a fiduciary for the Asheville Area HIDTA Task Force; and the associated budget amendment, in the amount of \$25,000.

**RESOLUTION BOOK NO. 38 - PAGE 320
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F. RESOLUTION NO. 17-24 - RESOLUTION PROPOSING APPROVAL OF A LICENSE AGREEMENT WITH BELL ATLANTIC MOBILE OF ASHEVILLE INC (D/B/A VERIZON WIRELESS) FOR ANTENNAS AT 166 RESERVOIR ROAD, DIRECTING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE LICENSE AGREEMENT IF NO ALTERNATE BIDS ARE RECEIVED

Summary: The consideration of a resolution proposing to accept/approve a license agreement with Bell Atlantic Mobile of Asheville, Inc. (dba Verizon Wireless) for antennas at 166 Reservoir Road, directing the City Clerk to advertise for upset bids, and authorizing the City Manager to execute the license agreement if no alternate bids are received.

The property at 166 Reservoir Road known as White Fawn Reservoir is on a knoll at the western end of the Beaucatcher Mountain ridge. It has exceptional range for telecommunication with approximately 300° coverage from northeast to west to southeast. Two telecommunication towers are located on the property and the City of Asheville leases antenna space on the towers and ground space for related equipment.

The lower tower has reached equipment capacity and due to changes in the building code that governs telecom towers, the City-owned tower is no longer serviceable in its present form. Based on a proposed Memorandum of Understanding (MOU), the City's intent is to replace and rebuild the existing tower with a new tower.

As a new tenant to the tower, Verizon has been consistent in expressing their desire to co-locate on the new tower once complete. Terms have been set forth, as follows:

- Verizon requests a 15 year term (structured as 3 - 5 year terms.)
- Verizon's rent will commence once the tower construction is complete, at the established fair market value of \$37,500 per year with annual increases of 3% per year.
- The City has verified that this rate is consistent with municipal tower rates across North Carolina and is considered fair market value.
- Verizon must also execute the MOU acknowledging the construction project and process.

Since the license agreement proposal is for a total period longer than ten (10) years, the North Carolina General Statutes state that Council may authorize a lease longer than ten (10) years, but to do so the lease must be administered as a sale in that the process must include an upset bid process or other competitive bid process.

If City Council approves the following resolution, the City Clerk will be directed to publish an advertisement for upset bids for a period of 10 days, in which any interested party may upset the current bid of \$37,500 per year at 3% annual increases over a 15 year term. The statutes require that a qualifying bid must increase the current offer by 10% of the first \$1,000 and 5% of the remainder. As set forth in the resolution, if no qualifying upset bids are received, then City Council agrees to further authorize the City Manager to execute the license agreement with Verizon.

The City Council Finance Committee reviewed this item on January 24, 2017 and provided a recommendation to approve.

Pros:

- Fair market value license agreement.
- Long term commitment from Verizon will secure a future revenue stream for the City.

Con:

- None noted.

License fee revenue is budgeted in the City's General Fund Operating budget. The revenue for this license agreement will be programmed in the annual operating budget for FY 2018.

City staff recommends City Council adopt the following resolution proposing to accept/approve a license agreement with Bell Atlantic Mobile of Asheville, Inc. (dba Verizon Wireless) for antennas at 166 Reservoir Road, directing the City Clerk to advertise for upset bids, and authorizing the City Manager to execute the license agreement if no alternate bids are received.

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G. RESOLUTION NO. 17-25 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE ASHEVILLE CITY SCHOOLS FOUNDATION TO ADMINISTER THE CITY OF ASHEVILLE YOUTH LEADERSHIP ACADEMY SCHOLARSHIP DISBURSEMENT PROCESS

Summary: The consideration of a resolution reauthorizing the Agreement with Asheville City Schools Foundation (ACS Foundation) to administer the City of Asheville Youth Leadership Academy (CAYLA) scholarship disbursement process.

The CAYLA program has been a partnership between the ACS Foundation and the City of Asheville since the program's founding in 2007. In addition to leadership development and college readiness activities throughout the year, CAYLA has provided area high school students with meaningful and positive employment opportunities during the summer. CAYLA offers an opportunity for students to earn a paycheck and, at the same time, gain quality work experience. The program intentionally creates a learning atmosphere that helps young people discover and explore their talents while contributing to the well-being of their community.

The ACS Foundation has administered the CAYLA scholarship fund beginning with the inaugural class of CAYLA graduates in 2008. City Council approved the CAYLA program and related scholarship fund on consent agenda on May 8, 2007; however, there is no record of a resolution to approve the annual contract between the City and ACS Foundation. This requested action is a technical correction to document that the relationship has been approved by City Council and will continue for the duration of the MOU between the City of Asheville and the ACS Foundation, up to 5 years, based upon satisfactory performance by the ACS Foundation.

Pros:

- Makes explicit the contractual relationship between the City and the ACS Foundation.
- Provides an efficient process for distributing CAYLA scholarships directly to the colleges at which CAYLA graduates are enrolled.
- Documents, through a formal MOU, the relationship between the City and the ACS Foundation.

Con:

- None

No new fiscal impact; relationship has been in place since 2008.

Staff recommends City Council adopt a resolution re-authorizing the CAYLA program agreement and authorizing the City Manager to execute the MOU with ACS Foundation and any associated amendments or documents.

RESOLUTION BOOK NO. 38 - PAGE 322

H. RESOLUTION ADOPTING THE HOMELESS INITIATIVE ADVISORY COMMITTEE 5-YEAR STRATEGIC PLAN ON HOMELESSNESS

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

I. RESOLUTION NO. 17-27 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT RIVERSIDE CEMETERY TO SHARON BOWLIN FOR THE PURPOSE OF INSTALLING A SEWER LINE TO SERVICE A SINGLE FAMILY RESIDENCE

Summary: The consideration of a resolution authorizing the City Manager to convey an easement over a portion of City Owned property at Riverside Cemetery to Sharon Bowlin for the purpose of installing a sewer line to service a single family residence.

The Riverside Cemetery is owned and maintained by the City of Asheville and is approximately 49 acres in size. An existing MSD sewer line runs along the Northwest property boundary of Riverside Cemetery serves residences on Westover Drive. Sharon Bowlin owns an undeveloped lot on Westover and has reached out to the City to request a sewer line easement to connect to the existing line. This is the only available connection to the sewer line. Both the Riverside Cemetery Director and Al Kopf of Parks and Recreation have been consulted and they have no objection to the easement. Ms. Bowlin is a private developer and she intends to sell this property to a buyer for the construction of a single family residence.

The easement being requested is 28 linear feet long and 6 feet wide for a total square footage of approximately 168 square feet. Using comparable sales figures, the value per square foot of land in this neighborhood is roughly \$16.61 per square foot. MSD has a policy of compensating owners according to 50% of land value for an easement and when we apply this to practice to this situation, the cost of the easement would be \$1,395 plus the real estate

transaction fee. A sketch is provided to show the approximate location of the sewer line and the manhole where this connection would have to be made.

Pros:

- There is compensation associated with the granting of this easement.
- The easement would not interfere with the operation of the Riverside Cemetery.

Con:

- None

Funds generated by the granting of this easement will be deposited in the General Fund.

Staff recommends City Council adopt a resolution authorizing the City Manager to convey this 168 square foot easement at Riverside Cemetery near Westover Drive to Ms. Bowlin for purposes of installing a sewer service line

RESOLUTION BOOK NO. 38 - PAGE 324

J. ORDINANCE NO. 4554 - BUDGET AMENDMENT IN THE TRANSIT CAPITAL FUND FROM INSURANCE RECOVERY FUNDS FOR A TOTALED BUS TO UTILIZE TOWARDS THE PURCHASE OF A NEW BUS OR BUS MAINTENANCE

Summary: The consideration of a budget amendment in the Transit Capital Fund, in the amount of \$25,000, from insurance recovery funds for a totaled bus to utilize towards the purchase of a new bus or bus maintenance.

On May 17, 2016, a City bus was totaled in a motor vehicle accident by a third-party and the City settled the property damage claim for \$25,000. The Transportation Department seeks to utilize the settlement funds toward the purchase of a new bus or bus maintenance.

Pro:

- Provides funding to off-set Transportation Department costs for bus replacement or maintenance.

Con:

- None.

The insurance recovery funds are held in the City Property & Liability Fund. Upon City Council approval, the funds will be transferred to the City Transit Capital Fund to be utilized by the Transportation Department.

City staff recommends City Council adopt the budget amendment in the Transit Capital Fund for the Transportation Department to utilize.

ORDINANCE BOOK NO. 31 - PAGE 75

K. RESOLUTION NO. 17-29 - RESOLUTION SETTING A PUBLIC HEARING ON FEBRUARY 28, 2017, TO CONSIDER A LAND USE INCENTIVE GRANT FOR 338 HILLIARD AVENUE (TRIBUTE COMPANIES)

Summary: The consideration of a resolution to set a public hearing on February 28, 2017, for a Land Use Incentive Grant for the development by Tribute Companies of 338 Hilliard Avenue, per the policy adopted by Council, and amended on September 22, 2015. This report summarizes the application and reports on eligibility and points for the public hearing on the application.

Tribute Companies is proposing a rental development on .8 acre at 338 Hilliard Avenue, on property currently owned by the City of Asheville, with an estimated development cost of \$5.7 million. The LUIG application proposes a 60 unit development in one building, with the following unit breakdown and amenities:

# of units	60
% 80% AMI or below	82%
# 30% AMI	6
# 60% AMI	12
# 80% AMI	31
# 100% AMI	11
# Market	0
# Reserved for Homeless Households	2
# 1 BR	35
# 2 BR	15
# 3 BR	10
Community Gardens	yes
Child Care Space	yes
Third-Party Sustainability Certification	yes

The project, as presented to staff, appears to meet the following Eligibility Requirements,

- The proposed development consists of three or more dwelling units for rent;
- At least 10% of the units will meet the affordability standards set by the City of Asheville for households earning 80% or less of the Area Median Income.
- The affordable units will be affordable to and leased to income-eligible households for at least 15 years.
- The proposed development must be located inside the city limits.
- The proposed development must be located to provide residents convenient access to jobs, schools and services

Staff has determined that their LUIG application meets the eligibility requirements.

Staff confirms the following scoring:

Affordable Rental Housing
 49 of the 60 Units will be rented to households under 80% of AMI.....90 pts.

Workforce Rental Housing
 60 of the 60 Units will be rented to households under 100% of AMI.....15 pts.

Superior Locational Efficiency
 Within .25 mile of an existing bus stop served by one-half hour
 ART transit frequency.....10 pts.

Longer Term Affordability

Committed to 25 years of Affordability.....10 pts.

Total Points

125 pts.

The HCD Committee reviewed the revised proposal at their meeting on January 17, 2017, and unanimously recommends that Council set a public hearing date for the LUIG application. The LUIG proposal was submitted concurrently with Tribute Companies revised proposal to purchase the site from the City of Asheville and develop the property for affordable and workforce housing. Award of a Land Use Incentive Grant is a condition of Tribute's proposal to purchase and develop the property.

Pros:

- The proposed project will provide affordable rental housing to 49 households earning 80% or less of area median income, for a period of at least 25 years; and an additional 11 “workforce” units for a minimum period of 25 years;
- The proposed project addresses the pressing need for affordable rental apartments within easy walking distance of employment opportunities and transit access;
- The proposed project has a significant economic impact. Construction wages and material purchases will positively affect the local and regional economy.

Con:

- None noted.

Estimated value of Land Use Incentive. The current estimated value of the property is \$450,000. The developer's estimate of completed project taxable value is \$5,500,000. Although currently non-taxable property, the annual city tax, based on the estimated value, would be \$2,138. The annual estimated city tax post completion, based on the developer's estimate of value is \$26,125. Therefore, the estimated annual Land Use Incentive Grant would be \$23,988, the exact amount to be determined by the length, in years, of the grant award, and the actual assessed value of the development upon completion. If approved for 12.5 years, the estimated Grant would be \$299,844. The subsidy per affordable unit would be \$6,119. The subsidy amount per affordable unit/year would be \$245.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Plan Review Fees and Water Service Connection Fee is \$8,300. The value of each 10% of the fee rebate would be \$830. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 125 point level, the fee rebate would be \$8,300, \$238 per unit.

The total estimated Land Use Incentive Grant, if approved, would be \$308,144.

Staff recommends that Council accept the HCD Committee recommendation to set the public hearing on February 28, 2017, for the LUIG grant application.

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L. RESOLUTION NO. 17-30- RESOLUTION AUTHORIZING HOUSING TRUST FUND LOANS TO SWANNANOA BEND LLC AND ASHEVILLE AREA HABITAT FOR HUMANITY

Summary: The consideration of the resolution authorizing the approval of Housing Trust Fund loans to Swannanoa Bend, LLC (\$350,000) and Asheville Area Habitat for Humanity (\$60,000).

Staff received two Housing Trust Fund (HTF) applications totaling \$410,000 requested funds for the creation of 76 affordable units: 6 homeowner units and 70 rental units. These

applications were presented to the Housing and Community Development Committee (HCD) on January 17, 2017. The HCD Committee recommended the full amount requested for each project be awarded (\$410,000 total) to the applicants.

The following applications have been recommended by HCD for approval:

- 1) Simpson Street: Swannanoa Bend, LLC for the construction of a 70 one-bedroom unit 100% affordable (all at 60% AMI or less) rental development in south-east Asheville, \$350,000.
- 2) Tunnel Road: Asheville Area Habitat for Humanity for the construction of a 6 attached housing homeowner development - 3 units sold to households earning 60% AMI or less and all six (6) units being affordable - in East Asheville, \$60,000.

Swannanoa Bend, LLC – Simpson Street (\$350,000)

Kirk Booth, via Swannanoa Bend, LLC, requests additional HTF funding for the proposed Simpson Street development. Council approved a \$300,000 request for this project in 2016. The developer now proposes an additional 10 units, for a 70 unit development, and additional HTF funding of \$350,000, for a proposed total HTF investment of \$650,000. The project will have 70 1-BR units with all rents below 60% AMI and/or voucher accepted (50% AMI). The project is designed to be modular construction with parking provided under the buildings; it will contain energy efficiency features, 5% of the units will be fully ADA accessible, and have a 20 year affordability period. The project has received a Conditional Use Permit, a Land Use Incentive Grant, a FY 16-17 Housing Trust Fund Loan (\$300,000), and is anticipated to begin construction in April 2017.

The proposed project is on a 1.43 acre site located just off of Tunnel Road and Swannanoa River Road behind Target. It is zoned River District and is in a primarily industrial area. Residential is permitted and Planning and Zoning approvals have been obtained. It is 3 miles from downtown, and is within 1/4 mile of jobs and services, as the crow flies, but walking and driving distance to transit and services is 0.9 miles. Developer has committed to improving the transit gaps for these residents by supporting walkway development along utility easement, providing shuttle transportation to existing transit stop, and/or advocate for bus stop along Swannanoa River Road.

The application request results in the following terms, conditions, estimated development costs and subsidy allocation:

Proposed Loan Terms and Conditions					
60% AMI Units	Loan Amount	HTF Investment Per Unit (\$350,000 / \$650,000)	Interest Rate	Term (Years)	Type
70	\$350,000	\$5,000 / \$9,286	2%	20	Interest Only (Special Terms)

Proposed Total Development Costs and Investment Allocations (Including \$300,000 FY 16-17 HTF Award)						
Total HTF Loan Amount	Total Development Cost	Loan % of Total Development Cost	Total cost per unit	Additional City Investment*	Total City Investment	Total Est. City Investment Per Unit
\$350,000 / \$650,000	\$4,314,000	8% / 15%	\$61,629	\$348,710	\$998,710	\$14,267
* Land Use Incentive Grant estimated – over 11 years						

The total Housing Trust Fund investment per unit including previous ask is \$9,286 per unit. Total City investment over the life of the project, including LUIG, is \$14,267/unit. Developer has submitted updated cost estimates and project is ready to begin as soon as conventional financing is secured. The conventional loan commitment is expected in April 2017 with construction starting immediately. The project scheduled to be completed by December 31, 2017.

Pros:

- 70 1-bedroom rental units serving 60% AMI or less (100% of the project)
- Total HTF investment per unit is less than \$10,000/unit
- Offers homelessness to housing transition via vouchers through Homeward Bound
- Project has appropriate permits and environmental studies completed
- Project has \$114,000 support from Buncombe County

Con:

- Conventional loan has not been secured

Asheville Area Habitat for Humanity – Tunnel Road (\$60,000)

Asheville Area Habitat for Humanity, is proposing a 6 unit affordable housing homeowner development project along Tunnel Road in East Asheville, of which 3 of those units will be sold to households earning 60% AMI or less and three (3) units will be sold to households earning 70% AMI or less. Developer requests a \$60,000 three (3) year construction loan, with 0% interest and deferred principal. This request does deviate from the current HTF policy, with a request for 0% interest (current policy offers a deferred 2% interest until principle is due).

The project will combine 4 existing lots on .8 total acres, and will have attached cottages (3 groups of 2) with 2, 3 or possibly 4 bedrooms, ranging from approximately 700 sq. ft. to 1300 sq. ft. All cottages would be either 1 or 2 stories tall and would front on a shared private drive with two dedicated parking spots per unit. All public infrastructure is currently in place and because it is on a major corridor, transit and other amenities are nearby and accessible. The project will be NC Green Built and System Vision certified with will units being fully ADA accessible. By Policy, there is a minimum three (3) year affordability period for these units from the day the units receive a certificate of occupancy under the HTF Policy, which the developer agrees to. AAHH structures their mortgages as permanently affordable, with a 0%, fixed-rate for the life of the loan, but homeowners can sell their houses whenever they wish by paying off both the affordable first mortgage and the 2nd silent (covering the value of volunteer labor and forgivable over the 30 year life of the loan).

The application request results in the following terms, conditions, estimated development costs and subsidy allocation:

Proposed Loan Terms and Conditions					
60% / 80% AMI Units	Loan Amount	HTF Investment Per Unit (@60% / @80% AMI)	Interest Rate	Term (Years)	Type
3 / 3	\$60,000	\$20,000 / \$10,000	0% deferred principle*	3 Construction Loan	Homebuyer program
<i>*Deviation from the current HTF policy - special term construction loans currently offer deferred 2% interest until principle is due. Principle becomes due at the end of the three (3) year term.</i>					

Proposed Total Development Costs and Investment Allocations			
Total HTF Loan Amount	Total Development Cost	HTF Loan % of Total Development Cost	Total cost per unit*

\$60,000	\$932,206	6%	\$155,368
*For-sale units			

The developer has the land under option and is expected close in June 2017 with construction beginning in November 2018. Occupancy of all 6 units is expected in November 2019. The units are constructed and occupied at a gradual pace, but the project will be completed within one year from the day of initial construction. The project does not have the required permits and/or engineering and environmental reviews because the project is in the early planning stages. This could also mean variations in the total development costs. There will be no need to ask for conditional uses or permits for this project.

The sales price of the homes will match the appraised value, with the first mortgage being considerably lower than that amount. At closing, AAHH executes: 1) a 0% 1st mortgage for the cost of construction reduced by the amount of HTF funds per lot; 2) a 2nd mortgage securing HTF funds with the proper retention language guaranteeing full recapture during the affordability period; 3) a 3rd forgivable mortgage securing the difference between the sales price and mortgage balances. AAHH also maintains the Right of First Purchase, which we consider on a case by case basis.

Overall, the project provides 6 affordable homeowner units: 3 attached homeowner units to homeowners earning 60% AMI or less and 3 units to homeowners earning 70% AMI or less. The site location is in close proximity to transit and amenities and is within 4 miles to downtown. The developer has proven very competent in the Asheville area and is providing a new model for homeownership through the creation of attached housing. Plans, elevations, and site plans were provided. As proposed, AAHH would not build and sell the units quickly enough to recapture mortgages and pay off the construction loans within the three (3) year construction loan period; however, they could obtain funds from additional sources to pay off the remaining balance.

Pros:

- Provides six (6) attached homeowner units: 3 at 60% AMI and 3 at 70% AMI or less
- It will provide three (3) homeowner units to households earning 60% AMI or less
- Will receive SystemVision and NC GreenBuilt certification
- Developer is creating new model for attached homeownership units

Con:

- Early in project planning with construction starting in 2018
- Variation from policy asking for 0% interest with deferred principal (special terms) and an underwriting score under 70 points

The Housing Trust Fund has sufficient cash flow to cover anticipated draw requests for the proposed developments.

The Housing and Community Development Committee recommends City Council approve a resolution approving the following loans subject to the developers meeting all program requirements for loan closing:

1. \$350,000 to Swannanoa Bend, LLC for the development of seventy (70) multifamily rental units on Simpson Street (1-BR, 60% AMI including vouchers 50% AMI), amortized at 2.00% annual interest-only with principle deferred for 20 years. The approval is conditioned on the developer providing improved transit access by either contributing to walkway improvements along utility easement; by installing lights, providing private transportation services for residents, or providing other services to meet this condition. Loan is to be made immediately available for disbursement following loan closing.

2. \$60,000 construction loan to Asheville Area Habitat for Humanity, for the development of six (6) homebuyer units on Tunnel Road (3 units at 60% AMI or less and 3 for 80% AMI or less). A construction loan at 0% deferred principle until the end of the three (3) year term is to be made immediately available for disbursement following loan closing.

RESOLUTION BOOK NO. 38 - PAGE 327

M. RESOLUTION NO. 17-31 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICES AGREEMENT WITH TIMMONS GROUP FOR THE WATER RESOURCES ENTERPRISE ASSET MANAGEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a general services agreement with Timmons Group for the Water Resources Enterprise Asset Management Project for the proposal amount of \$119,480 plus a 10% contingency of \$11,948 for a project budget of \$131,428.

The Water Resource Department (WRD) currently has an assessment management system, whose functionality is limited, that is due for an upgrade at a cost of \$120,000. As a matter of due diligence, the WRD issued a Request for Proposals (RFP) for the Water Resources Enterprise Asset Management Project on July 1, 2016 to see if competing programs could deliver the same or better functionality at a lower price.

As detailed below, a review of the proposals revealed that several providers could (a) supply product and installation for less cost than the cost of updating the existing system; and (b) offer systems that may be utilized by other City departments. Additionally it was discovered that the department will save approximately \$55,000 per year in maintenance fees by changing products. The current program requires several supporting programs which cost approximately \$75,000 per year.

The scope of work for this project includes, but is not limited to, consultation, data conversion, customization, licensing, training, integrations, and software maintenance required for a new, department-wide Cityworks-Azteca Server Asset Management System (AMS). This software will replace the department's existing, outdated Maximo Work Order System and allow for better system integration with the department's Geographic Information System (GIS) database and software.

The new Cityworks-Azteca AMS enhances the department's ability to track and analyze work orders through a more user friendly product that interfaces with the department's mapping system. The enhanced ability will allow the department to provide better response for system maintenance. The products were also evaluated on the ability for other city departments to use the system for work order management in the future.

In response to the RFP, the department received 8 proposals on August 1, 2016. The evaluation of these proposals required the input of various departments. Stakeholders departments were identified as those that will potentially adopt the use of the tool in the future and departments that will support the software. The conversion to this software is a significant commitment which staff wanted to ensure was made with absolute certainty and due diligence. This extensive evaluation accounts for the time it took to make a decision. Companies responding were:

1. AssetWorks, LLC, Wayne PA – proposal:
 - a. \$318,332.50 Year 1
 - b. \$27,226.50 Year 2
 - c. \$28,587.83 Year 3

2. SADA Systems (Atom), Inc., Los Angeles CA – proposal:
 - a. \$101,500 Year 1
 - b. \$57,000 Year 2
 - c. \$57,000 Year 3
3. Beehive Industries, Los Angeles CA – proposal:
 - a. \$89,900 Year 1
 - b. \$32,500 Year 2
 - c. \$32,500 Year 3
4. Cardno, Clearwater FL – proposal:
 - a. \$1,065,700 Year 1
 - b. \$53,300 Year 2
 - c. \$54,633 Year 3
5. Davenport Group, St. Paul MN – proposal:
 - a. \$82,816 Year 1
 - b. \$12,816 Year 2
 - c. \$12,816 Year 3
6. MainStar, Inc., Irvine CA – proposal:
 - a. \$247,000 Year 1
 - b. \$24,840 Year 2
 - c. \$25,710 Year 3
7. PSD Software, LLC, Marietta GA – proposal:
 - a. \$119,050 Year 1
 - b. \$31,500 Year 2
 - c. \$33,075 Year 3
8. Timmons Group, Richmond VA – proposal:
 - a. \$119,480 Year 1
 - b. \$20,000 Year 2
 - c. \$20,000 Year 3

Following an extensive review of the proposals by City Staff, including reference checks and on-site demonstrations, Timmons Group was selected for the proposal amount of \$119,480 plus a 10% contingency of \$11,948 for a project budget of \$131,428.

Pro:

- While not a mandatory or required project, it would replace the existing, out-dated work order system and allow other systems (i.e. GIS) to interface more easily with the work order software.

Con:

- None.

The funding needed for the general services agreement is currently allocated within the Water Resources Water Operating Fund, Contracted Services. This agreement requires City Council approval because the price of the contract exceeds \$90,000.

Staff recommends City Council adopt a resolution authorizing the City Manager to execute a general services agreement with Timmons Group for the Water Resources Enterprise Asset Management Project for the proposal amount of \$119,480 plus a 10% contingency of \$11,948 for a project budget of \$131,428.

RESOLUTION BOOK NO. 38 - PAGE 328

N. RESOLUTION NO. 17-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT WITH THOMAS CONSTRUCTION COMPANY INC. FOR THE NEIGHBORHOOD

**ENHANCEMENT PROJECT AREA 3 WATER DISTRIBUTION SYSTEMS
PHASE I PROJECT**

**ORDINANCE NO. 4555 - BUDGET AMENDMENT FOR THE NEIGHBORHOOD
ENHANCEMENT PROJECT AREA 3 WATER DISTRIBUTION SYSTEMS
PHASE I PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a construction agreement with Thomas Construction Company, Inc., for the NEP Area 3 Water Distribution Systems Phase I Project for the bid amount of \$3,978,160.50 plus a 15% contingency in the amount of \$596,724.50 for a total project budget in the amount of \$4,574,885.00; and a budget amendment in the amount of \$2,912,957 utilizing capital reserve funds to fully fund the construction agreement and contingency.

Water Resource's financial consultant Raftelis Financial Consultants Inc. (RFC) has recommended that the department utilize capital reserves fund. The amendment that is proposed as part of this staff report utilizes money from projects that have been closed and no longer require funding. NEP Area 3 was proposed with the capital reserve funds intended as a funding source for the completion of this project. The project sheet shows the subject funding sources.

On December 12, 2016, the Water Resources Department (WRD) issued an Advertisement for Bids for the NEP Area 3 Water Distribution Systems Phase I Project. The scope of work for this project includes, but is not limited to, all labor, materials, equipment, and incidentals required for the installation of approximately 24,500 Linear Feet of 6-inch Ductile Iron Pipe located in the Malvern Hills and Kenilworth Area neighborhoods with related appurtenances required in order to complete the work.

In response to the Advertisement for Bids, the department received 5 bids on January 10, 2017. Companies responding were:

1. Buckeye Bridge, LLC; Canton, NC – Bid: \$5,987,770.80
2. Cooper Construction Company, Inc.; Hendersonville, NC – Bid: \$4,313,287.00
3. E.S. Wagner Company, LLC; Charlotte, NC – Bid: \$5,128,157.50
4. T&K Utilities, Inc.; Asheville, NC – Bid: \$4,608,676.00
5. Thomas Construction Company, Inc.; Johnson City, TN – Bid: \$3,978,160.50

Following a review of the bids by City Staff and the project engineers, CDM Smith, Thomas Construction Company, Inc., was selected as the lowest responsible, responsive bidder for the bid amount of \$3,978,160.50. A contingency amount of \$596,724.50 has been added for a total project budget in the amount of \$4,574,885.00.

Pros:

- This project will replace existing waterlines. The subject lines are undersized, provide inadequate fire protection, and/or have a high risk of failure. Replacement of these lines will help to improve the service and reliability of the water system.
- This project is aligned with the City and the WRD goal of continued investment and improvement of the City's water system through Capital Improvement Projects, in order to provide safe and reliable service.

Con:

- Failure to award a construction contract would prevent the completion of the water system improvements.

2015 NEP Area 3 Project will be funded using a combination of current water revenue funding and capital reserves funds. The use of capital reserve funds will not impact the operating

reserves for the Water Resources Department and helps to decrease the funds which are currently in the capital reserve fund as recommended by the Department's financial consultant.

Amount Available for Construction	\$1,661,928.00
<u>Additional Funds Needed for Construction Agreement</u>	<u>\$2,912,957.00</u>
Total Amount for Construction Agreement (includes contingency)	\$4,574,885.00

Council approval is required to enter into this contract because the total value of the contract exceeds \$90,000.

Staff recommends City Council adopt a resolution authorizing the City Manager to execute a construction agreement with Thomas Construction Company, Inc., for the NEP Area 3 Water Distribution Systems Phase I Project for the bid amount of \$3,978,160.50 plus a 15% contingency in the amount of \$596,724.50 for a total project budget in the amount of \$4,574,885.00; and a budget amendment in the amount of \$2,912,957 utilizing capital reserve funds to fully fund the construction agreement and contingency.

**RESOLUTION BOOK NO. 38 - PAGE 329
ORDINANCE BOOK NO. 31 - PAGE 77**

**O. RESOLUTION NO. 17-33 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO EXECUTE A CONTRACT WITH NHM CONSTRUCTORS LLC
FOR THE TUNNEL ROAD RETAINING WALL PROJECT**

**ORDINANCE NO. 4556 - BUDGET AMENDMENT FOR THE TUNNEL
ROAD RETAINING WALL PROJECT**

Summary: The consideration of a (1) resolution authorizing the City Manager to execute, on behalf of the City of Asheville, a contract in the amount of \$451,635.00 with NHM Constructors, LLC for the project known as the Tunnel Road Retaining Wall Project, City of Asheville Project # ST-16-17-003, and further authorizing the execution of any change orders to said contract which may arise during construction, up to a total amount of \$497,000; and (2) budget amendment in the amount of \$650,000 from debt proceeds to fund the contract and additional costs including geotech design, utility relocation and contract administration costs.

A tributary to Grassy Branch has eroded the substrate of the sidewalk that runs along Tunnel Road in Oteen. A retaining wall must be constructed in order to rebuild the slope and maintain safe pedestrian access along the corridor. The project was advertised on January 20, 2017. Bids were opened on January 31, 2017 with the following results:

NHM Constructors of Asheville NC	\$451,635.00
Graham County Land of Robbinsville NC	\$539,850.00

The work produced from this contract would include the construction of a retaining wall, replacement of faulty stormwater infrastructure and repair of sidewalk and installation of handrail.

Pros:

- Project will repair sidewalk along a busy road.
- Project will replace faulty stormwater infrastructure.
- Project will eliminate a safety hazard.

Con: None noted.

The total budget for this contract is \$497,000.00. Additional costs associated with the project include geotech design, utility relocation and contract administration. The total project budget being requested is \$650,000. The City will add this project to the existing Capital

Improvement Program (CIP)/Debt Program and borrow funds to finance the project. With debt payback structured over twenty years, the addition of this project will not materially impact cash flow projections in the CIP model.

City staff recommends City Council adopt the resolution awarding the contract to NHM Constructors, LLC for the Tunnel Road Retaining Wall Project and giving the City Manager the authority to execute any change orders necessary to complete the work; and a budget amendment in the amount of \$650,000 from debt proceeds.

**RESOLUTION BOOK NO. 38 - PAGE 334
ORDINANCE BOOK NO. 31 - PAGE 82**

**P. ORDINANCE AMENDING THE FEES & CHARGES MANUAL FOR THE
ASTON PARK TENNIS CENTER**

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

**Q. RESOLUTION NO. 17-34 - RESOLUTION MAKING PROVISIONS FOR THE
POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR
UNFORTIFIED WINE AT THE SOCON JAMFEST**

**RESOLUTION NO. 17-35 - RESOLUTION MAKING PROVISIONS FOR THE
POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR
UNFORTIFIED WINE AT THE ASHEVILLE HALF MARATHON & 10K**

**RESOLUTION NO. 17-36 - RESOLUTION MAKING PROVISIONS FOR THE
POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR
UNFORTIFIED WINE AT THE XPAND FEST**

**RESOLUTION NO. 17-37 - RESOLUTION MAKING PROVISIONS FOR THE
POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR
UNFORTIFIED WINE AT THE ASHEVILLE VEGANFEST**

**RESOLUTION NO. 17-38 - RESOLUTION MAKING PROVISIONS FOR THE
POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR
UNFORTIFIED WINE AT THE BETTER DADS FESTIVAL**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the SoCon JamFest, the Asheville Half Marathon & 10K, Xpand Fest, Asheville VeganFest, and the Better Dads Festival.

- Asheville Buncombe Regional Sports Commission has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at the SoCon JamFest and allow for consumption at this event.

The SoCon JamFest will be held on Sunday, March 5, 2017 from 2:00 p.m. – 5:00 p.m. within the boundaries of Page Avenue as per the area limits referenced on the accompanying site map.

- Iron Girls, Inc. has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at the Asheville Half Marathon & 10K and allow for consumption at this event.

The Asheville Half Marathon & 10K will be held on Saturday, June 3, 2017 from 7:00 a.m. – 12:00 p.m. within the boundaries of Pack Square Park as per the area limits referenced on the accompanying site map.

- Xpand Your Vision has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at Xpand Fest and allow for consumption at this event.

Xpand Fest will be held on Saturday, June 10, 2017 from 11:00 a.m. – 9:00 p.m. within the boundaries of Banks and Buxton Avenues as per the area limits referenced on the accompanying site map.

- Brother Wolf Animal Rescue has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at Asheville VeganFest and allow for consumption at this event.

Asheville VeganFest will be held on Sunday, June 11, 2017 from 11:00 a.m. – 5:00 p.m. within the boundaries of Pack Square Park as per the area limits referenced on the accompanying site map.

- ManKind Project USA has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at the Better Dads Festival and allow for consumption at this event.

The Better Dads Festival will be held on Saturday, June 17, 2017 from 12:00 p.m. – 9:30 p.m. within the boundaries of Pack Square Park as per the area limits referenced on the accompanying site map.

Pro:

- Allows fundraising opportunities for Asheville Buncombe Regional Sports Commission, Iron Girls, Inc., Xpand Your Vision, Brother Wolf Animal Rescue, and ManKind Project USA

Con:

- Potential for public safety issues

There is no fiscal impact.

Staff recommends City Council adopt a resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at the SoCon JamFest, the Asheville Half Marathon & 10K, Xpand Fest, Asheville VeganFest, and the Better Dads Festival.

RESOLUTION NO. 17-34 - RESOLUTION BOOK NO. 38 - PAGE 335
RESOLUTION NO. 17-35 - RESOLUTION BOOK NO. 38 - PAGE 338
RESOLUTION NO. 17-36 - RESOLUTION BOOK NO. 38 - PAGE 341
RESOLUTION NO. 17-37 - RESOLUTION BOOK NO. 38 - PAGE 344
RESOLUTION NO. 17-38 - RESOLUTION BOOK NO. 38 - PAGE 347

R. ORDINANCE NO. 4558- ORDINANCE AMENDING THE FISCAL YEAR 2016-17 FEES AND CHARGES MANUAL BY INCREASING THE PARKING METER FEE RATE FROM \$1.25 PER HOUR TO \$1.50 PER HOUR WITH AN EFFECTIVE DATE OF APRIL 1, 2017

Summary: The consideration of an ordinance amending the Fiscal Year 2016-17 Fees and Charges Manual by increasing the parking meter fee rate from \$1.25 per hour to \$1.50 per hour with an effective date of April 1, 2017.

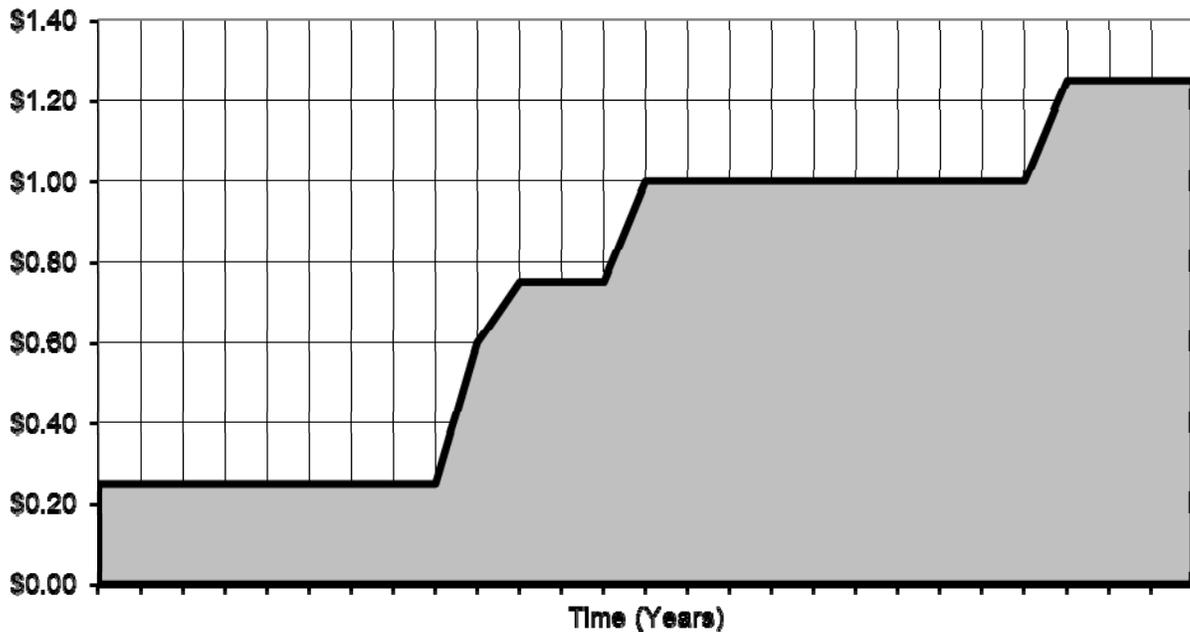
Parking meters date back to the 1980s and the Parking Enterprise Fund was established by City Council during June 1987 with the goal of making downtown parking operations self-sufficient. During FY 1988-89, 53% of the parking revenues came from the General Fund and today, the Parking Enterprise Fund is totally self-sufficient with a fund balance of \$1.9 million. Parking garage revenues at the end of FY 2015-16 totaled \$2.9 million compared to less than \$300,000 in FY 1988-89. The city has four parking garages with a supply of 1,437 parking spaces and three of the parking garages are debt-free.

Parking meter rates have ranged from \$0.25 per hour to the current \$1.25 per hour since FY 1990-91 but as you can see in Figure 1, for the most part, the rates have remained stable. The current rate has been in effect since July 1, 2013. When the \$1.00 per hour rate was approved beginning in FY 2003-04, City staff and the business community agreed to a differential rate between on-street hourly parking and parking garage hourly parking. The differential rate includes having the first hour free in the parking garages and keeping the on-street hourly rate higher than the parking garage hourly rate. The purpose of the differential rate is to encourage longer "stays" (greater than two hours) to use one of the parking garages while creating more turnover for the shorter "stays" (less than two hours) on the street.

The most significant asset belonging to the Parking Enterprise Fund is the parking garages and it is crucial that they are maintained in such a manner to ensure a long and cost efficient service life. The Civic Center Parking Garage is now 40 years old and a recent structural analysis has confirmed that its service life can be extended by 30 years if we commit to spending \$9.0 million on it over the next 30 years (which is an average of \$300,000 per year). A structural analysis is now being done on the Rankin Avenue and the Wall Street parking garages and those costs will be included in future years. Due to these needs and the numerous parking-related needs that continue to come up, staff has now created a 10-year capital improvement projects plan to help address the needs. The current plan includes; but not limited to, projects to modernize the elevators in the three oldest parking garages, to replace the existing parking meters with smart (credit card) meters, and to extend the Civic Center parking garage service life. The 10-year capital improvements projects plan will be reviewed annually and appropriate adjustments will be made which might trigger the need for parking fee rate increases.

Staff is moving forward to replace the existing parking meters within the next two years (including the current fiscal year) so that we will have more options available including extending enforcement hours, having the ability for variable pricing by location and/or time of the day or season, and having the ability to make parking fee rate increases effective much more quickly compared to today (currently, it can take up to three months because of the age and condition of the existing parking meters).

Figure 1 - City of Asheville Hourly Meter Rate History



A consulting firm was recently hired to prepare a comprehensive parking study (now in draft form) which included the preparation of a financial model to help staff determine parking rate fee increases and benchmarking information from 50+ cities located in the southeast region of the United States. 30 of these cities use parking meters to control on-street parking and 12 of these cities have an hourly parking rate greater than \$1.25 per hour. Chapel Hill is the only city in North Carolina that has a rate greater than \$1.25 per hour and it is \$1.50 per hour. Four of the cities have a rate of \$2.00 per hour.

Table 1 provides a summary of the parking fee rate increases that staff is recommending for FY 2017-18. In addition, staff recommends that the parking meters fee rate increase be made effective on April 1, 2017 to enable staff to adjust the existing parking meters to be able to accept the increase and be fully operational by July 1, 2017.

Table 1 – Parking Fee Rate Increases

Description	Increase	Revenue Generated +/-
Parking Meters (Hourly)	\$0.25	\$275,000
Parking Garages (Hourly)	\$0.25	\$169,000
Civic Center Parking Garage (Monthly)	\$10.00	\$55,000
Civic Center Parking Garage (Discounted Monthly)	\$5.00	\$1,200
Rankin Avenue Parking Garage (Monthly)	\$10.00	\$12,000
Wall Street Parking Garage (Monthly)	\$10.00	\$3,600
Parking Meter Temporary Closures (Daily)	\$4.00	\$4,000
Timed Parking Space Temporary Closures (Daily)	\$22.00	\$5,500
On-Street Permitted Parking (Monthly)	\$10.00	\$12,700
Surface Parking Lots (Monthly)	\$10.00	\$12,000
Surface Parking Lots (Discounted Monthly)	\$5.00	\$600

The Finance Committee reviewed the proposed parking fee rate increases at their regularly scheduled meeting on January 24, 2017, and unanimously recommended that the action move forward to City Council for consideration as a part of the overall FY 2017-18 Fees and Charges package except for the parking meter fee rates. Due to the age of the existing parking meters, staff needs about two to three months to go on-site and physically adjust the parking meters to accept the new rate.

Pros:

- Maintains a cost differential between on-street metered parking and hourly parking in the parking garages in order to encourage turnover for the on-street parking.
- Maintains the first hour free in the parking garages.
- Creates a steady funding stream to meet the needs of the 10-year CIP.
- Creates a steady funding stream for a new parking garage in the future.

Con:

- Higher cost to park in the Central Business District.

The total anticipated annual revenue that should be generated from all of the fee changes is about \$525,300. As noted above, the parking meter fee change alone will generate about \$275,000 annually.

Staff recommends that City Council approve an ordinance amending the Fiscal Year 2016-17 Fees and Charges Manual by increasing the parking meter fee rate from \$1.25 per hour to \$1.50 per hour with an effective date of April 1, 2017.

ORDINANCE BOOK NO. 31 - PAGE 87

S. RESOLUTION NO. 17-39 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE AN UNNAMED ALLEY BETWEEN 7 AND 19 AUSTIN AVENUE AND SETTING A PUBLIC HEARING ON MARCH 14, 2017

Summary: The consideration of a resolution of intent to permanently close an unnamed alley between 7 and 19 Austin Avenue and setting a public hearing on March 14, 2017.

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

Pursuant to this statute, adjoining property owners, Mark and Melissa Essig owners of parcel 9649460040 and David and Nancy Stainback owners of parcel 9649460150, have requested the City of Asheville to permanently close a portion of an unnamed alley between unnamed alley between #7 and #19 Austin Ave. A copy of this resolution of intent shall be sent by registered or certified mail to all owner of this property abutting this alley, not joining in the petition to close.

Public Works staff notified other city departments and the utility companies and received no concern with this closure. The Multimodal Transportation Commission met on January 25th, 2017, and approved the closure.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties
- Meets Council's goals of efficient land use and planning.

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close an unnamed alley between 7 and 19 Austin Avenue and setting a public hearing on March 14, 2017.

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- T. ORDINANCE NO. 4559 - ORDINANCE TO CHANGE THE SPEED LIMIT ON DEPOT STREET FROM LIVINGSTON STREET TO CLINGMAN AVENUE AND ROBERTS STREET FROM CLINGMAN AVENUE TO LYMAN STREET TO 20 MPH; AND TO CHANGE THE SPEED LIMIT ON CLARENDON ROAD FROM SCHOOL ROAD TO SCHOOL ROAD, CONGRESS STREET FROM CHOCTAW STREET TO LIVINGSTON STREET, DEPOT STREET FROM LIVINGSTON STREET TO END OF CITY MAINTENANCE, FAIRCREST ROAD FROM BEAVERDAM ROAD TO END OF CITY MAINTENANCE, LE-AN-HURST ROAD FROM EDGEWOOD DRIVE TO ROUND TOP ROAD, LONDON ROAD FROM BELVEDERE ROAD TO WEST CHAPEL ROAD, PINE ACRE BOULEVARD FROM MIDLAND DRIVE END OF CITY MAINTENANCE, ROBERTS STREET FROM HAYWOOD STREET-W TO CLINGMAN AVENUE, SPOOKS BRANCH ROAD FROM BEAVERDAM ROAD TO END OF CITY MAINTENANCE, AND SWEETEN CREEK ROAD INDUSTRIAL PARKWAY FROM SWEETEN CREEK ROAD TO END OF CITY MAINTENANCE TO 25 MPH**

Summary: The consideration of an ordinance to enact and/or change the speed limits on various sections of streets in the City of Asheville.

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

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed traffic engineering investigations and determined that a 20 mph speed limit would be reasonable and safe on Depot Street from Livingston Street to Clingman Avenue and Roberts Street from Clingman Avenue to Lyman Street.

City staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on Clarendon Road from School Road to School Road, Congress Street from Choctaw Street to Livingston Street, Depot Street from Livingston Street to End of City Maintenance, Faircrest Road from Beaverdam Road to End of City Maintenance, Le-An-Hurst Road from Edgewood Drive to Round Top Road, London Road from Belvedere Road to West Chapel Road, Pine Acre Boulevard from Midland Drive End of City Maintenance, Roberts Street from Haywood St-W to Clingman Avenue, Spooks Branch Road from Beaverdam Road to End of City Maintenance, and Sweeten Creek Industrial Parkway from Sweeten Creek Road to End of City Maintenance.

Pros:

- City staff has been able to respond favorably to citizens' requests.
- The new speed limits will be consistent with roads of like character and design.
- This action will also bring some of the roads into line with our speed limit policies.
- Based on the 85th percentile speeds, most drivers would adhere to the recommended speed limits on these roads.

Cons:

- The initial cost to install the appropriate speed limit signs is about \$2,000.00.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about \$2,000.00 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting 20 mph speed limits on Depot Street from Livingston Street to Clingman Avenue and Roberts Street from Clingman Avenue to Lyman Street. City staff also recommends that City Council approve an ordinance enacting 25 mph speed limits on Clarendon Road from School Road to School Road, Congress Street from Choctaw Street to Livingston Street, Depot Street from Livingston Street to End of City Maintenance, Faircrest Road from Beaverdam Road to End of City Maintenance, Le-An-Hurst Road from Edgewood Drive to Round Top Road, London Road from Belvedere Road to West Chapel Road, Pine Acre Boulevard from Midland Drive End of City Maintenance, Roberts Street from Haywood St-W to Clingman Avenue, Spooks Branch Road from Beaverdam Road to End of City Maintenance, and Sweeten Creek Industrial Parkway from Sweeten Creek Road to End of City Maintenance.

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U. RESOLUTION NO. 17-40 - RESOLUTION AUTHORIZING THE EXCHANGE OF AN EASEMENT IN THE CITY RIGHT-OF-WAY ALONG SOUTHSIDE AVENUE AND SHORT COXE AVENUE FOR A DEEDED TEN-FOOT WIDE STRIP OF LAND FOR USE AS ADDITIONAL PUBLIC RIGHT-OF-WAY AT SHORT COXE AVENUE AND WILBAR AVENUE OWNED BY PT DEVELOPMENT OF ASHEVILLE LLC

Summary: The consideration of a resolution authorizing the exchange of an easement in City right-of-way along Southside Avenue and Short Coxe Avenue for a deeded ten-foot wide strip of land for use as additional public right of way at Short Coxe Avenue and Wilbar Avenue owned by PT Development of Asheville, LLC.

The City of Asheville and PT Development of Asheville, LLC have negotiated a mutually beneficial exchange of an easement in right-of-way along Southside and Short Coxe Avenue for a strip of land that begins at Wilbar Avenue and Short Coxe Ave and runs the width of the property along the roadway at Wilbar. Pursuant to N. C. G. S. 160A-271, a notice was published in the Asheville Citizen Times on February 3rd, 2017 describing the exchange of properties.

PT Development of Asheville, LLC is planning to build approximately eighteen townhomes on a parcel (9648-37-5186) in the South Slope area. In accordance with the Central Business District (CBD) zoning, the townhomes are planned assuming zero lot line setbacks at the road frontage. The development of the parcel is constrained because of the long and narrow shape of the property and the topography at the rear of the property that is steep and unbuildable. The owners determined that in order to build the proposed structures on this site, they would need to put underground footings in front of every unit. These footings would be constructed under the City's sidewalk and would necessitate a subsurface easement of roughly 20 inches in width. It was determined that the easement would extend for approximately 258 linear feet on Southside Avenue and Coxe Avenue for a total square footage of 431 square feet. This request was discussed with the City's Public Works Director and it was determined that the granting of this easement would not substantially impair or hinder the street as a way of passage in compliance with NCGS 160A-273. Exhibit A is a two-page sketch of the subsurface easement that is being requested.

In response to this request, the City of Asheville proposed a land exchange for additional right-of-way at Wilbar Avenue. The City, in consultation with the Housing Authority of the City of Asheville determined that an additional width of 10 feet from Wilbar Avenue and South Coxe Avenue is needed to improve Wilbar Avenue as an access point for the future Lee Walker Heights redevelopment, which is directly above the townhome development site. Widening the right-of-way at Wilbar will allow for improved pedestrian and traffic facilities. PT Development owns the parcel (9648-37-8168) that is adjacent to Wilbar and has agreed to convey a 10 foot wide strip of land in fee simple as right-of-way in exchange for the subsurface easement that is needed for the construction of the townhomes. Exhibit B is provided to show what property is proposed for the exchange. The total area of the new right-of-way land to be conveyed is 1,324 square feet.

In consideration of the fact that the area to be conveyed to the City is much larger than the area requested by PT Development of Asheville, LLC and will be a fee simple conveyance in exchange for an easement interest in the City right-of-way, it has been determined that the City is receiving full and fair value for its property in compliance with the statute.

Pros:

- The right-of-way at Wilbar Avenue is limited and gaining 10 feet in width will allow for enhanced pedestrian and traffic safety improvements along this City street.
- City is receiving a larger land area in exchange for an easement.
- The subsurface easement will not interfere with the sidewalk after construction is complete.

Con:

- City is allowing a permanent improvement in its street right-of-way at Southside and Short Coxe Avenues.

No monetary consideration will change hands in this exchange, therefore no fiscal impact for this transaction.

Staff recommends City Council adopt a resolution approving this land exchange and authorizing the City Manager to convey this 431 square foot easement at Short Coxe and Southside Avenue to PT Development of Asheville, LLC and to accept the conveyance of land at Wilbar Avenue and Short Coxe Avenue.

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V. MOTION APPROVING THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR 192 HAYWOOD STREET

Summary: This public hearing was held on January 24, 2017. A copy of the adopted written Findings of Fact and Conclusions of Law for 192 Haywood Street are attached hereto and made a part hereof.

Mayor Manheimer 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, with the deletion of Consent Agenda Items "H" and "P". This motion was seconded by Vice-Mayor Wisler and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

H. RESOLUTION NO. 17-26 - RESOLUTION ADOPTING THE HOMELESS INITIATIVE ADVISORY COMMITTEE 5-YEAR STRATEGIC PLAN ON HOMELESSNESS

Summary: The consideration of a resolution authorizing the City Manager to adopt the Homeless Initiative Advisory Committee's (HIAC) Five Year Strategic Plan on Homelessness.

The Homeless Initiative Advisory Committee (HIAC), is a joint committee of the City of Asheville and Buncombe County. The committee completed the Five Year Strategic Plan on Homelessness for the Buncombe County Continuum of Care (NC-501). Looking Homeward: The Ten Year Plan to End Homelessness in Asheville and Buncombe County was adopted as a guiding document in January of 2005 by the City of Asheville and in March of 2005 by Buncombe County and was the culmination of a six-month planning effort by homeless service providers, government administrators, housing developers, community leaders, and the homeless. The plan focused primarily on housing the chronic homeless population in Buncombe County. A significant number of those individuals have moved from homeless into permanent housing as a direct result of the key strategies outlined in that visionary document.

The number of chronically homeless identified in the original 10-year plan was 293. In the past ten years, concerted community-wide efforts steadily reduced that population with the 2016 Point-in-Time (PIT) count showing 72 chronically homeless individuals remain unhoused in Buncombe County. While the Ten Year Plan targeted housing the chronically homeless, the plan was not limited to ending chronic homelessness alone but also addressed all aspects of homelessness. Subsequent policies guided the development of a systems' response to homelessness in Buncombe County that resulted in: the reduction of all types of homelessness, the number of persons that become homeless, the duration and frequency of homeless episodes and a reduction of the number of persons experiencing chronic homelessness. Since 2008, 1,097 homeless persons have been housed at the Housing Authority for the City of Asheville through a homeless preference and over 1,200 have been housed throughout Buncombe County in scattered site housing.

The Asheville-Buncombe Homeless Initiative has now completed a Five Year Strategic Plan to address the ongoing issues of homelessness in Buncombe County and further build on the successes on the Ten Year Plan. The Five Year Strategic Plan sets annual goals that target the needs of specific sub-populations, Veterans and the Chronically Homeless, and ensures emerging trends and best practices are integrated within community strategies over the next five years. The plan allows for adaptation and flexibility in community strategies and acts as a guiding document for comprehensive engagement grounded in best practices.

The Homeless Initiative Advisory Committee (HIAC), the governing body of the Continuum of Care in Buncombe County, solidified 7 Priorities for the Five Year Strategic Plan on Homelessness: Housing, Case Management, Safety and Transitional Services, Healthcare, Education and Employment, Transportation and Prevention and Diversion. The HIAC affirmed its vision, mission, and operating principals and developed these seven priorities from the cumulative work of the HIAC, individual sub-committee and work group recommendations, the Homeless Coalition, a report compiled from a community survey of the homeless conducted in partnership by University of North Carolina at Asheville Health and Wellness Department in the spring of 2016, the 2005-2016 Point-in-Time data, the Housing Inventory Count, Homeless Management Information System (HMIS) data, HUD guidance and a review of the City of Asheville priorities. The HIAC has engaged in an open and deliberative process involving key stakeholders, service providers, the homeless community, and advocates in this process and will continue to cultivate those critical relationships as it develops the annual goals.

The Five Year Strategic Plan on Homelessness continues to emphasize support of public-private partnerships, creation of opportunities to increase the affordable housing supply in the community, system-wide collaboration and measurable actions adopted annually by the HIAC

that are designed to decrease the many barriers homeless individuals and families face in accessing safe, stable and affordable housing.

The Housing and Community Development Committee reviewed the Plan at their December 20, 2016, meeting, with a unanimous recommendation to move the Plan to City Council for adoption.

Pro:

- HUD funding is a key funding resource for permanent supportive housing for homeless individuals and families. The Five Year Strategic Plan on Homelessness is not solely predicated on increased revenue but implementation of community wide strategies within the existing framework to better serve the homeless population in Buncombe County.

Con:

- Program funding and affordable housing availability does not meet the full demand for services and housing needed to assist all the low-income homeless households. HUD funding is allocated yearly in the Congressional Budget process, and is subject to change annually.

Homeless program services and subsidy funding is almost entirely from the US Department of Housing and Urban Development and the State of North Carolina. Existing Community Development staff administer and monitor current programs and initiatives. HUD and ESG homelessness funding through the Continuum of Care currently accounts for over 1.2 million in Buncombe County annually. The City of Asheville and Buncombe County continue to partner on funding the coordination of the Homeless Initiative lead. This funding has remained relatively stable since first made available in 2007. No new major local funding will be requested in the upcoming budget cycle.

Staff recommends City Council adopt a resolution authorizing the City Manager to adopt the Asheville-Buncombe Homeless Initiative Advisory Committee's Five Year Strategic Plan on Homelessness in Buncombe County.

April Burgess-Johnson, Chair of the Homeless Initiative Advisory Committee, spoke in support of the resolution and the many key stakeholders, homeless service providers and advocates that helped in developing the goals outlined in the Five Year Strategic Plan.

Mr. David Nash, former Chair of the Homeless Initiative Advisory Committee, spoke in support of the resolution and thanked Council for their support in making housing a high priority and getting homeless off the streets.

In response to Councilman Bothwell, Mr. Nash said that at the beginning of the 10-Year Plan to end homelessness, there were 298 chronic homeless and the number last year was 72.

Councilman Smith said this is a really ambitious and realistic set of goals. They have moved 1500 people who fell into homelessness back into housing over the last 10 years. And, a set of relationships and systems has been created so now people are doing this more collaboratively, more effectively, and more cost effectively than ever before. We are designing systems that will be in place so when someone falls into homelessness there will be a system to catch them and re-house them as quickly as possible. This plan helps knit together those systems that we have to have if we are going to be successful going forward. One achievable goal is to bring veterans homelessness to functional zero by December of 2017 in Buncombe County.

Rev. Christopher Chiaromonte was concerned about the amount of time it took to get on a housing list and where people would wait in the meantime.

Councilman Smith moved for the adoption of Resolution No. 17-26. This motion was seconded by Councilman Bothwell and carried unanimously.

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P. ORDINANCE NO. 4557 - ORDINANCE AMENDING THE FEES & CHARGES MANUAL FOR THE ASTON PARK TENNIS CENTER

Summary: The consideration of a proposed fee amendment at the Aston Park Tennis Center (Tennis Center).

A study of Tennis Center operations, completed by City staff in 2014, reviewed opportunities to reduce the level of general fund subsidy. The study included a public engagement process with Tennis Center users including two public meetings, online survey and a focus group.

In a concurrent process, the City engaged Matrix Consulting Group (consultants) to conduct a Cost of Services Study for the Parks and Recreation Department. The consultants reviewed direct and indirect costs of providing fee-based recreation services. The Tennis Center was included as a component of the study.

Based on the results of the Cost of Services Study and staff analysis, a three-year step up pass holder fee schedule was developed to incrementally increase fees over a three-year period. The three-year step up fee schedule was included in the Tennis Center public engagement process. The Finance Committee determined the acceptable annual Tennis Center subsidy at \$70,000 and adopted the step up fee schedule.

Based upon the Cost of Service Study and the three-year step up fee schedule, Tennis Center pass holder fees were amended in 2015 for year one, and in 2016 for year two.

The Cost of Services Study and staff recommends amending the current Tennis Center pass holder fees for year three effective immediately, in order for staff to implement the fee change prior to the Tennis Center opening on April 1, 2017. Amending the pass holder fees will continue to reduce the level of operational subsidy at the Tennis Center, in accordance with direction provided by the Finance Committee.

The proposed Tennis Center fee amendment was reviewed by the Finance Committee on January 24, 2017.

Proposed Fee Amendment:

1. Aston Park Tennis Center pass holder fees. If approved, the recommended amendment fees at the Tennis Center will generate additional revenue as summarized below.

Fund	Projected Range of Additional Revenue
General Fund	\$20,000 to \$25,000

This action complies with the Cost of Services Study for the Parks and Recreation Department.

Pros:

- Provides additional revenue as recommended by the Tennis Center operation study and Cost of Services Study to reduce operational subsidy at the Tennis Center to approximately \$70,000, or 31%.

- Provides staff with time to communicate and implement fee amendment to citizens, customers and stakeholders in advance of the April 1, 2017 opening of the Tennis Center.

Con:

- None.

The fiscal impact is (1) Recreation best practices show tennis facilities of this type shift a greater burden of the costs from the taxpayer subsidy to the individual users. Prior to the 2015 fee amendment, the annual Tennis Center subsidy was approximately \$150,000; (2) The current Tennis Center subsidy is approximately \$97,800, or 42%. The objective of the current fee amendment and the revenue projection is to achieve the goal of reducing the annual Tennis Center subsidy to approximately \$70,000, or 31%; (3) The proposed fee amendment is the third phase in a three-year step up pass holder fee proposal; and (4) The anticipated General Fund subsidy for the Tennis Center is projected at approximately \$70,000 based on revenue enhancements alone. Further reductions in the subsidy may be realized through operational changes impacting revenues and expenses.

Staff recommends Council to adopt the proposed Aston Park Tennis Center fee amendment.

Vice-Mayor Wisler said that the three-year step up fee was implemented the first year, with an effective date of April 1. The second year of the three-year step up fee was not implemented until July 1 (which let tennis players pay as the same rate they did year one if they signed up at the beginning of the season). She suggested instead of implementing the third year step up fee on April 1, that we split the difference between the year two and year three fees (\$62.50 for a resident individual) and have them pay \$375 plus \$62.50 effective April 1, and then on July 1 we set the fee at the original year 3 step up fee of \$500.

Mr. Jeff Joyce, President of the Asheville Tennis Association, said that this will be a 66% increase in each category and suggested Council wait until July 1 to implement the year three fee. The higher the increase the harder it will be to sell the players on paying it.

Vice-Mayor Wisler moved to adopt Ordinance No. 4557 with the amendment that between April 1 and July 1 each category of fees be increased by splitting the difference between year 2 and year 3 fees, and that on July 1, the step up fees for each categories be implemented. This motion was seconded by Councilman Bothwell and carried unanimously.

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III. PRESENTATIONS & REPORTS: None

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES

- 1. TO AMEND CERTAIN PROVISIONS IN THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO LEVEL III, LEVEL II AND LEVEL I PROJECTS, NOTICE STANDARDS, THE CONDITIONAL ZONING PROCESS, ZONING DISTRICTS (INCLUDING THE ADDITION OF EXPANSION DISTRICTS), THE TABLE OF PERMITTED USES, AND ADJUSTMENTS TO THE RELEVANT CODE SECTIONS CONCERNING THESE AMENDMENTS - THIS WILL AFFECT ARTICLES 2, 5, 7, 8, 11, 16 AND 17 OF THE UNIFIED DEVELOPMENT ORDINANCE**

ORDINANCE NO. 4560 - ORDINANCE TO AMEND CHAPTER 7 OF THE CODE OF ORDINANCES TO AMEND CERTAIN PROVISIONS IN THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO LEVEL III, LEVEL II AND LEVEL I PROJECTS, NOTICE STANDARDS, THE CONDITIONAL ZONING PROCESS, ZONING DISTRICTS (INCLUDING THE ADDITION OF EXPANSION DISTRICTS), THE TABLE OF PERMITTED USES, AND ADJUSTMENTS TO THE RELEVANT CODE SECTIONS CONCERNING THESE AMENDMENTS - THIS WILL AFFECT ARTICLES 2, 5, 7, 8, 11, 16 AND 17 OF THE UNIFIED DEVELOPMENT ORDINANCE

2. TO MODIFY THE DEVELOPMENT REVIEW PROCEDURES FOR LEVEL II DEVELOPMENT APPLICATIONS WHEN LOCATED OUTSIDE OF THE CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 4561 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES TO MODIFY THE DEVELOPMENT REVIEW PROCEDURES FOR LEVEL II DEVELOPMENT APPLICATIONS WHEN LOCATED OUTSIDE OF THE CENTRAL BUSINESS DISTRICT

Assistant Director of Planning & Urban Design Alan Glines said that this is an amendment to Chapter 7 of the Code of Ordinance to amend certain provisions in the Unified Development Ordinance relating to Level III, Level II and Level I projects, notice standards, the conditional zoning process, zoning districts (including the addition of expansion districts), the table of permitted uses, and adjustments to the relevant Code sections concerning these amendments. This will affect Articles 2, 5, 7, 8, 11, 16 and 17 of the Unified Development Ordinance. This public hearing was advertised on February 3 and 10, 2017.

Staff has provided a set of related revisions to the development review process as directed by City Council after a large amount of community discussion and consideration. Site plans are currently reviewed based on size or number of units as Level I, II or III projects. The detail of the review of each increases with each level allowing larger, more complex projects to receive a higher level of attention and input.

In December 2015, staff from the Planning and Urban Design Department presented information to City Council to understand and address concerns about the recent development in the downtown area and the expansion of hotels since the adoption of the Downtown Master Plan and the Central Business District (CBD) zoning changes in 2009 and 2010, respectively. At that meeting City Council directed staff to conduct a series of public engagement activities around this topic that included a public forum, an on-line survey and presentations and updates to a variety of community stakeholder groups. Staff presented these results and recommendations to City Council at their meeting on September 27, 2016. During this meeting, Council directed staff to coordinate the following efforts:

Actions from Downtown Planning and Development Policies:

1. Consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to amend the development review threshold of Level II projects to 20,000 square feet to 100,000 square feet or under 100 feet tall throughout the City.
2. Consensus of Council to direct staff to prepare a wording amendment to Unified Development Ordinance to amend the development review threshold of Level III projects throughout the City to anything over 100,000 square feet or 100 feet tall, which would require a rezoning and

- which would follow that process; and to establish certain incentive criteria for developers wishing to build residential.
3. Consensus of Council to direct staff to explore using the rezoning process outside of the Central Business District, especially in areas where mutual agreement would like to be reached.
 4. Consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to make lodging facilities with 20-25 or more rooms throughout the City a use which would require a rezoning and which would follow that process.
 5. Consensus of Council to direct staff to prepare a wording amendment to the Unified Development Ordinance to increase public notification for Level II and Level III projects in accordance with staff's recommendations.

In response to the Council directive, staff have prepared this wording amendment. The main change is that Level III developments will be defined and considered a *use* in the land use table. Level III developments are only to be permitted in the newly created *expansion districts* which a developer will apply to rezone the property into, through the conditional zoning process. The process is outlined as follows:

Proposed Changes to the development review process

A. Proposed changes to the development review process inside the CBD (7-5-9.1):

Level I <i>Over 500- 19,999 s.f. and projects that do not qualify as a Level II development</i>	Level II <i>20,000-99,999 s.f.; and/ or buildings less than 100' tall</i>	Level III Development requires a rezoning <i>Aligns with standards 100,000 s.f. or more; buildings 100' or taller; lodging with 21 or more guest rooms</i>
Pre-application (optional)	Pre-application required. Applicant for a Level II development for site plan review	Pre-application required. Applicant applies for a rezoning to the Central Business Expansion District as a conditional zoning
Applicant submits directly to staff	Developer meeting: Developer holds a meeting for neighbors, posts the site and includes property owners and tenants within the notification range.	Developer meeting: Developer holds a meeting for neighbors, posts the site and includes property owners and tenants within the notification range.
Initial review is complete within 10 days	Applicant submits to DSD for review by the Technical Review Committee (TRC). The development mapper is updated with plans.	Applicant submits to DSD for review by the Technical Review Committee (TRC). The development mapper is updated with plans.
	TRC performs a <i>ministerial</i> review and provides a recommendation considered by both the Downtown Commission and the Planning & Zoning Commission.	TRC performs a <i>ministerial</i> review and provides a recommendation considered by both the Downtown Commission and the Planning & Zoning Commission.
	Downtown Commission performs a design review for the development project and makes a recommendation to the Planning and Zoning Commission. Notice for the	Downtown Commission (DTC) performs a design review for the development project and makes a recommendation to the Planning and Zoning Commission. Notice for the

	project includes letters to neighbors and posting at the site. Website to be updated with current meeting agenda.	project includes letters to neighbors and posting at the site. Website to be updated with current meeting agenda.
	Planning & Zoning Commission performs a final <i>ministerial</i> review Process follows prescribed notice and meeting schedule to include neighbors and published notice and site is posted. Website is updated.	Planning & Zoning Commission (PZC) performs a <i>legislative</i> review & makes a recommendation to City Council. Process follows prescribed notice and meeting schedule to include neighbors, published notice and site is posted. Website is updated.
		City Council reviews the development plans and conditions, considers the recommendation of the DTC and PZC and considers compliance with adopted plans and the Comprehensive Plan. Council and applicant agree to a specific set of conditions. Since the process is a rezoning, Council and the applicant may discuss the application and conditions before the actual hearing.
		Process follows prescribed notice and meeting schedule to include neighbors, published notice and site is posted. Website is updated.

B. Proposed changes to the Level III development review process for areas outside of the CBD (7-5-9):

Level I Over 500 -34,999 s.f. or 3-19 units	Level II 35,000-99,999 s.f.; or 20-49 residential units (Process as proposed by a related ordinance)	Level III development requires a rezoning Aligns with standards 100,000 s.f. or more; 50 or more residential units; lodging with 21 or more guest rooms
Pre-application (optional)	Pre-application required. Applicant for a Level II development for site plan review.	Pre-application required. Applicant applies for a rezoning to an Expansion District that is most applicable to the proposed use(s) as a conditional zoning
Applicant submits directly to DSD.	Developer meeting is required: Developer holds a meeting for neighbors including property owners within the notification range	Developer meeting required: Developer holds a meeting for neighbors, posts the site and includes property owners within the notification range
Initial review is complete	Applicant submits to DSD for	Applicant submits to DSD for

within 10 days	review by the Technical Review Committee (TRC). The development mapper is updated with plans.	review by the Technical Review Committee (TRC). The development mapper is updated with plans.
	TRC performs a <i>ministerial</i> review with approval or denial of the project. The site is posted as to the meeting date and website address for development plans.	TRC performs a <i>ministerial</i> review and makes provides a recommendation considered by the Planning & Zoning Commission
	After a decision is reached, a letter is sent to neighboring property owners regarding the technical decision.	Planning & Zoning Commission (PZC) performs a <i>legislative</i> review & makes a recommendation to City Council. Process follows prescribed notice and meeting schedule to include neighbors, published notice and site is posted. Website is updated
		City Council reviews the development plans and conditions, considers the recommendation of the PZC and considers compliance with adopted plans and the Comprehensive Plan. Council and applicant agree to a specific set of conditions. Since the process is a rezoning, Council and the applicant may discuss the application and conditions before the actual hearing. Process follows prescribed notice and meeting schedule to include neighbors, published notice and site is posted. Website is updated.

Expansion Districts (7-8-1; 7-8-2)

This wording amendment provides for the addition of the seven proposed expansion districts that apply to the Central Business District and the following use types: residential, institutional, commercial, lodging, industrial, and mixed use. Each expansion district has a corresponding set of development standards that recognize the added impacts that larger projects can generate. With projects of larger scale, a higher level of site development and design are needed. Generally the standards focus on the placement of new structures, placement of parking areas, access and mobility to and around the site and buffering impacts to neighboring residential uses (if applicable). These standards comply with goals in the city’s comprehensive plan to enhance connectivity, placemaking and usability for larger projects within the city.

There will also be the addition of ‘Level III development’ to the land use table to permit this larger scale of development only in the new expansion districts.

Other Amendments

Revisions to Article II:

7-2-5. New definitions are being added for *Development plan* and *Level III development*.

Revisions to Article V:

7-5-10 Downtown Commission Review. There are some limited amendments to the Downtown Design Review process to update the procedures and current practices with consistent nomenclature. For example fees will be charged for major works review.

7-5-20 Notification. This amendment clarifies alignment with State Statutes regarding notification for public hearings (and not public meetings) and public notification requirements for rezonings.

7-5-21. This section is being removed since it is out of compliance with State Statutes. The Planning and Zoning Commission must always provide a recommendation to City Council for map amendments (rezonings) and wording amendments.

Revisions to Article VI:

7-6-2. This minor revision clarifies that all decisions made by an administrative officer or other boards or commissions may be appealed to the board of adjustment.

Revisions to Article VII:

7-7-8. The revisions to this article focus on adding the expansion districts to the conditional zoning process. There is also a new timeframe specified for the required neighborhood meeting along with other edits to the section to ensure consistency with other parts of the UDO.

Revisions to Article XI:

7-11-3. The expansion districts are being added to the table for property line buffers in this section.

7-11-4. Two expansion districts, the CBD EXP and the IND EXP are both to be exempt from open space standards similar to the general districts: CBD and IND.

Revisions to Article XVI:

7-16-2(b). There are two references in this conditional use section which include Level III projects and Retail with over 100,000 s.f.. Both of these references are replaced with the new Level III process already noted.

Revision to Article XVII:

7-17-3. Lodging facilities with 20 or fewer guest rooms and Lodging facilities with 21 or more guest rooms are being added to the land use impact table. This is needed for evaluating 'changes of use' and the relative impacts of each use which has implications for requirements for site improvements.

This wording amendment supports the City's Comprehensive Plan by 1) promoting compatible infill and redevelopment in areas with sufficient infrastructure to support the development; 2) following a reasonable and effective public participation process through public notice and neighborhood meetings; and, 3) encouraging place making and a higher quality of design in the built environment.

This proposal aligns with the 2036 Council Vision in the following areas: (1) Connected and Engaged Community – through promoting public engagement and encouraging input on development projects with neighborhood meetings, public notice and communication on the city's website; (2) Thriving Local Economy – by encouraging infill and redevelopment in key areas of the city; and (3) A Well-Planned and Livable Community – by encouraging compatibility of larger new development projects within the existing built environment through enhanced access and development standards and opportunities for public engagement through the review process.

At the Planning and Zoning Commission meeting held on February 1st, 2017, the Commission voted to recommend denial of the proposed amendments on a vote of 6 to 1. The Commissioners were concerned about the change in the thresholds for downtown, where growth is expected with some commenting that the amendment is an overreaction to growth in general and to hotels in particular. There was some concern that with the conditional zoning process, a developer may have no clear understanding of what is necessary for a project to move forward and that predictability will be lost. There was also concern that, should the amendment be passed, that development will be curtailed and new proposals will stay within the Level II threshold to avoid the public process.

At the request of the Downtown Commission, Mr. Glines reiterated their recommendations from their September 9, 2016, meeting. They didn't recommend changing the thresholds from \$175,000 because that was part of the Downtown Master Plan and that was where we wanted development intensity. They recommended support for whatever the Level III threshold is that those projects be reviewed as conditional zonings. The majority did not agree that hotels be treated differently from other developments but that if this is approved, that we make the standards as clear as possible. He noted that as soon as a developer has a plan they can talk to Council members at any time. Finally, they recommended staff work on outreach and most of that has been incorporated into the recommendations.

Staff recommends approval of the wording amendments modifying the Level III development review process, adopting new expansion zoning districts, and other associated amendments because of community support to amend the review process and scale of development and consistency with the Comprehensive Plan and other adopted plans.

Mayor Manheimer opened the public hearing at 5:47 p.m.

Mr. Byron Greiner, member of the Downtown Commission, said the Commission supports the notification process. The Commission would like clarify what kind of issues City Council will expect so that developers know what Council might want in going through the process.

Rev. Christopher Chiaromonte felt there people should be able to build on their land without getting the neighborhood approval.

Ms. Camille McCarthy, Co-Chair of the WNC Green Party, was concerned about the gentrification of our community and it's enormous hotel boom.

Mr. Timothy Sadler spoke in support of the proposed amendment.

Mayor Manheimer closed the public hearing at 5:58 p.m.

In response to Mayor Manheimer, Mr. Glines said that since September, the City has 4 pending hotel applications. They will not come before Council due to scale.

Councilman Bothwell felt that we needed to elevate the thresholds in order for Council to oversee what is being built in the City. He felt that City Council is a more public venue to discuss these issues. The McKibbin Standard is more of a moral persuasion because the City is not

allowed to dictate wages or impose environmental rules beyond what the State has allowed. When projects come before Council we hope to be able to encourage them to pay a living wage, use local artists and use local restaurants. Because projects are coming before Council does not mean they will be automatically rejected. Actually since Council will be able to have conversations earlier we can make all of the projects better. He feels it will improve development and the people will have a sense that they had input into those developments.

Councilman Bothwell moved to approve the revised wording amendments to UDO Articles: 2, 5, 7, 8, 11, 16 and 17 which modify the Level III review process along with associated changes, and find that the request is reasonable, is in the public interest, and is consistent with the Comprehensive Plan and other adopted plans in the following ways: the amendment 1) provides for greater development flexibility in higher impact projects; 2) leverages a higher quality of development with multimodal access and placemaking through enhanced development standards; and, 3) provides an early method of communication with the public through neighborhood meetings. This motion was seconded by Councilman Haynes.

Councilwoman Mayfield supported the change of the threshold levels. Regarding the hotel piece, she felt there is a real concern about hotels and tourism and the impacts of that. We do need to be responsive to that and how it's influencing the character of downtown. It's also our obligation to figure out how we want our downtown to look like and to make sure the people who live here always feel like it's their town. She also feels there is a bigger picture which is that Asheville is taking a different approach to big projects. It's just not hotels and downtown development. It's with I-26, closure of the coal plant and substations. The approach now is that we, as a City, are less interested in being told what it is that is going to happen to us. We want to be a part of that discussion and we are doing that on the other big projects. She was uncomfortable with the hotels being singled out, but she did think that is just part of this bigger picture. The public sentiment about hotels includes bigger concerns about tourism, wages, occupancy tax, traffic and affordability of our City. She didn't think that changes we make with this proposed amendment will do very little to address the wrath of other issues out there. She is still unclear about the degree to which the concern about hotels is the use, or design, or size. There are some outstanding and on-going questions around design issues in downtown. She hoped that the downtown design review guidelines and historic preservation guidelines will hopefully come to fruition soon. She felt we risk aggravating problems, like traffic and parking, to the degree that hoteliers prefer to go outside the City and their guests will be driving in and parking more. She was also concerned about the impact this will have on our downtown businesses that now rely on a steady flow of hotel visitors to eat and shop. Her preference would have been to deal with this in the Comprehensive Plan update or the Downtown Master Plan update. She moved to amend the motion to increase the City Council hotel review from 21 to 50. She was not sure building any hotel in Asheville under 20 rooms is even financially viable and if what we are trying to do is not have any more hotels downtown then we need to be honest about that. She also said that in Charleston's core downtown they limit the size of their hotels to 50. The motion made by Councilwoman Mayfield died for lack of a second.

Councilwoman Mayfield said that regarding the concern of unpredictability in the process for developers, in an attempt to create a little bit more predictability she suggested creating an earlier point in the process where developers have the option to come before Council to talk about their project before they have significantly invested in site design, engineering, etc. Perhaps they could come to Council and show a plan and get feedback on the kinds of things that we might be interested in seeing them do, so they can plan for that. Obviously they can talk to any Council member at any time.

City Attorney Currin said that what Councilwoman Mayfield is suggesting is a bigger discussion. One way to do that would be where a developer would come to Council, the back to the Planning & Zoning Commission, then back to Council. Another way would be having an application that didn't need to be as detailed in the first round and then do an initial presentation to Council. There are a lot of ways to get earlier input but changing it at the table without going

back to the Planning & Zoning Commission is difficult. That is something staff could work on longer-term.

Mayor Manheimer felt that this is a larger concept to craft. If this proposed amendment is adopted, she suggested we look into that concept later.

Councilwoman Mayfield asked that staff report back to Council in six and twelve months to let Council know how the amendment is working.

Councilman Smith supported the proposed amendment. To Councilwoman Mayfield's concerns of the unpredictability in the process, he felt that all of Council know how important tourism and hospitality is to the economy of our City. If we want to have a fruitful discussion around these issues and be able to come to the same table, it makes sense to have a third party sustainable tourism study that would look at wages, traffic impact, parking impact, cultural impacts, money that remains in the community, and money siphoned out of the community, crime impact, etc. Our tourism and hospitality industry must come to the table so we all all speaking the same language. He also felt we need to re-open the occupancy tax distribution conversation. Ultimately we are talking about what is community benefit.

Councilman Bothwell agreed with Councilman Smith in that we need a sustainable tourism study.

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

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

ORDINANCE BOOK NO. 31 – PAGE 91

Principal Planner Shannon Tuch said that this is an amendment to Chapter 7 of the Code of Ordinance to modify the development review procedures for Level II development applications located outside of the Central Business District. This public hearing was advertised on February 3 and 10, 2017.

She explained that the proposed ordinance would revise and clarify existing regulations affecting the review and administration of Level II projects when NOT located in the Central Business District.

Development projects, based on size or number of units, are categorized as Level I, II or III projects. The detail of the review of each increases with each level allowing larger, more complex projects to receive a higher level of attention and input. Those review processes are as follows:

Level I <i>Over 500 s.f. or 3-19 units</i>	Level II <i>35-100K s.f. or 20-49 units</i>	Level III (Requires CUP) <i>>100K s.f. or 50 units</i>
Pre-application (optional)	Pre-application (optional)	Pre-application required
Applicant submits directly to staff	Applicant submits to DSD for review by the Technical Review Committee (TRC)	Applicant submits to DSD for review by the Technical Review Committee (TRC)
Initial review is complete within 10 days	TRC performs a ministerial review and makes a recommendation to Planning & Zoning Commission	TRC performs a ministerial review and makes a recommendation to Planning & Zoning Commission
	Planning & Zoning Commission performs a final	Planning & Zoning Commissions performs a

	<i>ministerial</i> review	<i>legislative</i> review & makes a recommendation to City Council
	Process follows prescribed notice and meeting schedule	City Council performs a <i>quasi-judicial</i> review
		Process follows prescribed notice and meeting schedule

Prior to June 2011, all Level II projects were reviewed and approved by the city’s Technical Review Committee (TRC). The TRC is comprised of representatives from all city departments that have a role in the development review and approval process, along with a representative from the city’s Tree Commission and the Metropolitan Sewerage District (MSD). These individuals are experts in their respective fields and effectively and equitably apply city, state and federal development standards to projects meeting Level II and Level III thresholds. The TRC performs what is commonly called a *ministerial* review which describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out.

Events prior to June 2011 caused city officials to question not whether the review should be ministerial in nature, but rather whether the body approving the project should be different in order to allow for a more public forum where citizens could attend and offer comment and input. As a result, a change to the review process was adopted that moved the final review of a Level II project from the TRC to the Planning & Zoning Commission. Under this process, the TRC still performs its technical review which is then, to some degree, duplicated by the Planning & Zoning Commission who is limited in their ability to review to the same ministerial standards that the city staff is bound by.

After five years, it is apparent that this change did not produce the desired results and a request to return the final review of Level II projects back to the TRC was made at the August 2014 meeting of the Planning & Economic Development Committee (PED). In this meeting, the PED moved to recommend that Council consider this change but to apply it only to those Level II projects proposed for areas outside of the downtown (non-CBD projects) and to identify strategies to maintain or improve public notice and opportunity for input.

The Planning & Zoning Commission, as part of their stated recommendations and priorities in 2015, also included the return of final review of Level II projects to the TRC citing concerns with: public frustration at the Commission’s inability to consider non-technical matters; the Commission’s unfamiliarity with technical industry standards and how they should be applied; undue pressure from the community to make a legislative decision that could later be challenged legally; and the disincentive that comes with an additional review (time delay) by an appointed body (fear of subjective decisions).

North Carolina cities are not required to provide public notification for a ministerial review and most cities in the state do not provide any notification beyond a simple electronic agenda or email notice. City staff, however, are proposing that a similar level of notification and availability of information be provided that is currently afforded Level II projects going before the Planning & Zoning Commission and these measures, if adopted, greatly exceed what is required under state statutes. These recommendations are similar to those adopted for Major Subdivisions earlier this year, which place an emphasis on earlier public notification, and include the following:

- 1) Require a community meeting be held by the developer prior to application. All property owners within 200’ of the subject property would be notified and invited to attend.

Contact information for both the developer and the appropriate city staff will be provided for those with specific questions or for those who cannot or choose not to attend the meeting. The use of a meeting facilitator is recommended.

- 2) Require that a summary of that meeting be submitted with the application packet. All points raised in the meeting will be directly addressed in the TRC staff report.
- 3) Once application is made, city staff would post a "Notice of Technical Review Meeting" sign on all road frontages included in the subject property. This sign will also have a copy of the TRC agenda, city website, and the contact information where questions may be directed.
- 4) Development Services will upload all submitted documents to the development map (MapAsheville/TRC Projects) within one week of submittal.
- 5) A "Notice of Technical Decision" will be mailed via US mail to all property owners within 200' of the subject property within 10 days of the TRC decision. This letter would provide official notice to anyone wishing to appeal.

The focus of this amendment is to update the review and approval process for Level II projects, however, a number of clarifying amendments are proposed. These clarifications do not change the purpose and intent of the existing language.

This zoning text amendment was reviewed by the Planning & Zoning Commission at their regular meeting on November 2, 2016, and approved unanimously (7:0).

This wording amendment supports the City's Comprehensive Plan by (1) making the development review process clear and predictable; and, (2) following a reasonable and effective public participation and notification process.

Staff recommends approval of the wording amendment text modifying the (non-CBD) Level II review process as the amendment would revise and clarify the review process and is consistent with the Comprehensive Plan and other adopted plans.

Mayor Manheimer opened the public hearing at 6:23 p.m.

Ms. Kim Roney thanked Council for just not focusing on the downtown area.

Mayor Manheimer closed the public hearing at 6:24 p.m.

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

Vice-Mayor Wisler moved to approve the proposed wording amendments to UDO Section 7-5-9 which modifies the non-CBD Level II review process, and find that the request is reasonable, is in the public interest, and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) Makes the development review process clear and predictable; and, (2) Provides a reasonable and effective public participation and notification. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 31 – PAGE 137

V. UNFINISHED BUSINESS:

- A. ORDINANCE NO. 4562 - BUDGET AMENDMENT TO BUDGET CAPITAL PROJECTS DEPARTMENT OPERATING COSTS FOR THE REMAINDER OF FISCAL YEAR 2016-17 AND \$74 MILLION IN CAPITAL PROJECTS APPROVED AS PART OF THE NOVEMBER 2016 GENERAL OBLIGATION BOND REFERENDUM**

Interim Capital Projects Director Jade Dundas said that this is the consideration of a: 1) a budget amendment in the General Fund from unassigned fund balance in the amount of \$197,175 to support the staffing and administration of the new Capital Project Department for the remainder of the 2017 budget year and 2) a budget amendment in the General Capital Projects Fund in the amount of \$74,000,000 to budget capital improvements approved as part of the November 2016 General Obligation Bond Referendum and funded with future debt proceeds.

On November 8, 2016, the citizens of Asheville voted to authorize the City to issue \$74,000,000 in bonds to make capital improvements in the areas of transportation, affordable housing, and parks and recreation. These bonds allow seven years for the completion of key projects which are widely distributed throughout the City. These projects will be built in addition to the City existing capital list which include Innovation Districts and the suite of projects in the River Arts District which is funded through a time sensitive Federal grant.

In order to complete these projects a new department that will focus on capital program development has been proposed. The new department will consist of project teams that concentrate on specific categories of projects. This method of project completion will allow staff to specialize in one field of program management. Through this concentrated effort, staff will develop a particular project skillset which will lead to projects being constructed with greater efficiency.

The budget amendments presented by this staff report will support the staffing and administration of the new department during the remainder of the 2017 budget year. The adjustment to the operating budget includes staff salary and benefits. Staffing will initially include the department director, three program managers, and the business services supervisor. Other positions will be hired during the 2017 budget year but the expenses of these positions will be small and likely offset by salary savings within the general fund budget. Other small incidental operating expenses are also suggested in this amendment which will fund equipment and software.

Council is also being asked to make a capital budget amendment in the amount of \$74 million dollars. Projects will be funded using available cash reserves and bonds will not be issued until individual projects are completed. The suggestion to adopt the full bond amount immediately eliminates the need to consider annual adoption of the incremental amendments. Since the entire funding amount will be spent over the life of the program it is acceptable and advised to amend the capital budget for the full amount of \$74,000,000.

Pros:

- Making these budget amendments will ensure that funding is available to complete bond and grant funded projects on time and cost effectively.
- Adopting a capital budget amendment in the full bond amount of \$74,000,000 facilitate the full financing of all bond projects without the need for annual budget amendments.

Con:

- These budget amendments will place an additional financial burden on the general fund budget but without this reorganization, the City will have a difficult time constructing the projects and meeting the funding source requirements.

Creation of a Capital Projects Department has an impact on the City's general fund department by adding costs which would not be necessary if the bonds funding had not been approved. The approval of bond and grant funding do however have scheduling requirements which require that projects be completed within a certain timeframe. The consequence of not meeting these timeframes can be a forfeiture and/or repayment of funds.

It is important that the City be committed to providing adequate time and attention to the completion of capital projects. Authorizing the budget amendments suggested in this staff report

will help to insure that the City meets the obligations of the various project funding sources. The suggestion to adopt the full bond amount immediately, eliminates the need to consider annual adoption of the incremental amendments. Since the entire funding amount will be spent over the life of the program it is acceptable and advised to amend the capital budget for the full amount.

Staff recommends City Council adopt a: 1) a budget amendment in the General Fund from unassigned fund balance in the amount of \$197,175 to support the staffing and administration of the new Capital Project Department for the remainder of the 2017 budget year and 2) a budget amendment in the General Capital Projects Fund in the amount of \$74,000,000 to budget capital improvements approved as part of the November 2016 General Obligation Bond Referendum and funded with future debt proceeds.

Mr. Dundas responded to Vice-Mayor Wisler when she asked the process for transparency and communication amongst the citizens and Council.

In response to Vice-Mayor Wisler, Director of Finance Barbara Whitehorn said that the \$197,175 should not have any material effect on Fund Balance.

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

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

Councilman Bothwell moved for the adoption of Ordinance No. 4562. This motion was seconded by Councilman Young and carried unanimously.

ORDINANCE BOOK NO. 31 - PAGE 140

B. CONFIRMATION OF ASHEVILLE CITY BOARD OF EDUCATION INTERVIEWEES

Vice-Mayor Wisler said that the terms of Peggy Dalman, Leah Ferguson and Matt Buys, as Asheville City Board of Education members, expire on April 1, 2017.

The following individuals have applied for a vacancy on the Asheville City Board of Education and completed the necessary essay questions to be qualified for consideration for appointment: Pepi Acebo, Margaret Hutchison Allan, Joyce Brown, Margaret Ervin Bruder, Steve Cochran, Brian John Dockery, Patricia Griffin, Lockie Hunter, Yvette Jives, John Michael Kledis, Julie Koenke, James Lee, Mary Ellen Lewis, Dewana Little, Joe Lordi, Morgan Marshall-Clark, Mary McDermott, Sallie Porter, Amy Ray, Adam Reagan, Drew Shelfer, Kathleen Slowiczek, Phyllis Utley, J. Vann Vogel, Elizabeth Ward, Mary Ann Warren, Melissa Weiderman and Larry Wilson.

After reviewing all applications and essay questions, and after speaking highly of all the strong candidate who applied, Yvette Jives received 6 votes; James Lee received 6 votes; Amy Ray received 6 votes; Joyce Brown received 5 votes; Patricia Griffin received 3 votes; Mary Ellen Lewis received 3 votes; Steve Cochran received 2 votes; Pepi Acebo received 1 vote; Margaret Bruder received 1 vote; Phyllis Utley received 1 vote; and Larry Wilson received 1 vote.

Therefore, it was the consensus of Council to interview the top six candidates: Yvette Jives, James Lee, Amy Ray, Joyce Brown, Patricia Griffin and Mary Ellen Lewis. Those interviews will be held in the afternoon of February 28, 2017, with appointments being made later that evening in the formal session. All appointments will be effective April 1, 2017.

C. RESOLUTION NO. 17-41 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PINNACLE

LANDSCAPES, LLC FOR THE PRITCHARD PARK IMPROVEMENTS

ORDINANCE NO. 4563 - BUDGET AMENDMENT FOR THE PRITCHARD PARK IMPROVEMENTS

Director of Parks and Recreation Roderick Simmons said that this is consideration of: (1) a resolution authorizing the City Manager to enter into a contract with Pinnacle Landscapes, LLC to implement landscape improvements at Pritchard Park in downtown Asheville in the amount of \$194,349.00 plus a contingency of \$38,000.00 for a total of \$232,349.00; and (2) a budget amendment in the amount of \$232,349.00 from the Parks and Recreation Department General Fund park maintenance budget to establish a capital project in the General Capital Projects Fund.

The landscape of Pritchard Park has gradually declined over the last 15 years since it was initially constructed. There are a number of factors contributing to the need for such improvements including but not limited to the following:

- Maximize the sense of place for visitors to the park through attractive landscape plantings, additional ornamental boulders for seating, stone pavers, decorative tiles for the columns and a new drinking fountain and benches;
- Optimize the conditions through which existing trees and landscape beds can thrive by spading the compacted soils, providing master arborist care for all of the existing trees, installation of an irrigation system and an ornamental fence to protect the landscape;
- Complete modest repairs to the existing park concrete sidewalks and brick walls; and
- Enhance the experience of the park by adding lighting and park regulation signage along with a landscape that enhances visibility as recommended by the Crime Prevention Through Environmental Design (CPTED) report by the Asheville Police Department dated September 9, 2014.

While portions of the park will remain open to the public during construction, periodic closures of some areas of the park will be necessary. Staff will work with contractors and stakeholders including event organizers to maximize access to the area and notification of impacts.

Since Pritchard Park is a highly utilized park and an integral part of downtown Asheville's vibrancy, communication efforts regarding the planned improvements have been diverse. Information regarding the scope of the project and potential impacts on park use was shared with key stakeholders to include City Council's Downtown Commission, Tree Commission, Parks & Recreation Board, Asheville Downtown Association, Downtown Asheville Residential Neighbors (DARN). Information has also been shared through the City's news site and social media with regular updates scheduled through the completion of the project.

During City Council consideration of this item during its December 13, 2016, regular meeting, City Council requested that staff reach out to additional stakeholders regarding the improvements proposed for Pritchard Park. In furtherance of that request, staff engaged in the following outreach:

- Sponsored an open house on January 12th at the board room of the Asheville Housing Authority. The open house was communicated to a number of community groups as well as publicized through a media release, with a flyer at Pritchard Park, the city blog and social media postings. The two hour forum enabled staff, the consultant and architect to informally discuss the proposed improvements. Information was shared, questions were answered, and feedback was garnered through discussion and comment cards.
 - Feedback yielded the following themes:
 - Creating a setting where all people feel welcome
 - Concerns about extensiveness of fencing

- Suggestions to design the park to accommodate use by people in all areas through the following (i.e. additional hardscaping, grass, AstroTurf).
 - Suggestions for additional amenities:
 - Public restrooms
 - Family and kid-friendly amenities
 - Dog amenities
 - Emergency phone
 - Support for the project as proposed
- Worked with the Homeless Initiative Advisory Committee at its January 24th meeting to discuss the proposal; the Committee offered the following feedback (in order of importance):
 - Preserve downtown green space
 - Do what's best for all people, consider homeless with all people; all have equal right to use space
 - Continue to listen to the voices of homeless people
 - Move forward with safety needs (i.e. lights)
 - Investigate "hangout spots" for homeless people; find a different way to save the trees; get broad public feedback
 - Fence only outside areas to prevent jaywalking
- Met with each member of the City Council to review and discuss the elements of the project and received feedback; and
- Attended a meeting of DARN at Pritchard Park regarding the improvements on February

Based on the feedback received to date, the original bid is presented to City Council for review and consideration. The project – as bid – can move forward to meet the needs and feedback received by ensuring that fencing is of the height and location in areas to encourage pedestrians to cross at marked crosswalks and to protect the large tree (to the dripline) from root damage. While some modifications can be made, the project may need to be re-bid if the scope of the project changes significantly.

Mr. Simmons reviewed the original design and said the main concern was about the height and placement of the fence - narrowing down the usable areas in the Park. Basically there was no Council concern with lighting, signage, landscaping and irrigation. In order not to lose the trees, he showed pictures of cables holding the trees together in order to keep them from splitting. That was the reason for the fencing around the tree. The fencing was designed to be outside the drip line and not have any impact on the root system. In terms of the fence height, 40" is best practices. Anything below 30" will not deter foot traffic. We recommend proceeding with the 40" fence height. After receiving feedback, he showed a revised design where staff and the consultant tried not to eliminate public space. Their overall goal to protect the big tree and keep the fencing within the drip line; and install fencing on Patton Avenue to force pedestrians to the crosswalks. In order to address losing programmable space within the park, they looked at portion of the Park on Haywood Street. They recommend not fencing the area but mulching it with the addition of sitting boulders.

In support of this capital improvement project, the City issued an Advertisement for Bids for construction of the renovations and received two bids plus alternates. One bid was deemed non-responsive.

After thorough review and evaluation, Pinnacle Landscapes, LLC, Asheville, NC, was selected as the lowest, responsible bidder. The base bid plus alternates accepted was \$194,349.00.

The Parks and Recreation Department's Adopted FY 2016-17 General Fund included \$650,000 for maintenance projects. Funding for the Pritchard Park improvements will come from that budget. Due to the size of the project, the Finance Department is recommending that a separate project be established in the City's General Capital Project Fund. The budget

amendment will establish this project by moving budget from the General Fund to the General Capital Projects Fund. This includes \$232,349.00 to be applied for the cost of the Pritchard Park Improvements for a total base bid with alternates of \$194,349.00 plus a contingency of \$38,000.00.

Pros:

- Maximizes the place making qualities in a prominent park located within an urban downtown setting
- Enhances the conditions and provides protection for the health of the existing landscape beds and trees
- Improves security in this urban park via lighting and appropriate plantings

Cons:

- While portions of the park will remain open to the public during the construction of the park, it will be necessary to close some areas of the park periodically
- There will be a modest increase in maintenance relative to the existing conditions which is currently being contracted annually with a landscape contractor.

The \$194,349.00 plus a contingency of \$38,000.00 to support Pinnacle Landscapes, LLC contract for the Pritchard Park Improvements is budgeted in the Parks and Recreation Department operating budget as part of the maintenance budget. Due to the nature and size of the project, Finance staff recommends the project be budgeted in the General Capital Projects Fund rather than the General Fund. A budget amendment is required to create a budget in the General Capital Projects Fund.

Staff recommends that the City Council adopt: 1) a resolution authorizing the City Manager to enter into a contract with Pinnacle Landscapes, LLC to implement landscape improvements at Pritchard Park in downtown Asheville in the amount of \$194,349.00 plus a contingency of \$38,000.00 for a total of \$232,349.00; and 2) a budget amendment in the amount of \$232,349.00 from the Parks and Recreation Department General Fund park maintenance budget to establish a capital project in the General Capital Projects Fund.

When Councilman Smith asked what will happen if we don't fence the tree, Mr. Simmons said that he didn't know how many more years the tree would live. The pedestrian traffic on the root system is taking a toll on the tree and we want to take an early approach to preserve it as long as we can.

Councilman Bothwell said that other parks protect their trees by constructing wooden platforms to keep off the roots opposed to installing a fence around the tree. He felt for the last 15 years we haven't done anything in the way of loosing the soil and adding mulch. He was concerned that the Drum Circle people have not been consulted on this design and that is our biggest one use that we have in the Park.

In response to Councilman Bothwell, Mr. Roderick said that staff briefly reviewed the wooden platform idea but there has not been any engineering to determine how that would work in this particular instance. That is possible, but staff would need more time to make an informed decision. If Council decides to proceed with the wooden platform around the tree, we would need to re-bid the project.

The following individuals spoke in support of the revised design for improvements to Pritchard Park:

- Ms. Susan Robbins, current Chair of the Downtown Asheville Residential Neighbors (DARN) Steering Committee
- Mr. Timothy Sadler (suggested incorporation of artistic effort on the wall)
- Rev. Christopher Chiaromonte

Mr. Byron Greiner, member of the Asheville Downtown Association

Mr. Larry Holt, downtown resident and member of DARN and Asheville Downtown Association, supported the original plan.

Councilman Bothwell supported the revised plan; however, felt the better way to protect the tree roots would be by installing some sort of wooden deck platform. He would also like the Drum Circle to have input on the plans and preferred the the entire park plans be reconsidered.

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

Councilman Smith moved for the adoption of Resolution No. 17-41 with the revised design. This motion was seconded by Vice-Mayor Wisler and carried on a 4-3 vote with Councilman Bothwell, Councilman Haynes and Councilman Young voting "no".

Councilman Smith moved for the adoption of Ordinance No. 4563. This motion was seconded by Vice-Mayor Wisler and carried on a 4-3 vote with Councilman Bothwell, Councilman Haynes and Councilman Young voting "no".

**RESOLUTION BOOK NO. 38 - PAGE 353
ORDINANCE BOOK NO. 31 - PAGE 143**

VI. NEW BUSINESS:

Regarding the Homeless Initiative Advisory Committee, the following individuals applied for the homeless/formerly homeless vacancy: Joey Grisanti, Angela Dubs and Randy Stoudt. It was the consensus of Council to wait until the Homeless Initiative Advisory Committee submits a recommendation.

A. RESOLUTION NO. 17-28 - RESOLUTION APPOINT A MEMBER TO THE BOARD OF ELECTRICAL EXAMINERS

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that Mr. Gus Sims (filling the seat as a licensed engineer) has resigned as a member of the Board of Electrical Examiners, thus leaving an unexpired term until July 1, 2018.

The following individual applied for the vacancy of a licensed engineer: Russell Thacher.

It was the consensus of the Committee to appoint Russell Thacher.

Vice-Mayor Wisler moved to appoint Russell Thacher (licensed engineer) to serve the unexpired term of Mr. Sims, term to expire July 1, 2018, or until his successor has been appointed. This motion was seconded by Councilman Bothwell and carried unanimously.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about the need to truly forgive each other.

Mr. John Brigham presented several questions regarding the Asheville City Schools System, noting that we need to figure out how to educate our people.

Mr. Timothy Sadler supported the Police Chief's request for additional operating funds if we can look at some very innovative approaches to how we address laws, most notably whether they are criminal justice issues or public health issues.

Mr. Joe Connolly made a suggestion regarding the hearing system in the Council Chamber.

Closed Session

At 7:14 p.m., Councilman Young moved to go into closed session for the following reasons: (1) 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(A)(3). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); and (2) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:35 p.m., Councilman Bothwell moved to recessed the closed motion to return to the formal meeting, noting that the closed session would continue at the end of the formal meeting. This motion was seconded by Councilwoman Mayfield and carried unanimously.

VIII. ADJOURNMENT:

Mayor Manheimer adjourned the meeting at 7:35 p.m.

CITY CLERK

MAYOR

**192 HAYWOOD STREET
DENIAL OF CONDITIONAL USE PERMIT**

CITY OF ASHEVILLE CITY COUNCIL

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This application for a conditional use permit (“CUP”) for a hotel in the Central Business District (“CBD”) came before the Asheville City Council (the “Council”) on January 24, 2017 for a quasi-judicial hearing. Based on the testimony of the witnesses, the documentary evidence, the CUP Application and related materials, the exhibits and other evidence presented at the January 24, 2017 hearing, the Council finds that the CUP should be denied, and in support thereof, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. *Section 7-16-2(c) of the City of Asheville Unified Development Ordinance (the “UDO”) provides as follows:*

“Conditional use standards. The Asheville City Council shall not approve the conditional use application and site plan unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case:

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

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

- (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
- (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
- (5) That the proposed use or development of the land will generally conform with the comprehensive plan, smart growth policies, sustainable economic development strategic plan, and other official plans adopted by the city;
- (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
- (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.”

(hereinafter referenced as the “CUP Standards”).

2. The property at issue (PIN 9649-20-1616) (the “Property”) is located at 192 Haywood Street in downtown Asheville and consists of a 2.05 acre parcel of land. The Property is located in the Central Business District (the “CBD”) and is located outside of the Traditional Downtown Core.

3. The Property Owner and CUP Applicant is PHG Asheville, LLC (the “Applicant”).

4. The CUP Application requests an eight-story, 178,412 square foot hotel, with 185 rooms and an on-site parking structure (the “Hotel”). The Hotel includes 1,300 square feet of patio space located on the first floor, as well as 5,000 square feet of outdoor

terrace space located on the top floor, and 5,000 square feet of meeting space.

5. Pursuant to the UDO, the Hotel must be reviewed as a Level III Site Plan, which requires a CUP from the Council.

6. The Property has frontage along three streets: Haywood Street, Carter Street and North French Broad Avenue.

7. The uses of property adjacent to the proposed Hotel are: 1) a church (First Church of Scientist); 2) an apartment building (the Carolina Apartments); 3) an office building (Asheville Broad Center); and 4) the Salvation Army.

8. The Property's primary frontage is along Haywood Street, which borders the Property's entire northern property line. The Property also has frontage along Carter Street, which borders the Property's entire western property line, and North French Broad Avenue, which is the only key pedestrian street which borders the Property. The Hotel is oriented towards Haywood Street.

9. Pursuant to the UDO, the height of the Hotel is measured from the primary pedestrian entrance, which is located along Haywood Street. At that location, the height of the building, from the floor to the top story, is 75 feet. The building also has a parapet and the height of the building measured to the top of the parapet is 89 feet.

10. The Hotel is significantly taller and has a greater bulk and scale than the adjacent church, apartment building, office building and the Salvation Army.

11. Ninety percent of the existing improvements in the area are one and two story structures and approximately 72 percent of those structures are less than 10,000 square feet. The Hotel would constitute the third hotel within a several block radius (approximately $\frac{1}{4}$ mile). The addition of this third hotel would change the visual character of the area, and would create a cluster of hotels in the immediate vicinity, where there were previously smaller buildings and more diverse uses.

12. The Hotel as proposed did not comply with the requirements of the UDO. Specifically, the building was required to: 1) be constructed along 80% of the frontage line of the lot along North French Broad Avenue, the key pedestrian street (“lot frontage”); and 2) have a one story building height at the streetwall (“streetwall”). See UDO Section 7-8-18. The Applicant asserted that it was unable to meet these requirements because the requirements would create an “unnecessary hardship” and was, thus, granted variances by the Asheville Planning and Zoning Commission (the “P&Z”).

13. While the P&Z found that the lot frontage and streetwall variances met the variance requirements under UDO Section 7-6-1 (including unnecessary hardship), “harmony” with the scale, bulk, coverage and character of the neighborhood, are not requirements for a variance in Section 7-6-1. See UDO Section 7-16-2(c)(4).

14. Therefore, whether the Hotel was in “harmony” with the scale, bulk, coverage and character of the neighborhood was not a standard that the P&Z was required to find in order to grant the frontage and streetwall variances, but this is a part of the Council’s decision on the CUP. See UDO Section 7-16-2(c)(4). There was no evidence that any other buildings in the neighborhood, including the other hotels in the area, were allowed the same or similar variances, and these building modifications preclude the Hotel from being in harmony with the area as required by CUP Standard 4.

15. The Hotel would have a basement in the lower portion of the building along Carter Street. The Applicant proposed to locate a loading area in this basement and to provide access to the loading area via a driveway from Carter Street (the “Carter Street Driveway”).

16. There is a significant amount of pedestrian traffic in the area near and around the Carter Street Driveway.

17. The Carter Street Driveway is 28 feet wide, which is wider than the 24 foot driveway width allowed by City Standards. The Applicant obtained a modification from the City’s Transportation Department Director to allow for the wider driveway. The

Transportation Department Director's written decision to allow the modification, however, does not address the impact of the wider driveway on the public health and safety and there was no evidence presented that would indicate the wider driveway would provide the same level of protection to the public, particularly pedestrians, as a driveway which would comply with City requirements.

18. An appraiser, Tommy Crozier, testified on behalf of the Applicant and presented an "Expert Report," which purported to show that CUP Standard 3 was met, i.e., that the development of the Hotel would "not substantially injure the value of adjoining or abutting property." However, Mr. Crozier's testimony and the Expert Report do not contain facts and data sufficient to prove that there would not be a substantial adverse impact on such values following construction of the Hotel.

19. Mr. Crozier's testimony and the Expert Report state generally, and the Council accepts as fact, that the values of property in this area of Asheville (northwest downtown) have been increasing in recent years, and that recent sales prices exceed the assessed tax values of properties in the area. There was, however, no evidence to establish the date of the tax appraisals or evidence that would indicate how these tax values would have any relevance to CUP Standard 3. There was no evidence, through facts and data, to indicate how the Hotel would affect or impact such an increase in value (assuming such an increase would continue) on the adjacent and adjoining properties.

20. There was no sales data presented and there are no comparable sales in the Expert Report, which provide information about the sale prices of properties adjacent to hotels in Asheville, or elsewhere, before and after a hotel was constructed on the tract in question. In fact, there was no data through, e.g., comparable sales, that could show the before and after value of properties adjacent to any hotels in the City, even though the Expert Report indicates there have been multiple hotels constructed in the City in recent years, and at least two in the immediate area.

21. That property values are increasing in the area generally over time does not establish the impact of this Hotel on the adjoining and adjacent tracts, nor whether the value of those particular tracts would suffer an adverse impact if the Hotel is constructed.

22. There was no data or comparable sales to substantiate Mr. Crozier's claim that the Hotel Indigo was in part, the reason for the recent increase in property values in this area of downtown Asheville, or to show such increases were higher or lower than in other parts of the City during the same time period.

23. There was no evidence or data that could show the impact on the value of adjacent properties, when the proposed Hotel would be the third hotel in a several block radius. It appears that additional hotels could increase the value of other nearby hotels, but no facts or data were provided that could establish that property with other uses would not be substantially diminished.

24. The Expert Report also contains the following statements, which brings the reliability of the Expert Report into question:

- a. "The information contained in the Report or upon which the Report is based has been gathered from sources the Appraiser assumes to be reliable and accurate. The owner of the Property may have provided some of such information. Neither the Appraiser nor C&W [Cushman & Wakefield] shall be responsible for the accuracy or completeness of such information, including the correctness of estimates, opinions, dimensions, sketches, exhibits and factual matters. . . ."
- b. "This report assumes that the subject will secure an affiliation with Embassy Suites or a similar chain. If the subject does not maintain a similar affiliation, it could have a negative impact on the subject's market value."
- c. "Our financial analyses are based on estimates and assumptions which were developed in connection with this appraisal engagement. It is, however, inevitable that some assumptions will not materialize and that unanticipated events may occur which will cause actual achieved operating results to differ from the financial analyses contained in the report, and these difference may be material. It should be further noted that we are not

responsible for the effectiveness of future management and marketing efforts upon which the projected results contained in this report may depend.”

25. The CUP application does not request that the Hotel be only an Embassy Suites hotel or a “similar chain.”

26. The methodologies employed, and data provided, by the Applicant’s witness, Mr. Crozier, were inadequate to allow Council to find that the Hotel would not substantially injure the value of adjoining properties.

27. There is significant traffic in downtown Asheville near and around the Property in September and October, and in the summer months. The vehicular traffic in the area will increase if the Hotel is constructed.

28. The Applicant presented the testimony of a traffic engineer, Kevin Dean, as well as Mr. Dean’s written “Traffic Assessment.” The Traffic Assessment did not provide any facts or data which could show the level of traffic or traffic counts for any time of the year, except during a four hour period during the day on November 10, 2016, which was a Thursday. The level of traffic in this area is much higher at other times of the year, particularly the summer months; however, there were no traffic counts or any traffic data provided for any date other than November 10.

29. Mr. Dean was not aware of the environmental conditions on November 10, 2016, or whether such conditions could have affected traffic volumes on that date.

30. The Applicant’s traffic counts were done on November 10, 2016 between the hours of 7 a.m. and 9 a.m., and between the hours of 4 p.m. and 6 p.m. Under industry standards, this is apparently “assumed” to be the time of highest traffic on nearby streets, but there was no evidence which could establish this would be the case for this area of Asheville.

31. The number of trips generated from the Hotel in the Traffic Assessment was also derived from an industry standard, and not the actual trips expected from this Hotel at this location. Hotels in downtown Asheville have an occupancy rate in excess of 85%, but the general rate for an efficient market is 65%. The Traffic Assessment did not take this expected higher occupancy of the Asheville market into account.

32. The Applicant did not submit any traffic data for Friday through Sunday, even though those are typically the days that tourists visit the City and traffic volumes are higher.

33. The estimated traffic counts used for the Traffic Assessment and Mr. Dean's opinion, were also these on a "typical weekday." There was no weekend data collected, even though this is the time that most tourists visit the Asheville downtown.

34. Without accurate traffic counts for any days other than Thursday November 10, there is no data or evidence to determine whether the additional trips generated by the Hotel (as well those from the other tourists which the Hotel will attract but who do not stay at the hotel) would not decrease the existing level of service to an unacceptable level. The Level of Service Summary in the Traffic Assessment was not based on complete information or data.

35. There was no data or evidence presented that could show what the level of traffic would be with three hotels (Indigo, Hyatt and Embassy Suites) located within a several block area for Friday, Saturday and Sunday during the summer months or other high traffic periods.

36. The Traffic Assessment did not account for traffic that will be generated by future hotels and apartments in the downtown area that are planned and approved, but which are not yet fully constructed and operational.

37. The proposed Hotel includes a twenty-foot wide driveway, which provides street access to and from the parking structure and North French Broad Avenue.

38. There is a blind hill with limited visibility in the vicinity of the Hotel's parking deck's entrance and exit onto North French Broad Avenue. To determine whether the addition of that entrance/exit would cause a safety issue would require a "sight distance check." A sight distance check was not a part of the Traffic Assessment and no other evidence was presented to show the parking deck entrance or exit would not endanger driver or pedestrian safety. The Traffic Assessment did no analysis relating to traffic safety as it relates to vehicles entering and exiting this driveway.

39. The Hotel will have 5,000 square feet of meeting space, which would potentially attract visitors to the Hotel, other than guests

staying at the Hotel. This meeting space use was not included in the Traffic Assessment nor included in the traffic analysis.

40. The Hotel would bring more than 50,000 new visitors to the City each year. Not all of these new visitors would be patrons of the Hotel, but would frequent downtown businesses and, therefore, add to the already dense downtown area. The Traffic Assessment did not account for any traffic caused by additional visitors, other than an estimate of trips by Hotel patrons and employees.

41. The Hotel parking deck would have 200 vehicular parking spaces. The Hotel contains 185 rooms and will have 75 employees. There are insufficient spaces in the proposed Hotel parking deck to accommodate this number of guests and employees, even if they all do not drive automobiles to the Hotel.

42. There is currently a shortage of public parking in downtown Asheville and there are often insufficient parking spaces to meet the demand. The development of the Hotel would exacerbate the parking shortages in the area, because of the limited number of parking spaces planned in the parking deck and the Applicant's failure to provide sufficient parking to accommodate all of its guests and employees.

43. The City's 2036 Vision Plan includes the following goal:
"A WELL-PLANNED AND LIVABLE COMMUNITY

Asheville promotes community through thoughtful, resident-led planning that results in pedestrian oriented development for all ages and abilities, harmonized with an integrated transportation system. Asheville's unique character is reflected in our land use, preserved in our historic structures, and honored when incorporated in new development. Thoroughfares are lined with thriving businesses mixed with residential and office uses, and neighborhoods are socioeconomically diverse with a range of affordable housing choices. Open spaces, parks, greenways, community gardens, and edible landscapes are abundant throughout the city."

44. The addition of a third large hotel within a quarter mile radius creates a cluster of hotel uses in this neighborhood, and adds 185 more lodging rooms to the hundreds of hotel rooms which already exist on essentially the same block. As a result, the Hotel would not enhance, and in fact would adversely impact the neighborhood's mix of uses and socioeconomic diversity.

CONCLUSIONS OF LAW

Pursuant to the foregoing FINDINGS OF FACT and UDO Section 7-16-2(c), the Council makes the following Conclusions of Law:

1. The Applicant bears the burden of proving to the City Council, by competent, material and substantial evidence, that the proposed Hotel meets the seven CUP standards in the UDO. If the Applicant fails to meet its burden of producing competent, material and substantial evidence as to any one of the CUP Standards, the CUP must be denied.

2. In this case, the City Council finds that the CUP should be denied, for the following reasons, pursuant to UDO Section 7-16-2(c):

(1)The Applicant failed to produce competent, material and substantial evidence that the Hotel will not materially endanger the public health or safety;

(2) The Applicant failed to produce competent, material and substantial evidence that the Hotel is reasonably compatible with significant natural and topographic features of the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant;

(3)The Applicant failed to produce competent, material and substantial evidence that the Hotel will not

substantially injure the value of the adjoining or abutting property;

- (4)The Applicant failed to produce competent, material and substantial evidence that the Hotel will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located and, moreover, the evidence instead showed the Hotel would not be in harmony with the scale, bulk, coverage and character of the area and neighborhood;
- (5)The Applicant failed to produce competent, material and substantial evidence that the Hotel will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City and, moreover, the evidence instead showed the Hotel would not generally conform to the City's 2036 Vision Plan; and
- (7)The Applicant failed to produce competent, material and substantial evidence that the Hotel will not cause undue traffic congestion or create a traffic hazard.

ACCORDINGLY, based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the Applicant's request for a CUP for the Hotel is denied.

This the 14th day of February, 2017.

Esther Manheimer