

Tuesday – April 24, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson (left meeting at 7:02 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

**INVOCATION**

Councilman Hay gave the invocation.

**ADDITIONS TO THE AGENDA**

City Manager Westbrook asked that an item be added under "Other Business" regarding the May 1, 2001, worksession.

Mayor Sitnick requested that an item be added under "Other Business" regarding a request of Council.

Councilman Peterson stated that he would need to leave the meeting at 6:30 p.m. as he will be travelling to Durham, N.C.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING MAY 2001 AS "MOTORCYCLE**

**AWARENESS MONTH"**

Mayor Sitnick read the proclamation proclaiming May 2001 "Motorcycle Awareness Month " in the City of Asheville. She presented the proclamation to Mr. Eldon Moore who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING THE WEEK OF APRIL 29-MAY 5, 2001, AS "ASHEVILLE FIREFIGHTERS APPRECIATION WEEK"**

Mayor Sitnick read the proclamation proclaiming April 29-May 5, 2001, as "Asheville Firefighters Appreciation Week" in the City of Asheville. She presented the proclamation to Fire Chief Greg Grayson and Captain David McFee, President of the Asheville Firefighters Association. Captain McFee briefed City Council on some activities taking place during the week.

**II. CONSENT:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON APRIL 10, 2001, AND THE WORKSESSION HELD ON APRIL 17, 2001**

**B. ORDINANCE NO. 2805 – BUDGET AMENDMENT FOR THE CAROLINAS HISTORIC PRESERVATION COMMISSION CONFERENCE**

Summary: The consideration of a budget amendment, in the amount of \$14,750, for the Carolinas Historic Preservation Commission Conference hosted by the Historic Resources Commission of Asheville and

Buncombe County (HRC).

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The purposes of the conference are to provide training for new commission members and staff and continuing education for those more experienced. This is the first year that this event is being offered jointly by North and South Carolina. The program reflects the experiences, expertise, and strengths of both states.

The University of North Carolina at Asheville will serve as conference headquarters. Sessions will be held on campus and in the historic districts. With six National Register districts, three locally designated districts, and over sixty individual National Register listings and landmarks, Asheville offers an especially rich environment for the field sessions and special events.

This conference will be a superb commissions-to-commissions training event. The North Carolina State Historic Preservation Office has awarded the HRC a \$2,000 grant to cover the cost of the bus tour and honorarium. All other expenses will be covered by the \$55 registration fee and includes all sessions, meals, and events.

City staff recommends adoption of the budget amendment.

#### **ORDINANCE BOOK NO. 19 – PAGE**

#### **C. RESOLUTION NO. 01-51 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PAVING ENTERPRISES INC. FOR THE CONTRACTED PAVEMENT PREVENTIVE MAINTENANCE 2000-01 PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Paving Enterprises Inc. for the Preventative Maintenance Contract 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be maintained by application of both crack seal and a full coverage resurfacing treatment based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for preventative maintenance for Phifer Street, Kensington Drive, Jeffress Avenue, Mt. Vernon Place, Lucerne Avenue and Mountain Terrace.

The engineer's estimate for Contracted Pavement Preventative Maintenance 2000-2001, was \$204,804 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The sealed bid was returned to the bidder unopened. The project was immediately re-advertised for one week. The Engineering Department held a second bid opening on March 14, 2001. One bid was received and opened. The bid was \$198,040.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff requests City Council authorize the City Manager to execute a contract with Paving Enterprises, Inc. in the amount of \$198,040.00.

**RESOLUTION BOOK NO. 26 – PAGE 331**

**D. RESOLUTION NO. 01-52 – RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH APAC CAROLINA INC. FOR THE CONTRACTED PAVING 2001-01 PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. for the Contracted Paving 2000-2001.

The City annually budgets for paving city streets that are in need of repair as listed on the Institute for Transportation, Research and Education (ITRE) report. City Engineering and Public Works staff reviewed several streets that were listed on the ITRE report and chose six streets to be resurfaced based upon their condition and the staff members opinion of probable cost to resurface.

The Engineering Department has developed construction documents and specifications for resurfacing Grindstaff Road, Hilliard Avenue (from Clingman Avenue to West Haywood Street), Melton Drive, Brookcliff Drive, Starmount Drive, and Russell Street.

The engineer's estimate for Contracted Paving 2000-2001 was \$350,800 for these streets. Money for the project is currently budgeted in the Public Works Department's operating budget.

The project was advertised for one month. The Engineering Department received bids on February 28, 2001. Only one bid was received at this bid opening. The project was re-advertised for one week. The Engineering Department held a second bid opening on March 14, 2001. Two bids were received and opened. One bid was from APAC Carolina Inc. in the amount of \$260,325.00, and the other bid was from Paving Enterprises Inc. in the amount of \$304,643.39.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff recommends that City Council adopt a resolution authorizing the City Manager to execute a contract with APAC Carolina Inc. in the amount of \$260,325.00 for the Contracted Paving 2000-2001.

**RESOLUTION BOOK NO. 26 – PAGE 333**

**E. MOTION SETTING A PUBLIC HEARING ON MAY 8, 2001, TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 56 SHILOH ROAD**

**F. RESOLUTION NO. 01-53 – RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR A GRANT FROM AND ENTER INTO AN AGREEMENT WITH THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT TO FUND A LEAD-BASED PAINT HAZARD CONTROL PROGRAM**

Summary: The consideration of an application to the U. S. Department of Housing and Urban Development for a Lead-Based Paint Hazard Control Grant.

City staff is developing an application to the U.S. Department of Housing and Urban Development for approximately \$1,700,000 to fund a three year program to reduce Lead-Based

Paint Hazards in the City of Asheville and the Asheville Regional Housing Consortium Area (Buncombe,

Henderson, Madison and Transylvania Counties).

This program, which is being developed in close coordination with UNC-A's Environmental Quality Institute (EQI) and other governmental and non-profit agencies, will identify housing units occupied by low- and moderate-income families which contain lead-based paint. The level of risk in each unit will be assessed, and appropriate, cost-effective, hazard control measures will be carried out, followed by a clearance test to demonstrate that the unit is safe for occupancy.

This application will benefit greatly from its association with a national program, under development by EQI, to distribute do-it-yourself lead test kits to homeowners and renters and to follow up positive tests with advice and materials for the residents to carry out their own preventive controls. The partnership with EQI will provide both matching funds and a competitive edge for this application compared with others nationwide. The City will also partner with other non-profit agencies active in housing rehabilitation and repair.

The due date for the application is May 17, 2001.

City staff recommends approval of the resolution authorizing the grant application.

### **RESOLUTION BOOK NO. 26 – PAGE 335**

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.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

### **III. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING FOR THE 2001 CONSOLIDATED ACTION PLAN**

Due to a conflict of interest, Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilwoman Field and carried unanimously.

Mayor Sitnick opened the public hearing at 5:20 p.m.

Ms. Charlotte Caplan, Community Development Coordinator, said that the City expects to have available \$1,839,656 in CDBG funds and \$1,422,966 in HOME funds to spend on housing and community development activities in the fiscal year beginning July 1, 2001. The City's Housing and Community Development Committee (HCD) and the Asheville Regional Housing Consortium have made recommendations for allocating these funds to 22 CDBG-assisted and 14-HOME assisted projects.

In addition, the HCD Committee recommends that the City apply for a CDBG Section 108 Guaranteed Loan in the amount of \$850,000 to assist Eagle/Market Streets Development Corporation in a major redevelopment effort in South Pack Square. A draft loan application will be submitted separately.

If approved, the funding will assist in adding or preserving 188 affordable housing units in the City and 162 units in the rest of the Consortium area (Buncombe, Henderson, Madison, and

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Transylvania Counties), will provide 3,300 Asheville residents with other needed services, and will assist in a major revitalization of the South Pack Square neighborhood.

Notice of the public hearing and a summary of the draft plan was published on April 6. A 30-day public comment period is required by federal regulations. The final plan must be submitted to HUD on or before May 15, 2001.

The State Housing Finance Agency has completed its first round of evaluation of tax credit applications as a result of which it looks like one of the applications (Mountain Housing Opportunities' Northpoint Commons development in Woodfin) stands very little chance of success at the State level. That being the case, Mountain Housing Opportunities has requested reallocating \$188,000 from this development to the higher ranked (by the State Finance Agency) Compton Place development in Asheville. City staff supports this and the Asheville Regional Housing Consortium Board is in favor as well. They would like to propose that this be included as an amendment to the Plan as originally proposed to reduce the funding for the Northpoint Commons by \$188,000 and increase the HOME funding for Compton Place by \$188,000.

City Attorney Oast recommended City Council vote on May 8 to amend the Plan to include the proposal by Mountain Housing Opportunities, if City Council wishes to support that amendment.

Upon inquiry of Councilman Peterson about Neighborhood Housing Services' financial status, Councilwoman Field explained that the City is going to allocate money to them, however, they will not release those funds until they are more stable. Ms. Caplan will monitor that closely.

Ms. Caplan said that Neighborhood Housing Services has done an excellent job in the past and they have taken necessary steps to reduce their overhead and salaries while they re-group and plan their next year's projects. She said that they have completed good, quality projects but some financial planning done at the start of the projects was not as far-sighted as it might have been.

Mayor Sitnick closed the public hearing at 5:36 p.m.

Mayor Sitnick said that approval of the draft Action Plan and any amendments will be considered by City Council at the May 8, 2001, City Council meeting.

#### **IV. UNFINISHED BUSINESS:**

##### **A. ORDINANCE NO. 2806 – ORDINANCE DENYING THE CONDITIONAL USE PERMIT FOR AN ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE**

City Attorney Oast said that City Council held a public hearing on April 10, 2001, on this matter.

City Attorney Oast passed out a revised draft Order in which he explained the changes: (1) in Finding of Fact No. 4, he clarified where the vehicle counts occurred; (2) in the Conclusions (4) (d), he corrected the Section Number of Chapter 7; (3) in the ordinance, the addition of a repealer clause; (4) in the ordinance, the addition of the following language "if any section, subsection, clause or phrase of this ordinance is for any reason held to be invalid, then the entire ordinance shall likewise be invalid, and subject to modification or re-adoption as provided by law." and (5) in the caption of the Order he removed the Reisers name and just left the address.

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As recommended by Councilwoman Field, City Attorney Oast would amend the Conclusions No. 4 (e) to read: "There already exists on-street parking on Edwin Place ...."

City Attorney Oast responded to a clarification question from Councilman Worley regarding Finding of Fact No. 16.

As recommended by Vice-Mayor Cloninger, City Attorney Oast would amend Conclusion No. 4 to read: "The proposed parking lot is permissible as a conditional use on the subject property ...."

Upon inquiry of Councilwoman Bellamy, City Attorney Oast said that what City Council will be voting on is whether the Findings and Conclusions reflect the sense of Council from the evidence presented at the public hearing on April 10, 2001.

Mayor Sitnick said that Conclusion No. 4 (c), states that "the proposed use fails to comply with official plans of the City in that it introduces a commercial use onto a lot that is zoned to a residential classification ...." She asked that at a future worksession City Council determine whether or not a parking lot should be included as an ancillary use in a residential district. Councilwoman Field responded that the Planning & Zoning Commission will be considering that issue.

As recommended by Councilwoman Field, City Attorney Oast said that he would amend Conclusion No. 4 (c) to read: "The proposed use fails to comply with official plans of the City in that the corner serves as a transitional gateway between the residential uses to the north and the commercial uses to the south ...."

Mayor Sitnick personally felt that the "penalty" for a person who grades and paves a parking lot before obtaining permits is not a sufficient deterrent to make sure that it doesn't happen again. City Attorney Oast responded that he is working with the Planning & Development Department and will be bringing a report to City Council in the near future.

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

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2806, with amendments outlined above. This motion was seconded by Councilman Peterson and carried on a 4-3 vote, with Mayor Sitnick, Vice-Mayor Cloninger, Councilman Hay and Councilman Peterson voting "yes" and Councilwoman Bellamy, Councilwoman Field and Councilman Worley voting "no."

## **ORDINANCE BOOK NO. 19 - PAGE**

### **V. NEW BUSINESS:**

#### **A. RESOLUTION NO. 01-54 - RESOLUTION ENDORSING THE ASHEVILLE RIVERSIDE PARKWAY PROJECT**

Economic Development Director Mac Williams said that at the April 17, 2001, City Council worksession, Mr. Jack Cecil, Chairman of the Sustainable Economic Development Plan (SEDP) Implementation Task Force provided an update on the activities of the Task Force. He also requested approval of a resolution endorsing a project proposal that addresses a number of strategies outlined in the Plan concerning Riverfront Redevelopment.

He said the Plan is oriented toward a goal of positioning Asheville to attract "knowledge-based" enterprises; and, it lists approximately fifty specific action strategies, divided among four

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broad priority areas, determined by citizens to be important to achieving that goal. The broad priority areas include: The Development Process, Real Estate, Riverfront, and Workforce/Education.

The ITF was appointed to serve in an advisory capacity. It was to prioritize the strategies outlined in the Plan, work with City staff on implementation options, and make recommendations to Council. In that capacity, and

following that direction, the ITF has approved and is making a project recommendation for Council's endorsement. The project, a Riverside Parkway, was explained in detail at the April 17, 2001, worksession.

ITF members held a meeting to discuss the proposal with staff in the Planning and Engineering Departments, and with the approval of the City Manager, those departments are preparing to incorporate the project into their work plans.

The ITF and City staff is recommending Council endorsement of the Riverside Parkway concept and granting staff authority to begin project planning.

Mayor Sitnick said that last week at the Technical Advisory Committee meeting of the Metropolitan Planning Organization, she brought this issue up as requested by the ITF Committee Chair. She asked for the opportunity to get it on the Transportation Improvement Plan so that we can move forward with it.

Upon inquiry of Councilman Peterson, Mr. Williams stated this is an endorsement of a concept that ultimately would involve redesign, reconstruction and renaming of that corridor in the future. The actual changes may not occur for some time until after the public input process and the engineering, planning and funding is in place. City Manager Westbrook also explained that there will be City funding involved, but not in the next couple of years. He said the City has to get the N. C. Dept. of Transportation to get it on their projects list and fund it.

Mayor Sitnick said this is something for the established economy on the river corridors as well as inspiring future business, retail and residential.

Councilman Peterson questioned how many lanes are proposed. Mr. Williams said he didn't know in that this is just at the point of getting the process started so that engineering can start looking at a footprint.

After Ms. Hazel Fobes expressed concerns regarding the project, Mayor Sitnick explained that this is about beautifying existing roads and improving them, rather than digging them up or widening them. This is really just endorsement of a concept to explore the improvement of the roads on the river corridor.

Ms. Sharon Martin asked how much the study will cost the City taxpayers who will not be consulted on whether or not to spend the money on a study. Mr. Williams responded that City staff in the Planning and Development Department, the Engineering Departments, and other appropriate City departments will incorporate the project into their work plans.

Ms. Martin also expressed concern that the City is putting this as a priority, as far as development is concerned, when there are pressing infrastructure and sidewalks needs throughout the City.

Councilman Hay said that nothing in this concept building new streets or reallocates sidewalk dollars. Once City Council endorses the concept, as opportunities present themselves, there is a plan in place that they can relate to as other projects are started.

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Mr. Sakata Brokaw felt that with more redevelopment on the river corridor with service-type businesses and parks, some of the older industrial businesses currently located there may feel pressured to move out.

Mr. Adam Baylus was concerned that this is all about growth and growth is not sustainable. He felt our tax dollars will finance economic development for a very small group of people who own property and businesses. He didn't see the job opportunities being generated through this kind of economic development as really having the trickle down effect that we are after. He felt there is a huge section of our population that wants sustainability but not in the context that is being presented by the City here.

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

Councilman Hay moved for the adoption of Resolution No. 01-54. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

## **RESOLUTION BOOK NO. 25 – PAGE 336**

### **B. RESOLUTION NO. 01-55 – RESOLUTION ADOPTING POLICY REGARDING APPOINTMENT OF COUNCIL MEMBERS TO BOARDS AND COMMISSIONS**

Mayor Sitnick said that she asked City Attorney Oast to prepare a policy regarding termination of Council member appointments to boards/commissions/authorities ("board"). Said policy reads: "The Asheville City Council from time to time appoints one of its own members to serve on boards and commissions, and to represent Council's interest in the business that comes before that board or commission. It is not Council's practice to terminate its appointments prior to the expiration of the term for which the appointment was made, even where the authority exists to do so. However, with respect to any appointment of a Council member where that appointment is at the pleasure or discretion of Council, or with respect to which Council's power to terminate the appointment is not prescribed or limited by law or ordinance, Council reserves the right, in the event that the Council member appointed ceases to serve on the City Council, to terminate the appointment, and appoint a current member of the City Council. Nothing herein shall be construed to limit Council's appointment power, or the power to terminate appointments, with or without cause, with respect to any board or commission to which it may appointment members."

Mayor Sitnick said that in the past City Council has had a policy that said when we make appointments to certain boards that a Council member must be represented on that board as the appointments are made. She said those are the A-B Crime Stoppers Board of Directors (one must be a Council member), the ADA Compliance Committee (one must be a Council member), the Asheville Downtown Commission (two must be Council members), the Citizens-Police Advisory Committee (one must be a Council member), the Film Board (one must be a Council member), the Police Officers & Firefighters Disability Review Board (one must be a Council member), the Regional Water Authority (two of the three City's appointments may be Council members), and the Tourism Development Authority (TDA) (one must be a Council member). She finds it curious that the a Council member "may" be appointed to the Water Authority - a group that has a very serious impact on the City and on our rate-payers and an appointment that really requires signification communication and liaison activity with the Council.

Mayor Sitnick said that City Council doesn't have a specific policy about what happens to a Council member appointed to a board that does not seek reelection or was not re-elected. She said that because there are certain things occurring in the community, she personally felt there was a need to explore this policy especially with an appointment like to the Water Authority or MSD, because a lot of things that City Council does are impacted by the Water Authority or sewer

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issues, e.g. economic development. Therefore, she felt there was a need to explore this appointment process about whether that former Council member remains on the board, whether that person remove themselves from the board, or whether the Council should have that authority.

City Attorney Oast said that for most of the boards that Council makes appoints to, those members including Council members, serve at the pleasure of Council. What is suggested here is a policy that essentially tells Council they can do what they already have the power to do, but it may serve to put those people on notice that at least part of the basis for their appointment is the fact they are Council members and if they lose that



status, then their appointment may be subject for reconsideration.

Mayor Sitnick said that the two options discussed at the April 17, 2001, worksession was that if a person is not re-elected or has sought re-election, that (1) the former Council member is automatically removed from the board and replaced by a sitting member of Council; or (2) the Council has the option to review that appointment and either let it stand or replace that person with a sitting Council member.

Councilman Hay asked if Council made an appointment to the Metropolitan Sewerage District (MSD) Board, could Council revoke that appointment at some point, or if once the appointment is made, would it fall within MSD's rules on how to remove Board members. City Attorney Oast said that he would need to look at the rules or enabling authority for any particular board. However, typically most of those kinds of appointments are appointments that are at the pleasure of the appointing body, so they be revoked at anytime. There are some boards however, like the Board of Adjustment, that are for a specific term and Council can't revoke them.

Mayor Sitnick said that the philosophy behind appointing a City Council member to these boards is that the actual board is very involved in things that impact a lot of what City Council does and Council wants that direct connection. Those appointed members come back to the regular City Council meetings and let Council know what goes on at the board meetings.

Mayor Sitnick said that there is so much going on right now, this issue, with regard to the Water Authority, needs to be addressed now because she feels there is not a direct-enough line of communication and City Council has been in the dark. She didn't feel that calling representatives to the Water Authority in once or twice a year or quarterly is sufficient to keep Council up-to-date on what is going on with the Water Authority. There should be a general policy on the boards that Council feels strongly enough to appoint a member of Council that when that person is no longer a member of Council, that an automatic reappointment should occur. She personally feels that there are boards that City Council makes appointments to that really requires a direct link, e.g. Water Authority, MSD, TDA, and Economic Development Commission (EDC).

Councilwoman Bellamy agreed with Mayor Sitnick, however, she did not feel that Council should replace that member in the middle of their term. The next City Water Authority representative's term is up September 30, 2001 (Tommy Sellers).

Mayor Sitnick asked that if Council adopts this policy for the future that they don't do it at the discretion of Council, but that if a member from the Council is appointed and they don't get reappointed again, that it is an automatic replacement.

Councilman Peterson felt that because of the significant role that the Water Authority and MSD plays in the lives of our constituents that they expect City Council to have some more direct control. He felt Council might just want to focus on the Water Authority and MSD. He would be in favor of amending Council's policy to make it consistent with, for instance, the Film Board in

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which one member must be a Council member. He felt that not only will City Council be served better, but the board is served better as well because the current Council member has the knowledge of everything that is going on and that experience will serve them better.

Councilman Worley agreed that Council should have a policy to have Council members serving on these critical boards. However, he was not sure Council has the ability to set a policy, for example with the Water Authority, where we make an appointment and then we have the ability to remove that person if they cease to be a council member. One of the things you run up against are the creating documents that set up the

appointment process of that particular board. The Water Authority by-laws set a three year term and there is a procedure by which a member may be removed. He didn't think there was any policy City Council could establish that would supercede that unless the City goes back to the County and re-negotiates a change in the Water Authority by-laws. He was in favor of adopting a policy that may ask or even encourage Council members who no longer sitting Council members who are appointed on some of these boards to step down, but he didn't think we can require it or make it automatic.

Vice-Mayor Cloninger said it only makes sense that Council have a policy where they reserve the right if they so choose to remove someone who is on a board who is no longer a member of City Council. But, Council should have the discretion to leave that person on that board if they want to. By having a closed door policy when someone is no longer on Council that they automatically have to leave the board is not in the best interests of the City. There may be a situation where someone is no longer on City Council but is a very effective advocate for the City's interest and may be more effective than any current member of Council. Also, if you lock it in that a position must be a member of Council, you could have a situation where, for some reason, no one on City Council is able to attend those meetings. Or, the one member of Council who is interested would not be as an effective advocate than the person already on the board. He felt Council should reserve the right to ask someone to step down, but not tie Council's hands.

Councilwoman Field felt City Council should have the flexibility and ability to make the best decision possible.

Mr. Jim Bannon, representing Smart Growth Partners, spoke in favor of having a Council member on the critical boards, such as the Water Authority and MSD, since they deal with water quality, land use planning and infrastructure.

Councilwoman Bellamy felt that all Council members should have the opportunity to serve on a board.

Mr. Hazel Fobes felt it was important for Council to have a liaison to all boards.

Ms. Sharon Martin said that the purpose of having a sitting Council member on a board is to ensure that information flows to facilitate good decisions. If a Council member is not on the board, the direct communication is not there. Also, the citizens elect City Council and City Council turns around and appoints a member to a board. If that person is no longer a member of Council, then they are not accountable to the people who elected them.

Mr. Peter Dawes felt City Council should require one of their three appointments to the Water Authority a member of City Council.

Councilman Hay moved to adopt Resolution No. 01-55 as prepared by City Attorney Oast above. This motion was seconded by Vice-Mayor Cloninger and carried on a 5-1 vote, with Mayor Sitnick voting "no". (Councilman Peterson left the meeting at 7:02 p.m.)

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When Mayor Sitnick moved that City Council consider appointing a member of City Council to the Water Authority immediately, City Attorney Oast responded that he felt City Council would have to revoke one of it's appointments in order to create a vacancy on the Water Authority. Mayor Sitnick then requested at the next meeting that the City Attorney report back on how City Council can remove a member from the Water Authority whose term will be expiring September 30, 2001, and appoint a sitting Council member to that board.

Vice-Mayor Cloninger acknowledged the Mayor's right to ask the City Attorney for that information but opposed taking such action.

## C. CONSIDERATION OF MODIFICATIONS TO STATE BUILDING CODE APPLICABLE TO CITY OF ASHEVILLE

City Attorney Bob Oast said that at the City Council worksession on April 17, 2001, Councilwoman Field asked that he draft a letter to the N. C. Office of the State Fire Marshal asking that the Asheville amendments to the N. C. State Building Code Council be removed. That letter has been drafted and he asked for approval of that letter to be signed by the Mayor.

Fire Chief Greg Grayson reviewed with Council the following history of the fire protection water supply requirements for the City of Asheville and his recommendations:

- The state fire prevention code does not include fire protection water supply requirements, except for hazardous occupancies and for outdoor tire storage facilities. Facilities that are required to install automatic fire sprinkler systems must have adequate water supply to operate the systems.
- Within the state fire prevention code there are specific City of Asheville amendments, which do describe fire protection water supply requirements.
- These amendments were passed as a part of a local ordinance by the City Council then approved by the North Carolina State Building Code Council. The City ordinance covering fire protection water supply was passed by City Council on July 25, 1995. The ordinance became part of the State Building Code – Volume V – Fire Prevention on March 12, 1996.
- These amendments are a part of the state code therefore they are law. To deviate from the amendments in any way requires action by the State Building Code Council. Appeals are to the State Building Code Council.
- The standard used by the City of Asheville is amended from the National Fire Academy. The other top fifteen cities in North Carolina currently use the ISO schedule, the NFPA schedule or City Engineering Specifications to address water supply requirements. The amended National Fire Academy standard is less restrictive than the ISO schedule.
- Some cities do not have water supply gallons per minute minimum requirements. Instead, they use minimum water line sizing and water line looping and gridding requirements as a substitute.
- Asheville determined water flow requirements were more effective for this community because the water line sizing is under the auspices of the regional water authority, not

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directly under city government. Most North Carolina cities directly manage water line sizing without a regional water authority.

- Advantages for the Asheville standard being an integral part of the state code include formal acknowledgement across the state of established standards in Asheville. In addition, the local elected officials do not have to address this issue on a case-by-case basis.
- Disadvantages for the Asheville standard being a part of the state code is that some cities do not have a standard. In addition, the local elected officials cannot address the issue on a case-by-case basis. The standard is then under the control of the State Building Code Council.

- At this point, Asheville is the only North Carolina city which has fire protection water supply requirements as a part of the State Fire Prevention Code. Other cities did use this method in past years, but have removed the requirements from the state code in lieu of engineering specifications or ordinances.
- It is important to establish water supply requirements or line size requirements. Failure to do this will result in non-sprinkled commercial buildings that will have a negative effect on the city's overall fire insurance (ISO) rating. In addition, we strongly advocate automatic fire sprinkler systems as offering a superior level of fire protection while keeping the city's fire protection costs to a minimum.
- The state building code is changing as of January 1, 2002. We will need to take action before that time regarding our ordinance and amendments in order to be compatible with the new state building code.
- Should our fire protection water supply requirements move from state control to local control, it would be prudent for the established standard to apply to all buildings and facilities equally. To not take this approach would open the city up to a significant amount of liability in the event of a fire or other emergency.

Should the City Council decide to take action to change the fire protection water supply requirements, he suggested the following steps:

1. City Council makes the decision to remove the water supply requirements from the State Building Code. (City Ordinance – Appendix E of Chapter 6.)
2. Mayor Sitnick sends a letter to the State Building Code Council via the Office of State Fire Marshal indicating that the City Council desires to remove the fire protection water supply requirements from the State Building Code – Volume V – Fire Prevention, with a requested effective date.
3. Before the Building Code Council makes the request official, the City Council will need to approve fire protection water supply requirements be added to the City Engineering Standards and Specifications.

(To reduce confusion, we would suggest that if we make this change that we go ahead and implement the fire protection water supply requirements consistent with the new State Building Code , which will become effective January, 2002).

This would move the fire protection water supply standards from control at the state level to control at the local level. We do have some other fire protection requirements that are in our

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ordinance that are also in the State Fire Prevention Code. Prior to January, 2002, we will need to approach Council to carry forward any items necessary with the implementation of the new state building code. These items include lock box requirements, required fire district designations and other related items.

Councilwoman Field stressed that we will not be less safe or do anything different than we are doing now – we will just remove it from the Fire Code so we will be in conformance with the International Code. She recommended that as soon as possible, that a group of individuals made up of the Building Safety Department, Fire Department, Engineering Department, and representatives from the architectural community and engineering community to sit down and figure out what is the best way to handle this.

Councilman Worley moved to authorize the Mayor to send a letter to the N. C. Office of the State Fire Marshal asking that the Asheville amendments to the N. C. State Building Code Council be removed. This motion was seconded by Councilwoman and carried unanimously.

## **VI. OTHER BUSINESS:**

### **A. RESOLUTION NO. 01-56 – RESOLUTION MODIFYING THE CITY COUNCIL MEETING SCHEDULE**

Upon request of City Manager Westbrook, Councilwoman Bellamy moved to adopt Resolution No. 01-56 to (1) cancel the May 1, 2001, worksession, and (2) schedule the joint meeting with the Buncombe County Commissioners on May 29, 2001, at the Asheville Civic Center. Said meeting will begin at 3:00 p.m. in the Asheville Civic Center Banquet Room with a tour beginning at 2:30 p.m. in the lobby of the Asheville Civic Center. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

### **RESOLUTION BOOK NO. 26 – PAGE 338**

### **B. NON-BETTERMENT COSTS**

Upon request of Mayor Sitnick, Councilwoman Bellamy moved to send a request in writing to Buncombe County, Henderson County and the Regional Water Authority that they support the non-betterment legislation that is currently in Raleigh by making phone calls, sending letters or personal contact with our state delegation. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

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

### **Comments by Mickey Mahaffee**

Mr. Mickey Mahaffee, representing Peacemakers, stated that, in his opinion, the 1995 Water Agreement with Henderson County has not been fair to Henderson County.

### **Comments by Lola Fay**

Ms. Lola Fay, representing the Asheville Area War Tax Resistors, stated that 47% of our tax dollars goes to past and current military. Since the group won't use their money for death and destruction, incarceration and obliteration, six years ago their war tax resistance group was formed around a common theme of taxes for life, not for death. They believe in paying taxes for the betterment of their society. She presented checks of resistant war taxes to a representative of Prison Books, Asheville Global Report, and Shunyata.

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### **Comments by Sakata Brokaw**

Mr. Sakata Brokaw felt that two lanes should be adequate for the Asheville Riverside Parkway Project, not multi-lanes similar to Broadway.

### **Comments by Dan Waterman**

Mr. Dan Waterman, representing N.C. Hemp, felt there was a need for an audit of the City.

### **Comments by Dave Mitler**

Mr. Dave Mitler, representing Asheville People for Cannabis Education, complained about a parking ticket he received and questioned the City's penalty provisions.

### **Comments by Hazel Fobes**

Ms. Hazel Fobes, representing Citizens for Safe Drinking Water and Air, thanked City Council for beginning their appointment process to the Clean Air Community Trust Board. With regard to the Asheville Riverside

Parkway Project, she was in favor of the Project, however, was concerned that there were no drawings available to see what the nine-mile project would look like. She announced a public hearing on May 9, 2001, at 5:30 p.m. in the First Floor North Conference Room in City Hall regarding the Regional Water Authority's budget.

## **Claims**

The following claims were received by the City of Asheville during the period of April 6-19, 2001: Sandra Wells (Water), James R. Dutton (Water), Dale Houck (Water), Faith McCallister (Water), Deanna McClain (Streets), Brady Blackburn (Streets), BellSouth (Traffic Engineering) and Doris Richardson (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

## **Lawsuit**

The City has received the following Complaint on April 19, 2001, regarding Ginny Godfrey v. Asheville Police Department and William Annarino as Agent. The nature of the proceeding is a complaint for participating in the undue felonious assault and battery upon a civilian female, and failure to follow proper and reasonable procedure when criminal activity has been reported. This matter will be handled in-house.

## **Closed Session**

At 8:25 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations - G.S. 143-318.11(a)(4); (2) To prevent disclosure of information that is privileged or 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 renders the information to be discussed confidential is N. C. Gen. Stat. 160A-168, the Personnel Privacy Act. - G.S. 143-318.11(a)(1); and (3) 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 lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District, Asheville-Buncombe-

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Henderson Water Authority, Buncombe County, City of Asheville, Frances C. Briggs, Myrna R. Hendrix, Rose Investments, Travis M. Bach, Haywood and Ruth Plott, Howard and Doris Meece, Mary Ann Quarngesser, Allyn Family Real Estate Limited Partnership, Thantex Specialties, Hubbell Realty Development, Alliance-Carolina Tool & Mold, Medical Action Industries, Cutler-Hammer, Eaton Corporation, City of Asheville, and Carolina Power & Light - G.S. 143-318.11(a)(3). This motion was seconded by Councilman Worley and carried unanimously.

At 9:18 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

## **OTHER MATTERS**

There followed a brief discussion about the extraterritorial jurisdiction/annexation moratorium bills that had been introduced by Representative Crawford and that they had been "killed" on reconsideration in committee.

There was also a brief discussion of the closed session bills regarding their effects on current processes. City Manager Westbrook briefly discussed our legislative proposals for this session.

In response to a question from Councilwoman Field, City Manager Westbrook explained that millions of dollars had been given to the now-departed developer of the private portions of the Grove Arcade were not true.

**VIII. ADJOURNMENT:**

Mayor Sitnick adjourned the meeting at 9: 32 p.m.

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CITY CLERK MAYOR

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