

Tuesday – January 24, 2023 - 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Sandra Kilgore; Councilwoman S. Antanette Mosley; Councilwoman Kim Roney; Councilwoman Maggie Ullman; City Manager Debra Campbell; City Attorney Brad Branham; and City Clerk Magdalen Burleson

Absent: Councilwoman Sheneika Smith; and Councilwoman Sage Turner (participating via speaker phone - not voting; and not included in the calculation of quorum, pursuant to City Council Rule of Procedure 36(b))

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

On behalf of the City of Asheville, Mayor Manheimer expressed deep sympathies to the family and friends of Guillermo Rodriguez, long-time volunteer of several City committees, who passed away last week.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING FEBRUARY 2023 AS “BLACK HISTORY AND LEGACY MONTH”**

Mayor Manheimer read the proclamation proclaiming February, 2023, as "Black History and Legacy Month" in the City of Asheville. She presented the proclamation to Dr. Joseph Fox and Mrs. Andrea Clarke who briefed City Council on some activities taking place during the month, mentioning the historic walking tour of James Vester Miller from Slave to Master Mason and a 2023 Calendar Equal Justice, a History of Racial Justice.

**B. PROCLAMATION PROCLAIMING FEBRUARY 4, 2023, AS “ROSA PARKS/TRANSIT EQUITY DAY”**

Councilwoman Ullman read the proclamation proclaiming February 4, 2023, as "Rosa Parks/Transit Equity Day" in the City of Asheville. She presented the proclamation to Jan Whiteman, representing Grace Circle United Women of Faith (UWF), Good Morning Circle UWF, and Skyland Unit UWF (Treasurer); and Kathy Woods, representing Have a Heart Circle and Skyland Unit UWF (President), who briefed City Council on some activities taking place during the day.

**II. CONSENT AGENDA:**

At the request of City staff, Consent Agenda Item “G” has been removed from the Consent Agenda and rescheduled until February 14, 2023, in order to allow time for additional analysis and research on lower emission alternatives.

Consent Agenda Item “E” was removed from the Consent Agenda for discussion and/or individual votes.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 10, 2023**

**B. ORDINANCE NO. 4994 - ORDINANCE TO UPDATE APPENDIX G OF THE CODE OF ORDINANCES IDENTIFYING RECREATIONAL FACILITIES WHERE CONCEALED HANDGUNS ARE PROHIBITED**

**Action Requested:** Adoption of an ordinance to update Appendix G of the Code of Ordinances identifying recreational facilities where concealed handguns are prohibited.

**Background:**

- Section 12-42 (a) (5) of the Asheville City Code prohibits carrying a concealed handgun by permit (CCHP) at recreational facilities identified in Appendix G of the Code.
- This Section also requires that the list of facilities in Appendix G be reviewed and updated as necessary.
- The Appendix was last updated via Ordinance No. 4251 on November 12, 2013.
- Since that time there have been several recreational facilities added and a few recreational facilities that are no longer in existence and therefore an update to Appendix G is necessary.
- Signs listing prohibited concealed handguns will be visibly posted at all listed recreational facilities and city buildings in compliance with Section 12-44 of City Code.
- Section 12-42 (a) (3) of the Asheville City Code also prohibits carrying concealed handgun by permit (CCHP) in all buildings that are owned, leased or temporarily controlled by the city.
- A list of Parks and Recreation city-owned buildings has been added to Appendix G in order to clarify that while they are defined separately from “recreational facilities”, CCHP are also prohibited within and on their premises.

**Vendor Outreach Efforts:** N/A

**Council Goal(s):**

- Improve/Expand Core Services

**Committee(s):**

- None

**Pro(s):**

- Updated Appendix G correctly reflects all recreational facilities and provides guidance for citizens.
- Appendix G - List of Recreational Facilities of City Code of Ordinances solidifies the City’s understanding and commitment to safety.
- Supports City Council’s fiscal year 2022 - 2023 Improve and Expand Core Services priority.
- Corrects incomplete and improper listings.

**Con(s):**

- None

**Fiscal Impact:**

- This action requires no additional City resources and has no fiscal impact.

**Motion:**

- Motion to adopt an ordinance to update Appendix G of the Asheville Code of Ordinances identifying recreational facilities where concealed handguns are prohibited in compliance with Section 12-42 (a) (5) of the Code

**ORDINANCE BOOK NO. 43 - PAGE 327**

**C. RESOLUTION NO. 23-16 - RESOLUTION AUTHORIZING THE SALE OF ONE 2012 AUTOCAR GARBAGE TRUCK DEEMED SURPLUS CITY PERSONAL PROPERTY**

**Action Requested:** Approval of a resolution authorizing the sale of one (1) 2012 Autocar Garbage Truck which is beyond its useful life and deemed surplus City personal property.

**Background:**

- The City's Sanitation Division of the Public Works Department identified one (1) garbage truck as surplus personal property, with no anticipation of future utilization by the City.
- The 2012 Autocar Garbage Truck is expected to sell for more than \$30,000.
- All bids are solicited through GovDeals online auction.
- Pursuant to N.C.G.S. §160A-266, the Sale and Disposal of Personal Property valued at \$30,000 or more must be approved by the City Council.
- The City's Purchasing Manager has authority to dispose of personal property valued at less than \$30,000 by private negotiation and sale.

**Vendor Outreach Efforts:**

- Not Applicable

**Council Goal(s):**

- A Financially Resilient City

**Committee(s):**

- None

**Pro(s):**

- Prudent asset management
- Space utilization eliminates the need to store large, unused equipment
- Competitive process yielded market price

**Con(s):**

- None

**Fiscal Impact:**

- The garbage truck is fully depreciated and the General Fund will recognize the entire amount as revenue.
- An estimate of the annual revenue from the sale of fixed assets is already included in the Adopted General Fund Budget.

**Motion:**

- Move to adopt a resolution authorizing the sale of one (1) 2012 Autocar Garbage Truck which is beyond its useful life and deemed surplus City personal property.

**RESOLUTION BOOK NO. 43 - PAGE 412**

**D. RESOLUTION NO. 23-17 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PERSES CONSULTING LLC FOR THE CITYWIDE EMERGENCY OPERATIONS AND THE CONTINUITY OF OPERATIONS PLANS**

**Action Requested:** Adoption of a resolution authorizing the City Manager to execute a contract with Perses Consulting, LLC in the amount of \$200,000 to provide consulting services for the citywide emergency operations and continuity of operations plans.

**Background:**

- As a part of the Fiscal Year 2023 Budget process City Council prioritized and budgeted for a consultant to create citywide Emergency Operations and Continuity of Operations Plans.
- The focus of an Emergency Operations Plan (EOP) is on the emergency measures that are essential for responding to and protecting the public.
- A Continuity of Operations Plan (COOP) outlines the execution of essential functions that must continue during a wide range of emergency situations.
- A Diverse, cross departmental team reviewed and scored responses for the competitive request for proposal process. Perses Consulting, LLC was selected as top vendor.
- The proposed timeline to complete the plans is approximately eight months.

**Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned businesses through solicitation processes which include posting on the State's Interactive Purchasing System and requiring prime contractors to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services.
- No services will be subcontracted.
- Perses Consulting, LLC is woman-owned

**Council Goal(s):**

- Neighborhood Resilience

**Committee(s):**

- N/A

**Pro(s):**

- The plans are essential for emergency preparedness and the continuance of government during time of disruption
- The plans will recommend improvements for coordination and communication of COA departments internally and externally.
- The plans will outline the necessary and appropriate actions to be taken to protect people and property from the consequences of emergencies and disasters.
- This action supports the Climate Justice Initiative options to build resilience.

**Con(s):**

- None

**Fiscal Impact:**

- Funding for this contract is available in the Fire Department operating budget.

**Motion:**

- Motion to authorize the City Manager to execute a contract with Perses Consulting, LLC to provide consulting services for the citywide emergency operation and continuity of operations plan.

**RESOLUTION BOOK NO. 43 - PAGE 413**

**E. RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE BUNCOMBE COUNTY SHERIFF'S**

**OFFICE FOR THE USE OF THE FUSUS REAL-TIME CRIMINAL INTELLIGENCE CAMERA SYSTEM**

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

**F. RESOLUTION NO. 23-19 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WALKER CONSULTANTS FOR FACILITY ASSESSMENT AND PRE-DESIGN SERVICES FOR THE PARKING GARAGE CAPITAL REPAIRS PROJECT**

**Action Requested:** Adoption of resolution authorizing the City Manager to enter into a contract with Walker Consultants for pre-design services for the Parking Garage Capital Repairs Project in an amount not to exceed \$203,630; and further authorizing the City Manager to execute contract amendments in an amount not to exceed \$20,363 (10%) for additional professional services.

**Background:**

- Three of the City's four parking garages are more than 30 years old.
- Due to age and deferred maintenance, the structures are in need of more frequent inspections and assessments.
- The City's parking structures include:
  1. Harrah's Cherokee Center - 46 years old
  2. Rankin Avenue - 34 years old
  3. Wall Street - 34 years old
  4. Biltmore Avenue - 10 years old
- A comprehensive facility assessment of all four garages—including structural, envelope, building code compliance, accessibility, and expected remaining useful life, is needed to develop a prioritized plan for repairs and renovations.
- A Request for Qualifications was advertised on October 11, 2022 for facility assessment and engineering professional services.
- Responses were due November 8, 2022.
- The City received five Statements of Qualifications from the consultants listed below:
  - Bennett & Pless - Atlanta, GA
  - CPL - Suwanee, GA Office
  - Kimley-Horn - Charlotte, NC Office
  - SKA - Asheville, NC Office
  - Walker Consultants - Charlotte, NC Office
- After careful evaluation by the evaluation committee, Walker Consultants received the highest score.
- The evaluation committee consisted of representatives of the Transportation Department, Capital Projects Department, and Planning and Urban Design Department.
- The Request for Qualifications included a complete facility assessment, parking study, life cycle assessment, capital planning, and engineering of the project to address the most immediate repairs.
- The initial contract will authorize the assessment and study phase of the project.
- The scope and cost of the subsequent repair projects will be determined by the results of the pre-design study.

**Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned businesses through solicitation processes which include posting on the State's Interactive Purchasing System and encouraging consultants to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services.
- Walker Consultants will be subcontracting with John J. Clark & Associates, Inc. of Charlotte, NC which is a Minority-Owned Enterprise.

**Council Goal(s):**

- A Clean and Healthy Environment & A Financially Resilient City

**Committee(s):**

- None

**Pro(s):**

- This assessment will provide the reports and data needed to make effective decisions regarding repairs, on-going maintenance and future planning for the City's Parking Garages.
- This work is for the safe and beneficial use of City parking facilities by City residents and visitors.

**Con(s):**

- The project will temporarily impact parking operations, as phased shut-downs of areas of the garages are coordinated during construction.
- There is also the potential for short-term, limited closure of some parking spaces during the assessment phase.
- These temporary closures and reductions in parking result in a hardship for users, and a loss of parking revenue for the City.

**Fiscal Impact:**

- Funding for this contract was previously budgeted and is available in the Parking Services Capital Projects Fund.

**Motion:**

- Motion authorizing the City Manager to enter into a contract with Walker Consultants for pre-design services for the Parking Garage Capital Repairs project in an amount not to exceed \$203,630; and further authorizing the City Manager to execute contract amendments in an amount not to exceed \$20,363 (10%) for additional professional services.

**RESOLUTION BOOK NO. 43 - PAGE 415**

**G. RESOLUTION AUTHORIZING THE PURCHASING DIVISION TO EXECUTE PURCHASE ORDERS WITH GILLIG FOR 4 NEW 30-FOOT DIESEL BUSES FOR THE ASHEVILLE RIDES TRANSIT SYSTEM THAT INCLUDES TRANSIT ACCESSORIES AND FEATURES, UTILIZING THE WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES COOPERATIVE PURCHASING AGREEMENT; AND AUTHORIZING THE CITY MANAGER TO UTILIZE SOLE SOURCE PROCUREMENT ON THE BASIS OF STANDARDIZATION AND TO EXECUTE A PURCHASE ORDER WITH CLEVER DEVICES FOR TECHNOLOGY EQUIPMENT FOR THE BUSES**

This item has been removed from the Consent Agenda and rescheduled until February 14, 2023, in order to allow time for additional analysis and research on lower emission alternatives.

Jonathan Wainscott explained how electric buses come with a very high slavery fingerprint.

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.

Councilwoman Roney moved for the adoption of the Consent Agenda, minus Consent Agenda Item "E". This motion was seconded by Councilwoman Mosley and carried unanimously.

**ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

**E. RESOLUTION NO. 23-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE BUNCOMBE COUNTY SHERIFF'S OFFICE FOR THE USE OF THE FUSUS REAL-TIME CRIMINAL INTELLIGENCE CAMERA SYSTEM**

Assistant City Manager Ben Woody said this is consideration of adoption of a resolution authorizing the City Manager to enter into an interlocal agreement with the Buncombe County Sheriff's Office for the use of the FUSUS real time criminal intelligence camera system.

**Background:**

- The Buncombe County Sheriff's Office (BCSO) has implemented a software system (FUSUS) capable of extracting live and historical security feeds from multiple sources for use by law enforcement personnel.
- The FUSUS system is operated and maintained by the BCSO.
- This interlocal agreement provides permission for the BCSO to install FUSUS linked cameras on various portions of city property.
- BCSO is responsible for the operation and maintenance of cameras installed on city properties and will pay all costs associated with installation and required network connectivity and speeds.
- The interlocal agreement also provides for limited access by the Asheville Police Department (APD) to all FUSUS capabilities and cameras located within the city limits, excluding access to those cameras located on Buncombe County Schools properties within the city limits.
- The interlocal agreement requires \$30,000 annual compensation to the BCSO and may be canceled by either party by providing thirty days written notice.

**Vendor Outreach Efforts:**

- Not applicable

**Council Goal(s):**

- A well-planned and livable community
- A Clean and Healthy Environment

**Committee(s):**

- Environment and Safety Committee - January 24, 2023

**Pro(s):**

- Establishes the expectations for the installation and use of the FUSUS real time criminal intelligence camera system.
- Access to the FUSUS system will enhance local law enforcement ability to effectively respond to public safety emergencies.

**Con(s):**

- Funding was not planned in the FY23 budget for APD access to the FUSUS system.

**Fiscal Impact:**

- Funding for FY23 will come from anticipated savings in other interlocal agreements that the City has with the County.
- Beginning in FY24, annual funding will need to be included in the Manager's Proposed Budget.

**Motion:**

- Motion to adopt a resolution authorizing the City Manager to enter into an interlocal agreement with the Buncombe County Sheriff's Office for the use of the FUSUS real time criminal intelligence camera system

Two individuals spoke in support of more security cameras for the residents of housing authority properties, specifically mentioning Hillcrest Apartments. They asked for a safe police presence to deter any criminal activity.

Two individuals felt there needs to be more public discussion on how and when the software will be used, along with guidelines in place to assure how the system will be used, what it will be used for, who will have access to the information, who will benefit from it, and who will be harmed from it. In addition, they felt this is a huge change with massive implications for our community including further potential for violations of constitutional rights as it pertains to the 1st, 4th and 14th Amendments. A proposed ordinance was provided from the ACLU "An Act to Promote Transparency and Protect Civil Rights and Civil Liberties with respect to Surveillance Technology" which they hoped Council would adopt. The ordinance would require a Surveillance Impact Report prior to new technologies being adopted as well as a Surveillance Use Policy, neither of which have been provided as of this writing to my knowledge.

Councilwoman Roney and Councilwoman Ullman noted that the full interlocal agreement was provided to Council late this afternoon, which did not give Council sufficient time within which to review the provisions.

Councilwoman Roney said that if the City does not have an internal policy for accessing Fusus footage, what kind of checks/balances are in place to ensure quality, equitable service outcomes when City staff are using this equipment. Mr. Woody said that the City does not have an internal policy; however, City staff would be happy to work with the Sheriff's Office for that type of policy within the City.

Councilwoman Roney asked if the Fusus footage can/cannot be made public due to state legislation the way body camera footage is restricted, please point Council to that legislation. If the footage is unrestricted, what policies are in place for staff, electeds, or the public to review? City Attorney Branham said that video taken by the Fusus system would fall under the statutory definition of a "Recording" (NCGS 132-1.4). Pursuant to subpart (b) of this statute, these recordings are NOT considered public records. However, there is a process for certain people to review the footage. How and if this occurs depends on the circumstances of each case.

Councilwoman Roney suggested we postpone this action and take it back to the Environment & Safety Committee to have a greater understanding of the accountability and access point policy as we both use and safeguard public data.

Mayor Manheimer noted that the Sheriff's Office is already utilizing this program with cameras all over Buncombe County. This interlocal agreement is to have three cameras installed on three City properties - City Hall, Pritchard Park and Lexington/Hiawasse Streets. There are also residents who have private cameras who have opted into this system.



Sheriff Detective Armani Meadows and Sheriff Major Don Eberhardt said that their platform does not include facial recognition.

In response to Councilwoman Roney, City Manager Campbell said that there will be a governance group formed which Police Chief Zack will be a part of. They are looking at coordination between the Sheriff's office and Asheville Police Department to address crime in our community.

When Mayor Manheimer asked how long the data is retained, Councilwoman Ullman responded that it is generally a 72-hour window and then on an auto-delete cycle.

Councilwoman Mosley read one of the top priorities of the Housing Authority "Listen to actual Asheville Housing residents' requests and recommendations for immediate solutions to deteriorating public safety in their communities, respond to those requests, and, in the long term, increase local law enforcement funding and staffing to support proactive community policing, like the Camden model." This would allow the Asheville Police Department to access the already-installed cameras in public housing communities which are most harmed by crime in our community. It was very clear from meetings in those communities that they feel this type of system is needed.

Councilwoman Ullman felt that with the low staffing in the Asheville Police Department this might be a new tool to assist other ways to police.

Vice-Mayor Kilgore noted that this is a one year agreement, with the ability to terminate with 30 days notice.

In response to Councilwoman Ullman, Mr. Woody said that the Sheriff's Office policy, along with the interlocal agreement are public records and can be accessed by the public.

When Councilwoman Ullman suggested that Council refer this item back to the Environment & Safety Committee since the policy and interlocal agreement was not made available to that Committee until late afternoon today, Mayor Manheimer noted that the policy is the Sheriff's Office policy. She felt that she could support the Environment & Safety Committee discussing whether the Asheville Police Department should have an additional policy on how the footage is managed.

Councilwoman Kilgore moved for the adoption of the resolution authorizing the City Manager to execute an interlocal agreement with the Buncombe County Sheriff's Office for the use of the Fusus real-time criminal intelligence camera system. This motion was seconded by Councilwoman Mosley and carried on a 4-1 vote, with Councilwoman Roney voting "no."

## **RESOLUTION BOOK NO. 43 - PAGE 414**

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

#### **A. MANAGER'S REPORT - POINT IN TIME COUNT**

Homeless Strategy Division Manager Emily Ball said that our community's annual [Point-in-Time count](#) of people experiencing homelessness is coming up Tuesday, January 31, 2023. This count provides our only [comprehensive, local dataset on homelessness](#): how many people are experiencing it and for how long, whether they are in shelters or on the streets, what their demographic and household characteristics are. Point-in-Time data is submitted to the federal government and helps shape what resources are available for our community + drives local strategy as we work together to decrease occurrences of homelessness in Buncombe

County. Connecting with people on the streets takes a robust volunteer effort, and we need your help! Volunteers will work in teams to survey people experiencing homelessness in specific geographic areas beginning at 4 p.m. Each volunteer team will be led by an experienced professional, and no prior experience is necessary to volunteer; volunteers new to the count will receive training in advance.

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

##### **A. PUBLIC HEARING TO AMEND A PREVIOUSLY APPROVED CONDITIONAL ZONING APPROVAL (ORDINANCE NO. 4853) FOR PROPERTY LOCATED AT 264 ENKA HERITAGE PARKWAY TO MAKE SITE PLAN AND LAYOUT CHANGES**

##### **ORDINANCE NO. 4995 - ORDINANCE TO AMEND A PREVIOUSLY APPROVED CONDITIONAL ZONING APPROVAL (ORDINANCE NO. 4853) FOR PROPERTY LOCATED AT 264 ENKA HERITAGE PARKWAY TO MAKE SITE PLAN AND LAYOUT CHANGES**

Principal Planner Will Palmquist said that this is the consideration of an ordinance to amend a conditionally approved conditional zoning approval (Ordinance No. 4853) for property located at 264 Enka Heritage Parkway to make site plan and layout changes, currently zoned Commercial Expansion - Conditional Zone. This public hearing was advertised on January 13 and 20, 2023.

#### **Project Location and Contacts:**

- The project site totals 45.5 acres located at 264 Enka Commerce Pkwy (PIN 9617-43-0440).
- Owner: Enka Partners of Asheville LLC.

#### **Summary of Petition:**

##### Project Site

- The project site consists of 45.5 acres located at 264 Enka Commerce Pkwy.
- The project site was previously rezoned Commercial Expansion - Conditional Zone (COM EXP - CZ) per Ordinance No. 4853.
- The applicant is requesting an amendment to the conditional zoning based on the new site plan.
- The site is designated "Employment / Anchor Institution" on the city's Future Land Use (FLU) Map, which was amended through the aforementioned conditional zoning ordinance.
  - A change in the FLU designation will not be required.

##### Overall Project Proposal

- New building construction includes three, one-story, light industrial/distribution buildings totalling 585,360 gross square feet.
- The buildings are proposed to be built in phases.
- Other site improvements include off-street parking, a new roadway connection, and stormwater retention ponds.
- The historic brick clock tower on the site will be preserved.

##### Site Layout and Design

- Maximum building height for buildings in the COM EXP district is 80 feet. The maximum building height of the proposed project is 48 feet.
- Front yard (15 feet), rear yard (25 feet) and side yard setbacks (none) are required in the COM EXP district. The proposed project meets these requirements.

- Maximum impervious surface in the COM EXP district is 80%. The proposed project would result in a total impervious area of 66%.

#### Landscaping and Open Space

- Landscape requirements apply, including street tree, parking lot, and building impact.
- Open space is required at a rate of 15%, resulting in a required 6.83 acres of open space. The project is proposing 15.5 acres (34%) of open space.
- The project is classified as "suburban" under the Tree Canopy Preservation standards and has a classification of "Class C". The project is required to provide 20% new tree canopy, which will be satisfied through new tree planting (19.6%) and payment of fee-in-lieu (0.4%).

#### Access, Sidewalks and Parking

- Access to the site will be provided by a new cul-de-sac roadway extension off of Enka Heritage Parkway. This new roadway will be dedicated to and maintained by the NCDOT.
- A total of 463 employee parking spaces are proposed, including 18 accessible spaces and 23 bicycle parking spaces. Minimum and maximum required parking spaces for industrial uses in the COM EXP district are based on the number of employees (minimum of 1 per employee and maximum of 2 per employee on the shift of greatest employment). At this time the number of proposed employees is unknown so no determination of minimum and maximum parking spaces can be made.
- The project proposes 10 foot-wide sidewalks throughout the site. The COM EXP district requires that new 10 foot-wide sidewalks be constructed along the primary access corridor, as well as that new 8 foot-wide sidewalks be constructed to connect principal uses within the development.
- A Traffic Impact Analysis (TIA) was performed for the prior conditional zoning. An addendum to this previous TIA was performed based on the new site plan proposal.
- The TIA concludes that all analyzed signalized intersections and approaches are expected to operate at an acceptable Level of Service. Therefore no improvements are necessary.
- The proposed Enka Heritage Greenway is planned to cross the property along the western boundary of the project area and will include a 10 foot-wide paved greenway, a 15 foot-wide maintenance easement, and a 25 foot-wide construction easement.
- Final alignment of the greenway and corresponding easements are to be coordinated with Buncombe County.

#### Technical Modifications

- The project is seeking technical modifications to development standards through the conditional zoning process including:
  - Building entrance spacing in excess of the required 75-foot distance.
  - Parking lot tree islands will maintain a minimum width of nine feet instead of the required ten feet standard.
  - Outdoor site lighting will include approximately 2/3rds of onsite pole luminaires with type 5 (360 degree) lamps which have a Backlight-Uplight-Glare ("BUG") rating of B4-U0-G2. AH lumens per lamp are under 20,000 lumens and all poles are under 37 feet in height.

#### **Comprehensive Plan Consistency:**

- The proposed development supports a number of goals in the Living Asheville Comprehensive Plan, including:
  - **Encourage Responsible Growth** by directing growth in designated growth areas that provide access to housing, transportation, goods and services, and employment opportunities.

- **Promote Great Architecture and Urban Design to Enhance Placemaking** by encouraging the preservation of the historic Enka community clock tower.
- **Make Streets More Walkable, Comfortable and Connected** by preserving the opportunity for future greenway construction.
- **Facilitate Real Estate Development that Maximizes Public Benefit** by locating an employment opportunity in areas slated for future growth and in proximity to transportation and recreation facilities.
- The growth scenario maps all identify the areas around the intersection with Sand Hill Road and Smokey Park Highway as employment/anchor institution centers suitable for higher density/intensity development.
- The proposed development is compatible with the Future Land Use designation of “Employment / Anchor Institution” which is proposed, in part, as “important employment clusters and are often substantial anchors for the wider community”.

**Compatibility Analysis:**

- The proposed light industrial/distribution project is compatible with the surrounding land uses, including:
  - To the south of the subject property is industrial (IND) zoned property that supports an active manufacturing plant.
  - To the west is additional IND zoned property that supports the AB Tech Community College
  - To the east is a mix of industrial and warehouse uses located in Buncombe County and zoned Employment (EMP).
  - To the north across Smokey Park Highway is a mix of highway-oriented commercial businesses zoned Highway Business (HB).
  - The proposed development’s warehouse and distribution use contributes to the employment center that already exists in this location and is well located for access to transportation corridors.

**Council Goal(s):**

- This project is most closely aligned with the council goal of *A Well-Planned and Livable Community*.

**Committee(s):**

- Technical Review Committee (TRC) - July 11, 2022 - approved with conditions.
- Planning & Zoning Commission (PZC):
  - August 3, 2022, September 7, 2022, November 2, 2022, and December 7, 2022 - continued to January 4, 2023 PZC meeting.
  - January 4, 2023 - approved (Vote 6:0).

**Staff Recommendation:**

- Staff recommends approval of this conditional zoning amendment based on the reasons stated above.

Mr. Palmquist reviewed the prior conditional zoning approved on 1/26/22: (1) A one-story warehouse/distribution building totalling 129,859 s.f.; (2) 278 employee parking spaces and 696 van fleet parking spaces; (3) Technical modifications for sidewalk widths, parking lot tree islands, pedestrian entrance spacing, and outdoor lighting; and (4) Conditions for retention of historic clock tower and greenway easement. He then reviewed the aerial imagery and the Future Land Use Map. Regarding the site plan, (1) Three, one-story, light industrial and distribution buildings totalling 585,360 s.f.; (2) Off-street parking (463 spaces), a new roadway connection, and

stormwater retention ponds; (3) The historic brick clock tower on the site will be preserved; (4) Landscaping, including street tree, parking lot, and building impact; (5) Access off Enka Heritage Pkwy; (6) 10'-wide sidewalks throughout the site; and (7) Easements for Enka Heritage Greenway. He then showed building elevations. Conditions include (1) Easements to be dedicated for the Enka Heritage Greenway; and (2) The historic clock tower shall be retained and preserved on site with amenity/seating area and historic marker. Technical modifications include (1) Building entrance spacing in excess of the required 75-foot distance; (2) Parking lot tree islands will maintain a minimum width of nine feet instead of the required ten feet standard; (3) Outdoor site lighting will include approximately 2/3rds of onsite pole luminaires with type 5 (360 degree) lamps which have a Backlight-Uplight-Glare ("BUG") rating of B4-U0-G2. AH lumens per lamp are under 20,000 lumens and all poles are under 37 feet in height; and (4) No bike lanes into the development. He reviewed the review process along with how the project complies with the Living Asheville Comprehensive Plan. Staff concurs with the Planning & Zoning Commission and recommends approval of the proposed conditional zoning.

In response to Councilwoman Roney regarding the use of fee in lieu for the tree canopy, City Attorney Branham said there are some restrictions in place regarding the use of those fees; however, they are not the same restrictions as a fee in lieu for open space. For tree canopy fee in lieu, there does not, under state law, prohibit the use in other geographic locations; however, he felt it was the intent of our ordinance to reinvest the tree canopy fee in lieu money in the same district it comes from.

Councilwoman Roney explained how she appreciated the commitments regarding the clock tower and greenway connection; however, due to our limited land availability for commercial use, she was concerned that we might lose our leverage in getting the kind of community benefits that will help with our goals.

Duncan Clark, Senior Vice-President of the Asheville-Buncombe County Economic Development Coalition, explained how this is a unique opportunity to have a site plan which is focused on dense buildings where we can attract higher technology and higher wage jobs. If Council approves this request, it will be site ready for a developer. If a developer wants to take advantage of the City's incentives, they will have to provide community benefits as determined by City Council. He suggested the City emulate a policy Buncombe County has been utilizing regarding employment practices and incentives for sustainability investments.

At 6:20 p.m. Mayor Manheimer opened the public hearing, and when no one spoke, she closed the public hearing at 6:20 p.m.

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

Councilwoman Mosley moved to approve the conditional zoning amendment request for the property located at 264 Enka Heritage Pkwy zoned Commercial Expansion - Conditional Zone (COM EXP-CZ) for the modification of the site plan and find that the request is reasonable, is in the public interest, is consistent with the city's comprehensive plan and meets the development needs of the community in that the request: 1) encourages responsible growth by directing growth in designated growth areas that provide access to employment opportunities; 2) promotes great architecture and urban design to enhance placemaking by encouraging the preservation of the historic Enka community clock tower; 3) makes streets more walkable, comfortable and connected by preserving the opportunity for future greenway construction; and, 4) facilitates real estate development that maximizes public benefit by locating an employment opportunity in areas slated for future growth. This motion was seconded by Vice-Mayor Kilgore and carried unanimously.

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. RESOLUTION NO. 23-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DEVELOP A SCOPE OF WORK FOR AN OFFICIAL AUDIT IN RESPONSE TO THE COMMUNITY REPARATIONS COMMISSION'S IMMEDIATE RECOMMENDATION TO CEASE HARM IMPACTING THE AFRICAN AMERICAN COMMUNITY**

Equity Director Brenda Mills said that this is the consideration of a resolution authorizing the City Manager to develop a scope of work for an official audit in response to the Community Reparations Commission's Immediate Recommendation to cease harm impacting the African American community.

**Background:**

- At their December 5, 2022 meeting, the Community Reparations Commission unanimously approved an immediate recommendation for the City of Asheville and Buncombe County to stop further harm by ceasing the repetition of institutional processes that lead to racially disparate outcomes.
- The immediate recommendation included conducting an official audit to ensure compliance with federal and state laws, regulatory bodies, codes of conduct, court orders, and consent decrees to allow for the acceptance of guarantees that the City and County have ceased to inflict further harm on the African American community.
- The intent from the Community Reparations Commission is for the City and County to select an independent third-party firm to conduct the audit as described by the immediate recommendation.
- The proposed resolution directs the City Manager to work collaboratively with Buncombe County and the Community Reparations Commission to develop a scope of work, which will ultimately be used in a formal solicitation to select a firm to conduct the recommended audit.
- The proposed resolution also commits and provides assurances that necessary and reasonable action will be taken to address intentional and unintentional harm committed against the African American community.
- The draft resolution was reviewed by the Community Reparations Commission at their January 9 meeting. Feedback provided by the Community Reparations Commission has been incorporated into the draft of the resolution.
- Additional feedback was received from the Chair and Vice Chair of the Community Reparations Commission during the January 17 City Council Equity & Engagement Committee meeting. That feedback was distributed to the full Community Reparations Commission and is reflected in the latest version of the resolution.
- The draft resolution was prepared collaboratively between the City and County. The Buncombe County Commission was briefed on the proposed resolution at their January 17 meeting.
- Following City Council consideration of the resolution on January 24, the County Commission will then take a vote on February 7.
- Upon resolution adoption, City and County staff will work collaboratively with the Community Reparations Commission to finalize the scope of work and subsequently advertise a solicitation to select a firm to complete the recommended audit.
- Upon audit completion, the resolution directs the City Manager to review audit findings and evaluate and prioritize remediation opportunities.

**Council Goal(s):**

- Reparations

**Committee(s):**

- Reparations Commission - January 9, 2023 - Reviewed provided feedback
- Equity and Engagement Council Committee - January 17, 2023 approved 2-0.

**Pro(s):**

- This action will allow staff to develop a scope of work to effectuate the audit.

**Con(s):**

- Additional work time for staff to do research and develop a work plan on this recommendation.

**Fiscal Impact:**

- Previously budgeted reparations funding will be used to complete the audit.

Ms. Mills said she will cover the following key takeaways (1) On December 5, 2022, the Community Reparations Commission (CRC) passed an immediate recommendation to end further harm by ceasing repetition of institutional processes that lead to racially disparate outcomes; (2) The recommendation included a call for the City and County to conduct an official audit to ensure compliance with federal and state laws, regulatory bodies, codes of conduct, court orders, and consent decrees confirming that further harm to the African American community has ended; (3) The City Council and County Commission are being asked to consider the adoption of a resolution authorizing staff to develop a scope of work that will lead to the selection of a firm to conduct the requested audit; (4) Upon resolution approval, City and County staff will work with the CRC to develop a scope of work for the audit, select a firm, and then review and prioritize remediation opportunities; and (5) The scope of work, audit firm selection process, and review and prioritization of opportunities will be discussed at monthly CRC meetings.

She reviewed the December 5, 2022, immediate recommendation overview as follows (1) Recommended that the City and County provide assurance and take effective measures to end ongoing and current harms due to intentional and unintentional policies, programs, practices, and procedures; (2) Called for the City and County to conduct an audit to ensure compliance with federal and state laws, regulatory bodies, Codes of Conduct, Court Orders, and Consent Decrees - The audit will demonstrate that the cessation of harm has occurred and prevent further harm or threats to African Americans; and (3) Recommended that the City and County promote and enforce codes of conduct and ethical norms and take ongoing measures to foster: (a) Confidence building between government and African Americans; (b) Truth seeking mechanisms and processes; and (c) Timely accountability of the dispensation of recommendations. She then provided Council with the following draft City and County resolution overview: (1) Describes the CRC vote taken on Dec. 5 approving the immediate recommendation; (2) Commits and provides assurances that the City will take necessary and reasonable action to address harm due to intentional and unintentional policies, programs, practices and procedures that produce disparities as well as racially and gender-based discriminate outcomes in Education, Health Care, Housing, Economic Development and Justice; (3) Summarizes the call to conduct an official audit to ensure compliance with federal and state laws, regulatory bodies, codes of conduct, court orders, and consent decrees to allow for the acceptance of guarantees that the City and County have ceased to inflict further harm on the African American community; (4) Directs City and County staff to collaborate with the CRC to develop a scope of work and formal solicitation to select a firm to conduct the recommended audit; and (5) Upon audit completion, commits to reviewing and prioritizing audit findings to remediate the perpetuation of further harm. The following is the City and County response plan:

- **Dec. 5** - CRC adopted Immediate Recommendation
- **Dec. 6-Jan. 6** - City and County staff developed implementation plan and drafted resolution
- **Jan. 9** - Reviewed implementation plan and discussed draft resolution with CRC
- **Jan. 17** - County Commission and City Council Equity & Engagement Committee received briefing and provide feedback on draft resolution authorizing staff to work with CRC to develop audit scope of work and begin process of selecting a firm to conduct the audit
- **Jan. 24** - City Council to consider adoption of draft resolution
- **Feb. 7** - County Commission to consider adoption of draft resolution
- **Feb. 20** - City and County staff to review draft scope of work with CRC
- **Mar. 20** - City and County staff to finalize scope of work with CRC
- **Spring 2023** - Finalize and advertise solicitation and select firm to conduct audit
- **Summer 2023** - Finalize audit and review and prioritize recommendations
- **Ongoing** - Monthly updates and feedback sessions with CRC and coordinate with Impact Focus Areas

She said the key process components are (1) Scope of Work: Detailed description of the work, milestones, and timeline necessary to fully complete the recommended audit; (2) Solicitation: Public advertisement for vendors to review scope of work and submit responses that will be vetted to consider the best qualified firm to conduct the requested audit and prepare the findings report; (3) Audit Report: Detailed overview of key findings from the audit prepared by the selected firm to include detailed recommendations on policy and operational revisions needed to ensure cessation of further harm; (4) Evaluation and Prioritization: City and County staff, in coordination with the CRC, to review findings from the Audit Report and prioritize opportunities to ensure the cessation and prevention of future harm; and (5) Audit Resources: Funding to conduct the audit would come from previously approved City and County Reparations resources.

In response to Councilwoman Roney, Dr. Mullen (Chair of the Reparations Commission) and Ms. Dewana Little (Vice-Chair of the Reparations Commission) said they supported the resolution as revised and reviewed by the Reparations Commission being presented at this time.

In response to Councilwoman Mosley, Dr. Mullen said that this audit will be external and internal.

Jonathan Wainscott said since the creation of the Asheville City Council in 1931, a total of 653 years of service has been given by all our mayors and council members. Only 56 of those years have been served by African-Americans. This constitutes 8.6% representation of the black community for the entire history of the Asheville City Council. One quarter of African-American service was accomplished by one Councilwoman and Mayor, Terry Bellamy. Altnother 25% has been served by all who have followed her through 2022. He hoped that an audit of City Council should be included.



David Greenson supported this resolution and suggested we streamline the process in the future by not having an extra layer of review by a Council Committee, especially since the Reparations Commission vets their recommendations thoroughly.

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

Councilwoman Mosley moved to recommend authorizing the City Manager to develop a scope of work for an official audit in response to the Community Reparations Commission's Immediate Recommendation to cease harm impacting the African American Community. This motion was seconded by Vice-Mayor Kilgore and carried unanimously.

## **RESOLUTION BOOK NO. 43 - PAGE 416**

### **B. AFFIRMATION OF INDEPENDENT REVIEW COMMITTEE MEMBERSHIP WHICH WILL ANALYZE EVENTS AND CIRCUMSTANCES RELATED TO THE RECENT WATER OUTAGE**

Assistant City Manager Ben Woody said this is the consideration of affirming an independent review committee (IRC) membership which will analyze events and circumstances related to the recent water outage

#### **Background:**

- In December 2022, the City of Asheville experienced several days of extraordinarily low temperatures, causing water pipes to freeze and break and related infrastructure to fail.
- The associated damage to the system resulted in numerous customers of the City's Water Department to go without water for extended periods of time.
- On January 10, 2023 City Council adopted a resolution (Resolution No. [23-7](#)) that established a multidisciplinary and independent review committee (IRC) to review the water outage.
- The IRC shall include the following position classifications: two residential water customers, one commercial water customer, one emergency response/disaster preparedness professional, two communications professionals, and three subject matter experts in public water systems.
- Two appointments shall be made by the Buncombe County Commission, and the remaining appointments shall be made by the City Council
- The IRC will provide:
  - a comprehensive account of the event,
  - an assessment of the City's operations and emergency response and communication efforts, and
  - an analysis of needed infrastructure and process and policy changes that, if implemented, would maximize prevention of future events and improve communication, emergency response, and mitigation processes.

#### **Vendor Outreach Efforts:**

- Not applicable

#### **Council Goal(s):**

- Improve/Expand Core Services

#### **Committee(s):**

- Not applicable

**Pro(s):**

- The IRC analysis and written report will identify and assess actions that took place originating from days of unusually cold weather and provide actionable items to improve operations to minimize future impacts.

**Con(s):**

- Not applicable

**Fiscal Impact:**

- Funding will come from the Water Resources Fund's existing budget to contract with an independent facilitator to support the IRC and to engage with an expert to prepare a written report.

In response to Councilwoman Roney about the process used for these seats, Mr. Woody explained that this was not a typical process that Council uses for advisory board appointments. Candidates reached out to the City and we emailed them with information necessary to be considered. Since this is largely a technical committee on the water outage, we also reached out to people that have that special skill set.

In response to Councilwoman Mosley, Mr. Woody said they did reach out to the School of Government; however, they declined to commit to the committee. However, City staff is recommending an adjunct professor who is a facilitator at the School of Government. Mr. Woody also responded to Councilwoman Mosley by saying that the School of Government may be interested in some post-review analysis if that is the direction Council chooses to go through.

Katie Hudson supported the appointment of Kim Murphy, who is a residential and commercial customer, along with a water scientist and farmer, on the independent review committee. She was concerned about the demographic makeup of men vs. women on the committee.

Mayor Manheimer noted that Buncombe County will also appoint two people.

Councilwoman Roney moved to affirm the following seven members to the water outage independent review committee:

- Residential Water Customer: Michele Ashley
- Commercial Water Customer: Carolyn Roy
- Communications Professional: Mike McGill
- Communications Professional: Rob Brisley
- Public Water Systems Subject Matter Expert: John McLaughlin
- Public Water Systems Subject Matter Expert: Ted Tyree
- Public Water Systems Subject Matter Expert: Michael Holcombe

This motion was seconded by Councilwoman Ullman and carried unanimously.

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

Several individuals spoke to City Council about various matters, some being, but are not limited to: 1883 Asheville highlights; concern of Plugged-In Productions holding amplified musical events at Hazel Robinson Theatre; update on the Realignment Working Group on Boards & Commissions; and how homelessness is a housing problem and the need to address the root cause of homelessness.

**Closed Session**

At 7:18 p.m., Councilwoman Ullman 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)(1). The statutory authorization is contained in N.C.G.S. 143-318.10 (e); 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, including, but not limited to, the handling or settlement of a claim regarding the following: City of Asheville v. Arthur F. Jenkins, having a case file number of 16-CVS-2677. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(3). This motion was seconded by Councilwoman Roney and carried unanimously.

At 7:37 p.m., Councilwoman Roney moved to come out of closed session. This motion was seconded by Councilwoman Ullman and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 7:37 p.m.

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CITY CLERK

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MAYOR