

Worksession

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (arrived at 2:57 p.m.); 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

City Council held a worksession to discuss the budget and the economic stimulus package update.

Budget

Chief Financial Officer Ben Durant said that on May 26, 2009, City Council will hold a budget worksession at 2:30 p.m. to discuss the Fiscal Year 2009/2010 Manager's Recommended Budget.

At the May 12, 2009, formal City Council meeting, staff presented the Fiscal Year 2009/2010 Manager's Recommended Budget, with a focus on the general fund.

Staff would suggest that Council use the remaining time during the worksession to review and discuss the budget fund by fund. If there are questions that require more extensive research, we will provide those responses at a subsequent Council meeting. As usual, staff from each of the departments will also be available at the worksession to answer questions.

A public hearing on the Fiscal Year 2009/2010 Manager's Recommended Budget will be conducted on June 9, 2009, and City Council is scheduled to adopt the budget on June 23, 2009.

Staff recommends that City Council discuss the Fiscal Year 2009/2010 Manager's Recommended Budget fund by fund.

Mr. Durant began the budget worksession with a brief recap of the general fund budget themes that were discussed at the May 12th meeting, and provided an overview of some pending issues that may impact the general fund budget.

He said that the objectives of this worksession are to (1) have a staff overview of the FY 2009-10 budget; and (2) have City Council review of the budget fund by fund.

General Fund budget themes include (1) Sales tax decline; (2) Property tax base growth/annexation; (3) No property tax increase; (4) \$1.5 million fund balance appropriation; (5) Higher cost recovery from fees; (6) Significant cost increases; (7) No service cuts; (8) No market or merit pay adjustments; (9) Management streamlining & reorganization; and (10) Minimal capital funding.

General Fund pending issues include (1) Animal Control: \$32,000; (2) Civil Service Legal Fees: \$100,000; (3) Further Sales Tax Decline?; (4) Health Care & Other Inflationary Trends (a) \$1.3 million health care amendment in current year; and (5) Stimulus Funds.

Budget Director Tony McDowell then presented a summary of the major budget themes for each of the City's seven enterprise funds.

Water Fund budget themes include (1) 6.3% decrease due to the removal of \$3.5 million in one time capital expenses for Brevard Road project; (2) Significant inflation in key areas; (a) Health Care: \$220,000; and (b) Electricity & Chemicals: \$400,000; and (3) \$5.6 million for capital improvement projects.

He then reviewed the Water Fund Capital Improvement Projects fund, which totals \$5,597,735.

Transit Fund budget themes include (1) 4.9% budget increase; (2) Additional federal & state funding of \$947,000; (3) \$693,000 decrease in general fund subsidy; and (4) Increased operating costs (a) Fuel & maintenance; and (b) Black Mountain & Weaverville service (state reimbursed).

Stormwater Fund budget themes include (1) 12.3% budget decrease; (2) Development permit revenue reduced 29% from \$287,000 to \$204,000; and (3) One position eliminated & two positions will be paid from capital & grant funded projects.

Parking Fund budget themes include (1) 8.4% budget decrease; (2) Recession has impacted garage revenue (a) \$300,000 decrease; (3) \$500,000 for possible debt service payment on Biltmore Avenue parking deck; and (4) \$57,240 to fund signage for the Wayfinding program.

Civic Center budget themes include (1) 6.9% budget decrease; (2) General fund subsidy reduced from \$397,000 to \$391,000; (3) Capital funding reduced from \$400,000 to \$250,000; and (4) Discontinued ice installation (a) \$50,000 in immediate savings; and (b) Avoidance of another \$150,000 in repair work to the chiller.

Golf Fund budget themes include (1) 14.1% budget decrease; (2) Restructuring & streamlining of operations (a) 3 positions eliminated; and (b) \$150,000 in savings; and (3) Will operate without a general fund subsidy.

Festivals Fund budget themes include (1) 30% budget decrease (a) Reduction in the overall footprint for 2009 Bele Chere and (b) No ticketed event at the 2009 Bele Chere; (2) Recession impacting revenues (a) Attendance is expected to be down 10-12%; and (b) \$35,000 decrease in sponsorship revenue budget; and (3) Continuation of general fund subsidy (a) \$184,726 (2008-09 was \$162,675).

Using a chart, he reviewed the enterprise fund summary.

Throughout the presentation, Mr. Durant, Mr. McDowell and Civic Center Director Sherman Bass responded to various questions/comments from Council, some being, but are not limited to (noting that information not readily available would be provided to Council): update on the sales tax and what the state is using for their calculations; does City staff have any concerns the state will come to local governments to balance their budget; what is the rate of inflation from the last 6 months; explanation of the 3% overall budget increase; does the Consumer Price Index make allowances for health care; is there a better figure to compare our costs to than the Consumer Price Index; what was the analysis regarding health care costs for employees; if there are funds left over at the end of the Fiscal Year, do they go back into the General Fund Fund Balance; why is the investment income flat; suggestion to look at advertising opportunities in our parking decks to raise revenue; what has staff done, and how has staff reacted, to filling the \$5 Million gap learned about in November, 2008; what constitutes the emerging issue of \$100,000 Civil Service legal fees; what are our fuel costs based on this year; additional detailed information on health care costs, factors associated with the 15% increase, and what innovative ways is the City doing to reduce health care costs; what is the Metropolitan Sewerage District's projected revenue loss; reminder that there are available spaces in the parking deck for people who would like to rent them; why and how was the Civic Center capital improvement plan decreased; request for an update on the Civic Center's white paper presented to Council several years ago; and how many people will be affected with the deletion of the ice at the Civic Center.

In response to Councilman Mumpower, City Manager Jackson said that input and review of applicable Capital Improvement Project lists have been sought from all appropriate boards.

At 3:30 p.m., Mayor Bellamy announced a 5 minute recess.

Economic Stimulus Package Update

American Recovery & Reinvestment Project Manager Brenda Mills said that the purpose of this report is to provide City Council with an update on staff work to date on the American Recovery & Reinvestment Act (ARRA) funding opportunities and next steps.

Staff has worked since the February 17, 2009, when the \$789 billion funding for the American Recovery & Reinvestment Act (ARRA) was signed by President Barack Obama to respond to opportunities offered by the ARRA while ensuring the highest level of transparency and project coordination.

The federal stimulus package provides about \$6.2 billion in direct aid to North Carolina to create jobs and rebuild infrastructure, including highways and schools. The recovery program will also inject additional funding into the state through targeted tax cuts, additional grants from federal agencies and direct funding for specific federal programs in the state. We anticipated that the majority of recovery fund opportunities for the City of Asheville would come through specific grant or other program funding opportunities offered by state agencies.

Funding Announcements & Applications:

Entitlements

- Homeless Prevention Funds (\$509,460)
- Community Development Block Grant - R (\$332,942)

- Energy Efficiency & Conservation Block Grant (\$804,700) - \$250,000 for Community Projects
- Edward Byrne Justice Assistance Grant (\$265,466) – Memorandum of Understanding with Buncombe County
- Transit Capital Projects (\$2,500,000) – French Broad River Metropolitan Planning Organization (MPO) to guide choices for this funding – prioritized list submitted April 30, 2009
- Transportation Small Enhancement Projects (shovel ready under \$100,000) – staff submitted projects by letter in February
- MPO Urbanized Area Funding (\$6,000,000) - French Broad River MPO to guide choices for this funding – prioritized list submitted April 30, 2009

Grant Applications

- Neighborhood Stabilization Program (NSP2) - NSP 2 funding is available only for communities and neighborhoods showing high need. HUD has published the maps that indicate the high need areas for foreclosure and vacancy. Our Community Development Director, Jeff Staudinger, has reviewed the maps for the City of Asheville and no census tracts in our city meet the high need criteria. He advises that we are not eligible for NSP 2 funding.
- N.C. Dept. of Environment and Natural Resources (NCDENR) Drinking Water State Revolving Fund – Four Applications
- NCDENR Clean Water State Revolving Fund – Seven Applications
- Department of Energy Mobile Source Emissions Reductions Grant (\$60,000)
- Federal Transit Administration – Transit Investment for Greenhouse Gas and Energy Reduction Grant (TIGGER) -\$2,240,000
- Department of Justice (DOJ) – COPS Hiring Grant (\$1,645,668)
- DOJ – Local Youth Mentoring Initiative (\$482,250)
- DOJ – Competitive Byrne Grant: Project Safe Neighborhoods GREAT Families
- DOJ - Competitive Byrne Grant: Downtown Safety & Crime Prevention Initiative - equipment

Transparency and Accountability:

The ARRA website page is kept updated on funding announcements and applications that pertain to the City of Asheville. Resource links are provided to help with additional information on funding and granting opportunities.

The ARRA newsletter began in April and is sent to the community at large with updates, information and education on the ARRA funding and how it affects Asheville and WNC. There is a link to sign up for the newsletter as well. We are receiving positive feedback on the information.

Public meetings were held on May 14th and May 21st to provide information to the community which was very well received. Information from the meeting is online for future reference and we are continuing to answer inquiries in regards to the ARRA funding.

Next Steps for Staff:

We will be working on meeting and training with affected departments on being 'shovel ready,' ARRA funding requirements and reporting, grant receipts and procedures and contracting procedures once grant funding is awarded. It is our goal to help the process be transparent for the community and run smoothly for staff in getting projects out for contracting and bidding. This will also include a plan to advertise contracting opportunities in addition to what is provided with our regular contracting practices.

We will be meeting with community stakeholders in regards to their ARRA funding. We hope they will provide updates to City Council in the near future on their plans for ARRA funding. Our goal is to provide update to the community on how ARRA funding is affecting our area overall.

Ms. Mills responded to Mayor Bellamy's question of what the City's commitment is to make sure that we are hiring locally and what we can do to encourage our co-application agencies to hire local people as well.

Councilman Mumpower was concerned that this is basically Washington's Community Welfare Program based on borrowed dollars that will have to be repaid. He was concerned that our enthusiasm will bring us short-term returns, but long-term our children and grandchildren will have to pay for this.

In response to Councilman Mumpower, Ms. Mills explained how we are making information readily available for contractors to check on the legal status of employees. City Attorney Oast also noted that he will update Council on any new state initiatives regarding employing local, legal citizens.

At 3:51 p.m., Mayor Bellamy announced a recess prior to beginning the formal Council meeting.

Regular Meeting

Tuesday, May 26, 2009 – 5:00 p.m.

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape (excused at 10:05 p.m.); 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:

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 12, 2009**
- B. RESOLUTION NO. 09-99 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT FOR THE INSTALLATION OF POWER UTILITY LINES AND FACILITIES ON CITY PROPERTY ON AIRPORT ROAD (WNC AGRICULTURAL CENTER – NEW LIVESTOCK FACILITY)**

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electrical power facilities at the Western North Carolina Agricultural Center (herein "WNCAC")

The land on which the WNCAC is located is owned by the City of Asheville. It is leased to the State of North Carolina, specifically, the Department of Agriculture and Consumer Services, which uses it for the WNCAC. A new livestock facility is being constructed on the property, and this new facility requires electrical service. The new line would run from an existing transformer west about 30 feet and then north about 150 feet to new transformer to serve the new facility. The easement area would include 10 feet for the line, with the line being in the center, and 10 feet around the enclosure for the transformer.

This installation has been approved by the Department of Agriculture, which requested it. Such improvements are within the scope of and contemplated by the lease.

This action complies with the City's Strategic Operating Plan in that it contributes to an existing partnership with the State for the operation of a regional facility, and promotes community education on agriculture.

Pros:

- Facilitates development and use of WNCAC
- Promotes community education on agriculture

Con:

- None noted

No direct fiscal impact for City; marginal impact on State.

Adoption of the resolution is recommended

RESOLUTION BOOK NO. 32 – PAGE 59

C. RESOLUTION NO. 09-100 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART BOARD

Summary: The terms of Harry Harrison, Dana Irwin and Bill Fishburne, as members of the Public Art Board, expired on December 31, 2008. Mr. Fishburne is not eligible for reappointment and Ms. Irwin has resigned.

At the May 12, 2009, meeting, it was the consensus of Council to (1) reappoint Mr. Harrison to serve a three year term, term to expire December 31, 2011, or until his successor has been appointed; and (2) appoint Ms. Jenny Bowen (to replace Ms. Irwin) to serve a three year term, term to expire December 31, 2011, or until her successor has been appointed.

RESOLUTION BOOK NO. 32 – PAGE 61

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.

Councilman Mumpower moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Russell and carried unanimously.

III. PRESENTATIONS & REPORTS: None.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 3733 - ORDINANCE TO INITIALLY ZONE PROPERTIES RECENTLY ANNEXED AND LOCATED ALONG AIRPORT ROAD TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Bellamy opened the public hearing at 5:13 p.m.

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to initially zone properties recently annexed and located along Airport Road Commercial Industrial District. This public hearing was advertised on May 15 and 22, 2009.

On April 28, 2009, the Asheville City Council voted unanimously to zone 86 of 112 parcels in the Airport Road Annexation Area as Commercial Industrial, Highway Business, and RM-16 Districts. At that meeting, property owners in and around the other 26 parcels in the annexation area, which staff had recommended for RS-8 zoning, voiced an interest in Commercial Industrial zoning, despite being an area predominately comprised of single-family residential development. Their interest was based on the facts that the area was surrounded by commercial and industrial businesses and that the property had previously been zoned EMP (Employment) District by Buncombe County.

This property, more specifically, is located off of Bradley Branch Road, Gilliam Road, Machen Road, and Benwood Drive. As previously stated, the property is primarily single-family in nature, but does contain a paving business, a few multi-family structures, and a family care home. Initially, the Planning staff and Asheville Planning and Zoning Commission had recommended these properties be zoned RS-8 in keeping with the existing development pattern. Additionally, Commercial Industrial does not allow single-family residences which would make the existing homes grandfathered, nonconforming uses.

Staff met with property owners in the area on Monday, May 11, 2009, in order to discuss the issues with them and get a sense of their interests. At the meeting and subsequent to the meeting, it became clear that the consensus in the area was for the properties to be zoned Commercial Industrial. In these early communications, staff failed to mention the fact that the single-family homes in the area would be nonconforming and thus, unable to expand. Staff provided that information to the affected property owners and they recommended their property be rezoned Commercial Industrial District.

In light of the interests of the property owners, staff is supportive of the following 26 parcels being zoned Commercial Industrial (CI) District:

CI Commercial Industrial District – PINs 9643981845 ,9643983896, 9643983997, 9643986989, 9643988901, 9643994100, 9643994221, 9643994309, 9643994381, 9643996245, 9643996422, 9643999194, 9643999226, 9653081568, 9653081658, 9653081747, 9653081838, 9653090312, 9653090417, 9653090508, 9653091010, 9653091180, 9653091294, 9653091399, 9653092504, 9653092608.

Pros:

- Supports the *Asheville City Plan 2025* goals for regional commercial corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.

Con:

- The single-family homes would become grandfathered nonconforming uses in the Commercial Industrial District.

- In response to the interest of the property owners, staff is supportive of these 26 parcels being zoned Commercial Industrial (CI) District.

Mayor Bellamy closed the public hearing at 5:15 p.m.

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. 3733. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 285

B. PUBLIC HEARING TO SOLICIT COMMENTS ON A SUBSTANTIAL AMENDMENT TO THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO DISTRIBUTE \$332,952 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (CDBG-R) ALLOCATED TO THE CITY OF ASHEVILLE

RESOLUTION NO. 09-101 - RESOLUTION AMENDING THE CITY'S 2008-09 CONSOLIDATED ACTION PLAN, DETAILING THE CITY'S PLAN TO DISTRIBUTE \$332,952 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS (CDBG-R) ALLOCATED TO THE CITY OF ASHEVILLE

City Attorney Oast noted that Council's rules specify that a public hearing must be set by special order of the Council, except in zoning items. Staff was not advised in time for the public hearing to be set at Council's last meeting. Therefore, Councilwoman Cape moved to waive the rules and proceed with the public hearing. This motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy opened the public hearing at 5:18 p.m.

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution authorizing submission of a Substantial Amendment to the Consolidated Action Plan for Fiscal Year (FY) 2008-09, enabling the City to receive \$332,942 in CDBG-R grant funding from the U.S. Department of Housing and Urban Development. This public hearing was advertised on May 15 and 22, 2009.

The American Recovery and Reinvestment Act authorized the US Department of Housing and Urban Development to distribute an additional \$1 billion of Community Development Block Grant funds to eligible recipients. The City has been allocated \$332,942 of these funds, allocated as "CDBG-R" funding.

HUD is requiring unusually fast action on the part of grantees to receive and further allocate these funds. Entitlement cities (of which Asheville is one) have until June 5, 2009, to submit their plan for the use of the funds to HUD. HUD has in turn waived regular citizen participation provisions, requiring only a seven-day public comment period and reduced publishing requirements. City staff prepared and published on the City web site as of May 18, 2009, the proposed Substantial Amendment, thus satisfying the public notice requirements

The City's Housing and Community Development Committee has made recommendations for the use of CDBG-R funds, which must be used in housing or community development programs in Asheville. The recommended uses are consistent with the Strategic Housing & Community Development Plan for 2005-2010. Although statutorily available for any eligible community

development activity, HUD “strongly suggests that grantees incorporate consideration of the public perception of the intent of the Recovery Act in identifying and selecting projects for CDBG-R funding.” Section 1602 of the Recovery Act requires that grantees shall use grant funds in a manner that maximizes job creation and economic benefit.

HUD also states, “HUD strongly urges grantees to use CDBG-R funds for hard development costs associated with infrastructure activities that provide basic services to residents or activities that promote energy efficiency and conservation through rehabilitation or retrofitting of existing buildings.”

According to HUD: “In selecting projects to be funded, recipients shall give priority to projects that can award contracts based on bids within 120 calendar days from the date the funds are made available to the recipients; and that for CDBG-R funds being used for infrastructure investments, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 calendar days after February 17, 2009.”

In order to meet the program rules and the intent of the ARRA, the following projects have been recommended for funding:

- **Tier II Emergency Home Repair, \$75,000.** Sub-recipient: Mountain Housing Opportunities (MHO). MHO facilitates the extensive repair of homes owned by very-low and low-income, special need households. The maximum investment per home is \$15,000. MHO coordinates weatherization activities with Community Action Opportunities; the repairs facilitated by MHO enable weatherization activities to be allowable and effective. MHO will be able to immediately implement the CDBG-R activities. Local building contractors are informed of the program, and MHO will assist those who need help obtaining DUNS and CCR numbers.
- **Weed and Seed Weatherization Program, \$75,000.** Sub-recipient: Western North Carolina Green Building Council (WNCGBC). WNCGBC will market and facilitate weatherization for 60 low-income households in the West Riverside area of Asheville. They will partner in this program with the Community Action Opportunities Weatherization program. Marketing of the program will begin immediately upon funding. Youth participating in the Asheville GO program will serve as paid apprentices performing the weatherization work.
- **Mountain BizCapital, \$26,000.** Mountain BizCapital is a revolving loan fund for start-up businesses. Entrepreneurs are trained by Mountain BizWorks, which also administers the RLF. Education and training are ongoing, producing an ongoing pool of start-up business applications for the Revolving Loan Fund. At least two start-up businesses will be assisted with these funds.
- **City of Asheville, \$123,648.** The City of Asheville will use these funds to contract for a sidewalk serving a lower-income neighborhood in the City. Forty percent of residents of that neighborhood do not own cars, and must currently walk along a road with no sidewalks to schools, jobs, shopping and public transportation. All rights-of-way for the section of sidewalk to be built with CDBG-R funds have been obtained, and the City is prepared to contract for this work upon completion of the environmental review, which is underway.
- **City of Asheville, \$33,294: Program Administration.** 10% of grant funds are for administration.

The recommended use of these funds complies with the City Council’s Strategic Operating Plan in that it directly relates to the Council’s Strategic Goals as noted: (1) Affordable: This plan will assist at least 65 Asheville households remain in affordable housing; (2) Green: The weatherization program in the West Riverside Weed and Seed area will increase energy efficiency for at least 60 existing low income households there; (3) Safe: Sidewalk improvements will improve the safety of our public infrastructure. Emergency home repairs will improve the health and safety of at least 5 Asheville households, primarily elderly households; and (4) Sustainable: New jobs created through the entrepreneurship training program have an increased chance of success.

Pros:

- Approval of the Action Plan paves the way for the receipts of over \$332,942 of HUD funding to the City, which will be used to preserve affordable housing, create jobs, and improve public infrastructure.
- HUD funding will leverage \$ 345,813 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City’s Housing & Community Development Committee.
- Because these projects were funded from the pool of existing approved 2009-2010 applications, some of this year’s CDBG funds will be freed up for reallocation.

Con:

- Were more time available, a greater range of projects might have been able to be considered for funding.

The Action Plan proposed amendment is fully funded from federal CDBG entitlement grants.

The Housing and Community Development Committee and staff recommend the approval of the resolution to approve the Substantial Amendment to the Consolidated Action Plan for FY 2008-09, enabling the City to receive \$332,942 in CDBG-R grant funding from the U.S. Department of Housing and Urban Development.

Mr. Gordon Walton, President of the Board of Homeward Bound, introduced Ms. Fran Harvey, the new Executive Director, and Rev. Heather Spencer, the new Director of A-Hope. Ms. Harvey explained that the mission of Homeward Bound is to end the cycle of chronic homelessness and briefed Council on their overall success rate. Rev. Spencer explained that her role will be more community focused and she looked forward to working with the City of Asheville.

Vice-Mayor Davis felt it would be beneficial for Rev. Spencer to hold a neighborhood meeting in order to introduce herself and perhaps pledge her support in working with the neighborhood in finding some solutions to the difficulties arising from clients at A-Hope.

Mayor Bellamy closed the public hearing at 5:29 p.m.

Councilman Mumpower could not support the action in that this is basically Washington's Community Welfare Program based on borrowed dollars that will have to be repaid. In addition, he was concerned whether the choices are a wise investment of those dollars given the realities of our current economy.

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

Councilwoman Cape moved for the adoption of Resolution No. 09-101. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 62

C. PUBLIC HEARING ON THE DOWNTOWN MASTER PLAN

RESOLUTION NO. 09-102 - RESOLUTION ADOPTING THE DOWNTOWN MASTER PLAN IN CONCEPT

Ms. Sasha Vrtunski, Project Manager for the Downtown Master Plan, said that this is the consideration of a resolution adopting the Downtown Master Plan. This public hearing was advertised on May 15 and 22, 2009.

City Council heard a presentation of the final version of the Downtown Master Plan by the consultants on May 12, 2009. City Council authorized the development of a Downtown Master Plan in June, 2007. Goody Clancy was selected from a field of highly qualified consultants and began work in April 2008. A draft of the plan was presented at a public meeting on January 15, and further changes were made. The final draft was released to the public on March 23 and has been presented to and approved by the Planning and Zoning and Downtown Commissions and the Advisory Committee.

From the beginning of this process, the Downtown Commission stressed to the consultant team that our community is one of many opinions, and that they would have to work hard to find common ground, and to craft a plan that could meet the needs of many different perspectives. The plan strives to do just that. The recommendations are carefully balanced to help form our future downtown while allowing for creativity, flexibility and new initiatives, offering action on the elements that arose as most important to the greatest number of those who were a part of the process.

The master planning process provided numerous opportunities for citizen and stakeholder input. The turnout was very high - much higher than in any effort in recent years – an estimated 4,000 hours of citizens' time in public meetings and committee meetings; and there was wide representation of many different perspectives. In addition to public meetings the consultants conducted over 100 interviews and meetings with stakeholders, and presentations were made at dozens of groups throughout the community.

The consultant team turned that input into a set of design and plan principles and then a set of recommended strategies. Some of these recommendations were initially controversial, and there were numerous discussions between stakeholders to find common ground. Reflecting that effort, some elements that began as recommended actions evolved into recommendations for future consideration located in the Plan Appendix. As a result, there is a strong feeling among the majority of those who participated in the process that the plan now presents an important middle ground that will improve downtown development through predictability, rational standards and clarity.

It is crucial to understand that the Master Plan and the Master Plan Appendix serve two different functions. The Plan is the "roadmap" for Council, staff and the community, while the Appendix supplies additional information and suggestions to staff and the

community. By adopting the plan, City Council will not be adopting the Appendix. This preserves flexibility over time in being able to adapt to changing conditions. Key detailed numbers such as exact height of buildings are found in the Appendix, not the Plan itself. After implementation, exact details will be specified and worked out through amendments to the UDO and design guidelines. As always, this amendment process will include Council-appointed Boards and Commissions as appropriate.

Staff would like to note that some editing has been done to correct typos, and ensure consistency throughout the plan. The plan content, however, remains exactly the same.

Key Dates and Actions:

		Actions Taken
Planning & Zoning Commission	April 1, 2009	Voted 6-0 in support of the plan with two recommendations to Council.
Downtown Commission	April 3, 2009	Voted 8-0 in support of the plan
Downtown Master Plan Advisory Committee	April 9, 2009	Voted 13-0 in support of the plan.

A public hearing will provide the opportunity for Council to hear from the community. If Council chooses to adopt the master plan, staff will begin work on the higher priority items. Staff will report annually to the Council on the accomplishments of implementing the master plan. The Downtown Commission is prepared to assist with the implementation through a pursuit group that would have some representation of the commission, but would consist largely of stakeholders from the different sectors of downtown, and differing viewpoints.

Regarding the City Council Strategic Plan, City Council adopted the goal of completing the Downtown Master Plan and to begin implementation.

Pros:

- Establish a clear direction and a coordinated effort to guide staff, advisory boards and commissions and elected officials in efforts to enhance the arts, transportation, development and management of downtown Asheville.
- Help future development in our downtown through greater clarity in requirements, design guidelines and development process, which in turn will increase predictability and objectivity in the development approval process.

Con:

- None noted.

Recommendations about the arts and downtown management are to be triggered by the private sector for implementation. Implementation of the other recommendations in the plan can be folded into the work plans of current staff. The plan calls for supporting projects such as the Performing Arts Center, the Art Museum addition and the rehabilitation of the Diana Wortham Theater, but this support is not specified as financial support per se.

Staff recommends that City Council adopt the plan and direct staff to begin work on implementation of items that are highest priority to Council.

Mr. Jesse Plaster, Chairman of the Downtown Commission, said that this plan is the culmination of a series of planning efforts, beginning with the Asheville Revitalization Plan of 1978 through the Asheville Design Guidelines and the 2002 Center City Plan. The master plan discussion began in earnest at the Downtown Commission's annual retreat in 2007. The need for a master plan comes from all members of the community and addresses their needs. Developers needed a clear picture on what the City wanted and needed clear guidance on the route to approval. Thousands of people have come together from all walks of life during this master plan process to contribute to the plan and influence the future of Asheville. No single party or interest group has gotten exactly what they wanted from the plan. The Downtown Commission approved the plan unanimously and urged Council to do the same.

At 5:38 p.m., Mayor Bellamy opened the public hearing.

The following individuals spoke in support of adopting the Downtown Master Plan:

- Ms. Susan Griffin, Chair of the Downtown Asheville Residential Neighbors (DARN)
- Mr. Gordon Smith, downtown business owner
- Mr. Pat Whalen, past Chair of the Downtown Commission

Mr. Peter Alberice, member of Downtown Commission
Ms. Stephanie Pankiewicz, landscape architect and member of the Downtown Master Plan Advisory Committee
Mr. Larry Holt, member of DARN and member of the Downtown Master Plan Advisory Committee
Ms. Rebecca Heck, representing the Lexington Area Merchants Association
Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation and member of the Downtown Master Plan Advisory Committee
Mr. Joe Minicozzi, member of the Downtown Master Plan Advisory Committee
Ms. Stephanie Twitty, member of the Downtown Master Plan Advisory Committee

Mr. Steve Rasmussen supported most of the Downtown Master Plan, but expressed two concerns (1) degree of authority transferred from elected official to appointed Planning & Zoning Commission; and (2) need for a fair and well defined procedure for City residents affected by a proposal to appeal. He explained that the Master Plan only allows for developers to appeal a denial of their project to City Council. He proposed adding language to Strategy 6, Item J as follows "And enable aggrieved parties, as defined by City ordinance and state law, to appeal approved proposals to the City Council within a reasonable time period." These two issues should be examined further.

Ms. Jenny Bowen, member of the Downtown Master Plan Advisory Committee, expressed two concerns (1) the need for a citizen appeal process; and (2) the need for requirements to get information out to the public about upcoming projects. She could not validate the plan, but supported it as a treaty for growth.

Mr. Albert Sneed felt that there are many special interest group agenda items hidden in the plan, e.g, limit shadows on public parks and designated historic structures. A balanced overall view of the entire City is necessary or these special agendas will seriously impair future development in our City. The genius of downtown Asheville is hundreds of people making independent decisions and pursuing their own visions. It would be a terrible mistake for the City to impose a comprehensive monolithic plan that would prevent this type of growth in the future.

Ms. Leesa Kulba explained why she felt the City did not need a business improvement district. She also didn't like the assumption that developers owe the community something.

Mr. W. Louis Bisette, partner in the law firm of McGuire, Wood and Bisette, P.A., and member of Drhumor Associates LLC explained that the LLC owns the Drhumor building and a parcel of property located on Patton Avenue between Church Street and Lexington Avenue. The parcel of property located on Patton Avenue measures 19,166.4 square feet and is currently used for employee and client parking. The LLC would like to develop the property at some point in the future. He said the plan looks good at 50,000 feet, but the problems become apparent when you get to street level and start applying the compromise restrictions and regulations to specific pieces of property. Urban sprawl will be encouraged because of excessive restrictions and over-regulation of downtown development. When you try to apply the restrictions included in the Master Plan Appendix to a lot such as ours at the corner of Church and South Lexington, it becomes a mind-boggling task to determine what, if anything, can actually be built there.

Ms. Kitty Love, member of the Downtown Commission, hoped that if the Plan is adopted that the City will work with an alliance of arts organizations and individuals to create a cultural experience that benefits some of the broader goals, e.g., tourism, arts, cultural heritage and economic development.

Mr. Chris Lyman, partner with McGuire, Wood and Bisette, P.A., said that there are 11 restrictions in the Appendices which may apply to the property at the corner of Church and South Lexington. Some include (1) limited to 15 stories (even though the lot is in the middle of downtown); (2) subject to front and side step-back restrictions (taking building space from the development); (3) subject to top floor plate limitations (taking 2/3 of otherwise buildable space); (4) subject to a shadow study (because of small pocket park); (5) other restrictions if the lot is determined to be in a view corridor; and (6) due to the proximity of two historic buildings we would be subject to architectural standards to match the buildings. He opposed the adoption of the Plan on the basis that it is overly restrictive of their rights, will diminish the architectural diversity of Asheville, and limit the ability to build green and LEED projects.

Using pictures from the Master Plan, Mr. Jeffrey Owen, attorney with McGuire, Wood and Bisette, P.A., explained how the property value of the parking lot on Church and South Lexington Avenue will be reduced with adoption of the Plan if they develop the property in the future.

Mayor Bellamy closed the public hearing at 6:28 p.m.

Councilman Miller, former member of the Downtown Master Plan Advisory Committee, said that this Master Plan is a compromise and is not perfect. There are some unintended consequences but felt confident that staff will do a good job in working

out the details. He supported this Plan as it's predictable, transparent, actionable and pro-active.

Mayor Bellamy said that Council has the option of adopting the Plan in its totality or ask staff to bring the Plan back in phases attaching recommendations on implementation.

Vice-Mayor Davis agreed that the Plan is good and it's not perfect. Since there will be expectations that the Plan will be implemented once adopted, he suggested staff provide an implementation matrix.

Councilwoman Cape spoke in support of the Plan. Due to the 5,000 volunteer hours spent on this Plan, she felt we owe it to the community to adopt the Plan and the resources of staff to work out the details.

In response to Councilman Newman, Planning & Development Director Judy Daniel said that staff can present all the necessary Unified Development Ordinance amendments to Council at one time and then if Council has questions, the amendments can be continued until those questions are answered.

Councilman Mumpower explained how he felt this is an ill advised, expensive indulgence by the City. He felt government's job is to keep downtown clean and safe and if we adopt this Plan, we are expanding the bureaucracy and rules of that indulgence. He felt that adoption of this expensive exercise is expanding City government and curtailing downtown property owner's liberties.

Councilman Newman felt this is a pro-growth plan for downtown and felt there will be more development downtown because of the clarity on what can be built.

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

Councilman Miller moved to adopt the Downtown Master Plan (not the Appendix) in concept and to direct City staff to begin working on recommendations and a timetable specific to the seven strategies articulated in the Plan. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy said it was going to be very important for staff to bring back the recommendations and timetable in a timely fashion because personally the adopted concept might be different than what will really be implemented.

On behalf of Council, Mayor Bellamy thanked Ms. Vrtunski for her commitment in making this process inclusive to the community. She also thanked those who participated in the process and the countless hours in crafting this Plan.

RESOLUTION BOOK NO. 32 – PAGE 63

Closed Session

At 7:06 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: Troy Steven Wyatt, City of Asheville, City Manager Gary Jackson, Police Chief Bill Hogan, Police Officer Chad Bridges, and John Doe, individually and in their capacity as Asheville Police Officers or employees - The statutory authorization is contained in G.S. 143-318.11(a) (6); and (2) To prevent 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. 143-318.10(e). The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11(a)(1). This motion was seconded by Councilman Mumpower and carried unanimously.

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

V. UNFINISHED BUSINESS:

A. HEALTH OF DOWNTOWN ASHEVILLE UPDATE

RESOLUTION NO. 09-103 - RESOLUTION AUTHORIZING SUBMITTAL OF AN APPLICATION TO KEEP AMERICA BEAUTIFUL FOR THE GRAFFITI HURTS NATIONAL GRANT PROGRAM

Assistant City Manager Jeff Richardson said that the purpose of this staff report is to provide staff analysis on quick action steps recommended by the Health of Downtown Committee focusing on four key areas: (1) Graffiti Vandalism, (2) Cleanliness, (3)

Panhandling, and (4) Towing.

At its meeting on April 14, 2009, City Council received a report from the Health of Downtown Quick Action Committee including recommendations to address four main areas of concern. Pursuant to the report, City Council directed staff to review the recommendations to determine (1) which recommendations could be implemented immediately with no budgetary impact; (2) which recommendations require budgetary funding for implementation, and; (3) which recommendations need local ordinance adoption for legal implementation. Staff was directed to report back its analysis to the City Council on May 26, 2009.

He then reviewed with Council a chart which summarizes staff analysis based on City Council's direction.

Staff analysis of the Health of Downtown recommendations relate to several of City Council's focus areas included in the City of Asheville's 2009-2010 Strategic Plan, including Green, Safe and Sustainable.

Pro:

- Approval of these items will operationally jump start action on downtown issues that have been identified as problematic and needing the community's attention and oversight for improvement.

Con:

- Items requiring additional budgetary resources will require identification of a dedicated funding stream, or reprioritization of existing services.

Staff has provided preliminary information about the budgetary implications for implementing specific committee recommendations.

Staff recommends City Council: (1) Identify which items in each category for which staff should develop specific operational implementation plans. Provide guidance to staff in coordination with the adoption of the FY 2009-2010 budget as to funding levels and provide further direction on the level of service or program to be implemented, and; (2) Consider passing the resolution authorizing staff to apply for the Keep America Beautiful Graffiti Hurts Grant in the amount of \$2,500 to provide funding for the education and outreach component of the Committee's recommendations, or of any other portion of the recommendations Council may otherwise wish to see supported by grant funds.

In response to Councilman Newman, City Manager Jackson said that we have a placeholder of \$100,000 for downtown improvements.

Mr. Richardson then reviewed the following recommendations and policy/resource/legal analysis. Discussion occurred on each recommendation and direction was given on each policy question.

Graffiti/Vandalism: Cleanup

- City-owned property: Public Works to remove all reported graffiti vandalism on City-owned property by a specified time period – Continue database of complaints and disposition maintained, Public Works staff removes with 48 hours notification. Public Works work with N.C. Dept. of Transportation, Parks and Recreation and Asheville GreenWorks.
- City staff to work with recycling contractors, commercial waste haulers, and utility companies to remove graffiti vandalism from their properties within a specified period of time – Continue, Sanitation Division contacting affected parties.
- 50/50 matching grant program for property owners to help cover one-half vandalism abatement costs – (1) requires policy direction to establish fund and approve criteria and award process; (2) requires additional budgetary resources; and (3) requires staff resources to manage process, review applications and make recommendations to Council or designated body.
- Research and recommend to Council a possible third party to be the first responder for graffiti vandalism removal on private property – (1) requires policy direction and an ordinance to mandate removal by third parties; and (2) requires a Request for Proposals process to assess capabilities and address liability issues.
- Encourage and promote more groups like Asheville GreenWorks, who are removing vandalism for property owners at cost, as well as providing graffiti removal kits for smaller surfaces – Requires staff resources to coordinate program; potential to be included as part of the City's volunteer program coordination.

(1) Does City Council want to require private property owners to clean up graffiti at the property owners' cost under any circumstances?

It was the consensus of Council to instruct the City Attorney to explore the potential for contracting with non-profit agencies

or other organizations for graffiti clean-up.

There was discussion to (1) have private property owners cleaning up graffiti either by themselves within a specific amount of time or by signing a waiver that allows someone else on their property to clean up the graffiti; and (2) launch a public awareness campaign making the business community, especially in the downtown area, that they have a responsibility to get graffiti off their buildings quickly.

It was the consensus of Council to instruct staff to get graffiti off public property within 48 hours.

(2) Does City Council want to pilot a removal incentive program like a grant fund? (\$5,000, 50/50 match)

There as no consensus for this pilot removal incentive program.

(3) Does City Council want to dedicate resources to a 2-person downtown cleanliness team responsible for loose litter, weeds, sidewalk cleaning, median landscaping and other maintenance? (\$127,474 – potential for ARRA funding to cover some costs).

It was the consensus of Council to ask staff to bring back to Council some partnerships opportunities with other organizations.

(4) Does City Council want to allocate funding for 12 additional trash receptacles in downtown? (\$12,000)

There was no consensus for this allocation.

Graffiti/Vandalism: Enforcement

- The purchase and installation of a high definition, moveable surveillance camera capable of catching graffiti vandals in the act – Asheville Police Department (APD) has ordered two units to detect graffiti vandals in the act and report the incident for immediate police response.
- Increase the number of stakeouts – Requires additional budgetary resources to increase special operations. APD had conducted a number of stakeouts focused on graffiti vandals and have made a number of arrests.
- CrimeStopper rewards for citizens turning in graffiti vandals – Requires policy approval by the CrimeStoppers Board. Important to note that prosecuting requires catching vandals in the act of the crime.
- Make public aware of motion sensor lights as a major graffiti vandalism deterrent – Able to implement in CPTED immediately.
- Govern spray paint sales – Requires legal review, policy direction and an ordinance to govern sales. Important to note that most vandals arrested are between 18 to 30's, and so limiting sales to minors may not have intended impact.
- More boots patrolling – Requires policy direction and additional budgetary resources.

(1) Does City Council want to allocate additional funding for the purchase of additional detection devices? (\$7,500 – 5 units)

It was the consensus of Council to evaluate the detective devices recently purchased and if they are successful, Chief Hogan was instructed to return to the Public Safety Committee with a recommendation for more.

(2) Staff recommends waiting on the award status of ARRA funding dedicated to creating a downtown patrol unit before considering allocating additional resources to enforcement personnel.

It was the consensus of Council to continue to wait on award status.

Mayor Bellamy said that the City of Asheville allocates \$25,000 annually to the CrimeStoppers Committee. After a brief discussion, it was the consensus of Council to allocate a one-time addition of \$5,000 (in \$1,000 increments) for the charging of graffiti vandalism and asked staff to work with the CrimeStoppers Board on the process.

Graffiti/Vandalism: Communication & Education

- Officially launch “Vandal Free in 3,” a voluntary community-wide program that residents and property owners pledge to do all they can to remove graffiti vandalism within 72 hours (3 days)
- Create “Vandal Free in 3” website and launch press release campaign including press conference. Website will serve many purposes, including: (1) report graffiti vandalism; (2) post before and after photos; (3) graffiti vandalism removal tips; (4)

- volunteer sign-ups; and (5) frequently asked questions.
- Establish a hotline to report all graffiti vandalism
- Shame Game: Committee recommended promoting names and photos of captured graffiti vandals. Subsequent research by staff reveals conflicting viewpoints.
- Communicate to the community the economic impact of graffiti vandalism and how these acts increase consumer prices.

For the policy/research/legal analysis for the Communication and Education section, the following items are identified: (1) requires additional budgetary resources and/or a reassignment of existing resources through policy direction. Does not require legal review; (2) An estimate of necessary resource hours is outlined as follows (some work could be completed on contract) (a) campaign design: 4-8 hours; (b) press conference: 4-8 hours; (c) web portal: (i) page creation/design: 8-16 hours (within City's site and template); (ii) content development: 8-16 hours; (c) volunteer coordination: 16 hours for initial set-up; 8 hours/month ongoing; (iv) ongoing maintenance: 1-2 hours/week; and (v) IT support: 4-8 hours; (d) hotline (i) IT support: 4-8 hours; and (ii) ongoing APD support: 5-10 hours/weeks; (e) other resource considerations: (i) paid advertising: \$1000-\$1500; (ii) printed materials: Varies; and (iii) presentation materials: 8-16 hours; (f) Total resource hours (i) public relations: 16-40 hours; (ii) production: 16-40 hours; (iii) volunteer coordination: 16 hours; (iv) IT services: 8-16 hours; (v) ongoing hotline support: 1-2 hours/week; (vi) ongoing website support: 1-2 hours/week; and (vii) ongoing volunteer coordination: 4-8 hours/month.

Staff recommends Council authorize staff to apply for a \$2,500 Graffiti Hurts grant from Keep America Beautiful to apply toward community education and outreach.

When Mayor Bellamy asked for public comment, no one spoke.

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 to adopt Resolution No. 09-103 (application for a \$2,500 grant) to apply toward the recommendations regarding graffiti/vandalism communication and education. This motion was seconded by Councilman Russell and carried unanimously.

Towing

- Regulate through ordinance (passed Asheville City Council on March 24, 2009) – Initial notification and implementation; monitor for effectiveness.
- Convene major downtown property owners who own lots and discuss current challenges and opportunities regarding parking in private lots – Parking reservation system for private lots currently being researched by staff. Will require policy direction, Request for Proposals for software services, and a public outreach process. Staff to make recommendation to Council in the next 120 days.
- Continue to explore feasibility of awarding parking contract to a third party parking vendor similar to other North Carolina cities – See item above. Would voluntarily expand City parking opportunities and regulation to private lots.
- The integrated wayfinding program will be installed this summer/fall, directing drivers to City-owned parking decks. This should help in reducing the number of cars illegally parked in private lots. – One-half of funding is approved in current fiscal year and remaining amount is budgeted if Fiscal Year 2009-10.

Cleanliness

- If dollars are available, have dedicated City staff tackle litter and weeds problem on a regular basis. – Requires additional budgetary resources. Currently operational crews are reassigned as available to complete. City has applied for ARRA funding for landscaping needs.
- Asheville GreenWorks to encourage monthly clean-ups by Adopt-A-Street sponsors. – Staff can coordinate with GreenWorks to encourage program.
- More trash cans in Central Business District and at bus stops. – Requires additional budgetary resources. Staff has identified 12 new locations for trash cans – cost \$12,000.
- Make sure enough resources are available to keep Asheville's new "living room," (Pack Square Park), clean.

(1) The Downtown Cleanliness Team Detail duties and responsibilities would include (1) loose litter clean-up; (2) graffiti removal; (3) median landscaping and weed removal; (4) sidewalk cleaning and weed removal; and (5) sidewalk pressure washing (night schedule). The budget detail would be 2 full-time employees (\$67,474); specialized equipment – sidewalk pressure washing (\$30,000); and supplies, equipment and vehicle (\$30,000) – for a total Clean Team Total of \$127,474.

There was no consensus for the allocation of more trash cans in the Central Business District and at bus stops.

Panhandling

- Re-launch “Spare Change for Real Change” effort. – Requires policy direction and budgetary resources if the City were to be the lead agency in re-launching effort. Council may pass resolution encouraging the Downtown Association to re-launch effort.
- Increase number of “Spare Change” receptacles. – Requires policy direction and budgetary resources if the City were to add receptacles.
- Pursue City’s strategic goal of establishing a “nuisance court” that can effectively deal with panhandlers. – Requires budgetary resources to develop and launch the nuisance court model. Approximately \$25,000 in court administration annually, plus an additional amount to link offenders with services and alternative sentences in addition to police and social worker overtime. Requires policy direction in the form of formal memorandums of understanding with community partners including district attorney, courts, public defender, Buncombe County Department of Social Services, and community agencies.
- Promote widely and encourage residents to call Asheville Police Department at 252-1110 to report panhandling when witnessed. Councilman Mumpower suggested signage used by Savannah, Georgia. – Requires policy direction.

(1) Nuisance Court: Should staff move forward with pursuit of intergovernmental Memorandums of Understanding? Does City Council want to allocate funding to pilot the nuisance court in Fiscal Year 2009-10? (\$35,000 estimate for court costs and personnel overtime)

In response to Councilman Mumpower, Police Chief Hogan anticipated there would be fines associated with the conviction and also there would be community service. The District Attorney has committed an assistant to meet on a monthly basis. The money would go towards (1) hiring a retired judge to conduct court one day a month; and (2) support the Clerk of Court’s Office for the official judicial proceedings.

When Mayor Bellamy asked for public comment, no one spoke.

Vice-Mayor Davis moved to (1) develop the nuisance court model in the amount of \$35,000; (2) have staff research what other cities are investing in their program; and (3) instruct staff to move forward with the various Memorandums of Understanding for creation of a nuisance court. This motion was seconded by Councilman Russell and carried unanimously.

Councilman Mumpower said that if it turns out that a nuisance court is too expensive to continue, he suggested the City provide the Police Chief with additional resources to track chronic offenders.

When Mayor Bellamy asked for public comment, no one spoke.

Councilman Miller moved (1) to allocate \$2,000 toward increasing the number of “Spare Change” receptacles in the Central Business District; and (2) ask staff to provide Council with an estimate to install no panhandling signs, similar to those used in Savannah, Georgia, in the downtown area. This motion was seconded by Councilman Newman and carried unanimously.

Mayor Bellamy said that as soon as staff has the additional information, it will be placed on the Council’s agenda.

RESOLUTION BOOK NO. 32 – PAGE 64

B. CIVIL SERVICE BOARD BLUE RIBBON COMMISSION STATUS REPORT

Councilman Mumpower, liaison to the Civil Service Board, said that the Civil Service Board Blue Ribbon Commission reported their recommendations on the Civil Service Board on May 12, 2009. During that meeting it was determined that organized employee organizations were not consulted in that process. It was the consensus of City Council at that meeting to ask the former Boards & Commissions Committee (Mayor Bellamy, Vice-Mayor Davis and Councilman Mumpower) to meet with those organized employee organizations. That meeting occurred on May 19, 2009, which resulted in some significant actions. Since that time, however, Council determined that there was an issue on the table that the Council Subcommittee was not aware of – that there was new legislation as of May 12 that was introduced in Raleigh. Council had some apprehensions in locking the City into agreements where there is a legislative action occurring in Raleigh that the City Council nor staff was a part of. Council is being told what is happening and not being included in the process. On the basis of that, the Council Subcommittee convened an emergency meeting with the 3 of the 4 employee representatives earlier in the day. What the Council Subcommittee would like to bring to the table are the 5 things that the Subcommittee and the employee representatives reached consensus on. There are other issues we could not reach consensus on which will result in further detailed discussions in the near future. Those consensus items are listed below:

Blue Ribbon Commission Recommendation #6

City Clerk acts as Secretary (Section 2 c)

Best Practice in other existing Civil Service Laws. The City Clerk can designate someone to fulfill these duties. The City Clerk already has duties in the grievance process under the current law and is designated under State laws as records custodian and proper person for service of process. Grievance hearings typically are recorded by Court reporters. May have fiscal impact.

City Council Subcommittee Recommendation: Consensus to have City Clerk, or his/her designee, to act as Secretary.

Blue Ribbon Commission Recommendation #7

HR Director ex officio non voting member of the Board (Section 2 d)

Patterned after Wilmington's Civil Service law. Maintains a role in the process for Human Resources and allows for a resource for the Civil Service Board regarding City policy and procedures during grievance hearings. Allows HR Director to be present in closed sessions. No fiscal impact.

City Council Subcommittee Recommendation: Consensus for HR Director not to be an ex-officio non-voting member of the Board, but that the HR Director will be a staff resource and allowed in closed session only upon invitation of the Board.

Blue Ribbon Commission Recommendation #8

Employees may wear uniforms (Section 3 b)

Employees may wear uniforms to meetings but are not considered on duty or compensated while at meetings unless required to be there by subpoena or the City Manager. No fiscal impact.

City Council Subcommittee Recommendation: Consensus.

Blue Ribbon Commission Recommendation #10

Membership requirements (Section 2 b)

Provides for a broader base of possible Board members by extending the membership to all qualified voters of Buncombe County. This article also restricts employees who have been employed within the previous 5 years from serving on the Board. No fiscal impact.

City Council Subcommittee Recommendation: Consensus to reject Blue Ribbon Commission recommendation to allow qualified voters of Buncombe County to serve on the Board. Also consensus to enable former employees to serve on the Board after five years post-employment.

Blue Ribbon Commission Recommendation #11

Board makes own rules of procedure (Section 10)

Formalizes the Board's ability to make their own rules of procedure including meeting frequency and times. No fiscal impact.

City Council Subcommittee Recommendation: Consensus for Board to make their own rules of procedure including regular monthly meetings, however, the Board shall have the flexibility to cancel meetings and make schedule adjustments upon Board majority.

The following are the other items from the May 19, 2009, meeting which did not receive consensus and will be discussed at the next meeting:

Blue Ribbon Commission Recommendation #1

Elimination of rule making authority except as to procedural matters (Delete Sections 4 and 5)

State Law grants the power to the City Manager general supervisory authority over all employees, and to direct and supervise the administration of all departments and agencies, subject to such general rules, regulations, and policies as the Council adopts. The Human Resource field has become increasingly complex and requires a high level of expertise in order to manage the City's human capital. No fiscal impact.

Police and Fire association representative reaction

Section 4. *The BRC recommended deleting this section. This section gives the Civil Service Board the authority to make and amend rules for promoting efficiency in the Classified Service of the City. Currently, the Council has the authority to approve or deny the Board's rules and make their own rules. By deleting this section, the Blue Ribbon Commission is recommending that city staff be able to make personnel rules without any accountability to anyone looking over their shoulders, even the City Council and citizens of the City. The Council would give up much of their jurisdiction they currently have over the rule making process governing the city's civil service positions.*

- *The flawed reasoning of the Blue Ribbon Commission is very evident. If the funds paying the salaries and benefits of the employees were paid for by the City Manager and his staff, their way of thinking would make more sense. However, accountability as how tax payer's funds are spent requires another level of safeguards. Legislators in 1953 designed the current Civil Service Law so that the substantive rules governing public employees would be produced in the full view of the public. The RBC is recommending to the City Council that the process for substantive rules governing public employees be hidden in the back rooms of City Hall.*
- *As the law is now, and when everyone follows the law, the city manager and his staff can be involved with the Civil Service Board during the rule making process all the way through the City Council's approval or amendment of the Civil Service Board's proposed rules.*

Section 5. *This section is for standardization and classification and efficiencies of all positions within the classified service as authorized by Section 4 and requires the designee of the City Manager to consult representatives of the Police and Fire Departments to establish criteria to be used to fill positions within the respective departments. It also gives the Civil Service Board the authority to approve any criteria established. Again, the city staff wants to make the rules for promotion with very little accountability to public and City Council. If Sections 4 and 5 were deleted, rules could be adopted without the Council fully understanding the reasons behind the rule making process and how employees are managed.*

Council subcommittee recommendation

Reject the recommendation. Retain current provisions of Sections 4 and 5, with one clarifying amendment. In the first sentence of Section 4, scratch "shall make, and may amend" and insert "shall recommend."

Blue Ribbon Commission Recommendation #2

Judicial review in nature of certiorari instead of trial de novo (Section 8 f.)

Provides for a less burdensome and a less resource intense (time and money) process for each party. Similar to review for other administrative proceedings, including other civil service boards in NC. Empowers the Board with full quasi-judicial hearing and decision making authority. Decreases fiscal impact to employee and City.

Police and Fire association representative reaction

This should be rejected. Although it rarely happens, this is just another way to keep the employee from having their day in court or to be able to petition a trial by jury.

Council subcommittee recommendation

Inclined to reject subject to further advice from the City Attorney.

Blue Ribbon Commission Recommendation #3

Clarify Subpoena power to Board during grievance hearings (Section 8 c)

Best practice based upon review of other Civil Service laws in the State. No fiscal impact.

Police and Fire association representative reaction

We feel this should be rejected. The first sentence of the underlined words allows the city staff to reject any attorneys they do not like. The remainder of the underlined is not needed with the current language in SB 556.

Council subcommittee recommendation

Seek advice of the City Attorney.

Blue Ribbon Commission Recommendation #4

Assistant Directors added to those not covered by Civil Service (Section 2 b)

Assistant Directors are members of the City Manager's executive team and are frequently called upon to act as an extension of the Department Director. The City Manager, Department Directors and Assistant Directors are held to very high level of accountability to City Council on operational, budget and personnel matters. The City Manager needs the latitude to be held solely accountable to City Council for the actions and behavior of these personnel. No fiscal impact.

Police and Fire association representative reaction

Why should the assistant directors of any departments be exempt from being a member of the Civil Service?

- *Suppose the assistant director was being told to do something that was immoral or illegal and he refused. He/she could be fired without cause. If he/she were unable to appeal a grievance before the Civil Service Board the incorrectness of the original order would mostly be lost. All city employees are accountable to the public. Why not allow the process to work for the efficiencies of city government.*

Council subcommittee recommendation

Accept the recommendation to exempt Assistant Directors based on executive management status of the positions.

Blue Ribbon Commission Recommendation #5

City Council's right to control the City's finances (Section 1)

Common language in other existing Civil Service laws. Law should recognize Council's/Manager's legal authority to eliminate positions to address budget needs. No fiscal impact.

Police and Fire association representative reaction

Part of their proposal 'and nothing in this law shall be so construed as to deprive the Asheville City Council of its control of the finances of the City.'

- *The City Council should reject this addition. In over 56 years, the Civil Service Board has never caused a problem that affected the City's finances **BUT**, if this language were in the Civil Service Law, the City Staff could over rule any decision by the Board to subpoena witnesses they did not want to be heard by saying the Board is depriving the City Council of its control of the City's finances.*
- *The staff could even use this to deny the Board to meet saying the cost is denying the Council control of the City's finances.*

Council subcommittee recommendation

Inclined to accept the recommendation to retain Council's financial control.

Blue Ribbon Commission Recommendation #9

Outside Counsel for grievance hearings (Section 8 c)

Formalizes the current practice of providing a qualified outside attorney for grievance hearings. The City Attorney shall approve the qualifications and fees. No significant change in fiscal impact.

Police and Fire association representative reaction

We feel this should be rejected. The first sentence of the underlined words allows the city staff to reject any attorneys they do not like. The remainder of the underlined is not needed with the current language in SB 556.

Council subcommittee recommendation

Seek the advice of the City Attorney.

Other Blue Ribbon Commission Recommendations

Clarify provisions 8(b) enabling the Board to extend the time in taking action and 8(e) specifying board decisions shall include findings of fact. Delete language in Section 11.

Police and Fire association representative reaction

Section 8. Subsection (b) recommendation seems to be grammatically incorrect and the lack of helping words causes this sentence to make no sense.

Subsection (e) recommendation is trying to structure the law so that any witnesses' testimony could be rejected. They can always claim that any testimony, even if it is eye witnessed, is not "substantial and competent evidence of record." This is too much room for interpretation.

Section 11. Just deleting repetitive language and is okay.

Council subcommittee recommendation

Seek the advice of the City Attorney.

In addition to the discussion of the Blue Ribbon Commission Recommendations, the subcommittee and association representatives discussed the SB 556 provision of criminal penalties for violation of either the civil service law or civil service procedural rules. The association strongly recommended reinstatement, of pre-1999 criminal penalties, as a deterrent to oppressive management.

Councilman Mumpower moved to approve the City Council Subcommittee recommendations on the five items outlined above (Numbers 6, 7, 8, 10 and 11). This motion was seconded by Vice-Mayor Davis and carried unanimously.

Vice-Mayor Davis said that a meeting has been arranged for Monday, June 1, 2009, with the City Council Subcommittee and the employee organization representatives to work out the remaining details. Mayor Bellamy said that when those details are worked out, they would be brought back to City Council for consideration.

Councilman Miller suggested City Attorney Oast be invited to the next meeting for any attorney clarification that may be necessary.

C. ANIMAL CONTROL ORDINANCE – TETHERING

Assistant City Attorney Curt Euler said that Chain Free Asheville has proposed that the City of Asheville adopt an ordinance prohibiting the tethering of animals on private property within the City limits.

On Tuesday April 28, 2009, the City Council adopted a revised animal control ordinance. In the revised ordinance, staff did not have any provisions which prohibited the tethering of dogs on private property. At the public hearing on the revised animal control ordinance, Chain Free Asheville along with a number of individual citizens requested that the City Council adopt an ordinance prohibiting the tethering of dogs on private property in the City limits. Council adopted the revised animal control ordinance but requested that staff come back to Council with information on the issues of achieving a goal of the prohibition on tethering twenty-four hours a day/seven days a week in Asheville in the future and give recommendations on making sure that people who do not have the resources to build a fence to secure their dog are not unfairly penalized.

In terms of achieving the goal of completely prohibiting tethering on private property in the City of Asheville, staff believes there are two methods for Council to consider. First, Council could adopt a tethering prohibition but delay the implementation of the prohibition until a later date. When implementing the tethering prohibitions, Durham County, Orange County, the Town of Chapel Hill, and the City of Raleigh delayed the date the ordinance went into effect. For example, Durham County adopted the ordinance on September 8, 2008, and it does not go into effect until January 1, 2010. Raleigh adopted its ordinance on March 3, 2009, and it is not effective until July 1, 2009. Orange County adopted its ordinance on November 18, 2008, and it will not be effective until November 19, 2009. Chapel Hill's ordinance goes into effect March 1, 2010, but they will only be issuing warning citations for the first three months. Actual enforcement of the Chapel Hill Ordinance with penalties begins June 1, 2010. We also looked at New Hanover County and found that their ordinance had no waiting period. They are also responsible for no tethering in the City of Wilmington, which is a similar size of Asheville. The enforcement in New Hanover County is through the issuance of fines. Therefore, Council has the option of adopting a tethering prohibition but delaying the effective enforcement date of the ordinance for any period of time in order to educate the public and give dog owners who tether the chance to make alternate arrangements for keeping one's dog on his or her property.

The second option for Council, if Council does not wish to actually adopt a tethering prohibition at this time, is to place in the tethering provision of the animal control ordinance on a mandatory review date where staff must conduct a review of the tethering issue and report back to Council on an annual or bi-annual basis. City Council in other situations has mandated staff review of other City ordinances on a bi-annual basis.

Staff also researched at whether a tethering prohibition can only be enforced against persons who have the financial ability to purchase a fence. First, it should be noted there are no provisions in the current City Code that requires an individual to secure a dog on his or her property by means of a fence or electric fence. The City Code Sec. 3-27 prohibits a person from allowing his or her dog from being at large (i.e. off the owner's property without a leash). The City has no say in how a person keeps a dog on his or her property as long as the dog stays on the person's property and the means of securing the dog is humane. Therefore, under the current ordinance, except for potentially dangerous and dangerous dogs, there is no way for the City to make a person build a fence to secure his or her dog.

A tethering prohibition would be adopted pursuant to N.C.G.S. § 160A-186 in order to protect the public, health safety and welfare of the citizens. Staff could find no examples of existing public health and safety ordinances enforced on persons based on financial means. In addition, staff could find no case law or enabling legislation that would allow a municipality to apply a public health and safety ordinance to persons based on their financial status. It is staff's position that any financial test which triggers the enforcement of a public safety ordinance may violate the equal protection clause of the U.S. and North Carolina Constitutions and that the best practice for enforcing a public safety ordinance is for the ordinance to apply to all persons as opposed to a select few based on financial considerations.

Staff was also asked to look at whether the tethering prohibition could only be enforceable against persons who tether and refuse the help of community groups to build a fence. Furthermore, if the community group could not build the fence then the City would not issue the citation to the person tethering the dog. While it is possible to craft an ordinance with these provisions, it is staff's position that such an ordinance would be operationally unfeasible and enforcement would be based on a private group's ability to build a fence in the City. When researching tethering ordinance across the country, staff could not find any ordinances with similar provisions. If the City adopted such an ordinance, the enforceability of the tethering prohibition would totally be dependent on a non-profit or community group's ability to build fences. Such an ordinance would create numerous operational headaches for the animal control officer attempting to enforce the ordinance.

As stated in the April 28, 2009, Staff Report, tethering is the act of securing an animal to a fixed location so that it can only range within a set radius (i.e. tying a dog to a tree in one's backyard). Tethering has nothing to do with walking a dog on a leash and has no effect on one's ability to take his or her dog out for a walk. After researching this issue, it is staff's position that a tethering prohibition on private property initially will increase the number of at-large dogs and increase the number of dogs brought to the shelter. In addition, it is staff's position that adopting a complete tethering prohibition will create more calls for service and require an additional staff person to ensure proper education and enforcement of the tethering prohibition.

Pros:

- Eliminates the risk of a dog being injured by getting tangled in its tether.
- The City will be promoting a preferred practice in animal care.
- The prohibition may discourage persons from getting a dog when the persons are not prepared for the responsibilities associated with securing the dog on one's property.
- Improved quality of life for the dog.

Cons:

- Adopting a tethering ban would increase calls for service and need for additional staffing.
- The prohibition of tethering could adversely effect low income citizens and place financial burden on citizens to erect fences to confine their dogs.
- Person may allow his or her dog to roam freely on the person's property as opposed to building a fence thereby creating more at large dog calls for service.
- Persons may surrender their dogs to the animal shelter because of the increase costs of securing one's dog on his or her property through fencing or purchasing an invisible fence system.
- Requiring fences/invisible fences to be erected for confinement as opposed to tethering may come into conflict with homeowner associations' bylaws/restrictive covenants in some neighborhoods.

A tethering ban would increase the number of calls for services for animal control officer. This would create the need for one (1) additional full time employee for a total of five (5) Animal Services Officers.

Salary and Benefits:

Entry Level: \$25,396.98 annually + 26% for benefits = \$32,000.19

Vehicles: Fully equipped Animal Services Truck: \$38,000.00
1 current Vehicle has 174,000 miles and 1 has 96,900 miles.
Would need to replace 1 vehicle as part of current year Capital purchases.

Laptop Computer:	1 Semi-ruggedized mobile computer:	\$2500.00
Uniforms:	For 1 position:	\$700.00
Training, Travel and Certification:	For 1 Position:	\$1125.00
Total Fiscal Impact:		\$74325.19

If City Council decides to adopt an ordinance prohibiting the tethering of dogs on private property, from an operational standpoint, Staff recommends the following: (1) Create another animal control officer position to deal with the increased enforcement and educational issues associated with a tethering prohibition; (2) Do not begin enforcement of a tethering prohibition until September 1, 2010. The cost of the additional officer and equipment can be placed in the 2010-2011 budget as opposed to 2009-2010 budget.; (3) Adopt a total prohibition on unattended tethering at all times on private property. City staff believes that allowing a dog to be tethered unattended for a certain number of hours per day will be impossible to enforce in that staff has no adequate way to determine when a dog was first placed on a tether; and (4) Allow "attending tethering" within the City (i.e. the owner or person responsible for the dog must be present at all times when the dog is tethered on private property).

Upon inquiry of Mayor Bellamy about a public comment process, City Attorney Oast said that the public hearing on this was not a required public hearing and it's up to Council on whether they want to solicit additional public comment at this time. Staff was directed by Council to come back with information about tethering ordinances. If Council wants to provide staff with further direction on an ordinance, then at that time public comment would be appropriate.

Councilman Newman was very concerned about making criminals out of people who don't have the finances for a fence or compliance. It seems like most communities have an education period before they move into the enforcement phase and that makes sense. Since there are many people in the community who care a lot about this issue and who are spending their own funds to help people build fences, he suggested creating a fund with resources provided by those people. If we move towards prohibiting 24/7 tethering, during Phase One of the educational period we could work on the creation of a pool of resources raised by people in the community who care about these issues so when we move into Phase Two (the enforcement) we can feel confident that there will be some resources to help those who financially cannot comply. He did support moving forward with a policy prohibiting tethering of dogs, but contingent upon the creation of the fund outlined above.

Councilwoman Cape would like to adopt prohibiting tethering of dogs immediately. She noted that when you get a dog, you are supposed to apply for a \$10 dog license from the City of Asheville. We can amend the dog license form to show that the City does not allow tethering and perhaps a line that asks how will your dog be cared for. She felt we can phase out unattended tethering by September 1, 2009. She also felt that staff could work on a complaint driven basis for allowing tethering for a short number of hours.

In response to Councilwoman Cape, Police Chief Hogan said that the September 1, 2010, enforcement date was suggested in order to add the cost of the additional full-time animal control officer and equipment in the 2010-2011 budget. In addition, it would give staff a sufficient amount of time to work with ChainFree Asheville and other organizations to help in the education process, build fences, etc. We're not saying that you have to have to build a fence, or have an invisible fence installed – you can chose to take your dog inside. He also felt it would be wise for a grace period of warning citations.

Councilman Mumpower personally was against tethering, however, he did not support government getting involved in that role. A greater concern to him is that we can't stop drug dealers from running open air drug markets in our public housing developments, graffiti vandals, aggressive panhandlers, etc. He was very hesitant to see us distracted from our primary mission. He felt we should passionately concentrate on abuses through complaints and hold those people who are doing things wrong accountable. If the prohibition is adopted, he suggested some consideration be given to grandfathering.

Vice-Mayor Davis supported prohibiting tethering with enforcement beginning on September 1, 2010.

Councilman Miller also supported prohibiting tethering with enforcement beginning on September 1, 2010.

In response to Councilman Miller, Ms. Peggy Irwin, representing ChainFree Asheville, said that ChainFree Asheville wants a total ban on tethering, but would be open to a 3-hour time frame of unattended tethering, noting that it would be difficult to enforce. There are about 200-300 tethered dogs in the City, noting it's hard to see many of those as they are hidden in alleyways and behind homes. It costs roughly \$300 to build a fence for a single dog. They do have serious monetary commitments from people in the community to build fences.

Upon inquiry of Mayor Bellamy, Mr. Euler explained that under our current laws, tethering means you are required to keep

your dog on your property. How you keep your dog on your property is up to you (invisible fence, built fence, or inside). What the tethering ban would do is prevent you from tying the dog, whether that's using a rope, chain, etc. to a fixed location and leaving it outside on your property. T-runners would also not be allowed. The definition of tethering does not include a leash, so that does not prevent anyone from taking their dog out for a walk. All it does is prevent you from leaving your dog tied to a rope which is tied to a fixed location, so the dog can't run free.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that if the owner is outside with the dog and the dog is on a T-runner that is "attended" tethering and that is one of the recommendations which Council can consider. He understood that the recommendation is to adopt a total prohibition on unattended tethering.

Mayor Bellamy said that we need to be crystal clear on the recommendation. She felt we need some level of "attended" tethering in the ordinance. She agreed we do not want dogs on chains or ropes all day long, but felt strongly felt we need some form of "attended" tethering.

Councilwoman Cape agreed with the recommendation to adopt a prohibition on unattended tethering, except for a 3 hour period when the person responsible for the dog is present for not. She noted we are all trying to get to the end result of ending cruelty and dangerous aspects to animals, understanding there are a lot of variables.

In response to Councilman Newman, Police Chief Hogan said that we can change the form so that we can recognize it's a new animal that was not registered the prior year and have a notice that with this new dog you cannot tether the new dog. But, it will take (1) additional administrative time; and (2) a follow-up to ensure that the ordinance is being followed in that the new dog is not being tethered. He did feel it was doable through our licensing process.

Councilman Newman moved that it is the intent of City Council (1) to move forward with a policy on the prohibition of 24/7 unattended tethering (with perhaps a secondary motion on the period of time when the person responsible for the dog is present); (2) that there be a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component; (3) to support creating a fund using private dollars raised by people in the community who care about this issue used once we move into Phase Two (enforcement phase) to assist people complying with the law that have a legitimate financial hardship to achieve compliance with the ordinance; (4) to make execution entering into Phase Two contingent upon the creation of this community fund; and (5) to direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund. This motion was seconded by Councilman Miller.

Councilman Miller explained why he felt everyone should be allowed to take advantage of the community fund, regardless of income and offered a friendly amendment to remove the legitimate financial hardship as a condition of accessing the community fund. Councilman Newman accepted the friendly amendment.

Mayor Bellamy offered a friendly amendment to the motion to include a short hour period for "attended" tethering. Councilman Newman accepted the friendly amendment.

Councilwoman Cape was concerned that if the fund doesn't have \$90,000 (300 fences for \$300 each) that we are not going to move into enforcement of the ordinance. She suggested Phase One be an educational process and a fund-building process, and Phase Two be enforcement.

Councilman Newman felt that community fund needs to be a condition precedent going into Phase Two. He believes this is the right thing to do but not make people criminals that do not have the financial resources to build a fence.

Mayor Bellamy said that at this point, Council is giving direction to staff to come back to Council with an ordinance using the parameters discussed. If a Council member would like to work with staff on crafting such an ordinance, she felt that would be appropriate.

Councilman Newman said that the community can see that Council is committed to the law. He felt confident that the community will come forward with the resources to make sure that enforcement of the law is done in a way that is fair to the existing dog owners who do not have the financial means to comply with the law.

Upon inquiry of Councilman Mumpower, Police Chief Hogan said that he would provide Council with data for the past year on the number of dog bites and the percentage associated with tethered dogs.

The amended motion made by Councilman Newman and seconded by Councilman Miller as follows: "that it is the intent of City Council (1) to move forward with a policy on the prohibition of 24/7 unattended tethering, except for a short period of time of "attended" tethering; (2) that there be a Phase One of the policy that during the time that the policy is adopted until September 1, 2010, we work on an educational component; (3) to support creating a fund using private dollars raised by people in the community

who care about this issue used once we move into Phase Two (enforcement phase) to assist people in compliance with the law; (4) to make execution entering into Phase Two contingent upon the creation of this community fund; and (5) to direct staff to work with ChainFree Asheville and others in the community on what level of funding there will likely need to be in the community fund, carried on a 5-2 vote, with Councilman Mumpower and Councilman Russell voting "no."

Mayor Bellamy said that staff will bring back an ordinance for Council's consideration.

D. RESOLUTION NO. 09-104 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH MATHEWS ARCHITECTURE FOR WC REID CENTER CREATIVE ARTS CONSTRUCTION DOCUMENTS

Parks, Recreation and Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to enter into a contract with Mathews Architecture to develop the construction documents for the construction of the WC Reid Center for Creative Arts for an amount not to exceed \$278,600.

City Council reviewed and approved the new construction plan for the WC Reid Center for the Creative Arts on January 13, 2009.

The City conducted a request for qualifications (RFQ) to develop the WC Reid Center construction documents. The City's policy was followed which included posting RFQ at the mandated locations and number of days, and adhered to the Minority Business Plan. The City received 11 qualified submittals and selected three finalists to interview.

Mathews Architecture was selected as the most qualified firm to develop the construction documents since it demonstrated the most direct experience in recreation and community center design through representative projects that were similar to the scope and scale of this project. The firm most thoroughly articulated the site planning process and the integration of LEED design in terms of a proposed center design.

Mathews Architecture's offices are located at 34 Wall Street, Asheville, North Carolina. The negotiated cost for the construction documents is for an amount not to exceed \$278,600.

This action complies with the City Council Strategic Operating Plan in that it contributes to the Sustainable Goal of addressing the city's aging infrastructure including facilities, as well as the Green Goal of making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

This project complies with the Parks, Recreation, Cultural Arts and Greenway Master Plan in that it supports strategically increasing recreational programming level of service, ensures a continued high level of service in parks, and increases connectivity to parks and greenways.

Pros:

• Next step in the process to fulfill the city's commitment to construct a new WC Reid Center for Creative Arts

Cons:

• If not proceed with construction documents at this time will delay the project resulting in a loss of public and private grant and donation funding

Construction of the Reid Center is funded by 25% of City of Asheville funds as approved in the Fiscal Year 2006-07 capital improvement budget, and by 75% of public and private grants and donations. Cost associated with development of the construction documents is part of the total estimated project cost and budgeted in these funds previously allocated for project.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Mathews Architecture to develop the construction documents for the WC Reid Center for Creative Arts for an amount not to exceed \$278,600.

Mr. Simmons responded to Vice-Mayor Davis' concerns regarding \$278,600 being spent for a \$2 Million project and the reasoning behind a change from the original architect firm.

Councilwoman Cape was pleased that we will be using LEED standards with this building.

Councilman Mumpower was concerned that we are pursuing new construction when we are having tremendous difficulty in maintaining what we currently have. He was also concerned that this project will leave us with an old building that we are still going to have to do something with.

In response to Councilman Mumpower for low bid information, Mr. Simmons said that design work is not bid out. It's done by a Request for Qualifications. A vendor is selected and then a contract is negotiated. City Attorney Oast said that for construction projects over a certain size we are required to solicit proposals from certain types of professionals, but we are prohibited by law from seeking the low bid. The best qualified firm is selected and then a price is negotiated. He has seen where firms supply the hourly fees charged and that can vary depending on who's doing the work.

Councilman Newman felt that the project has strong merits and a lot of people have contributed and raised money for this project. It's true we do have a lot of capital needs for the City, but opposition to this project does not solve those problems for the City of Asheville.

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.

Councilwoman Cape moved for the adoption of Resolution No. 09-104. This motion was seconded by Councilman Miller and carried on a 5-2 vote, with Vice-Mayor Davis and Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 65

E. RESOLUTION NO. 09-105 - RESOLUTION AUTHORIZING NOTICE OF INTENT TO EXERCISE OPTION TO PURCHASE 29.62 ACRES OF REAL PROPERTY (BEAUCATCHER MOUNTAIN / WESTERN SLOPE) PURSUANT TO LEASE – PURCHASE AGREEMENT WITH THE TRUST FOR PUBLIC LAND

City Attorney Oast said that this is the consideration of a resolution authorizing the acquisition of 29.5 acres on Beaucatcher Mountain for park purposes

In May of 2007, the City entered into a 3-year lease purchase agreement with the Trust for Public Land (TPL) to acquire the property (approximately 29.5 acres) known as Overlook Park. We are entering the third year of that agreement, and the contract with TPL requires us to give notice of our intent to purchase the property on or before June 2, 2009, with closing to occur on or about August 1, 2009.

He provided Council with (1) copy of a March 20, 2007, memorandum outlining projected costs for developing and maintaining the park, and (2) copy of a May 15, 2007, staff report outlining the transaction, including acquisition costs. Reference to the previous documents is made for a detailed explanation of the transaction, including "pros and cons".

The entire amount remaining due on the property for 2009 is \$476,431, which includes principal and interest, and under the agreement, the City is responsible for all of it. Assuming that other pledges (including Buncombe County's pledge of \$191,000) are fulfilled as expected, the remaining obligation will be \$200,053. A recent conversation with representatives of TPL indicates that funds are on hand with TPL currently such that the City's obligation at closing is anticipated not to exceed \$260,000. This is a conservative estimate (principal and interest), and assumes that TPL will receive no more donations for this project, and that some pledges will be unfulfilled. We have reasonable expectations that additional funding will be received, and representatives from TPL and private funding sources will be present at Tuesday's meeting to address this.

Application for the PARTF Grant referred to in the May 15, 2007 staff report, which was supposed to be used in year 2 of the agreement, has been deferred until this year. If the PARTF grant is awarded, it is possible that all of the City's costs for the third year lease payment (and other costs of acquisition) will be covered by it. For budgeting purposes, however, the City should plan on expenditures as outlined herein, and some amount (conservatively, \$20,000) to cover closing costs and taxes. The proposed budget for 2009-2010 has sufficient funding to complete this transaction. As noted, this "account" remains open at TPL for the receipt of funds, and we will continue to be credited or reimbursed for our acquisition costs as pledges are fulfilled. In order to allow time for a decision to be made on the award of the PARTF grant and for other pledges to be fulfilled, we will see if it is possible to negotiate an extension of the August 1 closing date.

If Council desires to proceed with this acquisition, adoption of the resolution is recommended.

In response to Councilman Mumpower, Parks, Recreation and Cultural Arts Director Roderick Simmons said that he would be happy to provide Council with a comparison of the cost of our Parks, Recreation and Cultural Arts Department with other cities our size in North Carolina.

Mr. Slade Gleaton, representing the TPL, reported that they have \$148,000 in pledges, noting that there are still questions

on whether the pledges will be forthcoming due to the economy.

Councilwoman Cape said that the project was \$2.6 Million and we still have the possibility of a \$500,000 PARTF grant. She felt we have a good chance for that kind of grant because of all the participatory funding of private and public sources. She said that people that are interested in putting funds into the development but they can't do that until we own it. To offer this type of asset to our community and visitors is a great gift.

Ms. Stephanie Pankiewicz, member of the Greenway Commission, read a statement from the Greenway Commission. In part, it said that the Commission supports efforts to improve and expand parks and greenways throughout the City. The proposal concerning Overlook Park is an opportunity to do that. It also fulfills a commitment made by the Council to the TPL and to the citizens to take advantage of an opportunity to obtain a unique and desirable property at a fraction of the property's value. The \$260,000 funding amount due now from the City represents 10% of the property's \$2.6 Million value."

Councilman Mumpower thought this is a good purchase, however, he has trouble with promises made and not fulfilled (not intentional) and having the City taxpayer pick up the pressure. He was concerned that the City would not receive the PARTF grant since the State is contemplating a \$3 Billion reduction.

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

Councilwoman Cape moved for the adoption of Resolution No. 09-105. This motion was seconded by Councilman Mumpower and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 66

VI. NEW BUSINESS:

A. ORDINANCE NO. 3734 - BUDGET AMENDMENT FROM WARREN WILSON SUMMER TO ENHANCE THE SUSTAINABILITY OFFICE PROGRAM

Summary: This is the consideration of a budget amendment, in the amount of \$1,500, to appropriate revenue and budget expenditure accounts associated with the payment for a part time temporary intern in the Office of Sustainability.

The City of Asheville and Warren Wilson College formed a strategic partnership in June 2007 to collaborate in our efforts to reduce green house gas emissions. One of the specific elements of this partnership is to provide opportunities to Warren Wilson College students through internship. The Sustainability Management and Policy Intern will support the Energy Coordinators efforts in annual reporting requirements and data analysis part time for a 3 month period. The stipend associated with this work total \$1,500.

Warren Wilson College will provide the necessary funds for payment to the Sustainability Management and Policy Intern upon approval of this budget amendment request.

This action complies with the City Council Strategic Operating Plan in the following ways: (1) Expand partnerships with UNC-Asheville, AB Tech and other institutions; (2) Provide leadership in buying local products and services; and (3) Achieve short term and long term energy goals and reduce city carbon emissions by 2% each year.

Pros:

- Internship provides green collar job skills
- Internship supports the City Office of Sustainability efforts to reduce carbon footprint of city operation
- No cost to the City.

Con:

- None identified.

The \$1,500 to payment of intern wages will be provided by Warren Wilson College to be paid through the City of Asheville to the intern.

City staff recommends City Council adopt the budget amendment to appropriate revenue and budget expenditures associated with payment of intern wages.

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

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

Councilman Russell moved for the adoption of Ordinance No. 3734. This motion was seconded by Councilman Mumpower and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 287

B. RESOLUTION NO. 09-106 - RESOLUTION AUTHORIZING THE CITY TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO PURCHASE FAREBOXES FOR THE TRANSIT FLEET

Summary: This is the consideration of a resolution authorizing the City Manager to enter into an Interlocal Agreement with the N.C. Dept. of Transportation (NCDOT) as State match to purchase fareboxes for the transit fleet.

City staff is in the process of acquiring new fareboxes for the transit system. Part of the effort was to pursue 10% State match for the capital expenditure. Staff applied with the NCDOT and the funds were granted.

The fareboxes are an essential part of operations; they are used to collect the cash fares ensuring a safe environment for drivers and system users. The acquisition of new fareboxes will enhance driver effectiveness and work conditions. The proposed technology stores cash, and accept magnetic swipe cards which will expedite boardings and will increase safety. The farebox system records fares and passenger data and produce accurate and reliable reports about system usage. This technology can be upgraded to issue tickets, handle transfers and read smart cards.

Staff has developed the technical specifications for the fareboxes. The bid and selection process it is expected to take two months. Production process is estimated to take four months.

The estimated cost of this project is \$220,400. The City is funding this project using Section 5307 of the Federal Transit Administration which provides eighty percent (80%) for capital projects or \$176,320. The City will provide 10% or \$22,040 and with this Interlocal Agreement the State will contribute the additional 10%.

This action complies with the Strategic Operating Plan proactively leveraging funding from the State and other funding sources for regional transportation improvements.

Pro:

- Entering into an Interlocal Agreement with the NCDOT reduces the City's contribution to 10% of the cost of the project.

Con:

- None at this time.

The project cost will be \$220,040, with 80% of this total to be paid by federal funds - FTA section 5307; 10% or \$22,040 by the City and 10% or 22,040 by the State.

City staff recommends City Council authorizing the City Manager to enter into an Interlocal Agreement with the North Carolina Department of Transportation in the amount of \$22,040 as State match to purchase fareboxes for the transit fleet.

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

Councilman Mumpower reminded Council we are using borrowed dollars from the federal government. He said the help we need from the State of North Carolina, at any level, is for help with the court system. We can buy fareboxes, but we can't fix the court system.

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

Councilman Russell moved for the adoption of Resolution No. 09-106. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

RESOLUTION BOOK NO. 32 – PAGE 67

C. RESOLUTION NO. 09-107 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2010 TRANSPORTATION DEMAND MANAGEMENT GRANT PROGRAM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR ADMINISTRATION COSTS OF THE PROGRAM

Assistant Director of Transportation and Engineering Ken Putnam said that this is the consideration authorizing the City Manager to apply for the 2010 Transportation Demand Management (TDM) grant program and enter into an agreement with the N.C. Dept. of Transportation (NCDOT) for administration costs of the program.

TDM programs are programs which promote an alternative transportation option to the single occupant vehicle. Included among these alternatives are carpooling, vanpooling, telecommuting, transit, bicycle, flexible work hours, compressed work weeks, and parking policies and price structures.

NCDOT's Public Transportation Division is funding TDM programs across the state to support the provisions of the Ambient Air Quality Improvement Act of 1999, Senate Bill 953, to address growing concerns over ground level ozone pollution from motor vehicles and the need to deal with increasing vehicle miles traveled (VMT) and NO_x emissions. This bill established the goals of reducing emissions of nitrous oxides (NO_x) from motor vehicles by 25% by 2009 and reducing the growth of VMT in the State by 25% by 2009.

This program only funds the administrative costs associated with the TDM program, up to 50% of the total administrative expenses. This includes salaries, fringe benefits, marketing, etc.

There are six TDM strategies that the City of Asheville's TDM program is required to employ in order to accomplish the TDM Program Goals set by NCDOT. They are:

1. Conduct marketing efforts/activities identified in a marketing plan.
2. Coordinate with local transportation and land use planning efforts.
3. Facilitate ridematching services through the ShareTheRideNC website.
4. Promote the Best Workplaces for CommutersSM Program.
5. Collect and calculate data on VMT and NO_x reductions through TDM activities.
6. Operate in a manner consistent with the NCDOT goals regarding making our transportation network safer, making our transportation network move people and goods more efficiently, and making our infrastructure last longer.

The City's TDM program began in August 2005 and was administered under the French Broad River Metropolitan Planning Organization (MPO) and the City of Asheville's Transportation and Engineering Department. Since the functions of the MPO have been relocated to the Land of Sky Regional Planning Council, the TDM program was given its own budget code of 1606 to help with accountability. The 2009/10 budget for this program is currently in the City of Asheville's budget process.

Programs currently being administered are, but not limited to:

- The *PASSport* (employer bus pass) Program
- The Emergency Ride Home Program
- Strive Not to Drive – annual promotional event
- Share the Ride NC – Statewide ridematching program

On March 10, 2009, the City of Asheville applied for the Fiscal Year 2010 TDM Grant. In June 2009, the Board of Transportation will vote on whether or not to approve the funds in the maximum amount of \$84,636 for the City of Asheville's TDM Grant.

The total amount for this grant is \$84,636, of which 50% is reimbursed by NCDOT.

This TDM program supports the City of Asheville's 2009/10 Strategic Plan by helping to promote emission-reducing options, as well as supporting the Asheville Transit System through programs such as the *PASSport* program.

Pros:

- The current 50% match is reimbursed by NCDOT.
- To date, these statewide programs have reduced the growth of VMT by 24.6% - the goal for Senate Bill 953 was 25%.
- This program funds 50% of the TDM Coordinator position.

Con:

- None.

The project cost will be \$84,636; 50% of this total will be paid by NCDOT and 50% by the City.

City staff recommends City Council authorize the City Manager to apply for the 2010 TDM grant program and enter into an agreement with the NCDOT for administration costs of said program.

In response to Vice-Mayor Davis, Mr. Putnam said that he would be happy to provide Council with a report of performance measures on the effectiveness of the programs.

Councilman Mumpower said the help we need from the State of North Carolina, at any level, is for help with the court system. These are nice projects, but not necessary.

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 for the adoption of Resolution No. 09-107. This motion was seconded by Councilwoman Cape and carried on a 5-2 vote, with Councilman Russell and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 68

D. RESOLUTION NO. 09-108 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FEDERAL COST SHARE AGREEMENT WITH THE ARMY CORP OF ENGINEERS TO ASSIST IN THE COMPLETION OF THE SWANNANOA RIVER FLOOD RISK MANAGEMENT PROJECT

Director of Transportation and Engineering Cathy Ball said that this is the consideration of a resolution authorizing the City Manager to complete negotiations and sign a Federal Cost Share Agreement (FCSA) with the U.S. Department of the Army ("Government"), represented by the U.S. Army Engineer, Nashville District for the Government services assisting in the completion of the Swannanoa Flood Risk Management Project (Project) approved by Council on April 28, 2009.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. The Biltmore Village area of the City of Asheville (within the Swannanoa River watershed) was named as a recipient of this funding. From December 2005 through August 2006 a planning study was conducted to identify and prioritize flood damage reduction projects for implementation in the community. This planning study was conducted by the North Carolina Department of Environment and Natural Resources Division of Water Resources (DWR) and stakeholders from the Biltmore Village, City of Asheville and the Swannanoa watershed, with the assistance of a project consultant. In September 2006, expenditure of funding for implementation of this Plan was reviewed without objections by the NC Government Operations Committee. The requested action complies with the City's plans and commitments to administer \$2.5M of Senate Bill 7 funding consistent with a contract executed with the North Carolina Division of Water Resources on April 4, 2007.

Council approved a resolution on April 28, 2009, authorizing the City Manager to complete negotiations and sign a contract with Brown and Caldwell for the completion of the Swannanoa Flood Risk Management Project. The Project plan requires the involvement of the U.S. Army Corps of Engineers. The Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858 to allot appropriations for the implementation of small structural and non-structural projects for flood control and related purposes; provided that no more than \$7,000,000 shall be allotted for a project at any single locality.

The FCSA will recognize a majority of the work completed by the Brown and Caldwell project team as "work-in-kind" matching to Section 205 funds allotted to the Project. However, in order to complete the work requested of the U.S. Army Corps of Engineers, agreement to a cash match of up to \$110,000 is required. In addition, once identified flood control projects have proceeded to the final design and construction stages and as additional study needs (e.g. geotechnical or property acquisition services) are identified, additional funding may be required. The cost sharing ratio for final design and construction is generally 35% local, 65% Federal.

The agreement will cover basic services to be provided by the Government during the Project period (expected completion in June 2011). The total cost of this project is \$1,958,000 of which the City of Asheville is responsible for 50% of this cost. Work in Kind (WIK) from the Swannanoa River Flood Risk Management Study can be used toward the match from the City. The total cash match for this project is \$110,000 of which the monies will be budgeted in the Transportation and Engineering Department for \$30,000 in Fiscal Year 2010 and \$80,000 in Fiscal Year 2011 of which will be reimbursed from the SB 7 funds.

Pros:

- The cooperation of the U.S. Army Corps of Engineers and execution of a Federal Cost Sharing Agreement will position our community to receive Federal investment in flood control projects (35% local, 65% Federal sharing).
- The initial \$110,000 cash cost sharing match will be paid from Senate Bill 7 funds.
- The City may proceed with a request that one-half of the future cost sharing (above the requested \$110,000) be provided by funds allocated to the N.C. Division of Water Resources Capital Projects fund.

Cons:

- The City cannot currently know the ultimate cost of planning, design and construction of the projects to be recommended for implementation.
- The City's responsibilities during the study will require an approximately 20% full-time equivalent (FTE) staff assignment from the Engineering Department over the coming 2 years.
- It is expected that most of the flood risk reduction projects will be implemented in the Swannanoa watershed outside the City limits and extraterritorial jurisdiction.

The funds to be expended have been provided by the State in compliance with the Hurricane Recovery Act of 2005. City staff will provide project management oversight and will participate in a series of project meetings and workshops, public meetings, and meetings with regulatory agencies. Approximately 20% FTE staff assignment will be required over a two year period.

City staff recommends City Council adopt a resolution authorizing the City Manager to negotiate and then execute a Federal Cost Share Agreement (FCSA) with the Department of the Army for an amount not to exceed \$110,000.

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 for the adoption of Resolution No. 09-108. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 69

E. RESOLUTION NO. 09-109 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE THE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGE AND/OR UNFORTIFIED WINE TO WINDOWS ON THE PARK FOR A PRIVATE EVENT IN PACK SQUARE PARK IN PACK SQUARE ON THE LAWN AREA ON JUNE 6, 2009, FROM 3:00 P.M. TO 11:59 P.M.

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine to Windows on the Park for a private event in Pack Square Park in Pack Square on the lawn area on June 6, 2009, from 3:00 p.m. to 11:59 p.m.

Those Girls, LLC has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at a private event on the lawn area in the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building.

The malt beverages and unfortified wine will be served in glass containers and bottles.

Those Girls, LLC have requested a temporary extension of their ABC permit (premise 0016753AJ) from the North Carolina Alcoholic Beverage Control Commission (NCABC) for the date of the event. Event organizers will follow all City policies outlined in the Outdoor Special Event Guide and ordinances regarding alcohol on City property.

This resolution is pending the ability for the City of Asheville to issue an Outdoor Special Event permit for the lawn area in the Pack Square area in Pack Square Park and the event organizers receipt of the temporary extension from NCABC.

This action does not comply with the City Council Strategic Operating Plan nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pro:

- None.

Cons:

- Potential for public safety issues;
- The event is not open to the public.

There is no fiscal impact.

City staff recommends City Council adopt a resolution authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine on the lawn area in the Pack Square area in Pack Square Park on June 6, 2009 from 3:00 p.m. to 11:59 p.m. for Those Girls, LLC.

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.

Councilwoman Cape moved for the adoption of Resolution No. 09-109. This motion was seconded by Councilman Newman and carried on a 5-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 70

At 10:05 p.m. Councilwoman Cape asked to be excused from the remainder of the meeting due to her travelling schedule. Therefore, Councilman Mumpower moved to excuse Councilwoman Cape from the remainder of the meeting. This motion was seconded by Councilman Russell and carried unanimously.

F. ALTERNATIVE PROPOSAL ON RESOLVING THE WATER SYSTEM CONFLICT

Councilman Mumpower presented Council with an alternative proposal to the Asheville resolving the water system conflict.

He provided a bit of history as follows: (1) Asheville leaders purchased our two primary watersheds as Asheville City owned properties in the early part of the twentieth century – we are all blessed by their foresight and investment; (2) Sullivan Act I was passed in the early thirties during a time of major economic upheaval. It covered a limited number of private and public water systems that were absorbed into the Asheville water system – very little of the absorbed lines and infrastructure remain in use; (3) It is a fact that Asheville has taken money from the water revenue through the years – just like every other city in NC; (4) One of the biggest reasons is that Asheville, unlike every other city in NC and the country, refused to default on bonds during the Great Depression. To our credit we repaid our debt and used our resources to do the right thing; (5) There is a long standing history of neglecting water and other infrastructure in Asheville *and* every other city in NC and America (think bridges, roads, civic buildings, etc.) Some of the worst neglect occurred when we had a joint politicized water authority during the eighties, nineties, and the early part of this century; (6) When Mayor Worley, to his strong credit, took the leadership in legally retaking control of Asheville's water system, he demonstrated an unusual level of political courage that is to his permanent credit; (7) When Asheville leaders (unanimously) supported the Mayor, Buncombe county leaders immediately began a public misinformation campaign; (8) To add insult to injury, county staff collaborated with local legislative representatives in creating draft legislation for Sullivan Acts II and III in order to steal control of Asheville's water system; (9) Our local legislative representatives at that time (Nesbitt, Goforth, Apodoca, & Fisher are currently serving) successfully convinced their Raleigh colleagues to pass Sullivan Acts II and III. These acts uniquely singled Asheville out from all other city owned water systems and effectively took control of Asheville's water resources; (10) City leadership (again unanimously) voted to legally fight this unprecedented state intrusion on local government affairs; (11) We lost at every level – *but* – in every case what was validated by the courts was the right of the state to seize our assets – *not* the rightness of doing so; and (12) Fast forward to last month and we have the Mayor and Asheville City Council majority inserting a last minute compromise plan into the agenda whereby we effectively surrender to an unprecedented state action to essentially seize control of an Asheville citizen asset worth \$1.25 Billion (Brown and Caldwell study – 2008).

He explained a minority position of (1) We do not need to surrender control and thus realistic ownership of Asheville's water assets; (2) The City should stand strong until we have a change of heart by our local state legislators *or* Asheville residents see that a change of representation is in their interest; and (3) In the interim, there are options...

Option One (1) Continue to call for open public negotiations with county and state representatives; (2) Stand firm on treating Asheville like *all* other cities in North Carolina who own their water system; and (3) Cooperate on one point of compromise that insures fairness for city and county residents – *Implementing the equal treatment of Asheville over a longer term period – up to 10 years if such is necessary – to insure an agreement and permanent resolution of our water war.*

Advantages - fair; treats Asheville like other cities; places no unreasonable burden on city or county residents; resolves conflict in positive manner; provides a "political" out; and avoids complex political agreements that are difficult to implement and maintain.

Option Two (1) Accept the legislative theft of Asheville's water delivery system; (2) Separate the watersheds, reservoirs and treatment plant from the water delivery system; (3) Establish a regional water authority and deed control, debt, and responsibility for the water delivery system to that authority; (4) Invite other cities (Hendersonville and Weaverville for example) to join that regional authority; and (5) Charge a reasonable rate for water coming out of Asheville reservoirs and use this Asheville resource to off-set city resident's excessive tax burden.

Advantages - we are able to legally counter the theft of the most valuable components of our water system; we support the creation of a regional water authority; Asheville city residents will receive compensation for ownership of their watershed, reservoirs and water treatment facilities; and the conflict between the city, county, and state is ended.

Action steps forward include (1) Policy discussion tonight; (2) Review of our legal authority in this matter; (3) Public information campaign; (4) Public hearing; (5) Public discussion with state and county representatives; and (6) Timely movement forward.

He said that the legislative theft of our citizen's water resources is the most reprehensible political action in Asheville's history. As our city's elected officials, we should exhaust our options for resisting this action – we may lose – we should never surrender...

Councilman Newman asked for Council's support in asking our City Attorney to review any potentials to the points outlined in Option Two.

Councilman Newman felt that City Attorney Oast is constantly searching for a better outcome for the citizens of Asheville and feels confident that he would report back to Council if he uncovers anything useful.

Mayor Bellamy stressed that she did not think it was in the best interest of the City rate payers to have our water system (our number one asset) to be taken from us and placed into a body that is not elected and not accountable to the general public. If people don't like what we're doing with our water system, they can vote City Council out of office. She will not support an independent authority. She did not believe in any way that we surrendered our water system. We went to court and fought to work for changes to legislation on Sullivan Acts II and III and we lost that battle. Now we are working with our legislators to get some changes to make sure that we can at least use some of the revenue to improve stormwater upgrades and improve streets and sidewalks as we improve our water system. And, we will continue to show how well we have operated the system since 2005 through improvements and investments. We now have a new Water Resources Director who will take us to a better place with the system.

Upon inquiry of Councilman Mumpower, City Attorney Oast said that he would have to research separating the watersheds, reservoirs and treatment plant from the water delivery system. Since the watersheds and reservoirs were acquired in a different manner, there may be some basis for treating them differently.

Councilman Newman explained why he didn't think a regional authority would be politically viable.

Councilman Russell would be open to asking City Attorney Oast to investigate a regional authority.

Vice-Mayor Davis agreed that we have not surrendered our water system. He recalled that the independent authority did not work. He felt the legislators now recognize there is some merit to the tremendous improvements we've made to the system since 2006.

Mayor Bellamy felt that to allow an authority to have oversight of rates and improvements is wrong. We know our system needs millions of dollars of investment and the authority would have control over those rate increases. It would not be the political body which is accountable to the citizens. That is not right. When others in our region were talking about mandatory drought conservations, we were doing voluntary conservation in an adequate manner.

Even though there was not the majority Council asking City Attorney Oast to review any potentials to the points outlined in Option Two, he said that as time permits he will continue to look into this matter.

G. RESOLUTION NO. 09-110 - RESOLUTION APPOINTING MEMBERS TO THE CIVIC CENTER COMMISSION

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

The terms of Brian Woods, George Keller and J. Michael Burke, as members on the Civic Center Commission, expire June

30, 2009. In addition, Mr. Bill Lack resigned from the Civic Center Commission, thus leaving an unexpired term until June 30, 2011.

At the May 12, 2009, meeting, it was the consensus of Council (1) to reappoint Mr. Woods, Mr. Keller and Mr. Burke to each serve a three-year term respectively, terms to expire June 30, 2012, or until their successors have been appointed; and (2) to interview J.L. Thompson.

Councilman Mumpower moved to (1) reappoint Mr. Woods, Mr. Keller and Mr. Burke to each serve a three-year term respectively, terms to expire June 30, 2012, or until their successors have been appointed; and (2) appoint J.L. Thompson as a member of the Civic Center Commission to serve the unexpired term of Mr. Lack, term to expire June 30, 2011, or until his successor has been appointed. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 73

H. RESOLUTION NO. 09-111 - RESOLUTION APPOINTING A MEMBER TO THE CIVIL SERVICE BOARD

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civil Service Board.

The term of Sharon West, as a member of the Civil Service Board, expired on May 21, 2008. Ms. West is not interested in reappointment.

On March 24, 2009, City Council interviewed Ms. Odom and Ms. Brown. Ms. Brown has moved outside Asheville's City limits and is therefore not eligible for appointment. Mr. Davidson Jones did not attend the interview.

On May 12, 2009, it was the consensus of Council to interview Larry Harris.

Councilman Mumpower moved to appoint Larry Harris as a member of the Civil Service Board to serve the unexpired term of Ms. West, term to expire May 21, 2010, or until his successor has been appointed. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 74

VII. OTHER BUSINESS:

Mayor Bellamy was pleased to announce the dedication of the new Veterans Memorial at Memorial Stadium which was unveiled on May 25, 2009. The tablets are engraved with the names of Western North Carolina servicemen who lost their lives in World Wars I and II. Councilman Mumpower was pleased to be a part of the dedication ceremony.

Claims

The following claims were received by the City of Asheville during the period of May 1-21, 2009: Gary N. Weaver (Transit), Yvonne Benson (Sanitation), John Retherford (Streets), Susan Feinblatt (Streets), AT&T (Streets), Charmane A. Cox (Sanitation) and Brooke D. Dickson (Streets).

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

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:32 p.m.

CITY CLERK

MAYOR