

Regular Meeting

Present: Mayor Charles R. Worley, Presiding; Vice-Mayor Terry M. Bellamy; Councilman Joseph C. Dunn; Councilman James E. Ellis; Councilwoman Diana Hollis Jones; Councilman R. Carl Mumpower; and Councilman Brian L. Peterson; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

U.S. Air Force Staff Sergeant Michelle Moses led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING WEDNESDAY, OCTOBER 8, 2003, AS "WALK TO SCHOOL DAY" IN THE CITY OF ASHEVILLE

Mayor Worley read the proclamation proclaiming Wednesday, October 8, 2003, as "Walk to School Day" in the City of Asheville. He presented the proclamation to Ms. Terri Zimmerman March, Healthy Buncombe Coalition Coordinator, who briefed City Council on some activities taking place during the day and who invited City Council to participate in the walk.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON AUGUST 26, 2003, AND THE WORKSESSIONS HELD ON SEPTEMBER 2, 2003, AND SEPTEMBER 16, 2003

B. RESOLUTION NO. 03-159 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY DISPOSAL PARCELS 162 AND 163 ON BAXTER STREET TO DAVID FRECK

Summary: The consideration of a resolution authorizing the Mayor to convey Disposal Parcels 162 and 163 located on Baxter Street to David Freck in the amount of \$1,800.

The subject parcels, zoned RS-8 Residential Single-Family High Density District and comprising 0.03 acres each are located on the south side of Baxter Street (PIN Nos. 9649.19-60-6613 and 6681). The current tax value for the parcels are \$900 each for a total value of \$1,800. The proposed land use for the subject property in the East End/Valley Street Community Improvement Program is for assemblage with adjoining residential property.

David Freck, who owns the improved property adjoining and in between the subject parcels, has submitted a bid to purchase both parcels for the sum of \$1,800. Mr. Freck desires to assemble the parcels with the property he owns to provide yard space and off-street parking for his tenants.

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On August 26, 2003, City Council directed the City Clerk to advertise for upset bids on Disposal Parcels 162 and 163. The advertisement ran in the Asheville Citizen-Times on August 29, 2003, as provided in N. C. Gen. Stat. sec. 160A-269. No response was received. Therefore, the offer to purchase from David Freck in the amount of \$1,800 was not upset and the sale to David Freck should be approved.

Community Development staff recommends adoption of the resolution authorizing the Mayor to convey Disposal Parcels 162 and 163 on Baxter Street to David Freck in the amount of \$1,800.

C. RESOLUTION NO. 03-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH HOBSON CONSTRUCTION CO. INC. TO INSTALL DRAINAGE ALONG GLENDALE AVENUE

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Hobson Construction Company Inc. to install drainage located along Glendale Avenue in Asheville, North Carolina.

The City is in need of a contractor to provide stormwater installation services for a drain line along Glendale Avenue between Thompson Street and McArthur Lane. In accordance with N.C. Gen. Stat. sec. 143-131, informal bids for stormwater installation services were solicited and two responses were received. The project was rebid and there were two responses received. The bidders are listed below:

<u>Company</u>	<u>MB Part</u>	<u>Drug Free</u>	<u>Bond</u>	<u>Bid</u>
Hobson Construction Co. Inc.	0	Yes	Yes	\$75,300
Buckeye Construction Co. Inc.	0	Yes	Yes	\$104,034

Funding for this project has already been allocated in the Public Works Department's Stormwater Materials budget.

The Public Works Department staff recommends City Council adopt the resolution authorizing the City Manager to enter into contract with Hobson Construction Company Inc. to install a drain line along Glendale Avenue.

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D. RESOLUTION NO. 03-161 - RESOLUTION AUTHORIZING THE CHAIRMAN OF THE ASHEVILLE REGIONAL AIRPORT AUTHORITY TO EXECUTE A GRANT AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR IMPROVEMENTS TO THE ASHEVILLE REGIONAL AIRPORT

Summary: The consideration of a resolution with the N.C. Dept. of Transportation for matching funds for improvements to the Asheville Regional Airport.

The City is required by law to execute certain contracts and agreements for the Airport Authority. This grant agreement is to allow the Authority to receive additional matching funds from the N. C. Dept. of Transportation ("DOT") for the CAT II TDZ Lighting-Runway 34, Raise MITL, Perimeter Security Road-Phase II.

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The grant, in the amount of \$33,595, has been approved by DOT based on a total estimated cost of \$671,899.

City staff recommends adoption of the resolution.

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E. RESOLUTION NO. 03-162 - RESOLUTION MODIFYING THE 2003 CITY COUNCIL MEETING SCHEDULE TO (1) DELETE THE SEPTEMBER 30, 2003, COMMUNITY MEETING; (2) RESCHEDULE THE TUESDAY, OCTOBER 7, 2003, WORKSESSION TO WEDNESDAY, OCTOBER 8, 2003; AND (3) RESCHEDULE THE TUESDAY, NOVEMBER 4, 2003, WORKSESSION TO WEDNESDAY, NOVEMBER 5, 2003

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F. ORDINANCE NO. 3054 - ORDINANCE AMENDING APPENDIX B TO RESTRICT THE NUMBER OF LATE PENALTIES FOR UNPAID PARKING CITATIONS

Summary: The consideration of an ordinance restricting the number of late penalties for unpaid parking citations to a maximum of three.

A review of the collection of parking citations after the addition of three late penalties indicates a very low collection rate. In addition, collection agencies and the state income tax garnishment system requires a set amount due that is not changing on a

monthly basis to use these collection methods. By adoption of this ordinance, the City of Asheville would be in a position to better use the services of collection agencies and/or the state income tax garnishment program to increase compliance of parking ordinances and collection of amounts due.

Staff requests that City Council approves the ordinance.

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G. RESOLUTION NO. 03-163 - RESOLUTION SUPPORTING MAYOR OF ASHEVILLE'S NOMINATION FOR SECOND VICE-PRESIDENT OF THE BOARD OF DIRECTORS OF THE NORTH CAROLINA LEAGUE OF MUNICIPALITIES

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

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

III. PUBLIC HEARINGS:

A. CONTINUATION OF A PUBLIC HEARING TO CONSIDER EDITORIAL AND TECHNICAL AMENDMENTS TO THE MINIMUM HOUSING CODE, AND AMENDMENTS TO THE FEES AND CHARGES MANUAL

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ORDINANCE NO. 3055 - ORDINANCE AMENDING THE MINIMUM HOUSING CODE

RESOLUTION NO. 03-164 - RESOLUTION AMENDING THE FEES AND CHARGES MANUAL

Mayor Worley opened the public hearing to consider editorial and technical amendments to the Minimum Housing Code at 5:15 p.m.

Director of Building Safety Terry Summey said that City Council gave direction to City staff at its August 1, 2003, meeting related to enforcement of the Housing Code. The public hearing at that meeting was continued to September 23, 2003, in order to receive additional citizen input on the technical standards, penalties and fees. Consistent with Council's directive, staff has prepared a new Housing Code providing for changes in enforcement, technical standards and penalties. Additionally, a resolution is proposed for amending the Fees and Charges Manual.

On August 12, 2003, City Council directed staff to amend the enforcement section of the current Housing Code as follows: (1) that all residential rental buildings receive a Housing Certificate under the standards of the Housing Code; (2) that all owner-occupied residential properties receive a one time inspection upon change of occupancy for life safety issues only; and (3) that upon each residential rental building receiving a Housing Certificate and each owner-occupied residential property receiving a Life Safety Inspection Report; thereafter, both such properties be enforced under the complaint based program of the Housing Code. The new code recognizes the following as compliant with the Housing Certificate requirement: (1) all residential buildings that currently have Housing Certificates; and (2) all new structures built since July 1, 1994, with a Certificate of Occupancy. Additionally, the new Housing Code includes technical, editorial, and penalty changes. The minimum standards that will not be included on the Life Safety Report for owner-occupied properties will not prevent the new owners from occupying the property, even if there is a failure to meet these standards.

Consistent with Council's directive, the Code has been revised to require a one time inspection for owner occupied properties at the time of transfer of ownership for Life Safety issues only. The following minimum standards of the Code are not included on the Life Safety Report:

exterior painting, missing shingles, attic ventilated, insulation, screens, space requirements, sanitation and extermination

The new Code received comprehensive review at three public meetings held on September 2 and 3, 2003, with the Director and his staff. Fifteen citizens attended the meetings with written suggestions obtained from one group and 2 individuals. Some changes were made as a result of the feedback. The technical, editorial, and penalty changes, as well as fee changes, are based upon input received from members of the Citizens Task Force, staff, as well as other members of the public.

It is expected that the new Code will be effective in minimizing the burden and expense of those who continuously comply with the Code. Staff efforts will be focused upon improving housing conditions with the following emphasis: (1) rental properties not in compliance with the Code; (2) Life Safety issues of owner occupied properties at the time of change of occupancy; (3) dwellings that physically impact neighborhoods; and (4) a complaint based system that rental and owner occupied properties continue to maintain compliance with the standards of the Code.

City staff recommends that (1) the new Housing Code be adopted and made effective as of September 24, 2003, with the effective date of the increased penalties delayed until January 1,

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2004; and (2) the resolution setting forth changes to the Fees and Charges Manual also be effective as of September 24, 2003.

Mr. Summey then proceeded to review in detail the technical standards, consisting of definitions, agents, agencies, life safety standards and minimum standards.

With regard to administrative changes, he explained that the Housing Code Division consists of a Housing Code Coordinator, research assistant, two inspectors and one secretary.

Vice-Mayor Bellamy felt that since there was bound to be many questions regarding the technical changes and since Council had just received the lengthy document on Friday, she moved to table the matter until a worksession. This motion was seconded by Councilwoman Jones. Discussion occurred on the motion and said motion failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "yes" and Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "no."

Councilwoman Jones requested that Council discussion occur prior to any motions being made.

There was considerable discussion concerning the life safety/unsafe conditions along with the other technical changes. Mr. Summey responded explaining staff's reasoning behind each Council concern or comment expressed and why they, and the Task Force, felt they were taking the subjectivity out of the Code.

With regard to the heating system, Mr. Summey said that staff has worked on trying to find some compromise from the current system. The current system is maintaining a room temperature of 68 degrees in every room of the house, which is the same standards that you would have in a new house that is built today. It is difficult to make the older houses we have today be heated up to 68 degrees, particularly when you are talking about heating all the rooms. Staff recommended 65 degrees by using the International Property Maintenance Code (they used 65 degrees as the minimum). In addition, State law requires (only for jurisdictions over 200,000) that rental properties have a heating system that only heats one room (not the kitchen) up to 68 degrees. We tried to find something between the minimum state law and what is required for new construction. We recommend maintaining a room temperature of 65 degrees in every habitable room. We are not trying to have older houses meet current day standards. The problem most frequently found by inspections is not reaching 65 or 68 degrees, but that the system does not work at all.

With regard to the street address not visible from the public street, Mr. Summey said that the street address number cannot be less than 2 inches in height on one or two family residences and 4 inches in height on all other multi-family residences. Any new numbers to be installed shall be 4 inches in height. He explained that the Housing Code is being cross-referenced to the Fire Code, which requires 4 inches, and in certain instances 6 inches. Multi-family complexes have asked if they have to change their 3.5 inch numbers to 4 inches. Mr. Summey said that if fire equipment does not get to an emergency on time and they find that signage was part of the problem, a possible lawsuit could be filed. Since Fire Inspectors will mostly enforce this standard, he would assume if the sign were measured to 3.5 inches, the Fire Inspector would expect them to bring it into compliance to 4 inches.

With regard to clarifying fixtures and outlets, Mr. Summey explained that new construction would be required to have an arc-fault interrupter for extensions of bedroom circuits. But because of the complexity of putting arc-fault interrupters in, we are only recommending it for existing structures. However, if you are renovating the entire house, rewiring the house or even renovating one room by stripping the sheetrock off the walls, then the arc-fault interrupter would

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be required to be installed. He also mentioned that part of the reason this is in the Code as recommended is because as they go

out to train electricians and inspectors we want to discuss arc-fault interrupters so it will be familiar to them.

With regard to deleting the requirement for a 3 x 3 foot landing, Mr. Summey explained this deletion would have an impact on cost for an affordable home, because mostly only mobile homes have this landing. On new mobile homes this will be a requirement (because it's best to have the structure built comply with the Code it was built under), but not a requirement for existing mobile homes. He felt that the landing is not a true life safety issue and in fact, having the landing could be a detriment because if you have a heavy snowstorm, you can't open the door. Another factor is that if the City annexes any mobile home parks, Buncombe County does not have that requirement.

Regarding the deletion of inspections by a third party federal agency, Mr. Summey said that they are not inspecting to the City's standards because they are looking at different issues. For example, the Housing Authority is inspected under the third party federal agency; however, the Housing Authority must be in compliance with the City's Housing Code. We have trained the Housing Authority staff of our Code requirements and their units are handled just like any other rental complex. If someone complains from one of the Housing Authority's units, we investigate that just like any other complaint. He said that the City's Housing Code Coordinator will be making visits to the Housing Authority to make sure that their units are up to Code. First they will look at units from the outside and if necessary, they will ask for their inspection report.

With owner occupied structures, the Code has been revised to require a one-time inspection for owner occupied properties at the time of transfer of ownership for Life Safety issues only. The report will clarify the life safety issues not being inspected (because these are issues they don't think should keep a person from moving in), but chances are the owner is aware that the house that needs to be painted or there are some shingles missing. The following issues are not on the Life Safety Report because the owners are trying to move in and often times they want to do these things after they move in: exterior painting, missing shingles, attic ventilated, insulation, screens, space requirements, sanitation and extermination. If, however, complaints are received from the neighborhood, we will investigate those complaints and the owner could be required to fix the problems.

Regarding enforcement, are trying to make the Code more flexible to say certain things have to be fixed immediately. In the existing Code, after the owner is informed from the Housing Inspector of any deficiencies, the landlord has up to five days to notify the tenants of any unsafe conditions. Staff felt that if it's a life safety issue, the tenant should be notified immediately. The landlord should immediately start trying to reach his tenants.

Regarding communication of changes, Mr. Summey said that he and his staff would be educating the public with regard to the changes. There will be advertising in CityWorks, television, radio, and newspaper; presentations to the Board of Realtors, Carolina Real Estate Investor, and various community meetings; public educational sessions for tenants and landlords; educational brochures; and information on the City's Web page.

Councilwoman Jones requested language in the department's standards regarding handling of complaints. When she suggested that all complaints be followed up within 24 hours after received, Mr. Summey said that if there is one inspector or one inspector is on vacation, that standard cannot be met. He did explain that complaints are currently worked into the other schedule. For example, we have inspections scheduled as much as a week in advance for people who are wanting to sell their property. Then if a complaint is received, they investigate the complaint in between their schedule. Currently every complaint gets followed through. Because of the changes, staff should have more time to investigate complaints. One of the inspectors'

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priorities is to respond to complaints. When a complaint is filed, staff does ask the tenant if they have talked to the landlord. Regardless of whether they have talked to the landlord or not, staff is going to have to talk to the landlord and follow-up on the complaint. All complaints are followed-up on within 3 days.

Assistant City Attorney Martha McGlohon responded about the ways a complaint can be issued. She stressed that even though the ordinance allows a petition or complaint to be filed with the Code Enforcement Officer by at least five residents of the City, the Code Enforcement Officer can, on his own motion, It gives the Officer the discretion to not investigate the complaint until five residents of the City complain, however, the Officer's discretion is limited by his statutory responsibility and his job responsibilities. As a trained Code Enforcement Officer, when a complaint is called in, his job requires him to ask certain questions of that complainant, e.g., have you spoken with your landlord, have you been evicted, is there a dispute between you and the landlord, etc. Once the Officer asks those questions, then the Officer has a statutory responsibility, because they have information in their possession at that point that there may be violation of the Code, to investigate to determine whether or not the complaint is meritorious. When the Officer investigates a complaint on the outside, they cannot go inside unless the tenant invites them in. However, the officer does keep his eyes open and if he observes other situations that clearly show to him that there is another violation of the Housing Code, the officer will take note of that and will require that those violations be corrected. Under this Code, if we find four or more violations, then it can bring about the requirement for a full complete inspection report. There is no provision

in the law that would prohibit Council making our Code stricter than the state law. Council does have discretion to add language to the Code to require that the officer inspect every single complaint within 24 hours. Mr. Summey said that they would be putting more emphasis on tracking complaints. They will track when a complaint is first received and the date when it is investigated.

At 7:25 p.m., Mayor Worley announced a short recess.

The following individuals voiced concerns over the technical changes to the Code, some being, but are not limited to: reducing the heating temperature to 65 degrees may encourage supplemental heating that will be unsafe; need for insulation for energy conservation; how will you identify inside problems from the outside; need to prepare a brochure about the Housing Code that includes information on how to make a complaint, who to contact and what kinds of complaints would be considered; include information in brochure a list of the life safety issues; prepare an attachment for leases with the complaint procedure for prospective tenants; place brochures in rental offices, real estate offices, libraries and other public places; who is responsible for violations missed by third party inspectors; there is no strong enforcement measures for these Code standards; tenants may fear of being evicted if they complaint; how will the City prevent people from purchasing a home as an owner and turning it around in a short time to be rental property; will there be a requirement that the units inspected by fired third party inspectors receive new inspections; when inspectors investigate a complaint received, will the owner have to pay for the inspection if they don't find a violation; and there will be a major cost to change street address numbers from 3.5 to 4 inches:

Ms. Lottie Meyerson
Ms. Minnie Jones
Ms. Pauline Council
Mr. Fred English
Ms. Sarah Uminski, representing the Affordable Housing Coalition
A former member of the Board of the Affordable Housing Coalition
Ms. Beth Maczka
Ms. Bonnie Bailey, representing the Asheville Apartment Association

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The following individuals voiced support of the technical changes to the Code with some suggested amendments, some being, but are not limited to: if you make standards too stringent, people will not invest in the City; there has been ample time and opportunity for people to review the proposed Code; the increase of fees and penalties will help put "teeth" into the Code; and once a house is inspected and the owner is given a list of things that need to be fixed, it drives people crazy when it is reinspected and the inspector finds other violations:

Mr. Scott Osborne
Mr. Tom Garden

Mr. Walter Plaue, representing the Carolina Real Estate Investors Association, voiced support of the Code, however, he suggested the following modifications to the issuance of compliance section: (1) clarifying language that any person, including any employee of the City, may complain ...; (2) requiring the complainant to affirm that notice and reasonable time to repair have been given to the property owner, unless the condition is immediately life-threatening; (3) distinguishing between the original complaint by a citizen and the "official complaint" issued by the Code Enforcement Officer after the "violation notice" stage; (4) omitting the City's authority to file a notice of lis pendens before a hearing and finding of violation; and (5) the violation notice should give the owner a reasonable date by which the violation must be corrected. All agencies working in the low cost housing arena must look to creative and proactive approaches. We have already taken steps to work with Pisgah Legal Services for the purpose of identifying the City's most flagrant violators of the Code. We will expand this to include the County Health Department, the City Fire Marshal as well as the City's Inspection Department. We will look for ways to find, identify and penalize the slumlords. In conjunction with the Building Code staff, we hope to develop a form which will be included with each lease agreement which emphasizes the joint and mutual interest of tenants and landlords which will, among other things, ask that complaints be brought to the attention of the landlord as soon as detective. If the landlord is not responsive, the tenants will send a written and certified complaint to the landlord. In the event the tenant still does not receive satisfaction, the phone number of the Code Inspection Department will be provided on the form.

Upon inquiry of Ms. Maczka, City Attorney Oast said that the fact that some or even all of Council members are owners of rental property within the City creates a conflict that would disqualify them from voting, nor would the fact that any Council member is an attorney that deals in real estate.

Mayor Worley closed the public hearing at 8:34 p.m.

Mr. Summey responded to the concerns expressed during the public hearing and also to Council's concerns, some being, but are not limited to: the reasoning behind 65 degrees vs. 68 degrees and will it increase the need for supplemental hearing; is there a loophole or a high risk factor of people not feeling safe in making complaints; how can we encourage tenants to make complaints; why are we requiring 4 inch letters for street addresses and will 3.5 inches suffice; how will we address the fired third party inspector's inspections; who pays if a complaint is registered and no violation is found; how will we address people buying houses and then converting them to rental units; will the City be looking into attaching educational information about the Code and how to complain to leases; do we have enough enforcement mechanisms in place; how will we be addressing additional violations found during reinspection; how was this new Code information circulated and how did they get it; what are the implications of this new Code to the Building Safety budget; and what is the definition of the word "reasonable" and why do we use it in some places and not others.

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It was the consensus of City Council to have City staff come back to Council in six months for a thorough reassessment of the changes and if they are not working, perhaps make another recommendation.

Councilman Dunn felt that until we get rid of some of these regulations we are going to decrease affordable housing.

Councilwoman Jones initiated discussion about requesting language in the Building Safety Department's operating policy regarding responding to every complaint in a reasonable timeframe, but a maximum of 72 hours. City Manager Westbrook recommended some qualifier like "reasonable amount of time" because there are some cases we will want to respond within 3 hours, but sometimes a complaint can wait longer. So that we don't cripple that ability to act quicker on those type complaints, he recommended that we use a word that allows us that latitude. Staff does understand Council's urgency on responding to complaints. City Attorney Oast felt that language like "reasonable" was appropriate, but to establish a particular number of hours or days doesn't allow for prioritization of complaints based on their seriousness, and the work ebbs and flows. He suggested the following language "The City Manager shall maintain statistics and monitor response times to ensure that complaints are responded to within a reasonable amount of time." He felt it was essential to leave some of these experienced based judgment calls to the inspectors. Not to cheapen any complaint, but he thinks that a certain amount of discretion has to reside with the profession experience of our staff who have to do the inspection to make that determination.

In response to Councilwoman Jones, Mr. Summey said that the City doesn't inspect for air conditioning, but he didn't see any problem in inserting the word "functioning", before central air conditioning systems, in the first sentence in Section 4-210 (I). They may have to look at having a standard for what is a functioning central air conditioning system.

Councilwoman Jones was concerned about the deletion of the 3 x 3 landing. On one hand she heard it exists for safety reasons and that is important for the disabled and elderly. On the other hand she heard that if we annex mobile homes in then that would be problematic because Buncombe County doesn't require it. She felt the City needs to be doing what is best to keep people safe and not worry about somebody else's standards. Mayor Worley explained that it is being deleted because this would require retrofitting to those buildings that were constructed under a Code that allowed that at the time they were constructed. We are requiring it for new mobile homes, but not for existing mobile homes.

Councilwoman Jones said that in terms of educating people about a complaint-based system and how they can complain, we need put in large letters and bold print, that anyone can contact a City Council member or other public official to complain on their behalf. Then City Council will follow-up on that. City Attorney Oast said that City Council members are not required to pass a complaint on, however, the Building Inspection staff would expect those complaints to be turned over to them.

Upon inquiry of Councilman Mumpower about requiring some educational material be attached to leases, Councilman Ellis felt that was understood because staff has indicated that they have plans to do that and others have indicated that they are going to work on this as well.

Councilman Ellis moved to repeal the current Housing Code and adopt a new Housing Code, with the effective date of the new Code being effective the day after final adoption and the effective date of the increased penalties be delayed until January 1, 2004. This motion was seconded by Councilman Dunn.

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After discussion, Councilwoman Jones moved to amend the motion to read "Every dwelling shall have heating facilities ... and capable of maintaining a room temperature of 68 degrees in all habitable rooms." This motion was seconded by Vice-Mayor Bellamy and failed on a 3-4 vote, with Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no," and Mayor Worley, Councilman Dunn, Councilman Ellis and

Councilman Mumpower voting "no."

After discussion, Councilwoman Jones moved to amend the motion to include "The City Manager shall maintain statistics and monitor response times to ensure that complaints are responded to within a reasonable amount of time" as a new Section 4-217-(l). This motion was seconded by Vice-Mayor Bellamy and carried unanimously.

Councilman Mumpower said that we have a responsibility to govern fairly and realistically as representatives of our community and he thinks we have done that tonight.

Councilwoman Jones felt Council has made a terrible mistake. She felt there was a lot of opportunity for a genuine compromise and we missed an opportunity that perhaps could have taken us to a better place as a community. More importantly, she feels like the people who have brought up concerns for the people that will be most impacted by this, in terms of tenants and neighborhood residents, they are doing a service to bring those to our attention. She feels this Council has a double standard about timing. We have looked at the 2025 Plan extensively and that is fair because we want a lot of community buy-in, but we also needed more time on the Minimum Housing Code. It was great that the Task Force had it prior to this, but for something this important it would have been better to circulate it to a broader audience and it probably would have been reasonable to have a little more time. We do need to be fair about that. Since she chooses to live in mixed housing, it gives her the opportunity to hear concerns and take them more seriously than she has heard others take them. We do our citizens a disservice when we discount when they share with us and she feels we did some of that.

Vice-Mayor Bellamy thanked the Task Force who worked on this ordinance for 1.5 years and wished they could have come to a more middle ground. She will look forward to seeing the 6-month report. She felt we will see an increase in complaints because of the attention this has drawn. She agreed that our community is better when it can come together and hoped we can work on that in the future.

Councilman Dunn felt that the existing Code has hurt affordable housing. An inspector cannot guarantee the safety of a house. He felt our existing Code is a penalty for good landlords.

Mayor Worley believes this is the best interest of the City of Asheville.

The amended motion carried on a 4-3 vote with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

City Attorney Oast said that because of the vote on this ordinance, it will require a second reading on October 14, 2003.

ORDINANCE BOOK NO. 20 - PAGE

Councilman Mumpower moved to adopt the resolution setting forth changes to the Fees and Charges Manual to be effective the day after adoption of the new Housing Code. This motion was seconded by Councilman Dunn and carried on a 4-3 vote, with Mayor Worley, Councilman Dunn, Councilman Ellis and Councilman Mumpower voting "yes" and Vice-Mayor Bellamy, Councilwoman Jones and Councilman Peterson voting "no."

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RESOLUTION BOOK NO. 27 - PAGE

B. PUBLIC HEARING RELATIVE TO CONSIDER THE CLOSING OF A PORTION OF THE RIGHT-OF-WAY KNOWN AS GREENBRIAR ROAD WEST FROM BENT STREET TO PARKWOOD ROAD

RESOLUTION NO. 03-165 - RESOLUTION TO PERMANENTLY CLOSE A PORTION OF THE RIGHT-OF-WAY KNOWN AS GREENBRIAR ROAD WEST FROM BENT STREET TO PARKWOOD ROAD

Mayor Worley opened the public hearing at 10:05 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close a portion of the right-of-way known as Greenbriar Road West from Bent Street to Parkwood Road. This public hearing was advertised on August 29, September 5, September 12 and September 19, 2003.

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

Public Works Department staff have researched and determined that Greenbriar Road West from Bent Street to Parkwood Road is a City maintained right-of-way. The only lot abutting the affected portion of Greenbriar Road West is identified by the PIN No. 9628.12-86-6464.

PT Business Park, LLC intends to upgrade Bent Street from Greenbriar Road West to Patton Avenue to a paved width of twenty feet. Additionally, PT Business Park will grant the City a vehicle access easement and a pedestrian access easement across their property connecting Parkwood Road and the portion of Greenbriar Road that will remain open.

City staff recommends that City Council adopt the resolution to permanently close Greenbriar Road West from Bent Street to Parkwood Road.

Upon inquiry of Vice-Mayor Bellamy, Mr. Cole said that the developer is working with the City Engineer for improvements, including sidewalks, on Parkwood Road.

In response to Councilman Ellis, Mr. Cole said that the developer had a meeting with area businesses and he was able to satisfy any concerns they had.

Mayor Worley closed the public hearing at 10:09 p.m.

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

Vice-Mayor Bellamy moved for the adoption of Resolution No. 03-165. This motion was seconded by Councilwoman Jones and carried unanimously.

RESOLUTION BOOK NO. 28 - PAGE

C. PUBLIC HEARING RELATIVE TO CONSIDER THE CLOSING OF BELLVIEW ROAD FROM BELVEDERE ROAD TO LONDON ROAD

RESOLUTION NO. 03-166 - RESOLUTION TO PERMANENTLY CLOSE BELLVIEW ROAD FROM BELVEDERE ROAD TO LONDON ROAD

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Mayor Worley opened the public hearing at 10:10 p.m.

Assistant Public Works Director David Cole said that this is the consideration of a resolution to permanently close Bellview Road from Belvedere Road to London Road. This public hearing was advertised on August 29, September 5, September 12 and September 19, 2003.

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

Pursuant to this statute, Scott Buchanan, on behalf of Thoms Community Care Foundation, has requested the City of Asheville close the right-of-way known as Bellview Road from Belvedere Road to London Road.

Public Works Department staff have researched and determined that Bellview Road from Belvedere Road to London Road is a City maintained right-of-way. The only lot abutting the affected portion of Bellview Road is identified by PIN No. 9647.08-98-5093.

Thoms Community Care Foundation intends to construct and dedicate a new public right-of-way to the City to be known as "New Bellview Road," prior to closing Bellview Road.

City staff recommends that City Council adopt the resolution to permanently close Bellview Road from Belvedere Road to London Road.

Vice-Mayor Bellamy was concerned that the new road will be located closer to the residential homes on London Road.

Mr. Scott Buchanan, Executive Director of Thoms Community Care Foundation, said that they sent a petition to residents along London Road, Belvedere Road and Crestland. Then he sent a letter to everyone who lives all the way up to I-40 asking them to call or contact him with any questions. No one has contacted him. He said a person who lives in California owns the

house closest to the new road and she has offered to sell it. He feels the new road will create a better intersection on London Road. He said they will be a stop sign at the intersection of the new road and London Road, sidewalks on the new portion and on London Road, lighting along the new portion of Bellview Road, and they are trying to move the bus stop closer. He said they would ask their suppliers to use Sweeten Creek Road. There will also be a plan for extensive planting.

Mayor Worley closed the public hearing at 10:22 p.m.

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

Councilman Mumpower moved for the adoption of Resolution No. 03-166. This motion was seconded by Councilman Ellis and carried unanimously.

RESOLUTION BOOK NO. 28 - PAGE

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. ORDINANCE NO. 3056 - ORDINANCE TO PROVIDE FOR NONEXCLUSIVE FRANCHISES AND REVOCABLE PERMITS FOR TELECOMMUNICATION SERVICES IN THE CITY LIMITS

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Public Works Director Mark Combs said that this is the consideration of a telecommunications ordinance establishing a framework for communications infrastructure franchises and permits in the City limits.

The City needed a uniform way to regulate use, spacing, safety, etc. For example, you can have water, sewer, telephone, power, cable television, fiber optic, and possibly others in the future, in the public rights-of-way. Telecommunication consists of (1) fiber optic cable and other communications infrastructure located in public rights-of-way; (2) overhead (on existing or new poles; (3) underground (new or existing conduits); and (4) all new infrastructure. A telecommunications committee of City staff was formed to address the increasing use of the City's rights-of-way for utilities. The three key tasks for the committee was to: 1) Draft an ordinance; 2) Construct 'universal' franchise agreement; and 3) Convene to review and negotiate proposals.

In many cases, providing broadband cable access along certain routes makes such a system proprietary to the company in that particular area, and as a result companies have been scrambling to install such infrastructure in hopes of monopolizing future customers and access.

In the recent past, several cable companies have approached the City seeking exclusive rights to install fiber optic cable. Without a framework (ordinance) from which to negotiate non-exclusive franchises and permits, staff has been unable to develop long-term, binding legal agreements to benefit the franchise, current and future customers, and the City.

The goal of a telecommunications ordinance is that it will provide framework for (1) non-exclusive franchises; and (2) revocable permits. The ordinance will establish standards for: (1) telecommunications companies and developers and City staff (to base franchise agreement on); and (2) promote orderly development of infrastructure to insure: orderly installation within existing rights-of-way; customer access and services; and City and other government access.

In response to this need, a telecommunications ordinance was drafted which specifies the following sub-parts:

1. Franchise required: No telecommunications system can use public rights-or-way in the City without a franchise.
2. Franchise fees: As set forth in the (negotiated) franchise.
3. Service: Must be installed and in service within 12-months and "...in accordance with the conditions of its certificate of public convenience and necessity."
4. Construction and technical standards: Grantee must install and maintain their system consistent with listed laws, ordinances, technical standards/specifications.
5. Service to the City: Terms of service to the City at favorable rates.
6. Transfer of ownership or control: The City must be notified of any intent to transfer ownership or control and the transferee is required to accept all terms, provisions and amendments.
7. Franchise renewal: The City may grant or deny a franchise and Grantee will have no property right in the public rights-of-way if not renewed.
8. Forfeiture or revocation: Sets forth seven (7) grounds for revocation (breach of franchise, disposition of system, restoration,

abandonment and extended operation).

9. Terms of renewal: As negotiated with each Grantee.
10. Receivership and foreclosures: 120-day termination clause; termination by judicial action.
11. Performance Bond: Required with details of terms and conditions.
12. Insurance: Proof of insurance and maintenance of policy required.
13. Indemnification: Detailed conditions regarding release, indemnity, hold harmless, claims and broad construction (per N. C. Gen. Stat. sec. 22B-1).
14. Liquidated damages: Detailed conditions regarding liquidated damages, negotiated penalties, unavoidable delay and procedures.

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In conclusion, the ordinance will establish standards for orderly use of rights-of-way as approved by Council. The franchise agreements will be based on an ordinance and staff will review all proposals, make recommendations to Council, and oversee ordinance compliance.

City Attorney Oast reviewed some revisions which resulted from the September 16, 2003, worksession and comments from citizens. Additionally, after further legal review of the law and conversations with lawyers and officials from companies who have experience in other communities, he included further suggestions for revisions and clarifications to the proposed ordinance.

Upon inquiry of Vice-Mayor Bellamy, City Attorney Oast said that a provision has been included in the ordinance that exempts from the application of the ordinance public utilities that are in operation pursuant to a statewide franchise issued by the N.C. Utilities Commission, to the extent that such franchise covers that utility's operations within the City.

City staff recommends Council adopt a telecommunications ordinance, which will provide for non-exclusive franchises and revocable permits for telecommunications services established within the City of Asheville.

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

Vice-Mayor Bellamy moved for the adoption of Ordinance No. 3056, with the ordinance revisions prepared by City Attorney Oast. This motion was seconded by Councilwoman Jones and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

B. ORDINANCE NO. 3057 - ORDINANCE REQUIRING A PRE-TOWING NOTICE PRIOR TO TOWING ILLEGALLY PARKED VEHICLES FROM PRIVATE PARKING LOTS, GARAGES AND OTHER PARKING FACILITIES

City Attorney Oast said that this is the consideration of an ordinance to require posting of "pre-towing" notices on private lots before owners can tow unauthorized vehicles with a civil penalty imposed for violation.

The City has received numerous complaints from people, usually visitors to Asheville, whose cars have been towed from private parking lots. The problem arises primarily in downtown and in Biltmore Village, both high tourist traffic areas, when cars are parked in private parking lots after normal business hours. The lots are not conspicuously posted with signs restricting parking (if at all), and are not chained off or barricaded, and people mistakenly assume that the lots are available for after hours parking. When the owners of towed vehicles go to retrieve their cars, they have complained that they are gouged on the price, forced to pay in cash, and otherwise treated rudely. This is a practice known as predatory towing, and many victims have promised never to return to Asheville and to warn their friends away, too.

The City's ability to regulate towing is limited, but other cities with similar problems have obtained special legislation to allow them to enact certain regulations. In 2001, the cities of Greenville and Chapel Hill obtained legislation to allow them to adopt an ordinance to require private property owners who tow vehicles from their lots to post a "pre-towing notice" on their lots before towing, and to assess a penalty if the ordinance is violated. In 2003, with the help of our local delegation, the City of Asheville was added to this legislation.

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The ordinance is drawn from ordinances in Greenville and Chapel Hill. It requires the owners of lots who tow unauthorized

vehicles to post these lots, and prescribes the size, height, location and required content of the sign. The act made unlawful by the ordinance is the towing of a vehicle, not the failure to post the sign, and the civil penalty for violation is \$100 for the first violation, \$200 for a second violation within 12 months, and \$300 for a third or subsequent violation within 12 months.

As a result of Council comments at the September 16, 2003, City Attorney Oast included the 24-hour prohibition and the cost of the tow on the sign face.

Staff recommends adoption of the ordinance.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3057. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 20 – PAGE

C. RESOLUTION NO. 03-167 - RESOLUTION APPROVING THE METROPOLITAN PLANNING ORGANIZATION MEMORANDUM OF UNDERSTANDING

City Engineer Cathy Ball said that this is the consideration of a resolution authorizing the execution the Memorandum of Understanding for the French Broad River Metropolitan Planning Organization.

The Metropolitan Planning Organization (MPO) is in the process of expanding to include all of the local governments in Buncombe, Haywood, and Henderson Counties. The Transportation Advisory Committee approved the final version on August 21, 2003. All of the local governments must sign the agreement in order to participate in the MPO process.

The agreement establishes the membership and voting policies for the Transportation Advisory Committee (TAC) and Technical Coordinating Committee (TCC). City Council reviewed a draft of this agreement at the work session on August 5, 2003. Since the time of that review there has been one minor change to the agreement. The change involves representation on the TCC (staff level technical committee). In the previous draft, the Land of Sky Regional Council and Region A Council were voting members of the TCC. In the final version, those two organizations are non-voting members. This change was made in consultation with these organizations.

The Memorandum of Understanding (MOU) also establishes the membership of the TAC (policy board of elected officials). The TAC will be comprised of two representatives from Asheville, two from Buncombe County, two from Haywood County, two from Henderson County, and one from each of the other jurisdictions. The North Carolina Board of Transportation will have two representatives, for a total of 24 members.

The MPO staff has asked all eighteen jurisdictions to approve this agreement. To date, five jurisdictions have approved the agreement. Most of the other jurisdictions are scheduled to approve the agreement in September or October. A few jurisdictions still have some remaining questions and concerns about the document. Henderson County, Flat Rock and Mills River plan continued discussions about the MOU.

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The new MPO organization will hold its initial meeting on October 23, 2003.

City staff recommends City Council approve the resolution authorizing the execution of the Memorandum of Understanding for the French Broad River Metropolitan Planning Organization.

City Engineer Ball responded to various questions from Councilman Peterson.

Upon inquiry of Councilman Peterson, City Engineer Cathy Ball said that Vice-Mayor Bellamy is City Council's Alternate, but the proxies will still have to be voted on as a part of the by-laws because the by-laws still state that any TAC member can authorize someone to be their proxy. It doesn't state they have to be another elected official.

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

Councilman Peterson moved for the adoption of Resolution No. 03-167. This motion was seconded by Councilwoman Jones and carried unanimously.

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D. RESOLUTION NO. 03-168 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Bellamy said that the terms of Jan Davis and Billie Buie, as members on the Planning and Zoning Commission, expired on August 14, 2003.

Both Mr. Davis and Ms. Buie have served two full successive terms and are not eligible for reappointment.

On September 2, 2003, City Council interviewed Andy Brown, Jane Mathews, Robert Sweetser, Tom Byers, Harry Weiss and Derek Weekley.

On September 16, 2003, prior to this meeting, City Council interviewed Mike Vance and Steven Sizemore.

Andy Brown received 0 votes; Jane Mathews received 1 vote, Robert Sweetser received 0 votes, Tom Byers received 4 votes, Harry Weiss received 2 votes, Derek Weekly received 0 votes, Mike Vance received 3 votes and Steven Sizemore received 4 votes. Therefore, Tom Byers and Steven Sizemore are appointed as members to the Planning & Zoning Commission to each serve a three year term respectively. Both terms will begin effective September 4, 2003, and expire August 14, 2006, or until their successors have been appointed.

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VI. OTHER BUSINESS:

Claims

The following claims were received by the City of Asheville during the period of August 22 – 28, 2003: Kim MacQueen (Streets), Luis & Kathy Olivo (Water), Barvara Moutos (Water), BellSouth (Water).

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The following claims were received during the period of August 29-September 4, 2003: Bernard Thoma (Streets), Elizabeth Kendall (Sanitation), Marjorie Barnes (Water), Elizabeth Tate (Police), and Elizabeth Ros (Water).

The following claims were received during the period of September 5-11, 2003: Tyrone Simpson (Parks & Recreation), BellSouth (Water), Terry Kirkpatrick (Sanitation), Irene Wright (Streets) and Karen Bradshaw (Streets).

The following claims were received during the period of September 12-18, 2003: Addie Mae Luna (Fire), BellSouth (Streets), Lottie Robinson Pierce (Police) and Bobby Searcy (Water).

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

Lawsuits

On August 28, 2003, the City received a complaint from Carroll Moore. The nature of the proceedings is challenging constitutionality of City's noise and picketing ordinances, and a 1983 claim for violation of plaintiff's civil rights. This matter will be handled by outside counsel.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Vice-Mayor Bellamy thanked Biltmore Baptist Church for holding the City/County Appreciation Luncheon on September 16, 2003.

Mayor Worley was proud to announce that that at the September 21, 2003, Kids Voting Benefit Volleyball Game of Asheville City Council vs. Buncombe County Commissioners, the Asheville City Council won.

Mr. Mike Fryar showed Council various maps alleging that the description annexing his property is illegal. City Attorney Oast said that at this point after a preliminary review he didn't see anything that would cause him to say that Mr. Fryar's property did not qualify for annexation. He said that he would look into this matter again as soon as possible.

VIII. ADJOURNMENT:

Mayor Worley adjourned the meeting at 10:49 p.m.

CITY CLERK

MAYOR