

Tuesday - September 14, 1999 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor Edward C. Hay Jr.; Councilman M. Charles Cloninger; Councilman Earl Cobb; Councilwoman Barbara Field; and Councilman O.T. Tomes; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Thomas G. Sellers

INVOCATION

Vice-Mayor gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING THE WEEK OF SEPTEMBER 27-OCTOBER 1, 1999, AS "MINORITY ENTERPRISE DEVELOPMENT WEEK"

Councilman Tomes read the proclamation proclaiming September 27-October 1, 1999, as "Minority Enterprise Development Week" in the City of Asheville. He presented the proclamation to Mr. Marvin Vierra.

B. PROCLAMATION PROCLAIMING SEPTEMBER 15-OCTOBER 15, 1999, AS "NATIONAL HISPANIC HERITAGE MONTH "

Mayor Sitnick read the proclamation proclaiming September 15-October 15, 1999, as "National Hispanic Heritage Month " in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons and Ms. Edna Campos, who briefed City Council on some activities taking place during the month.

C. RECOGNITION OF URBAN TRAIL VOLUNTEERS

Vice-Mayor Hay read a certificate recognizing Ms. Grace Gordon Pless and Ms. Harriette Gradman Winner for their special contributions and endeavors to enhance the quality of life in Asheville and to tell the story of the City's rich history.

CONTINUANCE REQUEST

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS OF WIRELESS TELECOMMUNICATION FACILITIES

Mayor Sitnick said that on September 13, 1999, she received a letter from Mr. Larry McDevitt, attorney representing Bell Atlantic, requesting that the public hearing be postponed in order for his clients to have an opportunity to review the proposed ordinance for input.

Councilman Cloninger moved to postpone the public hearing on this matter until the October 19, 1999, worksession. This motion was seconded by Councilwoman Field and carried unanimously.

II. CONSENT:

-2-

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 24, 1999, AND THE WORKSESSION HELD ON SEPTEMBER 7, 1999

B. ORDINANCE NO. 2606 - BUDGET AMENDMENT TO SET UP A MEMORIAL FOR JIM CRUM, FORMER PRINT SHOP MANAGER

Summary: The consideration of a budget amendment, in the amount of \$2,152, to set up a memorial for Jim Crum, former City Print Shop Manager.

Jim Crum, former City Print Shop Manager, recently passed away after an extended illness. A number of City employees who knew and worked with Jim expressed an interest in setting up a memorial to Jim as an expression of appreciation for a special person. Since Jim was an avid skier and supporter of youth activities, the idea of establishing an annual scholarship to assist a deserving youth to participate in the City's learn to ski program was suggested as a fitting memorial to Jim. City employees have contributed a total of \$1,076 to the City for the memorial and Jim's family have agreed to match the employee contributions bringing the total to \$2,152. This action will set up an ongoing appropriation for the use of this amount as a memorial to Jim.

City staff recommends that a budget amendment for the Jim Crum Memorial be approved.

ORDINANCE BOOK NO. 17 - PAGE

C. RESOLUTION NO. 99-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH WOLFPEN CORPORATION FOR THE PROJECT KNOWN AS BREVARD ROAD ANNEXATION AREA, PHASE II, CONTRACT A, SEWER SYSTEM IMPROVEMENTS

Summary: The consideration of adopting a resolution awarding the contract for Brevard Road Annexation Area - Phase II - Contract "A" Sewer System Improvements to the lowest responsible bidder, Wolfpen Corporation, in the amount of \$249,681.00.

This project is part of the proposed Brevard Road Annexation Area Sanitary Sewer System Improvements and consists of the installation of approximately 3,600 linear feet of eight inch (8") diameter sanitary sewer line and related appurtenances.

The Engineering Department received and publicly opened three (3) bids on Friday, July 30, 1999, at 2:00 p.m. After a thorough review of the bid documents by the Engineering Department and the Office of Minority Affairs, Wolfpen Corporation was found to be the lowest responsible bidder with a total bid of \$249,681.00. The Engineer's estimate for this project was \$312,555.00.

Wolfpen Corporation has performed several projects of this nature in the past without any major problems.

The construction time for this project is identified as 120 calendar days in the contract documents. The Contractor will be required to pay the sum of \$250.00 as liquidated damages for each and every calendar day that he/she shall be in default after the time stipulated in the contract.

-3-

Staff recommends that City Council adopt the resolution awarding the bid for Brevard Road Annexation Area - Phase II- Contract "A" Sewer System Improvements to Wolfpen Corporation, the responsible low bidder, and authorize the City Manager to execute all necessary agreements and contracts.

RESOLUTION BOOK NO. 25 - PAGE 284

D. RESOLUTION NO. 99-127 - RESOLUTION ISSUING A WRITTEN DECISION IN RESPONSE TO THE FILLING OF AN FCC FORM 1235 AND AN FCC FORM 1240 BY BRENMOR CABLE PARTNERS, L.P. (d/b/a INTERMEDIA) FOR MONTHLY RATES FOR THE BASIC SERVICE TIER ON ITS CABLE SYSTEM

Summary: The consideration of a resolution which would issue a written decision in response to the filings of an FCC Form 1235 and an FCC Form 1240 by Brenmor Cable Partners, L.P. (d/b/a InterMedia) for monthly rates for the basic service tier on its cable system.

Pursuant to federal law and the regulations of the Federal Communications Commission ("FCC"), the City of Asheville ("City") is certified to regulate basic service rates and charges of Brenmor Cable Partners, L.P. ("InterMedia") in the franchised area of InterMedia within the corporate limits of the City.

On May 19, 1997, the City of Asheville received from InterMedia an FCC Form 1235 entitled "Abbreviated Cost of Service Filing for Cable Network Upgrades". The FCC Form 1235 filed with the City of Asheville by InterMedia was for pre-approval of maximum permitted rates for the basic service tier to recover costs for the rebuild of a portion of the cable system. The City of Asheville reviewed that FCC Form 1235 filed by InterMedia and issued an order in Resolution No. 97-90, extending the review period of the FCC Form 1235 by the City of Asheville by 150 days pursuant to federal laws and regulations.

After further review of the FCC Form 1235 filed by InterMedia, the City Council adopted Resolution No. 97-213 on November 11, 1997, which directed InterMedia to keep an accurate account of all amounts received by reason of the rate increase requested pursuant to the FCC Form 1235 filing by InterMedia, in order that the City may, at its option, subsequently issue a written decision regarding the rate request and determine whether or not refunds should be provided to subscribers after completion of the upgrade or rebuild of the cable system.

FCC regulations require a cable system operator who has chosen the pre-approval option to file the FCC Form 1235 again following the end of the month in which upgraded cable services become available and are providing benefits to all customers of rate-regulated services, using actual costs where applicable. The upgrade or rebuild of the cable system was completed for service to customers as of August 1, 1998.

On March 1, 1999, InterMedia filed FCC Form 1240, for the purpose of justifying its monthly rates and hourly service charges for cable services on the basic service tier on its cable system for the time period of June 1, 1999, to May 31, 2000. The new maximum permitted rate for the monthly rate on the basic service tier as calculated by InterMedia on the FCC Form 1240 for the time period of June 1, 1999 to May 31, 2000, was \$10.3579. InterMedia proposed to continue charging the current monthly rate of \$11.91 for the time period of June 1, 1999, to May 31, 2000, which amount exceeds the new maximum permitted rate of \$10.3579, by relying upon the filing of the FCC Form 1235 submitted to the City on May 16, 1997, which determined that an increase in the basic service tier rate of \$1.96 per month would be permitted as of the time of filing, based upon a rebuild of the cable system. The new maximum permitted rate of \$10.3579 -4-

and the increase in the rate of \$1.96 per month based on the filing of the FCC Form 1235 would combine to be a rate of \$12.32, which is in excess of the current basic service tier rate charged of \$11.91 per month.

Based upon the filing of FCC Form 1240 by InterMedia on March 1, 1999, and the filing of FCC Form 1235 by InterMedia on May 19, 1997, the City Council adopted Resolution No. 99-82 on May 25, 1999, which noted that InterMedia should file again the FCC Form 1235. The resolution also ordered InterMedia to keep an accurate accounting of all fees charged to subscribers on the basis of the FCC Form 1235 filed on May 16, 1997, and the FCC Form 1240 filed on March 1, 1999, in order that the City of Asheville may subsequently issue a decision on the reasonableness of the rates charged.

After adoption of Resolution No. 99-82 by the City Council on May 25, 1999, InterMedia filed again the FCC Form 1235 with the City of Asheville on June 4, 1999. Additional information was required from the Federal Communications Commission and InterMedia regarding the second filing of the FCC Form 1235, which information has now been received.

After further review of all documents and FCC requirements, it appears that the monthly rate of \$11.91 charged by InterMedia for the basic service tier, based upon the filings of FCC Form 1235 on May 19, 1997, and June 4, 1999, and the filing of FCC Form 1240 on March 1, 1999, does not exceed the maximum permitted rate per month for the basic service tier as authorized under FCC rules and regulations. The resolution makes that finding.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 25 - PAGE 287

E. RESOLUTION NO. 99-128 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 1999 GREEK FESTIVAL

Summary: The consideration of a resolution to allow alcohol at the Asheville Greek Festival on October 1-3, 1999, at the time and location shown on the resolution.

The Asheville Greek Festival is a unique celebration of Greek heritage and traditions at City County Plaza on October 1-3, 1999. Local entertainment, food, and vendor displays will be available daily.

N.C. Gen. Stat. sec. 18B-300(c) authorizes the City by ordinance to regulate or prohibit the consumption and/or possession of open containers of malt beverages and unfortified wine on public streets, and on property owned, occupied or controlled by the City. The City Council of the City of Asheville has adopted an ordinance pursuant to that statutory authority. That ordinance, Section 11-11 in the Code of Ordinances, provides that the City Council may adopt a resolution making other provisions at a special event or community festival.

The Parks and Recreation Department recommends that City Council adopt the resolution allowing the possession and consumption of malt beverages and/or unfortified wine at the Asheville Greek Festival to include the areas as described in the resolution.

RESOLUTION BOOK NO. 25 - PAGE 290

F. MOTION REVISING THE REGIONAL WATER AUTHORITY OF ASHEVILLE, BUNCOMBE AND HENDERSON BY-LAWS

-5-

Summary: The consideration of a motion revising the Regional Water Authority's By-Laws to reflect the conditions of the Restated and Amended Supplemental Water Agreement dated August 13, 1996.

Most of the changes reflect the requirements of the amended water agreement, and to update other references which have been revised over time, such as change in position title of the Director's position from Director of Water and Sewer to Director of Water Resources. The existing By-Laws were last adopted before the Water Agreement was updated in 1996. The restated Water Agreement in 1996 made a number of changes to the organization of the Authority, including the number of members of the Authority and the inclusion of representation by Henderson County.

One additional change was included in the By-Laws as approved by the Water Authority on August 17, 1999. On the second page, Section V, line 4, the word "appropriate" was substituted for "good" in front of cause to allow each appointing board to the Water Authority (the City Council, Buncombe County Commission, or Henderson County Commission) to decide by two-thirds vote what is appropriate for removing one of its appointments to the Water Authority before the appointee's three year term ended. Mr. Bill Moyer, a member of the Water Authority and Henderson County Commissioner, expressed the desire of the Henderson

Commissioners to remove an appointment from its own board if that individual left the Board of Commissioners before the term on the Water Authority expired.

The Water Agreement requires the Water Authority, the City Council, and the Buncombe County Commissioners to consider changes to the Water Authority By-Laws, with the amended By-Laws considered adopted upon the approval of two of the three boards.

The Regional Water Authority recommends approval of the changes to the By-Laws.

G. RESOLUTION NO. 99-129 - RESOLUTION ADOPTING THE RECOMMENDATIONS OF THE WATER AUTHORITY TO AWARD A BID TO COOPER CONSTRUCTION COMPANY FOR THE BEE TREE CREEK CROSSING

Summary: The consideration of a resolution adopting the recommendation of the Regional Water Authority to award a contract to Cooper Construction Company for the Bee Tree Creek Crossing Project.

The City Engineer's Office received bids on June 29, 1999, for the Bee Tree Creek Crossing waterline improvement project. This was the second scheduled bid opening as there were not three (3) bids at the first bid opening. This project involves the relocation of a 24-inch waterline, in three (3) separate locations along Bee Tree Creek. These relocations are necessary to insure the continued uninterrupted service of this major waterline.

Two (2) bids were received at the June 29th opening with Buckeye Construction Company submitting the low bid of \$ 349,220. Following is a summary of the bids received:

Buckeye Construction Co., Canton, N.C. \$349,220

Cooper Construction Co., Hendersonville, N.C. \$366,025

The engineer's estimate for this project is \$340,000

The Office of Minority Affairs has reviewed these bids and has determined that the low bidder, Buckeye Construction Company, did not fully comply with the requirements for -6-

documentation of the Minority Business Plan. The second low bidder, Cooper Construction Company, did comply with the requirements of the Minority Business Plan but their bid is over budget.

The Regional Water Authority voted on August 17, 1999, to reject the bid of Buckeye Construction Company and award the contract to Cooper Construction Company.

Since August 17, 1999, staff has met with Cooper Construction Company as part of a "value engineering" review to negotiate reduction in the contract price. The results of these efforts will be prepared as Change Order No. 1 and executed at the time of execution of the construction contract.

The Regional Water Authority recommends to reject the low bid from Buckeye Construction Company for non-compliance with the Minority Business Plan, and a contract be awarded to Cooper Construction Company.

RESOLUTION BOOK NO. 25 - PAGE 292

H. RESOLUTION NO. 99-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE N.C. DEPT. OF CRIME CONTROL & PUBLIC SAFETY TO FUND IMPLEMENTATION OF AN AUTOMATED CRIME REPORTING SYSTEM

Summary: The consideration of a resolution to authorize the City Manager to accept a grant award from the North Carolina Department of Crime Control and Public Safety, Division of Governor's Crime Commission.

The Governor's Crime Commission has awarded the City a grant in the amount of \$19,950. A local matching contribution of \$6,650 is required. Total project cost is \$26,600. The intent of the project is to implement an automated crime reporting system for the Police Department which will interface with the existing criminal justice information system and the Department's mobile computer network infrastructure. The switch from a manual process to an automated process will result in greater efficiency and accuracy in the department's crime reporting program.

The source for the local match is 110-0000-233-01-02, controlled substance excise tax revenues.

City staff recommends City Council adopt a (1) resolution authorizing the City Manager to accept the grant award and (2) Budget Ordinance Amendment to appropriate funds to the Police Department budget in support to the above referenced grant.

RESOLUTION BOOK NO. 25 - PAGE 293

I. ORDINANCE NO. 2607 - BUDGET AMENDMENT TO FUND THE IMPLEMENTATION OF AN AUTOMATED CRIME REPORTING SYSTEM

Summary: See Consent Agenda Item "H" above.

ORDINANCE BOOK NO. 17 - PAGE

-7-

J. RESOLUTION NO. 99-131 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE U.S. DEPT. OF JUSTICE TO FUND A COMMUNITY POLICING PROJECT

Summary: The consideration of a resolution authorizing the City Manager to accept a grant award from the U. S. Dept. of Justice, Office of Community Oriented Policing Services (COPS), and to adopt a budget amendment, in the amount of \$990,454, to support the grant.

The Police Department is planning a project to install 106 in-car mobile computers, and to fund two non-sworn police service technician (PST) positions. The computers will increase officer efficiency by allowing them to complete and submit reports from the field thereby reducing office time and remaining available for service. The police service technicians will perform non law enforcement related tasks now performed by officers. With the PSTs performing such activities as traffic control and direction, cold crime reporting, and the like officers will have more time to commit to law enforcement and community problem solving.

The City has been awarded a grant from the U.S. Dept. of Justice in the amount of \$742,840 to fund a portion of the project cost. As part of the grant requirements, the City is required to contribute local matching funds in the amount of \$247,614, which is equivalent to 25% of the total project cost. The City's matching requirement will be financed by appropriating a portion of unappropriated fund balance.

City staff recommends City Council adopt the (1) resolution authorizing the City Manager to accept the grant award; (2) budget amendment, in the amount of \$990,454, to appropriate funds in support of the above referenced grant.

RESOLUTION BOOK NO. 25 - PAGE 294

K. ORDINANCE NO. 2608 - BUDGET AMENDMENT TO SUPPORT A GRANT FROM THE U.S. DEPT. OF

JUSTICE TO FUND A COMMUNITY POLICING PROJECT

Summary: See Consent Agenda Item "J" above.

ORDINANCE BOOK NO. 17 - PAGE

L. RESOLUTION NO. 99-132 - RESOLUTION CONFIRMING APPOINTMENTS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointments of Stephanie Coleman, representative of the Eagle/Market Streets Development Corporation, and Grace Dorn, representative of the NAACP, on the Minority Business Commission.

On May 26, 1998, City Council adopted Resolution No. 98-63 adopting a City-County Minority Business Plan.

The composition of the Minority Business Commission consists of 13 members from various groups.

Jill Arrington, representing the Eagle/Market Streets Development Corporation, and Christy Credle, representing the NAACP, have resigned due to relocation and personal time constraints, respectively. The Commission has met and recommends to City Council the appointments of (1) Stephanie Coleman to serve the unexpired term of Ms. Arrington, term to -8-

expire August 1, 2001, or until her successor has been appointed; and (2) Grace Dorn to serve the unexpired term of Ms. Credle, term to expire August 1, 2000, or until her successor has been appointed.

City staff recommends City Council adopt a resolution confirming the appointments of Stephanie Coleman and Grace Dorn on the Minority Business Commission.

RESOLUTION BOOK NO. 25 - PAGE 295

M. RESOLUTION NO. 99-133 - RESOLUTION ESTABLISHING A PUBLIC ART POLICY

Summary: The consideration of adopting a policy on public art and creating a seven-member Public Art Board to oversee this policy.

The City of Asheville, although listed as seventh and thirteenth in two national surveys of favorite "art destination" cities of all sizes and ninth in terms of outstanding small town cultural centers, does not have a policy or program on public art. City Council at both its 1998 and 1999 Retreats discussed the need for some sort of mechanism to deal with public art issues and to promote the installation of public art. The *Downtown Streetscape Plan* and the Cultural Arts Task Force of VISION, INC! both have recommended the establishment of a Public Art Board or Commission. City Council has requested staff prepare a public art policy. A Public Art Working Group, chaired by Councilmember Barbara Field and staffed by the Urban Trail Coordinator, has met monthly since November to draft recommendations that form the basis for the proposed policy statement. The City Manager will make adjustments to realign the organization to accomplish the implementation of this policy by transferring the Urban Trail Coordinator from the Public Works Department to the Parks and Recreation Department. This staff person will implement the policy and continue to oversee the Urban Trail Program. Since the focus of Cultural Arts has been in Parks and Recreation, through the support of the YMI programming, special events and festivals, and other cultural programs, locating the Public Arts function in Parks and Recreation is a natural fit. The Public Art Program will be funded through a 1% annual appropriation of the General Capital Improvement Program being dedicated to acquisition and maintenance of Public Art. In addition, an establishing the Public Art Board with members being appointed by City Council is recommended.

The Public Works Department and the Parks and Recreation Department recommend that City Council adopt a public art policy and create a seven-member Public Art Board.

RESOLUTION BOOK NO. 25 - PAGE 296

N. ORDINANCE NO. 2609 - ORDINANCE ESTABLISHING A PUBLIC ART BOARD

Summary: See Consent Item "M" above.

ORDINANCE BOOK NO. 17 - PAGE

O. RESOLUTION NO. 99-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH CAROLINA POWER & LIGHT COMPANY FOR THE REPLACEMENT OF BALLFIELD LIGHTS AT MURPHY-OAKLEY PARK AND WEAVER PARK

-9-

Summary: The consideration of an agreement with Carolina Power & Light Company for the replacement of ballfield lights at Murphy-Oakley Park and Weaver Park.

Over the past several years, the ballfield lights at both Murphy-Oakley and Weaver Parks have continued to deteriorate. This has caused not only increased maintenance costs but has also resulted in safety concerns for participants. The Parks and Recreation Department has been working with Carolina Power & Light Company (CP&L) on an innovative approach to replacing the ballfield lights without an upfront capital expense. Traditionally, it has cost approximately \$75,000 to replace lights at one field. By working with CP&L, we are able to enter into a lease purchase agreement which would allow for monthly payments to CP&L to cover not only the cost of the lights but also maintenance. The monthly fee for Weaver Park would be \$587 and the monthly fee for Oakley would be \$1,132. The Parks and Recreation Department currently has funds allocated for this expenditure. As stated before, CP&L will maintain the lights over the ten-year lease agreement. This would include replacing any lights, relining the lights, and any other electrical work at the beginning of spring and fall seasons. In addition, after five years, CP&L will completely rewire and relight both ballfields. This total price is turnkey and includes use of concrete poles, which would replace the current poles at both fields. The Department has been spending approximately \$12,000 per year in maintenance costs associated with the outdated lights and feels that this equipment rental and maintenance agreement with CP&L would be extremely advantageous to the City.

The Parks and Recreation Department requests City Council approval for the City Manager to enter into an equipment rental and maintenance agreement with Carolina Power & Light for the replacement of the ballfield lights at Murphy-Oakley Park and Weaver Park.

RESOLUTION BOOK NO. 25 - PAGE 299

P. RESOLUTION NO. 99-135 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A NEW AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR RENEWAL OF THE ASHEVILLE FIRE DEPARTMENT'S HAZARDOUS MATERIALS RESPONSE TEAM'S STATUS AS "REGIONAL RESPONSE TEAM" FOR MAJOR HAZARDOUS MATERIALS EMERGENCIES IN WESTERN NORTH CAROLINA

Summary: The consideration of a resolution authorizing the Mayor to enter into a new agreement with the North Carolina Department of Crime Control/Public Safety's Emergency Management Division to provide hazardous materials emergency response in Western North Carolina through June of 2001.

In 1994, the North Carolina Assembly established funding for a "regional response" approach to hazardous

materials emergencies. This approach involved selection of the state's top six local fire department hazardous materials response teams to respond to multi-county areas in case of emergency using vehicles and equipment furnished by the state. The Asheville Fire Department's Hazardous Materials Response Team was selected as one of these elite teams.

In 1997, the State called for new competitive proposals for regional hazardous materials response teams, and Asheville's team was selected as the WNC team again. This past May, the State once again called for competitive proposals for regional hazardous materials response teams—and, again, Asheville's team was selected as the WNC regional response team.

The new agreement provides for hazardous materials emergency response for major incidents in North Carolina's 20 western counties from October of 1999 through June of 2001. -10-

The State will continue to provide and maintain the team's response vehicle ("RRT 6") and related equipment. The State will also reimburse the City for training expenses (up to \$24,500), administrative expenses (up to \$31,500), workers compensation expenses (up to \$8,750) and medical surveillance/evaluation (up to \$14,000) for each year of the proposed two-year agreement.

The Fire Chief recommends City Council adopt a resolution authorizing the Mayor into enter into a new agreement with the State of North Carolina through which the City of Asheville will provide hazardous materials emergency response in Western North Carolina, and the State will furnish response equipment and reimburse expenses of the City's hazardous materials response team for such response.

RESOLUTION BOOK NO. 25 - PAGE 300

Q. ORDINANCE NO. 2610 - BUDGET AMENDMENT FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS A PART OF THE HAZARD MITIGATION PROGRAM FOR THE FRENCH BROAD RIVER

Summary: The consideration of a budget amendment, in the amount of \$2,382,328, from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program.

The City applied for funds in 1997 for a grant from the Federal Emergency Management Agency as a part of the Hazard Mitigation Program. The grant was recently awarded in the amount of \$2,382,328 and is designated for the acquisition and improvement of commercial property for the French Broad River Greenway.

The section of greenway represents the City of Asheville's commitment to revitalize and build a greenway corridor along the French Broad River. Earlier developments in the greenway corridor include the French Broad River Park, Amboy Road Park Trail, and land acquisition. The section of greenway will be located on 7.25 acres along Riverside Drive adjacent to Haywood Road. The grant funds will be used for the acquisition and improvement of commercial property for the French Broad River Greenway.

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of \$2,382,328, to establish a budget for implementation of the FEMA grant project.

ORDINANCE BOOK NO. 17 - PAGE

R. RESOLUTION NO. 99-136 - RESOLUTION AUTHORIZING THE TRANSFER OF PROPERTY TO BUNCOMBE COUNTY FOR EXPANSION OF THE WEST ASHEVILLE BRANCH LIBRARY

Summary: The consideration of a resolution authorizing the transfer of property currently owned by the City of Asheville to Buncombe County for expansion of the West Asheville Branch Library.

A part of the negotiations for the renovation of the upstairs area of the West Asheville Complex included the transfer of approximately 5400 sq. ft. of area to Buncombe County for expansion of the West Asheville Branch Library. The library wishes to expand the current branch to include a resource area for Library programs and meeting space. The Parks and Recreation Department has been working on this particular issue and wishes to recommend proceeding with a deed transfer of the above property to Buncombe County for this specific use. -11-

The Department also recommends that a clause be included in the deed transfer that would require Buncombe County to revert the property back to the City of Asheville if the Library ever moves or if this particular use of the property is no longer an active function that results in direct customer services to the citizens. Furthermore, the Parks and Recreation Department is asking for City Council approval to begin negotiations involving both City and County Legal staff in finalizing this agreement. The anticipated value of this property based upon information provided by Ed Vess of Community Development will be approximately \$27,000.

The Parks and Recreation Department requests City Council approval to proceed with the transfer of approximately 5400 sq. ft. of property currently owned by the City of Asheville to Buncombe County to be used for library expansion at the West Asheville Branch Library.

RESOLUTION BOOK NO. 25 - PAGE 301

S. RESOLUTION NO. 99-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES TO FUND THE AFTER SCHOOL FOOD SERVICE PROGRAM.

Summary: The consideration of a resolution authorizing the City Manager to apply for a grant from and enter into an agreement with the N. C. Dept. of Health and Human Services, Division of Maternal and Child Health, to provide food service in the After School Program.

The Parks and Recreation After School Program provides supervised licensed child care, recreation, enrichment activities, and food service to children ages 5 to 12 during after school hours, teacher work days, and holidays at six program sites. Sites are located at Claxton, Dickson, Hall Fletcher, Jones, and Vance Elementary Schools; and Reid Community Center. Sites are licensed by the State of North Carolina with a child/staff ratio of 1 to 25. Snacks are provided in the afternoon, and breakfast and lunch is provided on holidays and teacher work days. Activities include arts and crafts, games, sports, science, music, homework time, and special events. Fees are based on the number of children from each family and frequency of attendance. The Parks and Recreation Department will contract with Asheville City Schools for food service at a rate of \$1.00 per breakfast, \$1.95 per lunch, and \$.85 per snack. The grant will reimburse the Parks and Recreation Department approximately one third of the cost of providing food service in the After School Program. The number of meals will vary based on the total meals actually served each month.

The Parks and Recreation Department recommends the City of Asheville to apply for the grant funds through the Child and Adult Care Food Program.

RESOLUTION BOOK NO. 25 - PAGE 302

T. RESOLUTION NO. 99-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JOHN FISHER, ARCHITECTS, FOR THE DESIGN AND FORMULATION OF CONSTRUCTION DOCUMENTS FOR THE NEW SKATEBOARD PARK

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park and

approval of a budget amendment from funds collected from outside sources, in the amount of \$568,275.00, to establish a budget for commencing the development of the skateboard park.

-12-

The concept of a new skateboard park in Asheville came from members of the Skateboard Task Force which is comprised of staff, skateboarders, Asheville Police Department officers, parents and community leaders. Due to the tremendous popularity and success of the "temporary site," City Council directed staff to proceed with locating a permanent site.

A site was located on land owned by the N.C. Department of Transportation. The parcel of land is located between I -240 to the South; Flint Street on the West; and Cherry Street on the North. The skateboard park will be designed in such a way to be a positive feature for the neighborhood and surrounding businesses.

The Skateboard Task Force developed a conceptual design of the new skateboard park. A Request for Proposal process solicited proposals from qualified firms for the final design and to formulate construction documents. The team of John Fisher Architects, Design Associates and Team Pain was selected as the top firm by an interview panel that was comprised of staff, and members of the Skateboard Task Force. The contract for the scope of service as outlined in the Request for Proposal is for \$47,775.00 (Design \$20,950.00, formulation of construction documents \$26,825.00). Staff has developed an overall budget of \$568,275.00 for the development of the skateboard park. As directed by City Council, staff and members of the Skateboard Task Force will be soliciting funds from outside sources for the development of the park.

The Parks and Recreation Department recommends (1) that authorization be given to the City Manager to enter into a contract with John Fisher Architects for the design and formulation of construction documents for the new skateboard park; and (2) approval of a budget amendment from outside funding, in the amount of \$568,275.00, to establish a budget for commencing the development of the skateboard park.

RESOLUTION BOOK NO. 25 - PAGE 303

U. ORDINANCE NO. 2611 - BUDGET AMENDMENT TO ESTABLISH A BUDGET FOR COMMENCING THE DEVELOPMENT OF THE SKATEBOARD PARK

Summary: See Consent Agenda Item "T" above.

ORDINANCE BOOK NO. 17 - PAGE

V. RESOLUTION NO. 99-139 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "VANDERBILT PARK DRIVE" LOCATED OFF OF HENDERSONVILLE ROAD IN VANDERBILT PARK SOUTH DEVELOPMENT EXTENDING TO THE CUL-DE-SAC

Summary: The consideration of a resolution accepting the new proposed street name of "Vanderbilt Park Drive."

Biltmore Farms, Inc., and Cecil Development Group, Inc., owners of all the lots in Vanderbilt Park South Development have petitioned the City of Asheville to accept the street name "Vanderbilt Park Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 304

-13-

W. RESOLUTION NO. 99-140 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "PATCH ADAMS DRIVE" LOCATED OFF OF SANDHILL ROAD TO A DEAD-END

Summary: The consideration of a resolution accepting the new proposed street name of "Patch Adams Drive."

David Buckner, John Backe, Shirley Backe, Jasper J. Boyer, Calvin A. Boyer, owners of all the lots off Sandhill Road have petitioned the City of Asheville to accept the street name "Patch Adams Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 305

X. RESOLUTION NO. 99-141 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "MEDICAL PARK DRIVE" LOCATED OFF OF SWEETEN CREEK ROAD IN REGIONAL MEDICAL PARK

Summary: The consideration of a resolution accepting the new proposed street name of "Medical Park Drive."

Sweeten Creek Surgery, LLC. Edward B. Shoff, Marian B. Shoff, Eyeland, LLC, Mission - ST. Joseph's Health System, Inc. owners of lots in The Regional Medical Park have petitioned the City of Asheville to accept the street name "Medical Park Drive."

Staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 25 - PAGE 306

Y. ORDINANCE NO. 2612 - ORDINANCE ESTABLISHING THE PUBLIC ACCESS CHANNEL COMMISSION

Summary: The consideration of an ordinance establishing a Public Access Channel Commission to develop policy and oversee the management of the public access channel.

In August 1998, City Council adopted a Cable Franchise Agreement allowing InterMedia to provide cable service within the city limits of Asheville. As part of this agreement, InterMedia was required to provide three initial channels to be used for public, educational, and/or government programming. A fourth access channel will be provided when certain programming thresholds are met on other channels.

The educational and government channels are established. In November 1998, the Asheville City Council directed staff to prepare a Request For Proposal (RFP) to solicit non-profit organizations who may be interested in managing the public access channel. Staff has prepared, advertised, and disseminated the RFP to interested organizations. The next step in establishing the public access channel is forming the Public Access Channel Commission.

This Commission will be responsible for developing policy for the public access channel and overseeing the management of the channel.

City staff requests that City Council approve the ordinance establishing a Public Access Channel Commission. -14-

ORDINANCE BOOK NO. 17 - PAGE

Z. RESOLUTION NO. 99-142 - RESOLUTION RESCHEDULING THE FORMAL MEETING FROM

TUESDAY, OCTOBER 26, 1999, TO WEDNESDAY, OCTOBER 27, 1999, BEGINNING AT 5:00 P.M. IN THE COUNCIL CHAMBER LOCATED ON THE SECOND FLOOR OF THE CITY HALL BUILDING

RESOLUTION BOOK NO. 25 - PAGE 307

AA. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR A CELLULAR TOWER TO BE LOCATED AT 200 TUNNEL ROAD

BB. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER A CONDITIONAL USE PERMIT FOR A DUPLEX ON TOWN MOUNTAIN ROAD

CC. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO CONSIDER AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO DEFINE THE POWERS AND DUTIES OF THE ASHEVILLE TREE COMMISSION

DD. MOTION SETTING A PUBLIC HEARING ON SEPTEMBER 28, 1999, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH THE DEFINITIONS OF COMMUNITY FACILITIES AND COMMUNITY IDENTIFICATION SIGNS, TO DETERMINE THE LOCATIONS OF COMMUNITY IDENTIFICATION SIGNS, TO AMEND REGULATIONS REGARDING SIGNS IN THE RIGHT -OF-WAY, AND TO AMEND REGULATIONS REGARDING THE ENFORCEMENT REMEDIES

EE. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO CHANGE THE AREA REQUIRED FOR PUBLIC NOTIFICATION FOR CERTIFICATES OF APPROPRIATENESS FOR PROJECTS

FF. MOTION SETTING A PUBLIC HEARING ON OCTOBER 12, 1999, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO ESTABLISH AS MINOR WORKS THOSE PROJECTS RELATED TO LOCALLY DESIGNATED HISTORIC LANDMARKS FOR THE PURPOSES OF DOWNTOWN DESIGN REVIEW

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

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Tomes and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

-15-

V. NEW BUSINESS:

A. RESOLUTION NO. 99-143 - RESOLUTION APPROVING PURCHASE OF CIVIC CENTER ICE FLOOR AND RELATED EQUIPMENT

City Attorney Bob Oast said that this is the consideration of a resolution authorizing the City to purchase the Civic Center ice floor.

Pursuant to the City's lease with Asheville Smoke Pro Hockey (ASPH), ASPH is responsible for providing a competition-grade ice floor for the hockey team. At the end of the five-year initial term of the lease, the City became the owner of the ice floor and related equipment (dasherboards, plexiglass, etc.). The lease provides

that, at the end of any of the first four years of the lease, the City may purchase the floor from ASPH essentially for the balance remaining on ASPH's financing obligation (assuming a straight line declining balance).

The City has negotiated with ASPH for the purchase of the floor, on slightly different terms than contemplated in the lease, and City Council has adopted or will adopt a resolution authorizing the City Manager to proceed with appropriate amendments to the lease. This resolution authorizes the City to proceed with the purchase of the ice floor and related equipment.

Ordinarily, purchases of equipment and apparatus are subject to the statutory competitive bidding process. However, the statute provides an exception to the competitive bidding process where the item to be purchased is available from only one source, or when performance or price competition is not available, or when compatibility is an overriding consideration. Purchases made under this section must be approved by the City Council prior to awarding the contract.

The Civic Center ice floor is not a regulation size hockey floor; it was custom fitted to our facility, and is essentially one of a kind. Moreover, following a competitive process conducted by ASPH, and United Hockey League, and in consultation with the Civic Center, Burley's Rink Supply, the manufacturer and installer of the ice floor, was determined to be the only company that could meet the particular needs of the Civic Center and ASPH. Accordingly, the exception in the statute appears to clearly apply, and the resolution contains these findings. We are in the process of obtaining affidavits and other documentation to support this determination.

Whether the City assumes ASPH's loan in connection with this purchase or seeks its own financing, the purchase will be by installment contract. Because the term of the installment purchase contract is less than 5 years, and the amount to be financed is less than \$500,000, no approval by the Local Government Commission is required. Because this is not a purchase of real property, no public hearing is required.

If City Council wishes to proceed with the purchase of the Civic Center ice floor and related equipment, adoption of the resolution is recommended.

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

Vice-Mayor Hay moved for the adoption of Resolution No. 99-143. This motion was seconded by Councilman Cloninger and carried unanimously.

RESOLUTION BOOK NO. 25 - PAGE 308 -16-

B. RESOLUTION NO. 99-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE LEASE AGREEMENT WITH ASHEVILLE PROFESSIONAL HOCKEY, LTD., FOR THE ASHEVILLE CIVIC CENTER

Mr. David Pisha, Civic Center Director, said that this is the consideration of a resolution authorizing the City Manager to amend the lease agreement with Asheville Professional Hockey, Ltd., for the Asheville Civic Center.

The City and Asheville Professional Hockey have entered into an agreement for an initial period of five years with an optional extension for two additional years. The hockey team, as part of the contract, agreed to purchase an ice rink and related equipment. At the end of the initial contract period, the rink ownership passes to the City. A contractual provision, however, allows the City to assume ownership earlier if it so desires. The team has asked the City to consider the possibility of exercising this option. Staff has reviewed this request and believes it would be in the best interest of the City to do so.

In doing so, the City would assume the approximately \$90,000 in annual lease payments for the next four years. The City, however, would not be at any financial risk by completing this transaction because the team is willing to give up its share of revenues from public skating and hockey concessions that were part of the original agreement. This revenue sharing was designed to aid the team in making the lease payments. Furthermore, the team has agreed to make up any monetary shortfall the City may suffer under this new agreement when compared to the old one. Therefore, the amount of net proceeds the City will receive is exactly equal to the previous amount it was due. In addition, the team has agreed to buy a new ice cover of the City's choice totally at its own expense. This cover will also come under City ownership once the loan necessary to finance it is amortized in at most four years.

Should revenues due the City exceed the amount that would have been earned under the old contract, the excess will be applied to accelerate payments of the ice cover. This would have the effect of transferring ownership of it to the City even sooner.

When the ice rink payment is completed by the City, the terms of the contract revert to the terms contained within the "option years" portion of the current contract. The team will once again receive a share of public skating and hockey concession revenues, however, it will be at substantially reduced rates from the current schedule.

The City has always wanted to own the ice rink and related equipment and taking over the lease payment will allow the City to own the rink sooner. By taking over the ice rink lease, the City will not be in any financial jeopardy since the team will make up any revenue shortfall that may occur. Furthermore, the team is willing to supply a new ice cover at their sole expense and turn it over to City ownership within four years.

Staff recommends City Council accept the proposed changes and direct the City Manager to sign the amended lease agreement.

Mr. Pisha responded to a question from Councilwoman Field relative to the maintenance of the darker material for the ice cover.

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

Councilman Cloninger moved for the adoption of Resolution No. 99-144. This motion was seconded by Councilman Tomes and carried unanimously.

-17-

RESOLUTION BOOK NO. 25 - PAGE 309

VI. OTHER BUSINESS:

A. LAWSUITS

The following lawsuit was received on August 19, 1999: Carrier Heights Neighborhood Association v. City of Asheville. The nature of the proceeding is: appealing Board of Adjustment decision upholding issuance of Level II permit. This matter will be handled in-house.

The following lawsuit was received on August 25, 1999: George E. Davis and Patricia D. Davis, and Ervin L. Ball Jr. and Carol Ball v. City of Asheville and Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision to deny petitioners' variance requests. This matter will be handled in house.

The following lawsuit was received on August 25, 1999: Outdoor Communications Inc. (now Lamar-OCI South Corporation) v. Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision dismissing appeal from Notice of Violation. This matter will be handled in-house.

The following lawsuit was received on August 27, 1999: Morris Communications Corporation (d/b/a Fairway Outdoor Advertising) v. Zoning Board of Adjustment. The nature of the proceeding is: appealing Board of Adjustment decision dismissing appeal from Notice of Violation. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by June Lamb

Ms. June Lamb, resident of 16 Carrier Street, thanked City Council for approving the transfer of property to Buncombe County for the expansion of the West Asheville Branch Library and hoped that Council would look favorably at funding for that project.

Ms. Lamb suggested that it might be helpful for someone to read the list of consent agenda items so when the meeting is televised, the public will know what items are being considered.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:37 p.m.

CITY CLERK MAYOR
