

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Diana Hollis Jones; Councilman Jan B. Davis; Councilman Bryan E. Freeborn; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilwoman Robin L. Cape

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

I. PROCLAMATIONS:

A. SENIOR OPPORTUNITY CENTER RECOGNITION AS A NC SENIOR CENTER OF EXCELLENCE

Mayor Bellamy recognized Mr. Joe Connolly, Director of the Land-of-Sky Area Agency on Aging, who presented the NC Senior Center of Excellence Award to Ms. Pam Kelly, Director of the Senior Opportunity Center; Ms. Irene Pickens and Mr. Daniel Campbell, Senior Opportunity Center staff; and Ms. Amy Rickman, Program Supervisor.

II. CONSENT AGENDA:

Councilman Mumpower asked that Consent Agenda "C" be removed from the Consent Agenda for discussion.

Mayor Bellamy asked that Consent Agenda "E" be removed from the Consent Agenda for an individual vote.

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON
JUNE 27, 2006**

**B. RESOLUTION NO. 06-127- RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT
WITH THE ASHEVILLE HUMANE SOCIETY FOR ANIMAL SHELTER SERVICES WITHIN THE CORPORATE
LIMITS OF THE CITY**

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with the Asheville Humane Society for animal shelter services within the corporate limits of the City.

For the past few years, Buncombe County has required the City to pay for animal shelter services through the Asheville Humane Society, who has contracted with the County to run the animal shelter. On June 27, 2006, the City approved the budget for Fiscal Year 2006-2007 and in that budget approved \$121,000.00 to pay for shelter services. The City and the Humane Society need to enter into an agreement for the shelter services for the term of July 1, 2006, through June 30, 2007.

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Pros:

- The City will not have to pay for the construction and operation of its own animal shelter to take care of its animal sheltering needs and the Humane Society will be responsible for the care of all animals brought to the shelter.

Cons:

- The City has to pay out of its general fund for shelter services where Buncombe County provides the same services to all other non-incorporated county residents at no additional cost except through county taxes.

City staff recommends the adoption of the resolution for animal shelter services for the term of July 1, 2006, through June 30, 2007.

C. RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE BE VACATED AND CLOSED UNTIL BROUGHT INTO COMPLIANCE WITH THE HOUSING CODE

This item was removed from the Consent Agenda for individual discussion.

D. RESOLUTION NO. 06-129 - RESOLUTION AMENDING THE 2006 CITY COUNCIL MEETING SCHEDULE TO DELETE THE AUGUST 8, 2006, FORMAL COUNCIL MEETING

E. RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 23, 2006

This item was removed from the Consent Agenda for an individual vote.

Mayor Bellamy 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 Jones moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Freeborn and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA

- RESOLUTION NO. 06-128 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER VACATE THE DWELLING LOCATED AT 128 ALABAMA AVENUE BE VACATED AND CLOSED UNTIL BROUGHT INTO COMPLIANCE WITH THE HOUSING CODE

Summary: The consideration of a resolution setting a public hearing on July 25, 2006, to consider the dwelling located at 128 Alabama Avenue be vacated and closed until brought into compliance with the Housing Code

The structure located at 128 Alabama Avenue (PIN 9638.15-52-0910) is a two-story wooden frame, deteriorated dwelling. Work conducted without a valid permit within the dwelling resulted in four illegal units. The owner has obtained zoning approval for two units but has not completed the required work in order to obtain a Housing Certificate. At a hearing on March 5, 2005, the dwelling was deemed by the building inspector as being unfit for human habitation.

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Additionally, the owner was ordered to make required repairs and obtain a housing certificate by May 9, 2005. Upon the owner's failure to comply with the Order, a re-accruing civil penalty was assessed on November 17, 2005. The civil penalty has accumulated to over \$8,000 and continues to accumulate at the rate of \$50 per day. To date, the illegally occupied dwelling remains unfit for human habitation and is being rented without the required Housing Certificate.

Pros:

- Removes occupants from a dwelling deemed unfit for human habitation
- Enforces the Housing Certificate requirement of the Housing Code
- Once vacated, allows the City to stop the accrual of the civil penalty
- Once vacated, allows the City to proceed with appropriate action to collect the total penalty owed

Cons:

- May require the City to file eviction proceeding to remove occupants from the dwelling.

This action complies with the City Council Strategic Operating Plan in that it promotes the focus area of Housing Opportunities, Goal #4, Objective C: Establish a proactive role for the City of Asheville to best utilize those programs available to it to dramatically increase the long-term availability of affordable housing.

The Building Safety Department recommends adoption of the resolution setting a public hearing on July 25, 2006, to consider the dwelling located at 128 Alabama Avenue be vacated and closed until brought into compliance with the Housing Code.

Upon inquiry of Councilman Mumpower, Director of Building Safety Robert Griffin said that they are in constant dialogue with the owner and there is an excellent opportunity that the owner will comply and the public hearing may be pulled from the July 25 agenda.

Councilman Mumpower moved for the adoption of Resolution No. 06-128. This motion was seconded by Vice-Mayor Jones and carried unanimously.

RESOLUTION BOOK NO. 30 – PAGE 55

RESOLUTION NO. 06-130 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE 10TH ANNUAL BREWGRASS FESTIVAL ON SEPTEMBER 23, 2006

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 10th Annual Brewgrass Festival on September 23, 2006.

Earlier this year this group received Council approval to serve malt beverages and/or unfortified wine at their event. However, they have changed the date and location of their event and this needs to be re-submitted again for Council consideration.

The 10th Annual Brewgrass Festival, which is a benefit for the Big Brothers/Big Sisters program, has requested through the Asheville Parks and Recreation Department that City Council permit them to serve beer and/or unfortified wine at their event and allow for consumption on September 23, 2006, in the Eagle/Market Street area of downtown Asheville.

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City staff recommends City Council adopt the resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the 10th Annual Brewgrass Festival on September 23, 2006.

Councilman Newman moved for the adoption of Resolution No. 06-130. This motion was seconded by Councilman Freeborn and carried on a 5-1 vote, with Mayor Bellamy voting “no.”

RESOLUTION BOOK NO. 30 – PAGE 58

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF PROPERTY LOCATED AT 37 ARLINGTON STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR A PROPOSED PARKING LOT

Mayor Bellamy said that on July 3, 2006, she received a letter from Mr. Robert L. Malkin, agent for Mr. and Mrs. Randall Higgins, doing business at 37 Arlington Street, Asheville, N.C., requesting “a continuation of the public hearing now scheduled for July 11 to July 25, 2006, based on a valid protest petition being filed on May 18, together with the absence of Councilwoman Robin Cape, during the public hearing on July 11. We were fully prepared to go forward on this conditional zoning request had we not been informed of Robin Cape’s absence, which thereupon would require 100% of City Council approval. Further, Mr. Higgins’ attorney is negotiating with attorney Patsy Brison towards providing a restricted deed to the signors of the protest petition, thus, to go forward with the public hearing on July 11 could be an untimely disadvantage to all parties.”

City Attorney Oast said that since there is a valid protest petition filed, in order to adopt any change in zoning would require an affirmative vote of all six members of Council.

Mayor Bellamy said that she has spoken with Councilwoman Cape who is supportive of this continuance since she was not able to be at this meeting due to traveling on City business.

Councilman Newman said that in light of a valid protest petition and Councilwoman Cape’s support for a continuance, he would support a continuance.

Councilman Mumpower said that since a valid protest petition has been filed, the goal is fairness and the petitioner should have the benefit of a full Council.

Ms. Patsy Brison, attorney representing neighbors who are opposed to the rezoning, submitted to Council a letter as follows: "You have received a request from the applicant's agent, Robert L. Malkin, for another continuance. The basis of the continuance is the absence of one council member on July 11 and a statement that the applicant's attorney has been negotiating with me about providing deed restrictions in exchange for withdrawal of the protest petition. While the clients I represent have been open to considering a proposal from the applicant, I have not received any proposals from the applicant through their attorney or agent. I have received a few telephone messages and have returned each of those but have not received any proposal for my clients to consider. As the applicant has already received one continuance, my clients and other neighbors will need to make a personal appearance plans to appear tonight to speak in opposition to the application in the event the matter is heard. My clients would like to proceed with this matter and oppose the request for a second continuance." She urged Council to hear the matter at this meeting.

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Mayor Bellamy confirmed that the first continuance request by the petitioner was due to a Council member being absent from the meeting as well, and was not the petitioner's fault.

Councilman Mumpower moved to continue this public hearing until July 25, 2006. This motion was seconded by Councilman Davis and carried on a 5-1 vote, with Councilman Freeborn voting "no."

Councilman Mumpower encouraged the developer to communicate with the neighborhood to see if they can resolve any concerns.

B. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO ALLOW TATTOO PARLORS AS A PERMITTED USE IN THE COMMERCIAL INDUSTRIAL DISTRICT, THE HIGHWAY BUSINESS DISTRICT, THE REGIONAL BUSINESS DISTRICT, THE CENTRAL BUSINESS DISTRICT AND THE RIVER DISTRICT

At staff's request, due to a technical amendment, this public hearing will be re-advertised for the July 25, 2006, meeting.

C. PUBLIC HEARING TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE UNIFORM NOTIFICATION FOR DEVELOPMENT REVIEW PROCEDURES

ORDINANCE NO. 3374 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO PROVIDE UNIFORM NOTIFICATION FOR DEVELOPMENT REVIEW PROCEDURES

Mayor Bellamy opened the public hearing at 5:17 p.m.

Urban Planner Julia Cogburn said that this is the consideration of an ordinance amending the Unified Development Ordinance to provide uniform notifications for development review procedures. This public hearing was advertised on June 30 and July 7, 2006.

The City of Asheville's Unified Development Ordinance sets forth a number of different notification requirements for many of the different review processes that might occur for the development or subdivision of property. There seems to be no clear reason for this process differentiation and the variation in process has led to much confusion for citizens and for staff about the notification processes.

This proposed amendment, except when state statutory provisions require differing notification, establishes uniform guidelines for the notification of the public on all types of review. These guidelines state that the City will provide notification for all public meetings and public hearings associated with review processes in the following manner:

- Published notice in the newspaper at least ten (10) days prior to the date of the hearing/meeting.
- Mailed notice to those within two hundred (200) feet of the subject property mailed at least ten (10) days prior to the date of the hearing/meeting.
- Mailed notice to any known neighborhood contact person at least ten (10) days prior to the date of the hearing/meeting.
- Posted notice at least ten (10) days prior to the date of the hearing/meeting.

The amendment further states that the North Carolina General Statutes control where specific notification requirements are

stated (currently this is only for amendments -- text or map -

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- when those are being heard by City Council). Since there are no statutory requirements for other types of review, the amendment also provides that errors in notification for these other types of review, shall not affect the validity of any action taken at a public hearing or public meeting on such matters.

Considerations:

- .. The amendment provides for uniform notification procedures for all types of development review giving clarity on these procedures to citizens and staff.
- .. The amendment refers to the North Carolina General Statutes but does not spell out statutory requirements, thus avoiding conflicts in the future should statutory requirements be amended.
- .. The amendment makes notifications that are not required by statute, "guidelines", that the staff will follow in providing public notice on review processes. The amendment provides that errors in the provision of notice for these other processes will not negate any action taken at a public meeting/hearing on such matters.

- At its meeting on June 7, 2006, the Planning and Zoning Commission unanimously (6-0) recommended approval of this wording amendment. Staff recommends approval as well.

Ms. Cogburn asked for Council consideration for two other amendment to the proposed ordinance as follows: "w. Section 7-5-1 (b) (3) be amended by deleting the following language: An application for a major works certificate of appropriateness must be filed with the director of the historic resources commission. When completed, the application shall be filed with the director of the historic resources commission at least 14 days prior to the historic resources commission meeting at which the request is to be heard."; and "Amend I. To add: Posting of sites as set forth in 7-5-20 is not required for major works certificates of appropriateness."

Mayor Bellamy closed the public hearing at 5:26 p.m.

Ms. Cogburn responded to Councilman Mumpower's concern regarding the treatment of errors in notification proposed in the amendment. He stated his concern for the City having ordinances designed to provide clarity, which then allow standards (in this instance, standards for notification) to be changed.

City Attorney Oast said that the technology for accessing and disseminating information is readily available and is being used, and our public notification process goes far beyond what the statutes require.

Ms. Cogburn responded to Vice-Mayor Jones' question why some of the mailing notices were being reduced from 400 feet to 200 feet.

City staff recommends City Council amend the Unified Development Ordinance (UDO) to provide uniform notification for development review procedures.

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

Councilman Mumpower moved for the adoption of Ordinance No. 3374, with the two amendments outlined by Ms. Cogburn. This motion was seconded by Councilman Davis and carried unanimously.

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IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE REGIONAL AIRPORT AUTHORITY

At the request of the Boards & Commissions Committee, it was the consensus of Council to delay the Airport Authority appointments until a full Council is present on July 25, 2006.

VI. OTHER BUSINESS:

At the request of the Boards & Commissions Committee, it was the consensus of Council to institute a procedure whereby when board and commission appointments are made during a formal meeting that all members of Council be present.

Councilman Mumpower encouraged citizens to volunteer to help build Top-A-Stops.

Councilman Newman was pleased to announce the following new improvements to the Asheville transit system: (1) implementation of the evening service, which provides transit services to all parts of town until 10:30 p.m.; and (2) the City's 90-day ride-for-free promotional campaign beginning on August 14, 2006.

Mayor Bellamy announced that the City of Asheville received a Weed and Seed Official Recognition from the Department of Justice for the West Riverside community, which is made up of the Pisgah View and Burton Street neighborhoods.

The following claims were received by the City of Asheville during the period of June 16-29, 2006: Willie D. White (Transit Services), Mark Anderson (Police), BellSouth (Water), Leanna Bowman (Water), Marlana Bartow (Water) and City of Asheville's Information Services (Information Services). These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Joe Minicozzi, speaking on behalf of the Coalition of Asheville Neighborhoods Board, spoke to Council about the David W. Owen's report on three development issues. They narrowed the report to four points, as follows: (1) they asked Council to move immediately to direct staff to fix what has been constructed without Code compliance according to the report – Greenlife, the loading dock in the buffer; Staples, the setback issues; and Prudential, sign not being in compliance with the square footage requirement; (2) there were matters for open interpretation that should have gone to a quasi-judicial hearing either before City Council or the Board of Adjustment and they asked for Council direction to cease the practice at staff level; (3) there were 22-24 items of Code modification that could be initiated by staff and they would like to see those changes start within the next 90 days; and (4) bring forward an immediate halt to the alternative compliance buffer variances at the staff level. Mayor Bellamy noted that City Council is in the process of inviting Mr. Owens to make his presentation to Council and then Council will develop the steps to address the recommendations.

Mr. Reid Thompson urged City Council to direct the Police Department to enforce the laws, in that trucks are driving on Maxwell Street and police officers are not ticketing them. City Manager Jackson took exception that there hasn't been police response in that location. He said he would provide City Council with an update on enforcement action at that location.

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Mr. Fred English spoke to Council about Pack Square and questioned how much money the City has contributed to that project, including the improvements to College Street. City Manager Jackson was not aware of any local matching dollars. Vice-Mayor Jones said that we are contributing in-kind support to make sure the project minimally impacts our citizens.

Councilman Mumpower suggested a worksession item be scheduled to discuss how City Council is going to respond to the extensive delays and the significant impacts of those delays to our community, since the delays are causing a dramatic economic and intrusive impact on our downtown businesses. The worksession discussion would be on how do we mitigate that impact. After a brief discussion, it was the majority of Council's decision to ask City staff to prepare a memo to Council to include some of the following, but not limited to, what is in the pipeline as far as parks and recreation activities and events, their timeline, their funding-raising; how will the delays be mitigated so as not to cause further congestion during the fall season; how will traffic be handled in that area; what money is available to complete the project and how will the different portions of the project be phased in. After that report is prepared by City staff, Mayor Bellamy said then a worksession could be scheduled.

Mr. George Grunewald expressed his feelings on the inadequacies that the Town of Biltmore Forest is paying for City water and Asheville Fire Department services. City Manager Jackson said that he would provide a response to Mr. Grunewald addressing his concerns.

Reverend Christopher Chiaromonte spoke in support of public restrooms downtown and the need for low cost apartments or roomy houses to get the homeless off the street.

CLOSED SESSION

At 6:17 p.m., Councilman Mumpower moved to go into closed session for the following reason: 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 litigation involving the following parties: City of Asheville; Reid Thompson; Board of Adjustment; Greenlife Grocery of Asheville, LLC; and State of North Carolina. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Freeborn and carried unanimously.

At 7:30 p.m., Councilman Freeborn moved to come out of closed session. This motion was seconded by Councilman Mumpower and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:30 p.m.

CITY CLERK

MAYOR