

Tuesday – February 10, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller; Councilman R. Carl Mumpower; Councilman Brownie W. Newman; Councilman William A. Russell Jr.; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilwoman Cape gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2009 AS "BLACK HISTORY MONTH"

Mayor Bellamy read the proclamation proclaiming February, 2009, as "Black History Month" in the City of Asheville. She presented the proclamation to Ms. Pat Griffin, Outgoing President of the Stephens-Lee Alumni Association, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION RECOGNIZING THE 100TH ANNIVERSARY OF THE NAACP

Mayor Bellamy read the proclamation recognizing the 100th Anniversary of the NAACP. She presented the proclamation to Mr. John Hayes, President of the Asheville NAACP, who briefed City Council on some activities taking place during the celebration.

II. CONSENT AGENDA:

At the request of Councilman Mumpower, Consent Agenda Items "B", "C", "D", "E", "H", "I" and "J" were removed from the Consent Agenda for discussion and/or individual votes.

At the request of Mayor Bellamy, Consent Agenda Item "T" was removed from the Consent Agenda for discussion and/or an individual vote.

A. APPROVAL OF THE MINUTES OF THE FORMAL MEETING HELD ON JANUARY 27, 2009

B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

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

C. BUDGET AMENDMENT FROM COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO SET UP THE PROJECT BUDGET FOR THREE SHELTERS IN HIGH DEMAND SPOTS SERVING LOW OR EMPLOYMENT AREAS ALONG THE MAIN CORRIDORS SERVED BY THE TRANSIT SYSTEM

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

D. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ECON CONSTRUCTION TO CONSTRUCT THE VETERANS MEMORIAL AT MEMORIAL STADIUM

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

E. RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT TWO CONSERVATION EASEMENTS FOR TWO PROPOSED PROJECTS TO RESTORE STREAM BANKS IN MALVERN HILLS PARK AND WEST ASHEVILLE PARK AS PART OF AN AGREEMENT WITH RIVERLINK INC.

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

F. ORDINANCE NO. 3697 - BUDGET AMENDMENT TO INCREASE THE CIVIC CENTER FUND BUDGET TO REFLECT UPDATED FISCAL YEAR 2008-09 REVENUE AND EXPENDITURE PROJECTIONS

Summary: The consideration of a budget amendment to increase the Civic Center Fund budget by \$136,000 to reflect updated Fiscal Year 2008-09 revenue and expenditure projections.

Primarily due to two two-night concerts last fall, concessions revenues are up significantly. At the same time, concessions expense budgets are running low. Civic Center Fund revenues and expenditures are expected to exceed budget by the end of Fiscal Year 2008-09. As a result, staff has calculated an updated estimate of the expected revenues and expenses in the Civic Center Fund. In order to fund anticipated expenses over the second half of the current fiscal year, staff is recommending that the Civic Center Fund expenditure budget be increased by \$136,000. The additional revenue generated by concessions will cover the cost of the budget amendment; therefore no additional transfer from the General Fund is required. Staff is estimating that the year-end operating deficit for the Civic Center will be slightly less than the budgeted deficit.

This action complies with the City Council Strategic Operating Plan in that it supports the Civic Center as a regional entertainment destination and improves the Civic Center customer experience.

This item has been reviewed by the Civic Center Commission and, at its meeting on February 3, 2009, members unanimously recommended approval.

Pro:

- Provides sufficient budget authorization for anticipated expenditures in the Civic Center Fund without increasing the General Fund subsidy.

Con:

- None

Year-end operating deficit for the Civic Center is projected to be less than budgeted. This amendment is funded with Civic Center operating revenue; therefore no additional transfer from the General Fund is required.

City staff and Civic Center Commission recommend City Council approve a budget amendment to increase the Civic Center Fund budget by \$136,000 to reflect updated Fiscal Year 2008-09 revenue and expenditure projections.

ORDINANCE BOOK NO. 25 – PAGE

G. RESOLUTION NO. 09-19 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A THREE-YEAR CONTRACT WITH MAIL MANAGEMENT SERVICES TO PROVIDE MAIL SERVICES FOR THE CITY OF ASHEVILLE

Summary: The consideration of a resolution authorizing the City Manager to enter into a three-year contract with Mail Management Services to provide mail services for the City of Asheville for an amount not to exceed the total approved budget for postage and contracted mail services each fiscal year.

City Council approved \$537,417 to pay for postage and mail services for the City of Asheville general operations and enterprise funds as part of the Fiscal Year 2008-09 budget.

The City provides municipal services to more than 60,000 accounts. The billing data for this customer base is developed primarily from water meters, business license, permits and general correspondence to citizens and visitors in Asheville. The customer base is divided into multiple billing cycles and by general information correspondence each month. All water, sewer and storm water accounts are billed monthly, with the expectation of a payment being received from each monthly billing.

The City issued a Request for Proposals to contract with a service provider to provide mail services. The lowest, responsible bid was received from Mail Management Services, LLC, 88 Roberts Street, Asheville, N.C., for pricing based on

volume and services to the City for a cost not to exceed the approved budget for postage and contracted services. Therefore, the total cost of the service in FY 08/09, including the postage that Mail Management Services, LLC will pay on behalf of the City, will be \$537,417. Postage and service costs will vary from year to year based on postage rate, volume, type of service provided.

This action complies with the City Council Strategic Operating Plan in that it provides for greater fiscal responsibility by controlling costs.

Pros:

- Provide more predictable pricing for mail services
- Lower costs for mailing city bills and correspondence

Con:

- None

Funding for postage and mail services for the City of Asheville as appropriated in the Fiscal Year 2008/09 budget.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into a contract with Mail Management Services, LLC to provide mail services to the City of Asheville for the amount of the approved budget for postage and contracted services.

RESOLUTION BOOK NO. 31 – PAGE

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HUMAN SERVICES' INTERAGENCY COUNCIL ON COORDINATING HOMELESS PROGRAMS TO FUND HOMELESS INITIATIVE DATA COLLECTION

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

I. BUDGET AMENDMENT FROM THE BUNCOMBE COUNTY BOARD OF ELECTIONS FOR THE SENIOR OPPORTUNITY CENTER

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

J. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JLS COMPANY, LLC TO CONSTRUCT THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

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

K. ORDINANCE NO. 3699 - BUDGET AMENDMENT FOR THE PARKER AVENUE WATER LINE RELOCATION PROJECT

Summary: The consideration of a budget amendment, in the amount of \$40,000, for the installation of new water service lines and meters on Parker and Wood Avenues.

While installing a new waterline as part of the revenue bond project, the Water Resources Department identified approximately 23 service lines and meters along Parker and Wood Avenue which are connected to existing waterlines of insufficient size and condition. These services must be reconnected to the new waterlines in order to provide reliable water service to these existing water customers. This project will be set up as a separate capital project from the water system improvement projects and will not be funded with revenue bond funds. It will be funded with surplus funds from completed capital projects.

Three quotes were received for this project as part of an informal bidding process:

1. S E Stewart & Son Plumbing	\$29,970
2. Wolfpen and Associates	\$68,400
3. Pipeline Utilities	\$99,450

These quotes have been reviewed by the Water Resources Department and the City's Office of Economic Development (Minority Business Plan Compliance) with both of these offices recommending approval and award to the lowest bidder, S E Stewart & Son Plumbing, 314 Riverside Drive, Asheville, N.C.

The Water Resources Department has added a construction contingency of \$10,030 to the lowest quote of \$29,970 for a total project budget of \$40,000. A construction contingency will allow for unexpected expenses related to this project. Even with an adequate construction contingency added, S E Stewart & Son Plumbing is still the lowest bidder on the project.

This project is part of the City Council strategic plan to improve City infrastructure.

Pro:

- The new water service lines and meters will replace old water service lines and meters, will coincide with planned street improvements and will provide more reliable service for the approximately 23 residential customers.

Con:

- Failure to approve the contract will result in old and undersized waterlines and meters remaining in place, which will result in water service for these specific connections to be of a lesser service level, meaning more frequent outages and low water pressures.

Cost of the Parker Avenue Water Service Line Project is estimated at \$40,000. The lowest quote from S E Stewart & Son Plumbing is \$29,970 but a contingency of \$10,030 has been added to account for unexpected expenses for a total project budget of \$40,000. These funds are available in the Water Resources Capital Projects Fund.

City staff recommends City Council approve a budget amendment, in the amount of \$40,000, for the installation of new water service lines and meters on Parker and Wood Avenues.

ORDINANCE BOOK NO. 25 - PAGE

L. RESOLUTION NO. 09-22 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Summary: The consideration of a resolution reappointing members to the Asheville School Board.

The terms of Allison Jordan, Al Whitesides and Gene Bell, as members on the Asheville School Board, expire on April 1, 2009. Ms. Jordan is not interested in reappointment.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Mr. Whitesides and Mr. Bell to serve a three year term, term to expire April 1, 2013, or until their successors have been appointed.

The application deadline for Ms. Jordan's seat on the School Board is February 23, 2009, at 5:00 p.m.

RESOLUTION BOOK NO. 31 – PAGE

M. RESOLUTION NO. 09-23 - RESOLUTION APPOINTING MEMBERS TO THE DOWNTOWN COMMISSION

Summary: The terms of J. Patrick Whalen, Brad Galbraith and Kitty Love, as members on the Asheville Downtown Commission, expired on December 31, 2008.

On January 27, 2009, it was the consensus of Council to (1) extend Mr. Whalen's term until April 1, 2009; and (2) reappoint Mr. Galbraith and Ms. Love to each serve a three year term respectively, terms to expire December 31, 2011. All terms are until their successors have been appointed.

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N. RESOLUTION NO. 09-24 - RESOLUTION APPOINTING MEMBERS TO THE SUSTAINABLE ADVISORY COMMITTEE ON ENERGY & THE ENVIRONMENT

Summary: The consideration of a resolution appointing members to the Sustainable Advisory Committee on Energy & the Environment.

The terms of Ashley Featherstone and Margie Mears, as members of the Sustainable Advisory Committee on Energy & the Environment, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) reappoint Ashley Featherstone to serve a three year term, term to expire December 31, 2011; and (2) appoint Matthew Raker to serve a three year term, term to

expire December 31, 2011. Both terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 - PAGE

O. RESOLUTION NO. 09-25- RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Summary: The term of Leesa Gibbs, as a member of the Firemen's Relief Fund, expired on January 1, 2009.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Ms. Gibbs to serve an additional two year term, term to expire January 1, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE

P. RESOLUTION NO. 09-26 - RESOLUTION APPOINTING A MEMBER TO THE GREENWAY COMMISSION

Summary: The term of Marc Hunt, as a member of the Asheville Greenway Commission, expired on December 31, 2008.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Mr. Hunt to serve a three year term, term to expire December 31, 2011, or until his successor has been appointed.

RESOLUTION BOOK NO. 31 – PAGE

Q. RESOLUTION NO. 09-27 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD

Summary: The term of Councilman Bill Russell, as a member on the Metropolitan Sewerage District Board of Directors, expired on January 19, 2009.

At the January 27, 2009, meeting, it was the consensus of Council to reappoint Councilman Russell to serve a three year term, term to expire January 19, 2012, or until his term on City Council ends, whichever occurs first.

RESOLUTION BOOK NO. 31 – PAGE

R. RESOLUTION NO. 09-28 - RESOLUTION APPOINTING MEMBERS TO THE TREE COMMISSION

Summary: The consideration of a resolution appointing members to the Tree Commission.

The terms of Starr Silvis, Bob Gale and Bill Jones, as members on the Asheville Tree Commission, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) reappoint Ms. Silvis and Mr. Gale to each serve a three year term, terms to expire December 31, 2011; and (2) appoint Brandee Boggs to serve a three year term, term to expire December 31, 2011. All terms are until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE

S. MOTION APPOINTING MEMBERS TO THE CIVIL SERVICE BOARD BLUE RIBBON COMMISSION

Summary: The Asheville City Council has expressed an interest in reviewing the effectiveness and necessity of the Asheville Civil Board and the Civil Service Law.

The City of Asheville is unique when it comes to the management of its human capital because we have a Civil Service law that governs some of our personnel practices. Only several other cities in North Carolina have Civil Service laws. Since the Asheville Civil Service Law was enacted in 1953, there has been significant state and federal personnel laws enacted. These laws are used to govern employer's personnel practices, to include the City of Asheville. This commission's work would include analysis to determine the usefulness of the local legislative act, given the city's local personnel policies, coupled with state and federal personnel law now in effect.

At the January 27, 2009, City Council Boards & Commissions Committee, the reviewed the proposed Blue Ribbon Commission membership (Lou Bisette, Gene Bell, Maria Roloff, Linda McDaniels and Bill Cook) and its scope of duties. They

recommended approval to the full Council.

The recommendation is that City Council appoint the Blue Ribbon Commission to analyze the effectiveness of Asheville's Civil Service Board and Law, whose scope of authority is outlined through a 1953 local legislative act. The scope of this Study Commission would be to determine, through its analysis, the effectiveness of the Civil Service Law and to offer advice on future policy direction. The Commission would report back to the City Council within 60 days upon appointment with recommendations.

T. RESOLUTION REAPPOINTING JOHN P. MIALL JR. AS CHAIR TO THE CIVIL SERVICE BOARD

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

Mayor Bellamy asked for public comments on any item on the Consent Agenda, but received none.

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.

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-16 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

The American with Disabilities Act of 1990 (ADA) and the Federal Transit Administration (FTA) regulations require any fixed route system such as the Asheville Transit system to provide paratransit services.

Mountain Mobility has provided these services to Asheville Transit since the 1990's when the ADA requirements began to be promulgated. Mountain Mobility is a county operated rural transit system. Mountain Mobility works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler to extend transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the council on aging, Industries for the Blind, and the Buncombe County Health Department.

The latest contract with Mountain Mobility was signed in 2007, as requested by the FTA during the triennial review to include an enumeration of the federal requirements which pass through to any agency or contractor with whom Asheville Transit spends federal funds.

Mountain Mobility has updated the contract to reflect increases in fuel and labor costs which will allow them to continue providing the same level of service. The rate will increase from \$1.20 to \$1.25, representing a four percent increase per shared service mile during the day. In addition, Mountain Mobility added paratransit night service to comply with ADA regulations at a rate of \$3.10 per shared service mile.

The contract sets the method for determining fares (by the mile) and adjust the rates according to increases or decreases based on the gallon of fuel, commits the county to purchasing, maintaining and operating equipment, providing services to qualify ADA customers and schedule trips according to ADA guidelines, and incorporates all Federal regulations.

Each party may cancel on thirty days notice.

The total cost of this project for Fiscal Year 2009 is \$296,986 of which City of Asheville is reimbursed 80% of the annual total expense under Section 5307 of the annual federal allocation. The City contributes 20% as local match (\$59,397) during the same period. These funds were already budgeted for this fiscal year. The City's share under the old rates was \$57,021.

Regarding the Strategic Operating Plan, this program will support the affordable and sustainable focus areas, specifically developing a long-term plan to address the City's aging infrastructure and offering a standard of living that is affordable and attainable for people of all income levels, life stages and abilities.

Pros:

- Allows the City to provide required paratransit service without a large capital investment.
- Provides a comparable standard of transportation for people with disabilities which will not allow them to ride the bus.
- Furthers intergovernmental cooperation to achieve a common goal of increasing mobility for all persons.
- Complies with Federal regulations.

Con:

- There are no disadvantages to the City of Asheville.

The project cost will be \$296,986; 80% or \$237,588 of this total will be reimbursed by Section 5307 and will require 20% or \$59,397 local match by the City. The contribution under the former rates would be \$285,107, being \$57,021 the local contribution. Funding for provision of paratransit services, including the City's match, is already a part of the FY 2008-09 Transit Fund budget.

City staff recommends City Council approve a resolution authorizing the City Manager to enter into an agreement with Buncombe County for the provision of paratransit services.

Councilman Mumpower was concerned using borrowed federal dollars under the current economic circumstances.

Councilman Newman moved for the adoption of Resolution No. 09-16. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

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C. ORDINANCE NO. 3996 - BUDGET AMENDMENT FROM COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS TO SET UP THE PROJECT BUDGET FOR THREE SHELTERS IN HIGH DEMAND SPOTS SERVING LOW INCOME OR EMPLOYMENT AREAS ALONG THE MAIN CORRIDORS SERVED BY THE TRANSIT SYSTEM

Summary: The consideration of a budget amendment, in the amount of \$25,000, from Community Development Block Grant funds, to set up the project budget for the Street Furniture Improvement project.

The street furniture improvement project seeks to install three (3) shelters in high demand spots serving low income or employment areas along the main corridors served by the transit system.

The Asheville Transit System (ATS) is a consolidated bus service that has been operating for more than 30 years. The fleet serves mainly transit dependant groups (low income levels represent 91% of the ridership) and in a lower scale attend other socio-economic levels; the service provides a geographic coverage of more than 75% in the City of Asheville (COA) boundaries and 40% in the entire urbanized area.

During the last years, the service has experienced a moderate growth in ridership (more than 20% in most of the routes) over the previous years. New routes have been developed and new bus stops have been installed to attend the growing demand along the routes. Most of the bus stops neither offer comfortable accommodation nor protection from the weather, affecting the riders that have to wait for the bus in an unfriendly environment. This project will help improving transit infrastructure and fulfilling some of our rider's needs.

The project will be financed with funds received from a Community Development Block Grant (CDBG) in the amount of \$25,000 that was approved during April 2008. The project includes purchasing of three shelters, installation of concrete pads and accessible routes.

The shelters will be located as follows:

1 shelter - Patton Avenue and North Louisiana Ave. as part of the sidewalk project the City will be building later this year. This shelter will match the one that will be installed in the opposite corner with 2007 CDBG funds.

1 shelter – Hendersonville Rd. and Erwin St.

1 shelter – Downtown Asheville, College St. and Rankin Ave.

The installation is programmed to occur later this year after completion of the permit process with the North Carolina Department of Transportation and Building and Safety Department.

This action complies with the City Council 2009-10 Strategic Operating Plan within the Sustainable Focus Area by

supporting a strong commitment to infrastructure maintenance and capital improvements.

The Transit Commission has been supportive of the Street Furniture project and the use of CDBG monies to fund the shelter installation.

Pros:

- The subject project is attending the growing demand for public transit service.
- The street furniture project will provide protection and comfortable accommodation to Asheville Transit System riders.

Con:

- There are no disadvantages to the City of Asheville.

The total financial impact for the subject project is \$25,000 financed with Community Development Block Grant funds. There is no impact on the City's FY 2008-09 operating budget.

Staff recommends that City Council adopt a budget amendment to set up the project budget for the Street Furniture Improvement project.

Councilman Newman moved for the adoption of Ordinance No. 3696. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 170

D. RESOLUTION NO. 09-17 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ECON CONSTRUCTION TO CONSTRUCT THE VETERANS MEMORIAL AT MEMORIAL STADIUM

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with ECON Construction to construct the Veterans Memorial at Memorial Stadium for an amount not to exceed \$215,000.

This project was initiated in 2003 as part of a larger plan to renovate the entire Memorial Stadium. Due to the lack of funding and challenges to raise additional funds, City Council approved in 2007 to reduce the scope of work to include only the Veterans Memorial component that is fully funded by a grant by Housing and Urban Development grant.

The City issued a request for proposals for the project and the lowest, responsible bid was received from ECON Construction, 11709 Fruehauf Drive, Suite 222, Charlotte, N.C., that totaled \$194,430 for the base bid and four alternates selected by staff. The Veterans Memorial project is scheduled for completion by Memorial Day of 2009.

Approximately \$30,000 has already been expended on professional fees. The initial work will total \$194,340 which includes the base bid amount of \$173,450 and four alternates: 1) Alternate 2 - Demolish Existing Chain Link Fence and Install New Chain Link Fence (\$5,000), 2) Alternate 4 – Brick Columns and Granite Band (\$5,980), 3) Alternate 7 – Brick Banding and Mulch at Trees (\$4,850), and 4) Alternate 10 – Donor Courtyard (\$5,150).

Staff wishes to retain \$20,660 the balance of the funds for contingency purposes. Should these not be expended in part or whole in the early stages of the project, staff seeks to implement four additional alternates: 1) Alternate 9 – Scatter Garden (\$5,050), 2) Alternate 8 – Tree Planting (\$5,250), 3) Alternate 6 – Irrigation and Landscaping (\$4,950), and 4) Alternate 3 – Metal Benches (\$5,000) which would total \$20,250.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Sustainable Focus Area in that it addresses the city's aging infrastructure including facilities.

This action complies with the proposed Parks, Recreation, Cultural Arts and Greenway Master Plan in that it improves the design and theme of an existing park and improves an existing park to meet community standards.

At its regular meeting on August 11, 2008, the Recreation Advisory Board reviewed the project and recommended supporting the construction plan of the project.

Pros:

- Provide a meaningful memorial for the veterans of the region of Western North Carolina

Fully funded by a Housing and Urban Development grant

- Enhance the entrance of Memorial Stadium

Con:

- The project will require maintenance resources

The contract is within the funds budgeted for the project by a \$247,000 Housing and Urban Development grant.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with ECON Construction to construct the Veterans Memorial at Memorial Stadium for an amount not to exceed \$215,000.

Councilman Mumpower said that he started and chaired the Memorial Stadium Restoration Committee about five years ago to restore the memorial component of that facility. Even though he had misgivings back then, on behalf of that Committee, he solicited former Congressman Taylor to assist us in raising monies for that effort. Former Congressman Taylor was successful in obtaining a grant for roughly \$250,000. We now have modified smaller version of the Veterans Memorial. He spoke strongly against spending \$250,000 on a memorial, when the VA Hospital could use that money to help veterans who don't have access to health care and who have lost their jobs. Even though a veteran's memorial is dear to his heart, this is not the time to spend federal dollars (borrowed monies). If Council votes against this action, he would be willing to pick up the responsibility to try to do this privately, but under no circumstances does he believe we should create a memorial out of these kinds of dollars and at this time in our economic climate.

In response to Councilwoman Cape, Parks & Recreation Director Roderick Simmons explained why he felt the Memorial Stadium Restoration Committee (although now inactive), would support moving forward with the contract for the Veterans Memorial.

Councilman Newman felt that this was largely an effort by Councilman Mumpower and since he recommends this not move forward, he felt Council should follow his direction.

Councilman Mumpower said that the Committee almost raised the funds, but Hurricane Katrina hit and construction costs rose by approximately 30% which stopped them. His commitment was not to ask for city government dollars and they honored that commitment. Over a period of time they did raise private funds. Personally, he was responsible for raising \$75,000 in private funds. Any funds they did raise, with the exception from a grant from the State of N.C., came from active work by the members of this Committee. He would be hesitant about reconstituting the committee in that he feels it is the wrong thing to spend these borrowed dollars.

In response to Councilman Miller, Mr. Simmons said that this contract would employ approximately 25 people for approximately 4 months.

Mayor Bellamy did some research on how Americans have dealt with recessions. She discovered that our country bought bonds. She has, and encouraged others, to invest in our and our children's future by buying bonds. She talked with Congressman Shuler and said that if our community is willing to invest in our country, she needed him to direct dollars to Asheville. He made that commitment. She will also contact Senators Burr and Hagan and make that same request. Her goal is to provide leadership to our community.

Councilwoman Cape moved for the adoption of Resolution No. 09-17. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Councilman Mumpower and Councilman Newman voting "no."

RESOLUTION BOOK NO. 31 – PAGE

E. RESOLUTION NO. 09-18 - RESOLUTION AUTHORIZING THE CITY MANAGER TO GRANT TWO CONSERVATION EASEMENTS FOR TWO PROPOSED PROJECTS TO RESTORE STREAM BANKS IN MALVERN HILLS PARK AND WEST ASHEVILLE PARK AS PART OF AN AGREEMENT WITH RIVERLINK INC.

Summary: The consideration of a resolution authorizing the City Manager to grant two (2) conservation easements for two proposed projects to restore stream banks in Malvern Hills Park and West Asheville Park as part of an agreement with RiverLink, Inc.

RiverLink, Inc. has secured a grant from the North Carolina Clean Water Management Trust Fund to restore 1,000 feet of Buttermilk Creek to Hominy Creek as it flows through Malvern Hills Park, and to restore 800 feet of Rhododendron Creek as it flows

through West Asheville Park. The grantor requires 1) a minimum 50-foot conservation easement along the creeks within the project area, and 2) a 50% match which is the value of the donated easement. Total conservation easement area is six acres. Total project cost as estimated by RiverLink, Inc., is \$440,000.

This action complies with the City Council Strategic Operating Plan in the Green Focus Area by providing a valuable education component by placing interpretive signs that would explain restoration, water quality, and threats to our streams.

This action also complies with the City Council Strategic Operating Plan in the Safe Focus Area by providing stabilization throughout the reach of the project involving rock and log features placement in the streams, as well as native riparian plant species to prevent future stream bank erosion. Storm water cells will be positioned to catch runoff from parking lots in order to slow down the water before it enters the stream reducing future erosion and filtering out pollutants.

This action also complies with the Asheville City Development Plan 2025 by the following 1) Continue to coordinate with and support efforts by RiverLink, Land of Sky Regional Council, and state and federal agencies to improve water quality, 2) Encourage the use of conservation easements to preserve riparian areas, and 3) Develop appropriate riparian buffer requirements, as needed, to enhance the environmental function of streams, creeks and rivers.

At its regular meeting on March 12, 2007, the Recreation Advisory Board expressed their support for the proposed project to restore stream banks in Malvern Hills Park and West Asheville Park as part of RiverLink, Inc.'s application for the grant to the North Carolina Clean Water Management Trust Fund.

The conservation easements restrict the City's activities on or its use of, the easement area and any activity inconsistent with the purposes of the conservation easement are prohibited. For example, the following activities and uses are expressly prohibited within the Easement Area: 1) industrial and commercial activities and uses 2) agricultural, timber harvesting, grazing and horticultural uses 3) disturbance of natural features, plants or animals 4) construction of buildings 5) mineral use, excavation, and/or dredging 6) the alteration of water bodies or activities that are detrimental to water quality; and 7) dumping.

Pros:

- Expand opportunities for education on water quality, restoration and threats to streams.
- Improve safety in two parks by stabilizing the banks to prevent future erosion.
- Improve water quality and stream integrity in two creeks.

Cons:

- Additional maintenance costs to maintain the bank plantings.
- Restricts the City's use of the easement area.

Additional maintenance costs will be dependant on the planting plan. Staff estimate five hours of labor per month to maintain stream bank planting areas.

City staff recommends City Council adopt a resolution authorizing the City Manager to grant two (2) conservation easements for a proposed project to restore stream banks in Malvern Hills Park and West Asheville Park as part of RiverLink, Inc.'s grant from the North Carolina Clean Water Management Trust Fund, and execute said grants of easements, subject to the approval of the City Attorney.

Even though these are good projects, Councilman Mumpower was concerned using state and private dollars when we have a \$3 Billion deficit.

Councilman Newman moved for the adoption of Resolution No. 09-18. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE

H. RESOLUTION NO. 09-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF HUMAN SERVICES' INTERAGENCY COUNCIL ON COORDINATING HOMELESS PROGRAMS TO FUND HOMELESS INITIATIVE DATA COLLECTION

Summary: The consideration of a resolution authorizing the City Manager City Manager to enter into an agreement with the N.C. Dept. of Human Services' Interagency Council on Coordinating Homeless Programs to fund Homeless Initiative data collection.

A maximum of \$4,000 was offered to 10-Year Plan communities in North Carolina by the North Carolina Interagency Council on Coordinating Homeless Programs (NC ICCHP). RFA funds were designated to be spent on data collection only. The Homeless Initiative applied for funding support in four areas, and received the maximum award possible of \$4,000. The four areas are:

1. Point in Time Count: This is a national count endorsed by the Department of Housing and Urban Development. Results from this count directly impact the approximately million dollars received by Asheville and Buncombe County through HUD's Continuum of Care Grant. In collaboration with the Homeless Coalition, The Homeless Initiative offers point in time count trainings, collects, analyzes, and reports out on data.
2. Aggregate, Unduplicated Count: The only accurate way to collect and aggregate, unduplicated count of people who experienced homelessness and accessed services over the past year is to use the Homeless Management Information System. The Homeless Initiative will work with community partners to strengthen data in HMIS so that a report can be pulled from the system.
3. Annual unduplicated count of children experiencing homelessness: The Homeless Initiative will work with school liaisons from City and County schools to collect an annual, unduplicated count of children experiencing homelessness.
4. 2008 Calendar Year Accomplishment Report: This report is completed by all 10-Year Plan communities in North Carolina. Participation by agencies is voluntary, so any data collected depends on local agency's willingness to provide necessary information. The Homeless Initiative will collect, analyze, and complete the Accomplishment report based on available data.

Regarding the Strategic Operating Plan, City Council has recently adopted the following four goals: *sustainable, affordable, green and safe*. An objective listed under the affordability goal states is to support initiatives to end homelessness. Accepting this grant will help the Homeless Initiative collect data that can be used by the City Council when evaluating initiatives designed to end homelessness.

Pro:

- In tight budget times, funds to further the work of the Homeless Initiative can enhance the services it offers to the community.

Con:

- No apparent cons.

This grant funding was included in the adopted Fiscal Year 2008-09 General Fund budget, so there is no additional fiscal impact associated with this agenda item.

City staff recommends City Council adopt a resolution authorizing the City Manager City Manager to enter into an agreement with the N.C. Dept. of Human Services' Interagency Council on Coordinating Homeless Programs to fund Homeless Initiative data collection.

Councilman Mumpower felt this was a frivolous use of money for an inexact process.

Councilman Newman moved for the adoption of Resolution No. 09-20. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE

I. ORDINANCE NO. 3698 - BUDGET AMENDMENT FROM THE BUNCOMBE COUNTY BOARD OF ELECTIONS FOR THE SENIOR OPPORTUNITY CENTER

Summary: The consideration of a budget amendment, in the amount of \$6,000, from the Buncombe County Board of Elections, for the Senior Opportunity Center.

In 2008, the Buncombe County Board of Elections donated \$6,000 to the City of Asheville to support senior programs and services at the Senior Opportunity Center in return for the use of the center as an early and regular voting site. Funds will be used to support general senior programs and services at the center.

This action complies with the 2015 Parks and Recreation Master Plan in that it will enhance the level of program services at senior centers.

- This action complies with the Asheville City Development Plan 2025 in that it cooperates with public agencies and private individuals and organizations in an effort to make the provision of parks, recreation facilities and programs, and open space as effective and efficient as possible.

- Pro:

- Provide funds to support senior programs and services at Senior Opportunity Center.

Con:

- None

Increase budget by \$6,000 and supplement current operating funds budgets for Senior Opportunity Center. There is no impact to the City's operating budget.

- Staff recommends City Council to approve the budget amendment authorizing the City Manager to increase the budget by \$6,000 for Senior Opportunity Center.

Even though Councilman Mumpower stated he is not against our senior citizens, he felt we are being careless with our dollars.

Councilwoman Cape felt the Board of Elections is a big part of our community and we are in partnership with them to offer locations. If the Board of Elections has funds to make sure that their operations move forward and those funds can be adequately used, she felt that is a proper use of those funds.

Councilman Newman moved for the adoption of Ordinance No. 3698. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE

J. RESOLUTION NO. 09-21 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH JLS COMPANY, LLC TO CONSTRUCT THE HOMINY CREEK SECTION OF THE FRENCH BROAD RIVER GREENWAY

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with JLS Company, LLC to construct the Hominy Creek section of the French Broad River Greenway for an amount not to exceed \$635,000.

The City of Asheville is preparing to construct the Hominy Creek section of the French Broad River Greenway, a 1.2-mile multi-use trail along the French Broad River that will connect Carrier Park to Hominy Creek Park.

The City issued a request for proposal for construction of the greenway and received a bid from JLS Company, LLC who was selected as the lowest, responsible bidder whose base bid was \$535,802.60. Staff is including a contingency budget of \$99,197.40 or about 18% due to the nature of the terrain. City Council approved the CIP budget for the project as part of the Fiscal Year 2007/08 Capital Improvement Plan (CIP) budget via a \$300,000 grant from North Carolina Department of Transportation, and \$590,000 via the City of Asheville.

This action complies with City Council's Strategic Plan in the Green Focus Area in that it advances the promotion of emission-reducing transportation options including greenways, and pursues opportunities to preserve open space.

This action complies with the Asheville City Development Plan 2025 in that it implements the adopted Greenway Master Plan.

This action complies with the Greenway Master Plan and the proposed Parks, Recreation, Cultural Arts, and Greenways Master Plan in that it extends an existing greenway by constructing a greenway that is currently funded.

Although the Greenway Commission did not take formal action on this project when it first began several years ago, it receives a regular project update at monthly board meetings. The Greenway Commission endorses the project.

Pros:

- Add 1.2 miles to French Broad River Greenway corridor extending it to a total 2.6 miles
- The contract amount is within the project budget

Con:

- The additional greenway mileage will require maintenance resources

Funds are currently funded in the City's CIP budget. The remaining CIP funds that will not be expended on this contract (\$255,000) will be deposited into the Fund Balance in order to help address budget challenges.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with JLS Company, LLC to construct the Hominy Creek section of the French Broad River Greenway for an amount not to exceed \$635,000.

Councilman Mumpower had no trouble with greenways, but was concerned with expending funds for a project that is nice, but not necessary.

Councilman Newman moved for the adoption of Resolution No. 09-21. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 31 – PAGE

T. RESOLUTION REAPPOINTING JOHN P. MIALL JR. AS CHAIR TO THE CIVIL SERVICE BOARD

Summary: The consideration of a resolution to reappoint Mr. John P. Miall Jr. as the Chair of the Asheville Civil Service Board, effective immediately and until February, 2010, or until his successor is duly appointed by the City Council, as provided by law.

Mayor Bellamy could not support a motion to reappoint Mr. Miall. She said that Mr. Miall is a wonderful person; however, we have had some issues on the Civil Service Board and thought to start a fresh prospective on this Board we should appoint a new Chair. We won a court case and the Board unanimously appointed a fifth member to the Board so it may not be a bad idea to have that person Chair it, for a fresh start.

Councilman Mumpower moved to reappoint Mr. Miall as Chair to the Civil Service Board. As liaison to that Board, it has been his experience that under very difficult circumstances Mr. Miall has persistently tried to find a point of fairness and consideration to the problems and personality issues that have existed on this Board. He has crafted, with the help of others, a successful course that has brought us to a place where a brighter day is ahead.

Vice-Mayor Davis seconded the motion, adding that Mr. Miall has more than demonstrated over the years his ability to work with people. There have been difficulties on that Board and he felt that Mr. Miall is capable of being fair and equitable in getting that Board to a better place.

Councilwoman Cape felt this puts Council in a difficult position when they haven't had the opportunity to interview Mr. Miall, especially when some Council members have not had the opportunity to meet Mr. Miall.

Councilman Miller suggested this appointment be delayed until the next meeting in order to give Council the opportunity to interview Mr. Miall.

Mayor Bellamy said that in the past if there was a Council member concerned about the process and requested an opportunity for interview, that has happened. Therefore, she asked for Councilman Mumpower and Vice-Mayor Davis to withdraw their motion to allow Council the opportunity to interview Mr. Miall.

Councilman Mumpower and Vice-Mayor Davis withdrew their motion to reappoint Mr. Miall as Civil Service Board Chair.

Councilwoman Cape moved that any member of Council that wishes not to vote for the reappointment of someone that it be pulled from the Consent Agenda and the position be re-interviewed or remanded back to the Boards & Commissions Committee. This motion died for a lack of a second.

It was the consensus of Council to direct City Clerk Burleson to arrange an interview time for Mr. Miall. City Attorney Oast noted that Mr. Miall will continue to serve in the capacity as Chairman until Council acts.

III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF THE FISCAL YEAR 2007-08 ANNUAL AUDIT REPORT

Chief Financial Officer Ben Durant said that at the conclusion of each fiscal year, an annual audit of the city's financial statements is conducted. The purpose of the audit is to obtain reasonable assurance that basic financial statements are free of material misstatement; to examine evidence supporting the amounts and disclosures in the financial statements; and to assess accounting principles used and the overall presentation of the financial statement.

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2008 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed one instance of non-compliance in the administration of federal awards programs. They also noted some areas for improvement in the City's accounting function that they have communicated to management in a separate letter dated December 30, 2008.

There was a brief discussion, initiated by Councilman Mumpower, on whether the \$505,989 of total assets shown on the summary financial statement included our water assets, which our engineers estimate to be \$1.2 Billion. Mr. Broom asked that City staff provide them with further information and if there are unrecorded assets or infrastructure assets, those figures can be adjusted. City Manager Jackson said that he report the findings back to Council.

Mayor Bellamy thanked Mr. Durant, Budget Director Tony McDowell and their staff for providing a transparent budget.

IV. PUBLIC HEARINGS:

A. RESOLUTION TO PERMANENTLY CLOSE A PORTION OF WALLACK STREET

RESOLUTION NO. 09-29 – RESOLUTION CLOSING A PORTION OF WALLACK STREET

Mayor Bellamy said that this public hearing was held on December 2, 2008, and continued to January 27, 2009, in order to give the Greenway Commission an opportunity for further evaluation of the request with the petitioners being given an opportunity to be heard at the meeting.

On January 29, 2009, this public hearing was continued in order to explore a compromise on this issue.

Public Works Director Mark Combs said that this is the consideration of a resolution permanently closing a portion of Wallack Street. This public hearing was advertised on October 31, November 7, 14 and 21, 2008.

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

Pursuant to this statute, Patsy Brison, representing property owners Asheville-Buncombe Community Christian Ministry Inc. and Robert and Joan Ledford, have requested the City of Asheville to permanently close an unopened portion of Wallack Street.

On November 13, 2008, the Greenway Commission reviewed the proposed closure of the unopened portion of Wallack Street, and voted to recommend denial of approval of the Wallack Street closure as part of this section is on the Greenway Master Plan.

At the December 2, 2008, City Council meeting, the Greenway Commission was directed to further evaluate the closure with the petitioners to look at ways to find a solution mutually beneficial to both parties.

This process complies with the City's Strategic Operating Plan states: "Promote sustainable, high-density, infill growth that makes use of existing resources." This closure would facilitate maximum land use potential for further development.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more effective use of the existing adjacent properties (in-fill and higher density)

Con:

- The closure will impact the Greenway Master Plan

There will be no fiscal impact related to this closure.

In consideration of the impact to the Greenway Master Plan and the recommendation from the Greenway Commission including further detailed review by Commission members, City staff cannot support the request for the closing of a portion of

Wallack Street.

City Attorney Oast said that at Council's January 27, 2009, meeting, Council continued the item regarding the petitioned closure of a portion of the unopened right-of-way of Wallack Street to allow for development of a possible compromise.

Using a map to illustrate his comments, City Attorney Oast further explained that in 1977 much of this area was part of the urban renewal project and the Housing Authority brought forward a request to close a lot of streets, one of which was a portion of Wallack Street. The closing was subject to the Housing Authority's commitment to provide access to the opened portion of Wallack Street. Those portions of Wallack Street that were closed are not affected by the action Council is being requested to close at this time.

He has spoken with the Chair of the Greenway Commission and representatives of the owners of the property abutting the portion of the right-of-way that is being requested for closure. As a starting point, the abutting owners desire a complete closure of the right-of-way; the Greenway Commission recommends not closing it so that it may remain available for use as a future greenway. However, a couple of options were discussed.

1. There is a paved driveway serving the rear of one of the buildings that abuts the right-of-way (ABCCM). One option that was discussed and that both ABCCM and the Greenway Commission would accept is to close only so much of the right-of-way as to allow that driveway area to become part of the adjacent property, with the City retaining some right of access across that closed portion. This option would leave the rest of the right-of-way unclosed, and does not satisfy the other abutting property owners, located to the north of ABCCM.
2. Another option that was discussed is closing the right-of-way, but taking back an easement that would make the right-of-way available for greenway purposes, if the City elected to install one. This was also acceptable to ABCCM, although it was a less desirable option. However, it was not acceptable to the other abutting property owners, primarily because it did not resolve many of the issues that prompted them to seek closure of the right-of-way in the first place, and because it continues the uncertainty on the future use of this area. Moreover, both the Chair of the Greenway Commission and the abutting property owners expressed some concern about the policing and maintenance responsibilities that would necessarily accompany an easement.

Since neither of the above options are acceptable to all parties, it appears that Council should proceed with its consideration of the petition for closure of the Wallack Street right-of-way, continued to this date.

City Attorney Oast responded to various Council questions surrounding easements, rights-of-way and public access.

Councilwoman Cape said that we do have a Greenway Master Plan and this section is on that Plan. Even though City doesn't own all the parcels for the greenway, we do own a part of it and like most greenways, the City will have to acquire some connecting parcels to complete the greenway. In addition, she was concerned about the precedent that will be set in that if someone encroaches onto City-owned property they can request the property be reverted to them. She believed that ABCCM is a valuable community partner, but strongly supported the Greenway Master Plan.

Due to a potential compromise, Mayor Bellamy re-opened the public hearing at 6:04 p.m.

Mr. Marc Hunt, Chair of the Greenway Commission, used a map showing the entire portion of the proposed greenway in that area. He hoped that the City will work with private land owners and the Housing Authority to gain the needed access for a greenway. This greenway corridor is listed at number 11 out of 26 greenways they studied in terms of importance. Even though the Greenway Commission and ABCCM were not able to come to an agreement, the following proposal is something he believed the ABCCM largely agrees with: "Only that portion of Wallack Street right-of-way that includes the fence and gate constructed by ABCCM (but only to the centerline of the Wallack Street right-of-way) be closed and thus come under the ownership of ABCCM. The closure would be conditioned; however, on the retention by the City of an acceptable easement on that closed portion that would allow for an unlimited public access easement for a future greenway or trail. Further, the terms of the easement would not preclude vehicular access similar to that which ABCCM now enjoys." He said that it has also been suggested that Council might grant the closure request and retain easements on the entire closed portion. The Greenway Commission strongly recommends against that as the diminished rights the City would have under an easement could prove challenging to maintain and ultimately inadequate in order to implement a greenway.

Mr. Michael Soule, representing Asheville on Bikes, explained how bicycle riding has a direct impact on the health of the community, and urged Council to support advancing our greenways.

Mayor Bellamy closed the public hearing at 6:14 p.m.

Councilwoman Cape moved to deny the closing of a portion of Wallack Street. This motion was seconded by Councilman Newman.

There was discussion on the compromise, noting that the compromise suggested by Mr. Hunt is acceptable to the City, the Greenway Commission and ABCCM; however, the other abutting property owners north of the ABCCM (who are not present) do not support the compromise. He understood they want their property line straightened out and they don't know the future of that property.

Councilwoman Cape amended her motion to close only that portion of Wallack Street right-of-way that includes the fence and gate constructed by ABCCM (but only to the centerline of the Wallack Street right-of-way) and thus come under the ownership of ABCCM. This closure is conditioned; however, on the retention by the City of an acceptable easement on that closed portion that would allow for an unlimited public access easement for a future greenway or trail. Further, the terms of the easement would not preclude vehicular access similar to that which ABCCM now enjoys. This amended motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy wanted to make sure that when the City has the opportunity to develop the greenway that we have no problems with the current property owners at that time. City Attorney Oast said that the resolution is recorded in the Buncombe County Register of Deed's Office.

RESOLUTION BOOK NO. 31 – PAGE

C. PUBLIC HEARING TO CONSIDER THE PERMANENT CLOSING OF AN UNOPENED ALLEY OFF PATTON AVENUE

RESOLUTION NO. 09-30 - RESOLUTION PERMANENTLY CLOSING AN UNOPENED ALLEY OFF PATTON AVENUE

Mayor Bellamy opened the public hearing at 6:29 p.m.

Assistant Public Works Director Richard Grant said that this is the consideration of a resolution permanently closing an unopened alley off Patton Avenue. This public hearing was advertised on January 16, 23, 30 and February 6, 2009.

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

Pursuant to this statute, the adjoining property owners, Western Carolina Rescue Ministries Inc., have requested the City of Asheville permanently close an unopened portion of Shady Lane.

The Greenway Commission reviewed the requested closure at their meeting on August 14, 2008, and concluded there was no visible use for retaining this unopened parcel of Shady Lane

This action complies with the Strategic Operating Plan in that this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties.

Con:

- In consideration of the location of the unopened right-of-way, staff can find no potential challenges regarding the closure of the alley.

There will be no fiscal impact related to this closure.

City staff recommends adoption of the resolution to permanently close an unnamed alley off Patton Avenue.

Mayor Bellamy closed the public hearing at 6:29 p.m.

In response to Councilwoman Cape, Mr. Combs explained the street closing review process of a street closing, which consists of sending documents to (1) all utilities to determine if there is any easement or infrastructure on the property, (2) other

City departments for review, and (3) the Greenway Commission for their review. We also post notices in at least two places along the right-of-way and advertise the closing, all of which is paid by the petitioners.

Mayor Bellamy 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. 09-30. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 31 - PAGE

D. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE

ORDINANCE NO. 3700 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF FILLING IN MISSING INFORMATION, CORRECTING MISTAKES, RESOLVING DISCREPANCIES AND CLARIFYING THE ORDINANCE

Mayor Bellamy opened the public hearing at 6:32 p.m.

Urban Planner Julia Cogburn said that this is consideration of an amendment to the Unified Development Ordinance (UDO) for the purpose of filling in missing information, correcting mistakes, resolving discrepancies and clarifying the ordinance. This public hearing was advertised on January 30 and February 6, 2009.

Working with the UDO on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains discrepancies, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use. This set of proposed amendments addresses fifteen of those discovered issues.

She reviewed with Council the following description of each amendment as follows:

- a. This amendment adds the language "and/or where the requirements are modified in accordance with Section 7-7-8(c)(6)" to clarify that modifications may be granted to standards and requirements of the general zoning districts in conditional zoning matters.
- b. The addition of a new number (7.1) to the conditional zoning process simply puts in writing the practice of taking detailed plans back to TRC before a permit is issued.
- c. This amendment adds Urban Place and Light Industrial to the zoning district list and places these along with URD, NCD, and Urban Village in a more appropriate place on the listing of "Highest" to "Lowest" use districts.
- d. & e. These amendments change two subsections so that the prohibition of "drive through facilities" is handled in the same way in all districts where there is such a prohibition (Neighborhood Commercial and CBI). This places the term "drive through facilities" under the prohibited uses listing rather than in the design and operations standards where it often gets lost.
- f. This amendment is a correction of a reference (from "chapter" to "article").
- g. This amendment codifies a long standing interpretation (1/07) that handrails on steps, etc. are not included when figuring the height of such steps, etc. This is important as steps, terraces, patios, and uncovered decks can encroach up to ten feet in a required front setback so long as they do not have a height greater than 30 inches.
- h. This amendment corrects a citation reference.
- i. This amendment also corrects a citation reference.
- j. This amendment codifies our recently adopted practice of requiring financial surety for a private drive in an alternative access ("four lot") subdivision if the developer wants to record the plat prior to completing the drive. Staff has dealt with a few instances where drives were not completed and lots were sold with the developer walking away from this responsibility.
- k. This amendment simply calls the reader's attention to the section that lists the districts where tree save areas are not

required.

- I. This amendment is a renumbering to bring this section in line with the numbering system found throughout the UDO.
- m. This amendment drops the words “and may be covered under one permit” from the last sentence of the section enumerating requirements for temporary storage containers in nonresidential districts. This phrase was dropped due to the fact that in another part of the same article, it is stated that permits are not required for temporary storage containers in nonresidential districts.
- n. This amendment corrects an incorrect district listing (should be Urban Village and not Neighborhood Commercial District).
- o. This amendment takes “group homes” out of the medium impact listings. “Group homes” were listed twice; in both the low and medium impact listings.

This action complies with the Strategic Operating Plan in that it supports the Council goal of bringing forward UDO amendments that improve clarity and address community goals.

At the Planning & Zoning Commission meeting on January 7, 2009, they unanimously approved the amendment (6-0) with no speakers on the issue.

Pros:

- Codifies past staff interpretations and practices on issues.
- Corrects incomplete or improper listings and citations.
- Adds or amends language for greater clarity.

Cons:

- None Noted.

City staff recommends approval of these wording amendments.

Mayor Bellamy closed the public hearing at 6:33 p.m.

There was a brief discussion about the housekeeping changes.

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

Councilman Newman moved for the adoption of Ordinance No. 3700. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 - PAGE

C. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND STANDARDS RESTRICTING AND REGULATING DIGITAL BILLBOARDS

ORDINANCE NO. 3701 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO AMEND STANDARDS RESTRICTING AND REGULATING DIGITAL BILLBOARDS

Mayor Bellamy opened the public hearing at 6:38 p.m.

Assistant Planning & Development Director Shannon Tuch said that this is consideration of an amendment to the Unified Development Ordinance to amend standards restricting and regulating digital billboards. This public hearing was advertised on January 30 and February 6, 2009.

In May 2008, the City Council reviewed and approved standards that allowed and regulated digital billboards along certain corridors within the City of Asheville corporate limits. The Asheville City Council subsequently reviewed and adopted the same standards. Since adoption, six separate digital billboards have been permitted along major thoroughfares including: Smoky Park Highway; Hendersonville Road; Long Shoals Road; Tunnel Road; and Sweeten Creek Road.

Asheville appears to be somewhat ahead of other municipalities in adopting standards to permit and regulate digital billboards. Those standards that were adopted, along with the existing restrictions to off-premise billboards, generally appear to

appropriately address safety and land use concerns. Any new billboards must meet all applicable standards including those that accommodate the removal/relocation/reconstruction of existing non-conforming off-premise billboards. Commonly referred to as the "cap and replace" ordinance, these standards "cap" the total number of billboards in the city based on a former survey but allows the billboards to be relocated within certain road corridors. In some cases, the relocation of a billboard will result in a net reduction of structures if signs are consolidated and relocated. The digital billboard ordinance requires a conversion of three square feet of traditional sign face for every one square foot of digital sign face, resulting in a reduction of total square footage. As with traditional billboards, digital billboards can only be located within the permissible road corridors; those corridors include:

1. Patton Ave. – from the French Broad River to the outer limit of the extraterritorial jurisdiction area (ETJ) in Enka
2. Merrimon Ave. – from Chestnut St. north to Woodfin
3. Sweeten Creek Rd. – from Fairview Rd. to the outer limit of the ETJ
4. Hendersonville Rd. – from I-40 interchange to the outer limit of the ETJ
5. Tunnel Rd. – from the tunnel to the outer limit of the ETJ past Oteen
6. Brevard Rd. – from I-240 Interchange to the outer limit of the ETJ
7. Airport Rd. – Hendersonville Rd. to the boundary between Buncombe County and Henderson County, and
8. Long Shoals Rd. – from Hendersonville Rd. to the outer limit of the ETJ.

The characteristics of the eight road corridors vary to some degree but are all generally heavily travelled roads supporting an automobile oriented pattern of development. All eight roads are NCDOT managed roads with varying rights-of-way. In most cases, the right of way widths are well over 75 feet.

Recent applications have helped staff identify an unintended omission in the standards that regulate billboards where, presently, no setback is required from either the right-of-way or travel lane of the road. This is particularly concerning in respect to the digital billboards where the brightness levels and changing images have the potential to become hazards to motorists if placed too closely to the travel lanes. This amendment will attempt to correct this by requiring a minimum setback from the right-of-way to ensure that the signs will remain a reasonable distance from the roadways to minimize any potential hazards and/or nuisances. Due to the varying right-of-way widths, staff is proposing a setback of 10-feet for rights-of-way that are 75-feet or greater in width while proposing a setback of 20-feet for those less than 75-feet in width.

Additionally, due to concerns over sounds and other potential nuisances or hazards, staff is also proposing a separation of 50-feet from any residential structure to ensure a reasonable quality of life for residents, particularly for those who may have limited choices.

This action complies with the Strategic Operating Plan in that safety focus area in that it ensures that standards are in place that help to control or mitigate potentials hazards or nuisances to motorists and residents.

Pros:

- Protects the general public from potential hazards and/or nuisances.
- Maintains opportunity outdoor advertising.

Cons:

- Reduces the number of potential locations for new digital billboards.

This draft has been circulated to CIBO, CAN, and CREIA along with other interested parties.

Staff recommends approval of the amendment to the standards regulating digital billboards.

Mayor Bellamy closed the public hearing at 6:41 p.m.

In response to Councilwoman Cape, Ms. Tuch said that she has received less than five calls about the digital billboard ordinance and was not aware of any light trespass concerns.

Mayor Bellamy said that she has received several e-mails and phone calls from the south Asheville area about the billboards on Hendersonville Road and Long Shoals Road. Their concerns are about the size, height and lighting. She suggested City staff look at the billboard which is in the back yards of homes on Burton Street because there is no separation of trees or shrubs. She felt the ordinance needed to be reviewed in terms of size, lighting and separation of issues. Mayor Bellamy said she will ask the individuals who have contacted her to contact staff for their investigation of the concerns.

Councilwoman Cape supported the motion and urged staff to investigate any concerns to see if the ordinance can be

better crafted.

In response to Councilman Newman, City Attorney Oast said the City's ability to regulate billboards on federal property is severely limited, but any located on City streets are under our control. He would research to see if the City has any ability to require a buffer between uses, but if the billboard is on the interstate, it's in a different class.

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. 3701. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Mayor Bellamy voting "no".

ORDINANCE BOOK NO. 25 - PAGE

V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-31 - RESOLUTION ADOPTING THE 2009 STRATEGIC OPERATING PLAN

City Manager Jackson said that this is the consideration of a resolution reaffirming City Council's Strategic Operating Plan and a related performance measurement and reporting system.

At its January 2009 retreat, City Council used feedback from a citizen survey conducted in summer 2008 to update its Strategic Operating Plan and the goals and objectives that correspond to the plan's key focus areas. During this process, City Council agreed that it was important to balance the strategic plan with the financial constraints of current economic conditions. As a result of these discussions, a new focus area was added called "Fiscal Responsibility."

In addition to updating the strategic goals, City Council also discussed systems for measuring and reporting progress associated with the Strategic Operating Plan. The plan serves as the guiding document for the city's strategic and operational priorities. Under the direction of the city manager, department business plans are annually aligned with the strategic plan to ensure Council's goals and priorities are implemented. The city manager and staff then provide City Council with quarterly management reports that include comprehensive updates regarding the Council's goals and related initiatives. At the January retreat, there was consensus among Council members to continue this system of management reporting.

Additionally, Council agreed to align City Council Committees with the focus areas outlined in the Strategic Operating Plan. Council Committees will receive updates on policy goals, metrics and major initiatives associated with their area of focus. Committee Chairs will then be responsible for providing progress updates to the entire City Council concurrent with the management reporting cycle. The committee assignments are noted with each focus area below.

City Council's strategic plan states that Asheville will be a city that is:

- **Affordable** -The City of Asheville will offer a standard of living that is affordable and attainable for people of all income levels, life stages and abilities. *Housing and Community Development Committee*
- **Fiscally Responsible** - The City of Asheville will create a stronger, more prosperous community with smart investments that accomplish real, lasting, tangible returns. *Finance Committee*
- **Green** - Asheville will be the southeastern leader in clean energy and environmental sustainability while preserving and enhancing the city's natural beauty. *Shared by the entire City Council with the Sustainability Advisory Committee on Energy & the Environment serving in an advisory role.*
- **Safe** - Asheville will be one of the safest and most secure communities when compared to similar cities. *Public Safety Committee*
- **Sustainable** - Asheville will support a sustainable community and a sustainable city government through a strong commitment to infrastructure maintenance, capital improvements, long-term planning. *Planning & Economic Development Committee*

This item has been reviewed by the City Council and the Executive Management Team.

Pros:

- Provide Council and city staff with an overall direction and goals of the organization
- Provide Council and city staff with a measure of success

Con:

- None noted.

The Strategic Operating Plan provides guidance for funding priorities throughout the budget process.

City staff recommends City Council adopt a resolution affirming Council's 2009 Strategic Operating Plan.

Councilwoman Cape suggested we be consistent in our wording of "fiscal responsibility", "fiscally responsible" or "financially responsible." In that focus area, she suggested Council focusing a little more on our own responsibility as an organization – perhaps a bullet point of "The City of Asheville will operate its organization to the highest fiscal responsibility."

Councilman Newman felt the Plan as presented does capture our areas around fiscal responsibility.

Mayor Bellamy asked City staff to wordsmith the "fiscal responsibility" focus area to address Councilwoman Cape's suggestion and that language be revisited on February 24, when the budget is discussed.

In response to Councilman Mumpower's concern about not supporting some of the action items, City Attorney Oast said that Council can take a complex motion and divide it. That would be one way for a Council member to support the Strategic Operating Plan with some exceptions.

When Mayor Bellamy asked for public comments, none were received.

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

Councilman Newman moved to adopt Resolution No. 09-31. This motion was seconded by Councilwoman Cape and carried unanimously, with Councilwoman Cape opposing "explore potential of a zero tolerance policy"; and Councilman Mumpower opposing the following items: (1) continue support of Housing Trust Fund; (2) proactively pursue funding opportunities with state and federal economic stimulus packages; (3) achieve short term and long term energy goals and reduce city carbon emissions by 2% per year; and (4) continue community policing initiatives.

Councilman Mumpower, in conjunction with Mr. Gene Bell, Executive Director of the Asheville Housing Authority, reviewed with Council a Safe Place proposal – a partnership proposal directed to improving the safety of public housing residents in Asheville. It is a model, a possibility and a necessity. He and Mr. Bell will be at the Public Safety Committee meeting on February 17 to discuss this in more detail.

Current realities are (1) some of our public housing developments continue to be "hotspots" for drug sales and related criminal activity; (2) too many of our community's children, elderly, and vulnerable citizens live in unsafe circumstances; and (3) the downturn in the economy holds the potential to increase criminal activity in Asheville.

A Safe Place is an effort to focus on one public housing community to ensure that safety, health, and opportunity standards in that community equal or exceed that of other neighborhoods in Asheville.

Safe Place components consist of (1) resident involvement and leadership; (2) community/church/civic club participation; (3) zero tolerance for criminal activity; (4) increased security services; (5) dedicated and persistent police presence; (6) consistent rule enforcement; and (7) a standard to match other Asheville neighborhoods.

The urgency is (1) changes in our economy predict an increase in criminal activity in Asheville. It is in everyone's interest that we act proactively on behalf of those most at risk; and (2) it is crucial that we have a system in place to meet the warm weather challenges. Our target is 60 days.

What is needed from the City of Asheville is (1) continued dedication to eliminating Asheville's open air drug markets; (2) stepped up police enforcement in our first "A Safe Place" development; and (3) political support and a firm devotion to creating a safe place and keeping it that way forward.

At this meeting, he requested (1) a general commitment to help from the City; and (2) Council's suggestions and support going forward.

Together we have an opportunity to create another model of success in Asheville's public housing. In our rapidly changing social and economic reality, unified action is a necessity. We appreciate the opportunity to partner with the City of Asheville in making a difference that will touch every citizen in the City of Asheville.

It was the consensus of Council to support this effort and to refer this to the Public Safety Committee.

Councilwoman Cape explained the idea behind Asheville First is that we have great local goods and services produced in this area and when you buy local you support the local economy. Her interest is also in supporting the emerging green economy. There are other cities that have crafted policy directions to create a program that would benefit local businesses and/or green businesses within the context of it being fiscally sound. She said that organizationally, do we need a policy that looks at how our own generated waste impacts our fiscal bottom line.

Councilman Mumpower, working with Councilwoman Cape, presented the Asheville First mission of establishing a comprehensive "Asheville First/America First" program dedicated to encouraging our citizens to purchase American, Asheville, and regional goods and services as a local response to a growing international economic crisis.

The motivations would be (1) There are strong indications that the crisis in our economy will grow worse; (2) Asheville City is in a position to model and encourage local solutions; (3) Asheville and WNC have a wide range of locally produced goods and services that would benefit from local support; (4) "Buy American" is a legitimate means to supporting American manufacturing jobs, regionally produced green technologies, local produce, and area service providers; (5) Asheville and WNC have the potential to produce a national model; and (6) Local education and action are a positive means to gaining a sense of control in difficult times.

Marks include: (1) Asheville City government as a model of Asheville/America First; (2) Regional and domestic application as a broader agenda; and (3) Inclusion of other local governmental entities, associations, and private businesses.

The methods would be (1) within legal limits, establish city policies that give extra weight to local/domestic goods and services; (2) Filter future policy decisions toward the priority of supporting local and domestic job creation; (3) Staff the program using existing staff and/or volunteers; (4) Rely on modeling and education (our TV channel as a sample resource) as our primary tools; and (5) Create a direct tie with Council's "Go Green" initiatives – let Asheville lead the way.

Vice-Mayor Davis supports buying local, but he cautioned Council that we live in a global economy.

City Manager Jackson said there are some immediate minor things staff can do to shed some light on what we are doing in terms of promoting businesses, contracting and purchasing. For transparency, in the staff reports we have begun to provide Council with the addresses of our contractors we are doing business with. He asked for direction from Council on how they want to partner with the Asheville Downtown Association, Chamber of Commerce, local restaurants, etc. in participating in public relations programs to support that kind of consumer behavior. We can also provide information on what we can reasonably do in terms of state law and local regulations. We have consistently placed an emphasis on that issue and included criteria in our call for professional services when it comes to commodities, supplies and purchase. However, we are very limited in following the state bidding process. He would be happy to supply that information to the Finance Committee or to the full Council.

Councilman Russell, Chair of the Finance Committee, supported buying from local businesses and felt it would be appropriate for the City Manager to provide that information to the Finance Committee for review.

Councilwoman Cape felt we need to keep our tax dollars at home and urged the public to make a conscious choice of buying local, opposed to over the internet or by 1-800 phone numbers.

Councilman Miller followed up by saying buying local builds community. When people purchase, we want them to purchase things in our area.

Councilman Newman moved to refer the Asheville First program to the Finance Committee. This motion was seconded by Councilman Miller and carried unanimously.

Councilman Mumpower, working with Councilman Russell and Councilman Miller, presented the Volunteer Corp proposal. Its mission would be to establish a comprehensive volunteer program dedicated to supporting the services of the City of Asheville.

Motivations include (1) In anticipation of impending economic difficulties, additional staff support needs are anticipated; (2) Asheville is blessed with strong pool of skilled, capable, and enthused retirees/other volunteer resources; and (3) Volunteers are a low cost means to supplementing/improving city services.

Marks include (1) All departments have the potential to benefit from volunteer resources; (2) Parks and Recreation, Asheville Police Department, Public Works, and Transit/Parking offer stand-out opportunities; (3) Expand volunteer corp. to explore on-site and from home opportunities; and (4) Provide opportunities/structures that uplift our volunteers as they uplift the city.

The methods would be (1) staff the program by expanding responsibilities of existing staff; (2) Pursue creative options that take us out of traditional comfort zones in volunteer utilization; (3) Explore models of volunteer utilization that are exceptional, expansive, cost effective, and dynamic; and (4) Have a positive and highly visible recognition program for our volunteers.

Mayor Bellamy said that expanding all non-salaried volunteer opportunities is an action item in our Strategic Operating Plan and staff has direction to begin working on this.

RESOLUTION BOOK NO. 31 - PAGE

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-32 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE THE MODIFICATION OF TERMS FOR A HOUSING TRUST FUND PROJECT KNOWN AS BOSTIC PLACE

Ms. Judy Daniel, Planning & Development Director, said that this is the consideration of a resolution authorizing the City Manager to approve the modification of terms for a Housing Trust Fund (HTF) project known as Bostic Place, by agreeing to the sale of three project lots to Habitat for Humanity, decreasing the total number of required affordable units from eleven (11) units to eight (8) units, and extending the maturity date for the first HTF lien to February 1, 2010, to allow for completion and sale of the final unit in Phase I.

Since 2005, the City has provided two Housing Trust Fund loans totaling \$378,750 for the development and sale of 11 affordable units at Bostic Place in the Shiloh area. The first HTF loan was made in 2005 in the amount of \$218,750 and required seven affordable units. The 2nd HTF loan was approved in 2008 and required four additional units. To date, \$93,750 has been repaid and three of the promised units have been completed and sold.

The homes in Bostic Place were designated to be modular construction. The lots designated for sale to Habitat for Humanity will be completed with stick-built homes. It is anticipated; however, that the designs will be compatible and that the homes will conform well to the existing neighborhood.

The construction of the remaining units is currently behind schedule; but the developer anticipates that the project will be fully completed within the next 12 months. To help expedite this process, the developer has asked that he be allowed to sell three of the proposed lots to Habitat for Humanity for completion. Habitat will retain the affordability requirement for these lots so there will be no net loss to the community in terms of the total number of affordable units received under the original loan agreements. In exchange for agreeing to this transaction, the City would receive a release fee for each lot equal to 1/7th of the original loan amount for Phase I, plus accumulated interest. This would generate approximately \$96,250 in program income that would be returned to the fund for reinvestment in other affordable projects.

If approved, in addition to the understanding that Habitat will retain the affordability provisions originally agreed to by the developer; the developer would only need to complete one (1) additional unit to satisfy the first HTF lien. An extension of the loan maturity date will be required to allow for completion and sale of the final unit in Phase I. The remaining four (4) units secured by the second HTF loan would be completed as originally agreed and released as they are sold.

The request for modification was presented to the Housing and Community Development Committee on January 28th and was unanimously approved.

This action complies with the Strategic Operating Plan in that the project is supportive of the City's goal of providing safe and decent affordable housing units to the citizens of Asheville.

It also addresses the priorities of the Consolidated Strategic Housing & Community Development Plan by increasing the housing stock, providing affordable rental units, building high quality energy-efficient housing, and coordinating development with transportation and jobs.

Pros:

- Returns \$96,250 to the Trust Fund for reinvestment in other worthy projects.

Allows the developer to more quickly complete the project.

- Purchase by Habitat ensures that the homes are sold to income-qualified families as originally agreed.

Cons:

- The current maturity date on the first HTF loan will need to be extended to allow for completion and sale of the final unit.
- Once the lots are released, the City no longer has the ability to monitor affordability.
- The project has experienced construction delays, but appears ready to proceed.

Funding for the Housing Trust Fund has been previously appropriated. The receipt of release fees from the proposed sale will increase the balance in the Trust fund from \$611,030 to approximately \$707,280.

Staff recommends adoption of a resolution authorizing the City Manager to modify the terms of the Loan Agreement for Bostic Place Phase I.

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

Councilman Mumpower moved for the adoption of Resolution No. 09-32. This motion was seconded by Councilman Russell and after the Mayor asked for public comments and received none, the motion carried unanimously.

RESOLUTION BOOK NO. 31 – PAGE

B. USE OF SPANISH IN DIRECTIONAL SIGNS

Councilman Mumpower said that the policy issue is that the City has placed directional signage containing English and Spanish in proximity to the City's police station. He asked for the opportunity to discuss policy on the appropriateness of dual language signage and the expenditure of City funds on such.

The impact is that the influx of illegal immigrants is unprecedented in our history. It is a personal belief that the U.S. and our community are unable to absorb this illegal influx without significant harms to our culture and economy.

He outlined the following concerns: (1) Dual language signs send a message of implicit acceptance of illegal immigration; (2) Dual language signs are expensive; (3) This action was initiated in response to Federal pressures versus local initiative; (4) The words for "Police Station" in English and Spanish are similar and thus redundant; (5) Enabling non-English speaking people to remain so inhibits assimilation at all levels; and (6) Energy invested in dual language signs is an unnecessary use of limited city resources.

His position is that all City signage should be in English.

Police Chief Bill Hogan said that language access for Limited English Proficiency (LEP) persons is a protection under Title VI of the Civil Rights Act of 1964, the Title VI regulations, and Presidential Executive Order 13166 issued in 2000 by President Clinton and affirmed by President Bush in a memorandum dated October 25, 2001, that requires all government or private entities receiving Federal assistance to provide meaningful access to LEP persons.

The basis for Executive Order 13166 is Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d which provides that no person shall "on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 directs and authorizes Federal agencies to issue rules, regulations or orders of general applicability. 36 Federal agencies provide assistance to government and private agencies for many programs and activities to include the Department of Transportation that requires language access for public transportation riders, the Department of Housing and Urban Development requiring access for LEP clients accepting CDBG funding, the Department of Labor requires language access for job program participants, the Department of Health and Human Services requires language access for health care programs, the Department of Education for any education programs and the Department of Justice to name a few. Obviously many programs carried out by the City of Asheville use federal funds and are by law required to provide meaningful language access to LEP persons.

All Federal agencies provide assistance and are required to publish "Guidance" and "Implementation" documents approved by the Department of Justice, Office of Civil Rights. Hence the DOJ, OCR attorney conducting the compliance review.

The APD is the subject of an (LEP) Compliance Review conducted by the United States Department of Justice, Office of Justice Programs, Office of Civil Rights, (DOJ, OJP, OCR) requiring the enactment of provisions to provide meaningful access to

programs and activities for limited English proficiency persons. Charlotte and Greensboro were also selected for a Compliance Review around the same time period.

The APD was notified November 15, 2007 of selection for a LEP Compliance Review that began with set of 30 in depth questions requiring written responses addressing what steps have been taken to provide access and assistance to LEP individuals. LEP is defined as individuals who do not speak English as their primary language and have a limited ability to read, write, speak or understand English. Census, empirical and local community resources data reveal that APD LEP clients are primarily Spanish speaking with Slavic (Russian and Ukrainian) being secondary. The on site inspection was June 25 – 27, 2008, and was conducted by a DOJ, OJP, OCR staff attorney. The compliance review is pursuant to Title VI of the Civil Rights Act of 1964 and the Omnibus Crime Control and Safe Streets Act of 1968. The final report was completed and delivered to the APD in December 2008. The scope of the review was narrowly related to APD's provisions of services to people with LEP. The report contains documentation of efforts to comply and deficiencies that must be corrected for taking steps to provide meaningful access to programs and activities for LEP persons. Implementation will include translation of vital forms and documents to include rights advisements and reports, oral and written translation access, signage at the Municipal Building and Community Resource Centers as well as tracking of all LEP contacts and assistance provided.

This action is Federal law and complies with City Council Strategic Operating Plan in that funding for programs under the focus area *Critical Services and Infrastructure* Goals 1 – 6 for APD programs are funded through DOJ, OJP financial assistance programs. The Weed and Seed program, drug suppression equipment and communication technologies are three examples.

The DOJ, OJP, OCR has submitted their findings and the APD is designing the implementation plan based on the findings according to law.

In response to Councilman Newman, Police Chief Hogan said we have also been asked to put signs in our police substations, with not only this is where it's located, but basic information on how they can get help. They also want to make sure that we have the capability of assisting any citizens that cannot speak English proficiently so that they are not deprived of services that should be rendered to them by the government.

In response to Councilman Mumpower if the City does not comply, City Attorney Oast said that he didn't know about the Limited English Proficiency compliance with this executive order, but in situations where communities have not complied with federal law, like the Fair Housing Amendments Act of 1988, there have been lawsuits brought by federal government that can result in significant fines. He felt there is a potential for the City to experience a loss of federal revenue and some fines.

Councilwoman Cape said we strive to be a community that is welcoming to people and when they need the police, they need to know they can find them and that it's a welcoming place for them. If they have a crime to report, they can walk in and not be automatically lost. This is a nation of immigrants who assimilate in different manners. Usually the older people often don't ever gain English as a full language, but they may be someone who had a crime acted upon them. Whether or not the federal government is using a heavy hand or not, she thinks they are asking us to reach beyond our regional small mindedness and recognize that we are a large county that is expanding with people from all over the world.

When Mayor Bellamy called for a motion, she received none.

C. RESOLUTION NO. 09-33 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Board of Adjustment.

The terms of Richard Ford (Regular member), James Sheeler (Alternate member), Robert Middlemas (Regular member), and Janet Whitworth (Alternate member), as members on the Board of Adjustment, expired on January 21, 2009. In addition, there currently exists an Alternate member vacancy left by Lee McElrath, whose term will expire on January 21, 2010.

At the January 27, 2009, City Council meeting, it was the consensus of Council to (1) appoint Janet Whitworth as a Regular member to serve a three year term, term to expire January 21, 2012, or until her successor has been appointed; (2) reappoint James Sheeler as an Alternate member, to serve an additional three year term, term to expire January 21, 2012; and (3) reappoint Robert Middlemas as a Regular member to serve an additional three year term, term to expire January 21, 2012, or until his successor has been appointed.

Also at the January 27, 2009, City Council meeting, it was the consensus of Council to interview Phillip Hardin, Juma Jackson and Eugene Britton IV for the Alternate positions.

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After Council spoke highly of the candidates, Phillip Hardin received 5 votes, Juma Jackson received 7 votes and Eugene Britton IV received 2 votes. Therefore, (1) Mr. Jackson was appointed as an Alternate member to serve a three year term, term to expire January 21, 2012; and (2) Mr. Hardin was appointed as an Alternate to serve an unexpired term, term to expire January 21, 2010. In addition, (1) Janet Whitworth was appointed as a Regular member to serve a three year term, term to expire January 21, 2012; (2) James Sheeler was appointed as an Alternate member, to serve an additional three year term, term to expire January 21, 2012; and (3) Robert Middlemas was reappointed as a Regular member to serve an additional three year term, term to expire January 21, 2012. All appointments are made until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE

D. RESOLUTION NO. 09-34 - RESOLUTION APPOINTMENT MEMBERS TO THE COMMUNITY RELATIONS COUNCIL

Vice-Mayor Davis said that this is the consideration of a resolution appointing members to the Asheville-Buncombe Community Relations Council.

The terms of Jill Fromewick and Michael Burkhead, as members of the Asheville-Buncombe Community Relations Council, expired on December 31, 2008.

At the January 27, 2009, City Council meeting, it was the consensus of Council to reappoint Jill Fromewick to serve a three year term, term to expire December 31, 2011, or until her successor has been appointed.

Also at the January 27, 2009, City Council meeting, it was the consensus of Council to interview Kent Purser and William Moore.

After Council spoke highly of the candidates, it was the consensus of Council to appoint William Moore as a member to the Community Relations Council to serve a three-year term, term to expire December 31, 2011. In addition, Jill Fromewick was reappointed to serve a three year term, term to expire December 31, 2011. Both appointments are made until their successors have been appointed.

RESOLUTION BOOK NO. 31 – PAGE

E. BOARDS & COMMISSIONS

Due to the worksession scheduled at 3:00 p.m. on Tuesday, February 24, 2009, it was the consensus of Council that the board & commission interviews be held at 5:00 p.m. on Tuesday, February 17, 2009, in Room 209.

It was the consensus of Council to interview Tabatha Hamlin, Vanessa Penix, Daniel Collins and Richard Stiles for a vacancy on the HUB Community Economic Development Alliance.

It was the consensus of Council to interview Gerald Hixson, Gordon Smith, Crystal Williams, Stephen Bolden and Wanda J. Lanier for vacancies on the Homeless Initiative Advisory Committee. Vice-Mayor Davis noted that the Homeless Initiative Advisory Committee recommended Gerald Hixson, Gordon Smith and Stephen Bolden.

At Mayor Bellamy's request, Councilman Mumpower moved to appoint the City Manager or his designee to the Pack Place Board of Trustees to replace Mayor Bellamy. This motion was seconded by Mayor Bellamy and carried unanimously.

It was the consensus of Council to appoint Mayor Bellamy as the liaison to the Homeless Initiative Advisory Committee.

Vice-Mayor Davis said that Ms. Andrea Robel from the U.S. Census Bureau made a presentation to the Boards & Commissions Committee about the need for Asheville to establish a "Complete Count" Committee. When the City's committee is formed, they will appoint a City representative to Buncombe County's Complete Count Committee, per Ms. Robel's request. Mayor Bellamy moved to establish a Complete Count Committee and directed City Clerk Bureson to begin advertising for this short-term action committee. This motion was seconded by Councilman Mumpower and carried unanimously.

In response to Councilman Russell, City Clerk Bureson said that letters to all board and commission chairs defining liaison/member roles will be going out within the next couple of weeks.

Councilwoman Cape announced that the Planning & Economic Development Committee meeting scheduled for Wednesday, February 11, 2009, has been cancelled.

Councilwoman Cape thanked City staff for providing various adopted plans and the Code of Ordinances on City Council laptops.

Councilwoman Cape will be updating Council in the future on developing a National Coalition for Integrated Solutions to deal with some national challenges facing our community.

VII. OTHER BUSINESS:

A. LAWSUIT

The City received four Complaints on January 29, 2009, from Buckeye Construction Company. The four separate lawsuits involve water system improvement contracts at Brevard Road/Clayton Road, Hendersonville Road, Weston Road, and Beaucatcher Road, for breach of duty in the City's delay in issuing the Notice to Proceed resulting in material price increases, failure by the City to acquire necessary easement agreements, and costs associated with stop, start, demobilizing, move, remobilize, and restart work. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Brian Festa spoke to Council about the need for a conscious evolution in the way we teach in the public school system.

Mr. Gene Hampton spoke to Council about the need for quality education, as quality education and quality government equals quality of life for all.

Mr. Fred English commented on the economic stimulus package.

Mr. John Blackwell asked for direction on how to apply for a position on the URTV Inc. Board of Directors.

Closed Session

At 8:13 p.m., Councilman Miller moved to go into closed session for the following reason: (1) 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: State of North Carolina; County of Buncombe; and City of Asheville - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent the disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C. Gen. Stat. sec. 143-318.11 (10) (e) - The statutory authority is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Newman and carried unanimously.

At 8:34 p.m., Councilman Newman moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:34 p.m.

CITY CLERK

MAYOR