

Tuesday – July 14, 2009 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Jan B. Davis; Councilwoman Robin L. Cape; Councilman Kelly M. Miller (left meeting excused at 5:57 p.m.); Councilman R. Carl Mumpower; Councilman Brownie W. Newman; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman William A. Russell Jr.

PLEDGE OF ALLEGIANCE

- Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Newman gave the invocation.

ADDITION TO AGENDA

- Mayor Bellamy said that a resolution authorizing the City Manager to make provisions for the possession of malt beverages and/or unfortified wine at the RiverLink event on August 1, 2009, will be added under New Business.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JULY 2009 AS "SKYVIEW GOLF ASSOCIATION MONTH"

Mayor Bellamy read the proclamation proclaiming July, 2009, as "Skyview Golf Association Month" in the City of Asheville. She presented the proclamation to Mr. Lee Shepherd, President of Skyview Golf Association, who briefed City Council on some activities taking place during the month. Vice-Mayor Davis also wanted to recognize the late Mr. Chillie Young for his efforts during the 50 years of the Skyview Golf Association.

II. CONSENT AGENDA:

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 23, 2009

B. RESOLUTION NO. 09-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH INTEGRATED TECHNOLOGY SYSTEMS FOR THE PURCHASE OF IN-CAR VIDEO CAMERAS AND INFRASTRUCTURE TO UPLOAD THE EVIDENCE WIRELESSLY INTO A SECURE STORAGE DEVICE

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with Integrated Technology Systems for \$82,950.64 for the purchase of ten (10) in-car video cameras and infrastructure and retrofit equipment in six (6) existing police cars that currently have in-car video capability, for a total of 16 in-car video installations

Each year the Finance Department, through its Risk Management Division, budgets money specifically for liability claims management and settlements. This year, staff proposes to use a portion of the risk management/liability claims fund for a one-time risk avoidance investment. The City of Asheville Risk Management staff, in coordination with Asheville Claims Corporation and Police Department, has identified as a high priority the purchase of in-car video cameras to place into police patrol cars for the purpose of recording the activities of the officer operating the patrol car. These recordings would generally serve as evidence to be utilized in court for the prosecution of criminal cases. However, these recordings could also be used to aid in resolving allegations of wrongdoing by officers. This would allow for an even greater level of protection of officers and citizens.

The cameras to be purchased are digital in nature and provide high quality and high resolution video/audio recording of events in and around the patrol car. Recordings such as this help protect the interests of citizens as well as the interests of police officers. Recordings captured with these cameras could potentially aid in mitigating potential civil liability for the City of Asheville by illustrating in detail the actual events that transpired. The secure storage device and wireless upload capabilities of the system

creates a user friendly video storage system that is extremely secure and versatile.

This action conforms to the City Council's Strategic Plan under Safe to make Asheville the safest city in America based on approved metrics for similarly sized cities and by strengthening the enforcement of existing laws and regulations as opposed to adding new ordinances.

This action was reviewed by the Public Safety Committee at its May 19, 2009, which recommended approval.

Pros:

- More video/audio recorded evidence is available to review when critical incidents occur.
- The City has one-time funding available through Risk Management to purchase this equipment.
- The Police Department will receive 10 new in-car video units, be able to upgrade the six existing units for wireless upload capabilities, and will receive a wireless infrastructure and Evidence and Video storage network dedicated solely to evidentiary video storage.

Cons:

- The Asheville Police Department will need to bear the cost for future maintenance of this equipment as necessary.

There will be an expense of \$82,950.64 posted to the Risk Management Budget. The Asheville Police Department will be responsible for the on-going maintenance of the equipment purchased, any expenses are anticipated to be absorbed through current operating budget allocations.

City staff requests City Council to adopt a resolution authorizing the City Manager to enter into an agreement with Integrated Technology Systems for the purchase of in-car video cameras and infrastructure to upload the evidence wirelessly into a secure storage device.

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C. RESOLUTION NO. 09-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOTOROLA INC. TO PROVIDE MAINTENANCE COVERAGE FOR THE CITY'S RADIO SYSTEM

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement with Motorola, Inc. to provide maintenance coverage for the City's radio system.

Motorola, Inc. has provided maintenance services for the City's radio communications system since installation of the system in 1992. The service agreements are renewed annually. The maintenance cost per unit of equipment for the renewal period of August 1, 2009, through July 31, 2010, has increased by approximately three percent. Funding for this contract was appropriated in the FY10 budget process.

The renewal agreement reflects an annual charge of \$130,086.24 and covers additional equipment purchased by the City to equip new vehicles and replace broken equipment. The agreement also covers infrastructure that has come out of the installer's warranty during the past year.

This action ties into the City Council Strategic Operating Plan regarding partnerships to improve critical services / infrastructure. These partnerships also help the City recoup some of their investment in the system infrastructure through fees collected for use of the system.

Pros:

- The primary benefit of this contract is to keep the City's radio system reliable and operational for public safety officers.
- By keeping the radio system in optimal condition the City is also able to provide communication services to several outside agencies, thereby improving interagency communications.

Cons:

- None noted.

City staff recommends the adoption of the resolution for radio maintenance coverage for the term of August 1, 2009,

through July 31, 2010.

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D. RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS INC. FOR THE RENOVATION OF FIRE STATION 6

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

E. MOTION APPROVING THE EXTENDED TERMS FOR SALE OF THE PROPERTY ON BROTHERTON AVENUE TO ASHEVILLE AREA HABITAT FOR HUMANITY

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

F. RESOLUTION NO. 09-146 - RESOLUTION APPROVING THE MUNICIPAL RECORDS RETENTION AND DISPOSITION SCHEDULE ISSUED MAY 19, 2009

Summary: The consideration of a resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued May 19, 2009.

N.C. Gen. Stat. sec. 121-5 mandates that records defined under Chapter 132 may be disposed of only in accordance with an official records retention schedule. The N.C. Dept. of Cultural Resources, Division of Archives and History, has updated the 1997 Municipal Records Retention and Disposition Schedule.

This updated Schedule provides that records listed may be destroyed after the specified retention periods without further approval from the City or the N.C. Dept. of Cultural Resources provided, the governing body has authorized the records listed for destruction to be destroyed through its blanket approval of the Retention and Disposition Schedule.

Pros:

- Will allow records listed to be destroyed after specified retention period
- Will free up storage space

Con:

- None noted.

City staff recommends City Council adopt the resolution approving the N.C. Dept. of Cultural Resource's updated Municipal Records Retention and Disposition schedule issued May 19, 2009.

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G. MOTION AUTHORIZING THE ASHEVILLE FIRE & RESCUE DEPARTMENT TO PARTICIPATE IN THE MANNA FOOD BANK'S FESTIVAL NEIGHBORHOOD DRIVE JULY 11-28, 2009

Summary: The consideration of a motion authorizing Asheville Fire and Rescue to participate in MANNA Food Bank's Festival Neighborhood Drive between July 11th and July 28, 2009.

Asheville Fire and Rescue has been approached by MANNA Food bank to become a partner in the MANNA Food Bank Festival Neighborhood Drive. All of the fire stations within Buncombe County have been asked to participate as drop off locations for the community to bring food items in coordination with the drive. MANNA will provide the food receptacles and will pick the items up during the food drive. Community fire stations serve as good collection points for this drive due to their neighborhood locations.

This action supports City Council's Strategic Operating Plan to offer a standard of living that is affordable and attainable for people of all income levels, life stages, and abilities.

Pro:

- By partnering with MANNA Food Bank, the City of Asheville supports a strong effort to assist citizens with basic food needs.

Con:

None

City staff recommends City Council approves a motion authorizing Asheville Fire and Rescue to participate in MANNA Food Bank's Festival neighborhood Drive.

- H. RESOLUTION NO. 09-147 - RESOLUTION TO AFFIRM REQUIRED ASSURANCES AND AGREEMENTS AND DESIGNATE AN AUTHORIZED REPRESENTATIVE TO FILE THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES , TO MAKE NECESSARY CERTIFICATIONS, AND EXECUTE SUCH AFFIDAVITS AS ARE REQUIRED BY THE RULES AND REGULATIONS FOR THE VIEWMONT ACRES AND REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS**

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

- I. RESOLUTION NO. 09-148 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 28, 2009, FORMAL MEETING**

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

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- J. RESOLUTION NO. 09-158 – RESOLUTION APPROVING NAMING OF NATIONAL GUARD FACILITY IN HONOR OF LT. COLONEL WILLIAM GARWOOD**

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

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

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

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

- D. RESOLUTION NO. 09-145 - RESOLUTION AUTHORIZING THE CITY MANAGER ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS INC. FOR THE RENOVATION OF FIRE STATION 6**

Summary: The consideration of a resolution authorizing the City Manager to sign a contract with H & M Constructors, Inc. for the renovation of Fire Station 6.

The need for the renovation of Fire Station 6 on Haywood Road was identified as a capital improvement project and Council allocated funds for this project in Fiscal Year 2008/09. Architectural and Engineering plans were completed for this project in early 2009 and an informal request for bids was properly advertised. A preliminary meeting was held with interested contractors in reference to the renovation of Fire Station 6. The request for bids was specific for the renovation with the potential for two alternates. Written bids were received by City staff and were evaluated for compliance with City of Asheville contract guidelines. A team of staff from Fire and Rescue, Finance, and the Minority Business Office reviewed all of the submittals. One contractor was clearly selected as the recommended vendor to complete the renovation. The committee selected H & M Constructors, Inc., 187 Deaverview Rd., Asheville, NC 28806, as the recommended contractor for this project. H & M Constructors, Inc. was the lowest responsive bidder for the project. The base bid amount is for \$256,400. The two alternates will not be pursued at this time as they exceed the project's budget.

This action complies with the City Council Strategic Operating Plan in that this project provides leadership in buying local products and services. H & M Constructors, Inc. is an Asheville based contractor. This action also complies with the City Council Strategic Operating Plan by achieving short term and long term energy goals. This renovation includes important energy efficiency upgrades. This action also complies with the City Council Strategic Operating Plan by addressing the City's aging infrastructure including facilities. Fire Station 6 was built in 1958.

Pro:

- Energy efficiency improvements and station renovations are provided for with this contract

Con:

- None identified

City Council has previously allocated \$256,400 for this project.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract with H & M Constructors, Inc. for the renovation of Fire Station 6.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects. He questioned if we are in a position to address the use of a verified legal labor pool for this project. City Attorney Oast responded that we still do not have any more authority under state law and we are still awaiting for some resolution under federal law to allow more involvement in that kind of activity than we currently have. He continues to keep track of these bills.

Councilman Mumpower moved for the adoption of Resolution No. 09-145. This motion was seconded by Councilman Newman and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 119

E. MOTION APPROVING THE EXTENDED TERMS FOR SALE OF THE PROPERTY ON BROTHERTON AVENUE TO ASHEVILLE AREA HABITAT FOR HUMANITY

Summary: At their regular meeting of June 18, 2009, the Housing and Community Development (H&CD) Committee approved a change in the terms of the City's financial assistance to Asheville Area Habitat for Humanity for their purchase of the City-owned real property located at Brotherton and Virginia Avenues.

In 1999, the City acquired 7.19 acres at Brotherton Avenue, for the purpose of creating affordable housing. The City invested a total of \$527,000 in Community Development Block Grant (CDBG) funds to acquire and improve the site. The City, through RFP processes, twice selected developers to create that affordable housing. In each case, the developer withdrew for financial reasons before constructing any housing.

In November of 2007, Council passed a resolution to sell this property to the Asheville Area Habitat for Humanity to develop 22 single family homes on this site, all to be sold to low-income families. The purchase price of \$467,500 was established via an appraisal dated June 10, 2007. Habitat proposed to pay a \$5,000 deposit and the balance of \$462,500 in one lump sum ten (10) years from the closing date, at zero percent interest.

As Habitat's vision for the project matured, and more information about project costs were developed, Habitat became concerned that the financing terms offered by the City could affect Habitat's fulfillment of the project mission. Much of the earlier constructed infrastructure, paid for with CDBG funds, has no value for the proposed Habitat development and would need to be removed at significant costs. In ten years Habitat would need to pass the balloon repayment onto its purchasers thus reducing by as much as 60% the pool of Habitat clients who could afford the house.

Habitat presented the above information to the H&CD Committee at the Committee's June 18, 2009, meeting. Habitat asked for assistance in revising the terms of its original proposal to enable it to meet its mission and develop the property as affordable housing, meeting both Habitat's and the City's goals. Habitat proposed the removal of the 10-year balloon provision, substituting instead a provision to pass the purchase price on a pro-rata basis to individual buyers as an assumable loan, carrying zero percent interest, in a secured third mortgage held by the City. Each loan would be due and payable only upon sale or transfer of the house to a household earning more than 80% of median income. The loan would be assumable at 0% interest for any transfer to a household with income of 80% of median income or less.

Through this mechanism, Habitat would create a development that was 100% affordable to low-income families; provide for the sustainability of that affordability for subsequent families; and enable recapture of the appraised value of the land and reuse of the funds by the City upon sale to non-lower-income households.

Pros:

- Development of 22 affordable homes for purchase by low-income families supports the City's Strategic Plan goals for addressing housing needs.
- The provision of third mortgage financing helps ensure the sustainability of the affordable housing created through this

project while not prohibiting free-market sales of the homes;

- In-fill development matching established density for the area supports Smart-Growth land policies.
- Habitat has an excellent track record of building high quality, Energy Star homes, and creating and supporting well-functioning neighborhoods;
- Habitat offers 0% interest mortgages, making its homes the most affordable new homes available;
- Agency has sufficient financial and volunteer resources to complete the project;
- Returns the property to the tax rolls with tax base Increase of at least \$3,500,000.

Cons:

- The CDBG Program Income the City will receive for selling the property to Habitat will be received over an extended period of time.

Approval of the extended terms for sale of the property on Brotherton Avenue to Asheville Area Habitat for Humanity.

Councilman Mumpower could not support the motion and explained why he felt the City should have stayed out of this venture.

Councilman Newman and Councilwoman Cape spoke in strong support for Habitat for Humanity as they are a good partner and have an excellent record on their projects. What Habitat is proposing is very much supported by the neighborhood and is a good proposal.

Mayor Bellamy explained the financing, and said that even though the property was purchased by the 1999 this Council needs to address any concerns associated with the property.

When Mayor Bellamy called the question, Councilman Mumpower raised a point of order. City Attorney Oast said that the Mayor has some control to control the debate and in her role as presiding officer, if the debate is not proceeding, it is within her power to move the meeting along.

Councilwoman Cape moved for the adoption of a motion approving the extended terms for sale of the property on Brotherton Avenue to Asheville Area Habitat for Humanity. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

H. RESOLUTION NO. 09-147 - RESOLUTION TO AFFIRM REQUIRED ASSURANCES AND AGREEMENTS AND DESIGNATE AN AUTHORIZED REPRESENTATIVE TO FILE THE APPLICATION TO THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES , TO MAKE NECESSARY CERTIFICATIONS, AND EXECUTE SUCH AFFIDAVITS AS ARE REQUIRED BY THE RULES AND REGULATIONS FOR THE VIEWMONT ACRES AND REYNOLDS MOBILE HOME PARK WATER SYSTEM IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to be named an Authorized Official with approval to accept grants from the North Carolina Department of Environment & Natural Resources (NCDENR) for the Viewmont Acres and Reynolds Mobile Home Park water system improvement projects at an estimated cost of \$1,084,421, along with authorizing the City Manager to execute contracts for engineering services, construction contracts, and other incidental work related to the projects so long as the projects' budget is not exceeded.

For the past couple of years, NCDENR has been in discussion with the City of Asheville Water Resources Department regarding the status of two (2) failing private water systems in Buncombe County. These systems serve the Viewmont Acres Subdivision, located off Cedar Hill Road, and the Reynolds Mobile Home Park, located off Charlotte Highway. These private water systems, serving a combined sixty (60) residences, are failing and have been assigned emergency operators by the North Carolina Utility Commission.

Through its "Disadvantaged Community Program", NCDENR has offered the City of Asheville Water Resources Department grants for these projects at an estimated cost of \$1,084,421, in accordance with Section II.S.3 of the NC DWSRF, to design, construct, own and maintain replacement water systems for Viewmont Acres and Reynolds Mobile Home Park.

The accompanying resolution authorizes the City Manager to execute forms of acceptance for this grant offer and authorizes the City Manager to execute multiple contracts for consulting engineering services and multiple construction contracts, all

secured in accordance with City and State bidding requirements, and other miscellaneous contracts required by the projects so long as said contracts do not exceed budgeted grant funds.

This project is part of City Council's strategic plans to improve city infrastructure.

Pros:

- Sixty (60) homes in Buncombe County are being served by failing public water systems and without this intervention by the NCDENR and the City of Asheville, some of these homes may have to be vacated.
- The provision of safe, reliable water supply can be provided to these sixty (60) homes without any initial capital contribution from the City of Asheville.

Con:

- The terrain in Viewmont Acres will make future maintenance operations more difficult than our typical work. This can be mitigated to a great extent by special design requirements in the waterline replacement project design.

Since this is a "Disadvantaged Community Program" project, these funds can be provided in advance so the City will not have to front the project expenses.

City staff recommends City Council adopt a resolution authorizing the City Manager to be named an Authorized Official with approval to accept grants from the North Carolina Department of Environment & Natural Resources (NCDENR) for the Viewmont Acres and Reynolds Mobile Home Park water system improvement projects at an estimated cost of \$1,084,421, also with authorizing the City Manager to execute contracts for engineering services, construction contracts, and other incidental work related to the projects so long as the projects' budget is not exceeded.

Councilman Mumpower was concerned about the City's continued use in what is likely a large percentage of illegal laborers on contracted City projects. He questioned if we are in a position to address the use of a verified legal labor pool for this project. City Attorney Oast responded that we still do not have any more authority under state law and we are still awaiting for some resolution under federal law to allow more involvement in that kind of activity than we currently have. He continues to keep track of these bills.

Councilman Mumpower moved for the adoption of Resolution No. 09-147. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 12

I. RESOLUTION NO. 09-148 - RESOLUTION MODIFYING THE SCHEDULED CITY COUNCIL MEETINGS TO CANCEL THE TUESDAY, JULY 28, 2009, FORMAL MEETING

Councilman Mumpower felt that one meeting a month does not allow ample opportunity to effectively address the volume of issues before City Council.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-148. This motion was seconded by Councilman Newman and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 124

J. RESOLUTION NO. 09-158 – RESOLUTION APPROVING NAMING OF NATIONAL GUARD FACILITY IN HONOR OF LT. COLONEL WILLIAM GARWOOD

Summary: The consideration of a resolution approving the naming of the National Guard Facility at Richmond Hill.

The North Carolina National Guard recently completed its new training facility on Richmond Hill. This was done in conjunction with the City's development of a park facility adjacent to the new training facility.

The Guard wishes to name the facility after Lt. Colonel William Garwood, now deceased, who had a long career of service with the Guard, including serving in the Gulf War and commanding the National Guard in Western North Carolina. When naming its facilities, the Guard requests the approval of the local government with jurisdiction over the site of the facility. Accordingly, this request has come to the Asheville City Council. A synopsis of Lt. Colonel Garwood's career will be attached to the resolution.

If Council approves of the resolution, adoption of it is recommended.

Mayor Bellamy was pleased to support this resolution and that this is the first step in the process of getting the facility named.

Councilman Mumpower moved for the adoption of Resolution No. 09-158. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 142

III. PRESENTATIONS & REPORTS:

A. ASHEVILLE AREA ARTS COUNCIL

Ms. Angela Martinez, Executive Director of the Asheville Arts Council, said that the Asheville Area Arts Council has a long history as one of the oldest arts councils in the country. It was formed from a working committee of the Junior League, the Civic Arts Council (CAC) was incorporated in 1952.

The mission of the Asheville Area Arts Council is: (1) Enrich our community by educating all people in the Asheville area about the arts; (2) Advocate integration of the arts in all aspects of community life; and (3) Support artists and arts organizations.

Major programs include (1) Arts-in-Education (a) Teachers Grants; (b) WORD – Poetry Slams; and (c) Professional Development; (2) Artist Support Services (a) Regional Artists Program Grants; and (b) Gallery Space; (3) Organizational Support Services (a) Grassroots Arts Program Grants; and (4) Community Services (a) KidsTix; and (b) Urban Trail.

She explained Arts-in-Education program as (1) Teacher Grants provide funding for Artists' workshops and residencies that bring arts integration programs into area schools; (2) The Arts Council runs a county- wide WORD Poetry Slam for middle and high school aged students; (3) The Council, in partnership with Asheville City Schools & Buncombe County Schools, was chosen as one of 12 teams, nationwide, to participate in the Kennedy Center Partners & Education program; and (4) Every two years, the Kennedy Center for the Performing Arts selects arts organizations throughout the nation who partner with their local school systems to develop arts-in-education Professional Development opportunities.

She explained the Artist Support program as (1) The arts council has also received state funds for disbursement through the Regional Artists Project program; (2) Since 1997, close to One Hundred Thousand Dollars (\$92,320) has been sub-granted to individual artists in support of their professional development, promotion, and to facilitate the production of new works; and (3) Gallery space to showcase the work of emerging or non-commercial artists. It is the mission of the AAAC gallery is to promote our local emerging artists.

She then explained the Organizational Support as (1) AAAC's service to the community is defined by its role as the Designated County Partner (DCP) for administering state-allocated grants throughout Buncombe County and surrounding areas; (2) Since 1983 the AAAC has participated in the Grassroots Arts program providing funding to help support organizational arts projects and cultural events within Western North Carolina; and (3) The AAAC has sub-granted over a half million dollars (\$565,933) in this program alone.

Regarding Community Services (1) KidsTix program provides tickets to cultural events for underserved students with mentors; and (2) The City of Asheville and the Arts Council are partners in the Urban Trail, which has become the unique signature piece of Asheville's history. The Arts Council is responsible for marketing, tour scheduling, and guide training.

New initiatives include (1) The Arts Council hopes to help support the needs of Asheville's creative community by developing a Resource Center for the Arts (RCA) in partnership with other arts and community organizations; and (2) The Arts Council will be creating and maintaining an online Arts and Culture Calendar to promote regional events to residents and visitors.

She said the Arts Council looks forward to many more decades of service to Asheville's creative community and arts audiences, residents and visitors.

She said that Asheville has been featured in the O Magazine as an arts destination. She felt as we look at our own natural resources we need to pay attention to and allocate funding to the arts in this area which might be endangered of going away to other communities who will support them.

On behalf of the City Council, Mayor Bellamy thanked Ms. Martinez for the hard work they have done on behalf of the City of Asheville, in particular their assistance with the Urban Trail.

B. MAYOR'S COMMITTEE ON VETERANS AFFAIRS

Mr. Josh O'Conner, Chair of the Mayor's Committee on Veterans Affairs, explained the mission of the Committee, which is to recognize the role played by veterans in the defense of this country, and to promote equal and inclusive opportunities for veterans and their families in all aspects of society, including employment, transportation, housing, health and education, and to identify and support all individuals and organizations that contribute to this mission.

2009 annual goals include (1) Increase collaboration with other local Veterans (and family) organizations; (2) Host/co-host patriotic events to honor veterans and increase awareness of veterans resource organizations; (3) Review/update Mission Statement and By-Laws; and (4) Implement a recognition program for service to veterans (with a city-wide focus on awareness).

Regarding the membership and meetings, they have 14 members, a diverse membership, they hold monthly meetings, they work to connect with other organizations, and that meetings are open to input from the public.

The following are events and activities that the Committee has participated in: Memorial Day, Bele Chere, Veterans Day, and Committee members have collectively and individually supported various veterans-related events.

The Honor and Remember request is to create, establish and promote a nationally recognized flag that would fly continuously as a visible reminder to all Americans of the lives lost in defense of our national freedoms. All Military lives lost not only in action but also in service, from our nation's inception. In our over 200 year history there has never been an official national symbol that recognizes in gratitude and respect the ultimate sacrifice made by members of the United States military in service to our nation. The Honor and Remember Flag was created for that purpose.

He then explained the symbols (1) The Red Field represents the blood spilled by brave men and women in America's military throughout our history, who willingly gave their lives so that we all would remain free; (2) The Blue Star represents active service in military conflict. This symbol originated with World War I, but on this flag it signifies service in all wars from the American Revolution to present day; (3) The White Border surrounding the gold star recognizes the purity of sacrifice. There is no greater price an American can pay than to give his or her life in service to our country; (4) The Gold Star signifies the ultimate sacrifice of a warrior in active service who will not return home. Gold reflects the value of the life that was given; (5) The Folded Flag signifies the final tribute to an individual life that a family sacrificed and gave to the nation; and (6) The Flame is an eternal reminder of the spirit that has departed this life yet burns on in the memory of all who knew and loved the fallen hero.

The Committee has adopted the Honor and Remember resolution as well as other localities. To be able to fly alongside the American Flag, this would require an amendment to Title 36 of US Code.

In summary, he showed what the flag will look like and (1) urged Council to support the Honor and Remember Campaign by adopting the resolution; (2) requested City Staff support; (3) "Sounding Board" for veteran's issues; and (4) asked the Committee be allowed to serve veterans in a more comprehensive manner.

Mayor Bellamy thanked Mr. O'Conner for his leadership on this committee. She commended him for the Committee's work on the Memorial Day ceremony, noting that attendance has continued to grow as well as the diversity of the crowd. She thanked him for doing a good job of reaching out to our community.

Councilman Mumpower supported adopting a resolution in support of the "Honor and Remembrance" Flag as the official symbol to recognize and honor members of the armed forces who have died in the line of duty and urged the United States Congress to adopt this flag as a national symbol. He said that Memorial Stadium has donated three flagpoles and suggested one of the flagpoles be used to fly this flag, possibly along with the POW Flag.

Councilman Mumpower moved to adopt a resolution in support of the "Honor and Remembrance" Flag as the official symbol to recognize and honor members of the armed forces who have died in the line of duty and urged the United States Congress to adopt this flag as a national symbol, with appropriate modifications to the form of the resolution. This motion was seconded by Vice-Mayor Davis.

Mr. Walt Plaue spoke in support of the Mayor's Committee for Veterans Affairs and thanked City staff for their assistance to that Committee. The Committee has moved tremendous mountains to solidify the relationship of veterans and the community and help mutual understanding the needs of veterans and what the veterans can accomplish within the community.

Councilman Newman was supportive of the resolution, however, he felt it might be more appropriate to place this item on the August 11, 2009, meeting consent agenda to see if there are any other perspectives due to the powerful symbolic issue.

In response to Councilwoman Cape, Mr. O'Conner said that typically the flag would be flown next to the US flag, similar to the POW flag. City Attorney Oast said that the resolution is urging Congress to adopt the flag as a national symbol and it does not require any particular manner of display.

Councilman Mumpower amended his original motion to place this resolution (with appropriate form modifications) on the August 11, 2009, agenda, along with deliberation of utilizing this flag, effective at that time, at the Memorial Stadium facility. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

C. ECONOMIC STIMULUS PACKAGE UPDATE

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the American Recovery & Reinvestment Act (ARRA) funding announcements and opportunities.

Homeless Prevention Funds - The City of Asheville will receive \$509,460 in funding from the Department of Housing and Urban Development (HUD). A press release and notification to participating agencies was sent out the week of June 29th regarding the beginning of the pre-application period was opened on July 6, 2009. A public meeting was held to on July 8th to discuss the pre-application process with pre-application due no later than July 17, 2009.

Energy Efficiency & Conservation Block Grant (\$804,700) - The City of Asheville will receive \$804,700 in funding from the Department of Energy and has successfully submitted our application for this funding on June 25th. We received confirmation of receipt through FedConnect the following day. We should expect a response in 120 days or on or about October 2009. Staff is currently working on a timeline for award in mid-August.

Department of Transportation:

Enhancement Projects - Staff is still awaiting notice of funding decisions from N.C. Dept. of Transportation (NCDOT) Division 13.

MPO Urbanized Area Funding - The Metropolitan Planning Organization (MPO) announced awards of MPO Surface Transportation Program – Directly Attributable funding. The city received funding for Fairview Road Pedestrian Enhancements, Coxe Avenue Bike Lanes (including resurfacing), Downtown and Gateway Streetscapes, and South Slope Bike Network. The remaining projects for sidewalks and resurfacing Kimberly Avenue were selected for funding if money becomes available. Since all projects that will be funded must be ready to put to bid by September 1, staff is moving forward with these projects as though they will be funded.

After reviewing the sidewalk gap projects in light of the other awards and meeting with NCDOT representatives who expressed concern from Raleigh at the large number of individual projects, City staff has requested the MPO allow revision of the list pedestrian facilities funded under the three sidewalk projects. The revision removed several very small projects, added Piney Mountain Road to the Chunns Cove project, and added a greenway connection along Choctaw that will serve as a link between McDowell Avenue and the Riverway. The total value of the projects requested is \$1,779,500, just under the \$1,784,750 the MPO originally allotted for these projects. Since this project was selected based on funding availability, it, like the Kimberly Avenue resurfacing project, will only be constructed if and to the extent that the MPO has funds available. Here is the revised proposal:

Street	Approximate linear feet	Cost Estimate
Chunns Cove Road/ Piney Mountain Road	2,560	\$512,000
Depot Street	600	\$90,000
Hilliard Street	1,200	\$360,000
Short Michigan Avenue	1,350	\$270,000
Choctaw	1,400	\$350,000
Linden Street	1,100	\$165,000
Evelyn Place	130	\$32,500
Total	8,340	\$1,779,500

To ease management of the project, staff asked to consolidate the projects into one list and one municipal agreement for gaps 1, gaps 2, and Hilliard Avenue sidewalk.

Transit Capital Projects - The City of Asheville received \$2,004,598 transit capital funding from the Department of Transportation for five (5) buses and ten (10) shelters. Announcement of the award was issued June 10, 2009 through the Governor's Office.

Regarding transparency and accountability, Ms. Mills attended a meeting in Raleigh, North Carolina, sponsored by the School of Government on July 7, 2009, along with representatives from the North Carolina Economic Recovery Office, North Carolina Treasurer's Office, the League of Municipalities, State Office of Purchase and Contracts, and others to discuss ARRA requirements for purchasing and contracting. The meeting will result in procedures that will be shared across the state to support in these efforts.

With regard to community stakeholders, staff met with the Asheville Regional Airport on linking with their website to post information on their contracting efforts through their ARRA funding.

Contact has been made with Asheville City Schools, Community Action Opportunities and Buncombe County to provide more information to the public on what ARRA opportunities will be available in our region.

Director of Transportation and Engineering Cathy Ball explained the process used of selecting the sidewalk for this proposal (by September 1) – in-fill projects, with the City's rights-of-way, owning the property, not having any significant environmental issues, and accessing the Pedestrian Thoroughfare Plan. She said that this allocation went through the Transportation Advisory Committee (TAC) process. Once they approved it, staff went back and asked for a revision. Staff is asking for Council to endorse the changes made in order to move ahead on these projects.

Councilman Newman, member of the Metropolitan Planning Organization (MPO) explained that there was a block of funding for transportation improvements for our MPO area (including Haywood County, Henderson County, Transylvania County and Buncombe County) and it was a very healthy discussion about different projects. Ultimately the MPO reached consensus on all of the funding goals throughout the area.

Mayor Bellamy voiced concern on the Chunns Cove Road/Piney Mountain Road sidewalk. She felt that project was not necessary as (1) bus services is now being provided for people to the Social Security Office; and (2) Council approved a conditional use permit for construction of a church (which property is now for sale) and Council waived them constructing a sidewalk for their project in that area – now we are using tax dollars. She did not support spending money on the Chunns Cove Road/Piney Mountain Road sidewalk as she sees other areas that have a higher need. She did, however, support funding for Patton Avenue sidewalks since we know that is a high pedestrian traffic area.

Ms. Ball said that staff is moving ahead with the Patton Avenue sidewalks, agreeing that there is a high pedestrian need on Patton Avenue rather than on Chunns Cove Road. Ms. Ball explained how staff got to the point of recommending the Chunns Cove Road/Piney Mountain Road sidewalk. Their goal was to create opportunities where we already had right-of-way, the sidewalk was fairly constructible and not a lot of environmental impact.

In response to Mayor Bellamy, Ms. Ball said that we cannot use City forces to spend this money – it has to be contracted out, which means we have to be able to put together construction and bid documents by August 15 because we have to have State approval by September 1. Some of the challenges were our ability to be able to develop the engineering documents and the permitting requirements and getting all of the easements to be able to meet that deadline. We focused on areas where we felt confident we could get engineering drawings as well as all the permitting we needed.

When Mayor Bellamy asked about Haw Creek sidewalks, Ms. Ball said that the biggest problem with Haw Creek sidewalks is we don't have any easements and couldn't obtain them prior to meeting this deadline.

Councilman Mumpower spoke strongly against our participation in the economy recovery stimulus package. The potential for waste is phenomenal due to the rushing. We should be putting sidewalks on roads where we already see pedestrian paths.

In response to Councilman Newman about projects moving forward, Ms. Ball explained that the Patton Avenue project from Regent Park Boulevard to Leicester Highway is funded and we are moving forward with that project. We cannot use economic stimulus money for portion as we previously received an allocation from the State. We also have quite a bit of funding for the sidewalk project Louisiana Avenue which will make a connection to the Emma community. Additionally, we have received funding for Clingman Avenue sidewalks.

In response to Councilman Newman, Ms. Ball said that staff has recently looked at possibly spending the Chunns Cove Road/Piney Mountain Road funds for a sidewalk project on Hendersonville Road or Tunnel Road, not necessarily making one connection to another. Unfortunately the MPO put this before the N.C. Dept. of Transportation (NCDOT) Board last week but she

could call and ask how they can make changes at this point. She feels the NCDOT wants to be flexible in working with the City. The message they got is they like the concept of doing in-fill gap projects opposed to a Hendersonville Road project where a lot of development still needed to occur. She felt there is an expressed desire to fill in the places that don't have sidewalks that are closer into the City.

In response to Councilwoman Cape, Ms. Ball gave a brief overview how staff got to the point of making the recommendation of the Choctaw sidewalks.

Mr. Alan Rosenthal supported sidewalks on Patton Avenue.

Mr. Fred English felt Council should be using the economic stimulus money to fund education and construction of sidewalks.

Mr. Mack Cox supported sidewalks and shelters in South Asheville on Hendersonville Road.

Mr. Marc Hunt, Chair of the Greenway Commission, hoped that as staff fine tunes the project on Choctaw that the route remains open for this important section of greenway along the stream, while still being able to implement some of the modifications to Choctaw which are critical to the community.

Mayor Bellamy explained that these funds are designated for these uses only. She stressed that City Council would not choose to install sidewalks over hiring teachers.

It was the consensus of Council to re-appropriate the funds for the Chunns Cove Road/Piney Mountain Road sidewalk project to an adequate place on Hendersonville Road where staff feels it is constructible and we have right-of-way, with the priority of starting downtown and trying to find gaps. Ms. Ball said that she will take that directive back to the MPO, with concurrence from the Chair of the TAC, and then work with the people in NCDOT for approval.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CORRECTING ERRORS, CODIFYING PRACTICES AND PROCEDURES, AND CLARIFYING THE ORDINANCE

ORDINANCE NO. 3757 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE FOR THE PURPOSE OF CORRECTING ERRORS, CODIFYING PRACTICES AND PROCEDURES, AND CLARIFYING THE ORDINANCE

Mayor Bellamy opened the public hearing at 5:24 p.m.

City Manager Jackson said that this is the consideration of an ordinance amending the Unified Development Ordinance (UDO) for the purpose of correcting errors, codifying practices and procedures, and clarifying the ordinance. This public hearing was advertised on July 3 and 10, 2009.

Working with the Unified Development Ordinance (UDO) on a daily basis, the Planning and Development staff has noted a number of instances where the ordinance contains errors, is incomplete, or needs clarification. Staff compiles these issues as they are noted and regularly proposes amendments to correct these situations and to make the UDO a clearer document for staff and public use without altering the intent of the standard. This set of proposed amendments addresses eleven of those discovered issues.

He provided Council with a list of amendments in detail as follows:

- a. This amendment is a correction of a reference (from "chapter" to "article").
- b. & k. These amendments add clarifying language concerning the ability of City Council to modify requirements as part of the conditional use approval process and that these are not seen as use variances.
- c. & e. These amendments add a clarifying reference to the North Carolina General Statutes concerning appeals from the Board of Adjustment to Superior Court.
- d. This amendment brings the ordinance in line with recently adopted Board of Adjustment procedures extending the time for

appeal of an administrative decision from 30 days to 60 days. The new wording refers individuals to the rules and procedures to avoid similar problems in the future.

- f. This amendment deletes a reference to a buffer standard ('C') that no longer exists in the ordinance.
- g. This amendment deletes incorrect procedures for granting alternative compliance for landscaping from the Neighborhood Commercial District standards.
- h. This amendment codifies an interpretation/practice that temporary uses need not be on a parcel on which there is another use or structure. The current wording implies that the use must be accessory to a principal use or structure.
- i. This amendment clarifies the interpretation that a home occupation must be run by an occupant of the dwelling. The current wording lacks clarity.
- j. This amendment corrects a listing error in the conditional use section of the ordinance. Group homes are not showing in the initial listing of conditional uses but are conditional uses in three districts.

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

The Planning & Zoning Commission, at their June 3, 2009, meeting, approved the amendments unanimously.

Pros:

- Codifies interpretations, procedures and practices.
- Corrects incomplete or improper listings and citations.
- Adds or amends language for greater clarity.

Con:

- None Noted.

The Planning and Development Commission and the Planning & Development Department staff recommend approval of these wording amendments.

Mayor Bellamy closed the public hearing at 5:24 p.m.

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

Councilman Newman moved for the adoption of Ordinance No. 3757. This motion was seconded by Vice-Mayor Davis and carried unanimously.

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B. PUBLIC HEARING TO SOLICIT COMMENTS ON A SUBSTANTIAL AMENDMENT TO THE CITY'S 2009-10 CONSOLIDATED ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE \$1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND \$1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

RESOLUTION NO. 09-149 - RESOLUTION AMENDING THE CITY'S 2009-10 CONSOLIDATED ACTION PLAN DETAILING THE CITY'S PLAN TO DISTRIBUTE \$1,503,557 OF COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS AND \$1,542,387 OF HOME INVESTMENT PARTNERSHIP ACT FUNDS ALLOCATED TO THE CITY OF ASHEVILLE

Mayor Bellamy opened the public hearing at 5:25 p.m.

Mr. Jeff Staudinger, Community Development Director, said that this is the consideration of a resolution amending the City's 2009-10 Consolidated Action Plan detailing the City's plan to distribute \$1,503,557 of Community Development Block Grant funds and \$1,542,387 of HOME Investment Partnership Act fund allocated to the City of Asheville. This public hearing was advertised on July 3 and 10, 2009.

The City submitted its Consolidated Action Plan for 2009-2010 to the U.S. Dept. of Housing & Urban Development (HUD)

on May 15, 2009. Since that time, the City has received an allocation of and submitted required documentation for CDBG-R funding, freeing up 2009-2010 regular HUD funding. The City also learned after the submittal that its 2009-2010 allocation of HUD and HOME funding had increased. The Housing and Community Development Committee, and the Asheville Regional Housing Consortium both met and recommended the distribution of these additional funds. Both recommending bodies decided to fund applications that either had not been chosen for funding in the original round, or to enhance funding for applications that had been funded for less than their original request. He then reviewed the summary of the total revised funding recommendations.

HUD requires that communities follow their Citizen Participation Plans when adjustments in the Action Plan are necessary. The adjustments recommended by the HCD and Consortium Board require a Substantial Amendment, which necessitates a 30 day public comment period, and a public hearing and City Council approval. A notice of public hearing was published in the Asheville Times-Citizen on June 12, 2009.

This action complies with the City Council Strategic Operating Plan in that the draft Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable." This plan directly supports the City's affordable housing plan, supports the city-owned land redevelopment process, and will increase the supply of workforce housing. It supports initiatives to end homelessness in Asheville.

Pro:

- The public hearing process gives citizens the opportunity to comment and affect public decision-making regarding the use of public funds.

Con:

- None noted.

Through timely following of the public process, Asheville continues to be eligible for these CDBG and HOME entitlement funds, projected to be over \$3.9 million for 2009-2010.

Staff recommends that Council adopt a resolution authorizing a Substantial Amendment to the Consolidated Action Plan for Fiscal Year (FY) 2009-10, which sets out the proposed use of federal Community Development Block Grant (CDBG) and HOME Investment Partnership Act (HOME) funds.

Mayor Bellamy closed the public hearing at 5:28 p.m.

Councilman Newman noted that the distribution of these funds were unanimously recommended by the Asheville Regional Housing Consortium.

Councilman Mumpower could not support the action in that (1) they are borrowed dollars, (2) he didn't believe you can spend your way out of an economic crisis, and (3) these dollars are indulgences to special interests, some of which are non-profits which already enjoy tax-free status.

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

Councilman Newman moved for the adoption of Resolution No. 09-149. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 125

V. UNFINISHED BUSINESS:

A. NEGOTIATIONS WITH HENDERSON COUNTY ON REGIONAL WATER SUPPLY AND WATER SERVICE AGREEMENT

City Attorney Oast said that this update will summarize recent negotiations between officials of Henderson County and the City of Asheville on various issues regarding water lines, water supply, the Mills River Treatment Plant, and the 1995 Agreement that covers these issues.

Beginning in late 2008, elected officials and staff for the City of Asheville and Henderson County held meetings to discuss the Regional Water Supply and Water Service Agreement between Henderson County and the Asheville Buncombe Water Authority (and its participating members) to supply water to parts of Henderson County (herein "1995 Agreement"). This 1995 Agreement is not the same agreement as the Water Agreement between Asheville and Buncombe County that established the

Water Authority; it should also not be confused with the Sullivan Acts. Rather, this 1995 Agreement was part of the series of transactions that resulted in the construction of the Mills River Water Treatment Plant in Henderson County (although it was clearly influenced by both the Water Agreement and the Sullivan Act).

Pursuant to the 1995 Agreement, Asheville agreed to supply Henderson County with water, and to build water lines in Henderson County. As with all agreements of this nature, there are detailed requirements and arrangements regarding the construction and manner of financing of those lines that cannot adequately be covered in this update. The practical application of some of those details has been the source of considerable disagreement between the City and Henderson County.

Also included in the 1995 Agreement was a provision for the City to transfer to Henderson County a piece of property approximately 137 acres in size. The property is located near Brevard Road on the west side of the French Broad River, across from the entrance to the Arboretum. This transfer was to enable Henderson County to negotiate with the Metropolitan Sewerage District (MSD) for sewer services, and required Henderson County to (1) transfer the property to MSD to build a wastewater treatment plant within 10 years, or (2) convey the property to a regional water and sewer authority that includes Asheville and Henderson County as members. If neither of these things occurs within 10 years, Henderson County is to deed the property back to Asheville.

After several unsuccessful attempts to negotiate the language of a deed for this transfer, Henderson County sued the City, and the matter was settled by a consent judgment, which required that the language in the 1995 agreement be incorporated into the deed. This was done, and the property was conveyed to Henderson County and the deed was recorded on July 15, 2002. Unless the conditions in the deed can be satisfied, the terms of the deed and the consent judgment require that the property be returned to Asheville within the times specified therein.

Regarding renegotiation efforts, several years ago, not long after the Brevard Road site was transferred, there was some interest expressed in renegotiating the agreement. There was some preliminary discussion among elected officials at the time, but no significant progress was made. Late in 2008, interest was revived and the two elected bodies met together with the objective of establishing a framework for renegotiating the agreement. At this initial meeting, Henderson County expressed dissatisfaction with several aspects of the 1995 Agreement, and made a proposal to renegotiate it. The City also has identified some issues with respect to which clarification is needed, and places where operations could be improved, and agreed to pursue renegotiation. A joint committee, consisting of some Henderson County Commissioners and some City Council members, was established for this purpose, and met on two more occasions. At these meetings, the issues with the 1995 Agreement were further identified and clarified.

Not surprisingly, a major issue is the Brevard Road site. Henderson County has proposed to sell its interest in the property back to Asheville for monetary consideration. Alternatively, Henderson County would agree to convey the property back to Asheville for marketing and sale, with the proceeds from the sale to be divided, with Henderson County being guaranteed a minimum.

Regarding renegotiation issues, after the meetings of this joint committee, the matter was referred to the respective staffs to address as many issues as possible. He reviewed the following list he compiled of some of the issues of importance to the City: (1) define service area – Should be the same as under current agreement, which is the Cane Creek Water & Sewer District. Additions are possible by amendment, but Asheville should be able to approve; (2) no sales or quantity transfers outside of the service area or to wholesale customers such as local governments, water districts, or private utilities without City consent (not unreasonably withheld); (3) recognize applicability of Sullivan Acts, and that Henderson County customers cannot be treated differently; (4) recognize that “without regard to quantity” refers only to water from facilities in Henderson County (MRTP). This is actually in the current agreement, but is somewhat obliquely worded; (5) Henderson County should (and under Sullivan Acts is required to) be subject to same policies regarding use as in Buncombe County/Asheville; (6) Henderson County should develop a water facilities Master Plan, to become part of the system-wide plan, to be used in capital facilities and land use planning; (7) Henderson County lines should receive same priority as Buncombe/Asheville lines as to installation and water allocation (Sullivan Act may require this); Henderson County should not go to the front of the line, without justification. If Henderson is willing to pay for installation, this may be waived; and (8) if Asheville installs lines at its expense, must be clear demonstration of need, and of payback in defined time (currently 9 years, consistent with MSD). Other issues were identified by Henderson County, and there was considerable overlap. He met several times with our water resources staff and with the Henderson County attorney. Those meetings and discussions resulted in agreement as to most of the identified issues, at least conceptually.

The one major issue on which we were not able to agree was the Brevard Road site. As noted above, the City's position is that the property will come back to the City, pursuant to the terms of the conveyance and consent judgment. We are not aware of any interest by MSD in using the property (recently confirmed), and there is no qualifying regional water and sewer authority to which it could be transferred. With respect to this issue, several possibilities were discussed:

- (a) Consideration initially centered on whether the City wished to acquire Henderson County's interest, or whether Henderson County should share in the proceeds of its sale as proposed. Henderson County's interest in the property is extremely limited, however, and we remain fairly far apart on the amount of consideration.
- (b) Another possibility that was discussed was that the City would retain the property for some public purpose. A recent water system engineering study has identified the potential need for another water source by about 2025 – 16 years from now – so the City is reconsidering whether to dispose of the property at all. With this in mind various alternatives were proposed regarding continued public use of the property and Henderson County's participation in such use. Such uses include a regional public park, or a future water treatment facility, both of which would benefit Henderson County. Henderson County has made no substantive response to these proposals.

There may be other possibilities for dealing with the Brevard Road property, but these have not been discussed. He felt that that, if the disposition of the Brevard Road site could be resolved to the satisfaction of the City and Henderson County, agreement on the other issues regarding the agreement could be fairly reached fairly easily.

Although there are some lingering uncertainties regarding the implementation of the 1995 Agreement, City staff confirms that we are not in default as to any of its terms, and can continue to implement it as we currently do. At this time, Asheville serves over 500 customers in Henderson County pursuant to the 1995 Agreement.

The next steps include continuing discussions with Henderson County regarding the Brevard Road site. The possibility of holding the property for governmental use was a fairly new factor in our consideration. This may present opportunities for cooperation that have not been considered, and that both parties may find acceptable.

Councilman Newman was pleased with the positive clarifications made to the agreement. He said that Mayor Bellamy, Vice-Mayor Davis and he have further discussed the Brevard property looking for a possible resolution of that issue. Henderson County would like to receive some compensation for returning the property to Asheville now rather than later. In these budget times, we don't have a lot of money to pay and don't necessarily feel like there is a lot of significant residual financial value to Henderson County. Furthermore, as we look at the Brevard Road property, several years ago there was an idea that if we could get the property back in Asheville's jurisdiction sooner that there would be a lot of value there. We could sell it and plug the money into a lot of priorities in the City. But, we now realize that there are a lot of important public values with the property, including greenways along the River. In terms of putting a proposal to Henderson County, Mayor Bellamy, Vice-Mayor Davis and he recommend (1) Council accept the clarifications to the agreement that the attorneys have worked out; and (2) if Henderson County is willing to return the property to Asheville now, that while we cannot commit to any particular use of the property now (because we need to go through a thoughtful process about what might be the future needs on the property) if the City does decide in the future that all or part of the property is not needed for public purposes and is simply sold to capture the economic value of the property, that the revenues from that sale of the land would be 80% to the City of Asheville and 20% to Henderson County. This idea has not been broached yet with Henderson County.

Mayor Bellamy pointed out that the Water Fund would have to be reimbursed prior to any split of the proceeds. She also mentioned that a letter has been received from MSD saying that they do not want to use the land for a water treatment facility.

Councilman Mumpower moved (1) for City Council accept the clarifications to the agreement that the attorneys have worked out; and (2) if Henderson County is willing to return the property to Asheville now, that while we cannot commit to any particular use of the property now (because we need to go through a thoughtful process about what might be the future needs on the property) if the City does decide in the future that all or part of the property is not needed for public purposes and is simply sold to capture the economic value of the property, that the revenues from that sale of the land would be 80% to the City of Asheville and 20% to Henderson County. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-150 - RESOLUTION FOR CONSENT TO BANKRUPTCY RESTRUCTURING OF CHARTER COMMUNICATIONS

City Attorney Oast said that this is the consideration of a resolution for consenting to proposed bankruptcy restructuring by Charter Communications Inc.

In April we received a notice from Charter Communications, the owner/operator of our cable television service, that Charter has voluntarily entered into a corporate reorganization under Chapter 11 of the U.S. Bankruptcy laws. As Council was advised at that time, this is part of a restructuring intended to reduce some of Charter's debt, and provide it with new capital. Charter will

continue to operate its franchise in this area, and there should be no termination or interruption in service. This bankruptcy proceeding involves a number of agreements with the "key bondholders" regarding continuance of operations. He provided details of the proposed reorganization.

The notice states that it is not clear under the bankruptcy law that the City's consent is legally required for this transaction, but they are nevertheless providing us with the opportunity to consent. As explained below, it does not appear that our consent is required pursuant to the terms of the franchise, either. If we take no action, it is assumed that we have consented to the transaction. Charter is requesting that we take action (adopt a resolution), or provide some affirmative indication that we do not intend to take action on or before July 20.

On review, it appears that this bankruptcy/reorganization proceeding affects Charter's (and its stockholders') financial situation more than its operations. The Chapter 11 proceeding is designed so that a corporation may continue operations (and generate income) while its debt is restructured. As part of the assurances provided by Charter in its agreements, Charter's CEO and its current local management and employees will remain in place. Further, all cable franchises held by Charter will continue to be operated by the local subsidiary. For Asheville, this local subsidiary is Robin Media Group (herein "RMG"). Also as part of the agreement, Charter (and its subsidiaries) will continue to pay franchise fees. This commitment to continue servicing the franchise and pay franchise fees is confirmed by other industry sources who are familiar with the Charter bankruptcy, and does not appear to be cause for concern.

Under our Cable Services Ordinance (which governs our franchise with RMG), we have the ability to terminate our franchise if the franchisee declares bankruptcy "and thereby becomes unable to pay its debts as they mature." As noted, however, the franchisee is RMG, and the information provided by Charter, which includes an order authorizing certain payments, specifically authorizes Charter and subsidiaries to pay franchise fees and other operational obligations as they become due. Our ordinance also provides that our consent is required whenever there is a change in control of the franchise. A corporate restructuring of the parent company does not appear to trigger this requirement, and the local franchisee will continue to be RMG. However, any transfer or disposition of assets (franchise) coming out of the bankruptcy certainly could trigger this requirement, so it is important for the City to continue to monitor the process. In any event, our current franchise with Charter has slightly over a year left to run; it expires on July 31, 2010. After that date (assuming no prior termination), the State of North Carolina becomes the franchising authority, pursuant to G.S. 66-350 et seq., adopted in 2006, which establishes a State franchise for Cable Television Service.

Back in April, we had a limited opportunity to object to Charter's bankruptcy if, in our opinion, they had failed to make "adequate assurance" for payment of utility costs (i.e., water). Our internal review indicated no reason at that time to make such an objection and we did not. The issue now under consideration is whether there is any reason to object to the proposed confirmation of the restructuring plan. Reasons for objecting would include chiefly that Charter/RMG is in default as to any provisions of its franchise with us, whether financial or performance based. I have checked with appropriate City offices, and Charter is not in default. If default does occur, Charter has agreed that the "cure bar date" (the deadline for asserting claims of default) does not apply to franchises with a State or local government.

One issue that has been identified is the City's "I-Net," or the system of fiber optic connections between City facilities that enables secure digital communications. Pursuant to our franchise, Charter is responsible for installing and maintaining this system. This is part of Charter's obligation under the franchise and continues during any extension of the franchise, subject to certain terms and conditions regarding maintenance being renegotiated. Since the franchise will soon be ending, we are using this bankruptcy as an opportunity to begin discussions with Charter about the I-Net. They have expressed a desire to continue working with us on this and issues related to their non-video services (internet, telephone).

As drafted by Charter, the form resolution provided to the City is deemed to have the force of an agreement, and committed Council not to amend the resolution without Charter's consent. He was reluctant to commit Council's legislative discretion in this way. Moreover, although it appears to be unlikely, the conditions supporting the City's consent could change such that a commitment of this nature would be inadvisable, so this language was removed from the supplied draft.

City Attorney Oast asked that the proposed resolution before Council be amended to revise (5) to read as follows: "This resolution is conditioned upon Robin Media Group performing its obligations under the Franchise until the closing of the Transaction. The City does not waive any rights it may have to require Robin Media Group to comply with the Franchise after the closing of the Transaction."

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Pros:

- Continues current level of service
- Provides a basis for opening discussions with Charter on future of other services

Cons:

- None noted

There is no fiscal impact, except for maintenance of current cable and related services. This resolution is essentially neutral.

Unless Council has objections to the proposed financial restructuring of Charter, adoption of the resolution is recommended.

Upon inquiry of Mayor Bellamy, City Attorney Oast information received is that Charter has pledged to maintain all their current franchise obligations and our PEG fees is one of their franchise obligations, thus they will not be affected.

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 Mumpower moved for the adoption of Resolution No. 09-150, with the revised language read by City Attorney Oast. This motion was seconded by Councilwoman Cape and carried unanimously (Councilman Miller excused).

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B. RESOLUTION NO. 09-151 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING WITH THE UNIVERSITY OF NORTH CAROLINA – ASHEVILLE

Assistant to the City Manager Lauren Bradley said that this is the consideration of a resolution authorizing the Mayor to sign a Memorandum of Agreement with UNC-Asheville that establishes a framework by which UNC-Asheville and the City of Asheville will work to exchange information, conduct cooperative research, and jointly explore projects for the sustainability of the Asheville community.

Through its annual strategic planning process, the city council identified *Sustainability* as one of five key focus areas for the current fiscal year. One action item specific to Sustainability is “expand partnerships with UNC-Asheville, AB-Tech and other institutions to achieve common goals, including health and wellness, workforce development, and sustainable economic development.” Staffs from both organizations met this past January and have been meeting bi-monthly since in an effort identify areas of opportunity for collaboration and partnership. From those initial meetings, five (5) collaboration areas were identified to include:

1. Economic Development and Technology
2. Health and Wellness
3. Cultural and Recreation
4. Environmental Sustainability
5. Public Safety

Many of these focus areas overlap with a number of areas identified in City Council's Strategic Plan, to include public safety, economic development, and health and wellness. City staff will briefly provide operational updates on progress made in each focus area.

The Memorandum of Understanding encourages both organizations to (1) engage in dialogue about activities in the five collaborative areas; (2) identify and undertake collaborative activity and joint research; (3) organize joint activities, such as courses, conferences, seminars and similar events, in the five collaboration areas; (4) exchange relevant materials and information; and (5) identify new areas for collaboration.

Pros:

- Formalizes a partnership between the City of Asheville and UNCA to work collaboratively on initiatives that benefit the community.
- Recognizes the historic relationship the two organizations have had since 1927.

Con:

- None noted.

Staff recommends City Council authorize the Mayor to sign a Memorandum of Understanding with UNC-Asheville for further collaborative efforts in the focus areas identified above.

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 resolutions and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-151. This motion was seconded by Vice-Mayor Davis and carried unanimously (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 130

C. ORDINANCE NO. 3758 - BUDGET AMENDMENT FOR A SERIES OF DONATIONS AND DRAW DOWN FROM THE ASHEVILLE PARKS & GREENWAYS FOUNDATION TO SUPPORT RECREATION PROGRAMS

Superintendent of Recreation Danny Hopkins said that this is the consideration of the following budget amendments to increase the budgets for contributions to support programming and special projects: (1) Park Maintenance by \$1,800; (2) the W.C. Reid Center by \$1,475; (3) Senior Programs by \$2,494; (4) the Burton Street Center by \$81; (5) the Stephens-Lee Center by \$100; (6) the Murphy-Oakley Center by \$210; and (7) Special Projects budget by \$13,790.

The City of Asheville in the Parks, Recreation & Cultural Arts Department has received contributions to support programming and special projects within the department operations. Description of each is listed below.

- \$1,800 from the Asheville Parks and Greenways Foundation to increase the operational budget in the Parks Maintenance Division to support the Hanging Baskets program.
- \$13,790 from the Asheville Parks and Greenways Foundation to increase the special projects budget to support arts programming at the W.C. Reid Center for Creative Arts.
- \$1,475 from fundraising activities to increase the operating budget to support programming at the W.C. Reid Center.
- \$2,494 from fundraising activities and a sponsorship by Humana to increase the operating budget to support programming and operation of athletics and arts programs for senior citizens in the Recreation Division.
- \$391 from community donations to increase the operating budget to support youth recreation programming at area community centers in the Recreation Division.

This action complies with the Parks, Recreation, Cultural Arts & Greenway Master Plan in that it makes use of diverse funding sources for successful implementation in the delivery of parks, recreation and cultural art services.

Pro:

- Provide funds to support parks, recreation and cultural arts programming enhancements

Con:

- None

- The fiscal impact would be to increase the City's Fiscal Year 2009/10 operational budget by \$6,160, and special projects budget by \$13,790.

- Staff recommends City Council to adopt budget amendments authorizing the City Manager to increase the budgets for 1) Park Maintenance by \$1,800, 2) the W.C. Reid Center by \$1,475, 3) Senior Programs by \$2,494, 4) the Burton Street Center by \$81, 5) the Stephens-Lee Center by \$100, 6) the Murphy-Oakley Center by \$210, and 7) Special Projects budget by \$13,790.

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 ordinance and it would not be read.

Councilwoman Cape moved for the adoption of Ordinance No. 3758. This motion was seconded by Councilman Mumpower and carried unanimously (Councilman Miller excused).

ORDINANCE BOOK NO. 25 – PAGE 346

D. RESOLUTION NO. 09-152 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT & NATURAL RESOURCES, DIVISION OF POLLUTION PREVENTION AND ENVIRONMENTAL ASSISTANCE, TO ACCEPT A GRANT FOR A RESIDENTIAL BACKYARD COMPOSTING PROGRAM

ORDINANCE NO. 3759 - BUDGET AMENDMENT TO ACCEPT A GRANT AWARD FOR A RESIDENTIAL BACKYARD COMPOSTING PROGRAM

Public Works Director Mark Combs said that this is the consideration of (1) a resolution authorizing the City Manager to accept a grant award from the N.C. Dept. of Environment and Natural Resources (NC DENR), Division of Pollution Prevention and Environmental Assistance, for a residential backyard composting program; and (2) the accompanying budget amendment, in the amount of \$6,000.

The City has been awarded a grant of \$5,000 from the NC DENR to purchase compost bins with a cash match from the City of \$1,000 to be spent on outreach and promotional materials to encourage residential backyard composting. The grant award from NC DENR will be used to sell compost bins at a subsidized rate for purchase by City residents. Compost bins on average retail from \$90.00 to \$200.00. It is expected that the City will be able to sell compost bins for approximately \$35.00 to \$40.00 which is a substantial value for residents.

Backyard composting will enhance the City's waste reduction and recycling program efforts. By placing backyard composting bins in the homes of residents, the City will be able to target the diversion of kitchen and garden organics from the landfill.

This action promotes the City's strategic priorities to be green and environmentally sustainable by reducing waste and encouraging recycling.

Pros:

- Promotes waste diversion from the landfill, decreasing tipping fees
- \$5,000 grant to City
- Increases residential awareness of a sustainable environmental practice

Con:

- \$1,000 cost to City

The total cost of this project will be \$6,000. The NC DENR will grant the City \$5,000, and the City will be required to provide a \$1,000 cash match. The City's \$1,000 cash match will come from the Public Works Department's approved Fiscal Year 2009-10 budget (solid waste disposal tax).

City staff recommends City Council adopt (1) a resolution authorizing the City Manager to accept a grant award from NC DENR, for a residential backyard composting program; and (2) a budget amendment to accept the residential backyard composting grant from the NC DPPEA.

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

Councilman Mumpower could not support this action in that we need the state to fix the underfunded court system. He felt that if the City needs a compost program, we should take that on as a City function.

There was a brief discussion, initiated by Councilwoman Cape, about a for-profit business trying to get started which is looking at food waste as an organic composting provider (residential and commercial). She felt the City needs to look at composting on a larger scale and encouraged City staff be open to conversations with them and any other provider that is known for that service. Mr. Combs explained this is a small grassroots program which far more efficient from a carbon and efficiency standpoint. It uses zero staff, equipment and fuel.

Mayor Bellamy said that this program is a portion of the solution, not the complete solution to reduce solid waste.

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

Vice-Mayor Davis moved for the adoption of Resolution No. 09-152. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 131

Councilwoman Cape moved for the adoption of Ordinance No. 3759. This motion was seconded by Councilman Miller and carried on a 5-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 – PAGE 348

E. RESOLUTION NO. 09-153 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH OWENS ROOFING INC. TO REPLACE THE ROOF AT THE CIVIC CENTER ARENA AND CONCOURSE

ORDINANCE NO. 3760 - BUDGET AMENDMENT FOR ADDITIONAL COSTS RELATED TO REPLACEMENT OF THE ROOF AT THE CIVIC CENTER ARENA AND CONCOURSE

Director of Transportation and Engineering Cathy Ball said that this is the consideration of (1) a resolution authorizing the City Manager to execute a contract with Owens Roofing Inc. in the amount of \$1,497,982 plus a contingency of \$10% (\$150,000) to replace the roof at the Civic Center arena and concourse; and (2) a budget amendment, in the amount of \$300,000 for additional costs that exceed the original budget amount of \$1,500,000.

Three years ago, City Council adopted a budget of \$1,500,000 to replace the roof at the Civic Center concourse and arena. Cort Architectural Group was hired to provide a feasibility analysis and then later to complete the construction documents for the project. On July 1, 2009, the City received seven bids for the roof replacement.

The low bidder was Owens Roofing Inc., located in Raleigh, North Carolina, with a base bid of \$1,350,159 and a bid of \$147,823 for alternate number 1. Owens Roofing's total bid was \$1,497,982. The next bidder was H&M Construction with a total bid of \$1,673,200.

The total cost of the project will be approximately \$1,800,000 which includes \$18,000 for the feasibility analysis, \$132,000 for design and construction documents and a maximum of \$1,650,000 for construction. As stated earlier, the original budget for the project was \$1,500,000. The additional cost of \$300,000 is attributed to the several factors which include the following:

- o The estimate was completed three years ago. We had hoped that this would be offset by the current economic conditions but the bids did not reflect this.
- o The designer did not anticipate the need to seal all the concrete (alternate number 1) following the repair work. The concrete needs to be sealed to extend the life of the project and potential for water infiltration and to prevent the exterior of the building from looking like patch work.

The Civic Center Commission members have been polled and overwhelming agree with staff recommendations.

This recommendation complies with City Council's 2008-09 Strategic Plan by providing a green alternative roof option and sustainability of addressing capital needs of the Civic Center.

Staff is requesting a budget amendment in the amount of \$300,000 to supplement the \$1,500,000 previously budgeted for the project. \$240,000 of this amount will come from the reprogramming of capital funding that was previously approved for other Civic Center capital projects. A list of the projects in which funding will be diverted from is included below:

<u>Project</u>	<u>Amount Diverted</u>	<u>Notes</u>
Marquee	\$20,000	Left \$5k for replacement of stationary side
TW Fire Exits	25,000	Left \$90k, which should complete project
Cooling Tower	13,573	Closes old project
Minor Cap Equip.	12,045	Left small balance for future purchases
CC Capital Reserve	5,000	Use all CC reserve
Arena Seating	150,000	Left \$25k for emergency replacements

Air Handler Repair General Improvements	2,756 11,626	Closes old project Left small balance for future improvements
Total	\$240,000	

In addition, staff recommends appropriating \$60,000 from the General Fund capital reserves. As staff reported to Council in June, the balance in the General Fund capital reserve was down to \$20,000. Since that time, staff has identified approximately \$85,000 in savings to transfer into the reserves from the Haw Creek/Avon Road sidewalk project. As a result, as of July 6, 2009, there was approximately \$105,000 available in the General Fund capital reserves. Appropriating \$60,000 for the arena roof replacement will leave \$45,000 available for future use. It should also be noted that once the City receives the final reimbursement from the State for the Haw Creek/Avon Road project, there will likely be additional funding available in that project that can be transferred to the capital reserve. Staff will report on that to Council during the Fiscal Year 2009-10 first quarter Financial Report.

Pro:

- This project will replace the roof on the Civic Center arena and concourse which is in desperate need of replacement.

Con:

- The project will cost an additional \$300,000.

Staff recommends City Council authorize the City Manager to execute a contract with Owens Roofing Inc. in the amount of \$1,497,982 plus a contingency of \$10% (\$150,000) to replace the roof at the Civic Center arena and concourse, and adopt the associated budget amendment.

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

Mr. John Cort, Cort Architectural Group, responded to various questions/comments from Councilman Mumpower, some being, but are not limited to: are there any concerns about the close low bids; why has it taken three years to get to this point; how much money did the exploration to see if the roof could handle a living roof with additional load carrying capacity cost; how long did that exploring take; did time delays result in additional costs; and what is the additional cost to seal all the concrete following the repair work.

In response to Councilwoman Cape, Mr. Cort described the roof as a white PVC roof that has reflectants of .78 and will quality for LEED standards. He felt sealing the concrete was a good thing to discover before the project started.

Councilwoman Cape encouraged anyone who is interested in a green roof look at what the weight specifications need to be.

Mayor Bellamy publicly recognized Civic Center Director Sherman Bass who will be leaving his position to accept another in his hometown in Texas. Vice-Mayor Davis said that his tenure was short, but significant as he has made significant positive changes during his time as Civic Center Director. The building continues to be active and thanked him for his service.

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

Councilman Newman moved for the adoption of Resolution No. 09-153. This motion was seconded by Vice-Mayor Davis and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 132

Councilwoman Cape moved for the adoption of Ordinance No. 3760. This motion was seconded by Councilman Miller and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 350

F. RESOLUTION NO. 09-154 - RESOLUTION ACCEPTING ELLA STREET AS A CITY-MAINTAINED STREET

ORDINANCE NO. 3761 - BUDGET AMENDMENT FROM ASHEVILLE CITY SCHOOLS FOR THE COST OF MATERIALS TO REPAIR A FAILED STORM DRAINAGE PIPE ON ELLA STREET

City Manager Jackson said that this is the consideration of a resolution to accept Ella Street for public maintenance, and the associated budget amendment, in the amount not to exceed \$5,000, for the cost of materials to repair a failed storm drainage pipe on the street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. Ella Street is located within a public right-of-way.

This street is a primary route for school buses to service Asheville Middle School. The road currently has a failing storm drain pipe. Asheville City Schools has requested that the City partner with them to repair the storm drainage pipe and take over maintenance of the street. Aside from the failing storm drainage pipe, the street is in good condition. The City has proposed that the Asheville City School System pay the cost of materials and the City will provide the labor and equipment.

Ella Street has an average width of 18 feet, a length of 0.05 mile, and a right-of-way width of 40 feet. The typical two-year warranty period for major failures will be waived because the City of Asheville will be repairing the storm drainage pipe.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2008-09 Strategic Operating Plan within the Sustainable Focus Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the North Carolina Department of Transportation (NCDOT) to help maintain the streets.
- The streets provide access to Asheville Middle School particularly for school buses.

Cons:

- Powell Bill Funds will not cover 100% of the total cost to maintain the streets.
- The City will provide labor and equipment to make repairs to the storm drainage system.

- The financial impact to the City will be in the cost of the labor and equipment which is paid from the Stormwater Enterprise Fund. The Asheville City School System will cover the cost of the materials which is not expected to exceed \$5,000.

The responsibility of maintenance will belong to the Public Works Department. The City will receive Powell Bill Funds in the future to help maintain the streets. Currently, the Powell Bill Funds equate to \$6,326 per mile compared to the City's maintenance cost of \$18,189 per mile.

- Staff recommends that City Council accept Ella Street as a city-maintained street and adopt the budget amendment to cover the cost of the materials to repair the storm drainage pipe.

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 resolution and ordinance and they would not be read.

Councilman Mumpower moved for the adoption of Resolution No. 09-154. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 133

Councilman Mumpower moved for the adoption of Ordinance No. 3761. This motion was seconded by Councilwoman Cape and carried unanimously.

ORDINANCE BOOK NO. 25 – PAGE 353

G. RESOLUTION NO. 09-155 - RESOLUTION AUTHORIZING THE CONVEYANCE OF AIR SPACE FOR THE PURPOSE OF CONSTRUCTING PERMANENT ARCHITECTURAL FEATURES AT 51 BILTMORE AVENUE TO

MCKIBBON HOTEL GROUP INC.

Real Estate Manager Nikki Reid said that this is the consideration of a resolution authorizing the conveyance of air space for the purpose of constructing permanent architectural features at 51 Biltmore Avenue to McKibbon Hotel Group, Inc.

On June 1, 2009, a qualifying bid was received from McKibbon Hotel Group, Inc. in the amount of \$889 for the purchase of 187 square feet of air space for the purpose of constructing permanent architectural features to a proposed building at 51 Biltmore Avenue. Pursuant to N. C. General Statute sec. 160-269, the City Council of the City of Asheville adopted Resolution No. 09-113 directing the City Clerk to advertise for upset bids in regard to airspace at 51 Biltmore Avenue. The notice ran in the Asheville Citizen Times on June 12, 2009. No qualifying upset bids were received in response to said advertisement.

This air rights request is specific to the proposed hotel, the Aloft by Starwood, via McKibbon Hotel Group, Inc. According to the plans, the hotel building will be sited at the corner of Biltmore Avenue and Aston Street. At 90' above the sidewalk level on the Aston Street side, a decorative seam metal roof element, known as a "swoof", is designed that will extend 5'6" over the right-of-way boundary (sidewalk), with a corresponding length of 34'. The total area of this architectural feature that encroaches into the public right-of-way equals 187 square feet.

Approval of the resolution will authorize the sale of the property to McKibbon Hotel Group, Inc. for the amount of \$889.00.

This action complies with the City Council Strategic Operating Plan in that this development proposal supports the strategic goal of sustainability by providing infill growth where infrastructure currently exists and encourages economic development in the downtown.

This action conforms to current policy regarding air rights disposition. The City Council Planning and Economic Development Committee is scheduled to review the air rights disposition policy in the August meeting.

Pros:

- The sale will be at fair market value.
- The architectural details will provide a more visually interesting façade on the building.

Con:

- There is no negative impact.

Additional revenue in the amount of \$889.00 that will be directed to the City's bottom line.

Economic Development staff recommends adoption of the resolution.

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

In response to Councilman Mumpower, Ms. Reid said that the City Council Planning and Economic Development Committee is scheduled to review the air rights disposition policy in their August meeting.

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

Councilman Newman moved for the adoption of Resolution No. 09-155. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 134

At 5:57 p.m., Councilman Mumpower moved to excuse Councilman Miller from the meeting due to an unexpected family emergency. This motion was seconded by Councilwoman Cape and carried unanimously.

H. RESOLUTION NO. 09-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE CITY OF ASHEVILLE OPEN TENNIS CHAMPIONSHIPS ON JULY 16 AND 17, 2009

RESOLUTION NO. 09-157- RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE FOR A PRIVATE EVENT AT WINDOWS ON THE PARK EVENT ON AUGUST 1, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine at 1) City of Asheville Open Tennis Championships on July 16 and July 17, 2009, and 2) private event at Windows on the Park on August 1, 2009, from 4:30 p.m. to 8:30 p.m.

- City of Asheville Open Tennis Championships

- The Western North Carolina Tennis Association has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at the City of Asheville Open Tennis Championships coordinated by the City of Asheville and allow for consumption at this event.

The City of Asheville Open Tennis Championships will be held on Thursday, July 16, 2009 from 5:00 p.m. to 10:00 p.m. and Friday, July 17, 2009 from 5:00 p.m. to 10:00 p.m. within the boundaries of the Aston Park Tennis Complex and will be free and open to the public.

- Windows on the Park Private Event

- Those Girl, 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 grass area of the Pack Square area in Pack Square Park adjacent to their business, Windows on the Park, located in the Biltmore Building (Area A). 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 (ABC) 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 action does not comply with the City Council Strategic Operating Plan, nor does it comply with the Parks, Recreation and Cultural Arts Master Plan.

Pros:

- City of Asheville Open Tennis Championships: Allows fundraising opportunity for the Western North Carolina Tennis Association
- Windows on the Park Private Event: None

Cons:

- City of Asheville Open Tennis Championships: Potential for public safety issues
- Windows on the Park Private Event: Potential for public safety issues, the event is not open to the public

The fiscal impact for these events are as follows: (1) City of Asheville Open Tennis Championships: Overtime pay for Asheville Police officers; (2) Windows on the Park Private Event: None.

- 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 at 1) City of Asheville Open Tennis Championships on July 16 & July 17, 2009 at the Aston Park Tennis Complex, and 2) Those Girls, LLC for a Windows on the Park private event on August 1, 2009, on grass area in the Pack Square area of Pack Square Park.

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 resolutions and they would not be read.

Councilwoman Cape moved for the adoption of Resolution No. 09-156. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused).

RESOLUTION BOOK NO. 32 – PAGE 135

Councilwoman Cape moved for the adoption of Resolution No. 09-157. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused)

I. RESOLUTION NO. 09-159- RESOLUTION AUTHORIZING THE CITY MANAGER TO MAKE PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ROCKIN' RIVERFEST ON AUGUST 1, 2009

Ms. Diane Ruggiero, Superintendent of Cultural Arts, said that this is the consideration of resolutions authorizing the City Manager to make provision for the possession and consumption of malt beverages and/or unfortified wine Rockin' RiverFest on August 1, 2009.

RiverLink has requested through the Asheville Parks, Recreation and Cultural Arts Department that City Council permit them to serve beer and/or unfortified wine at Rockin' RiverFest and allow for consumption at this event.

Rockin' RiverFest will be held on Saturday, August 1, 2009 from 11:00 a.m. to 5:00 p.m. within the boundaries of French Broad River Park, as per the event area limits referenced on the accompanying site map.

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:

- Allows fundraising opportunity for the Asheville Downtown Association

Con:

- Potential for public safety issues

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 at Rockin' RiverFest on August 1, 2009.

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. 09-159. This motion was seconded by Councilman Newman and carried on a 3-2 vote, with Mayor Bellamy and Councilman Mumpower voting "no" (Councilman Miller excused).

J. BOARDS & COMMISSIONS

Recreation Board

It was the consensus of Council to re-advertise for vacancies on the Recreation Board.

URTV Inc. Board of Directors

Vice-Mayor Davis, Chair of the Boards & Commissions Committee, said that the Committee met with the Executive Director and some members of the URTV Inc. Board to discuss some concerns that have been brought to the attention of City Council. Even though City Council has limited authority over the URTV (2 appointments and City allocation of funding from PEG fees collected by Charter cable subscribers), public dollars are being spent and they need to be good stewards of those dollars. At that meeting, Ms. Lauren Bradley, Assistant to the City Manager, offered some options to City Council, those being (1) conducting an independent performance review of URTV at an estimated cost of \$5-15,000 which the City would be responsible for; or (2) delay agreement renewal for a period of six months to provide an opportunity for the URTV board to resolve community concerns and demonstrate board, operational and financial stability to the City Council; move forward with making its appointment to the Board and task Councilman Russell (liaison to the URTV Inc. Board of Directors) to provide updates to the Boards & Commissions Committee; and delay further funding allocations during the six month period until the agreement can be renegotiated. The Committee felt there was an absence of effective problem-solving at some level. As the Committee discussed specifically some concerns, they felt it was appropriate that they consult with the City Attorney and if we are operating within reasonable parameters, that we provide the URTV Board with an informal list of those concerns to be further fleshed out and allow them 60 days to come back with an action plan addressing those concerns in a way that their Board and staff feels best. They were receptive to this. Therefore, was the recommendation of the Boards & Commissions Committee that a letter be sent from the Boards & Commissions Committee to the URTV Inc. Board of Directors outlining concerns expressed and that those concerns be addressed and provided to City Council by the end of September, 2009 in the form of an action plan to mediate or problem-solve those concerns. Some

concerns included, but are not limited to, the dissention amongst board members; dissention amongst the board members and the public; and consideration of changing the membership from 13 back to 11 as the original agreement was written (which they expressed a willingness to do). He noted that Council will continue moving forward with making their appointment on the URTV Inc. Board.

He said that Councilman Russell is liaison to the URTV Inc. Board and unfortunately due to illness he was unable to attend the meeting. He said that we did invite URTV Inc. Board members to this meeting so they would have the opportunity to be heard.

Councilman Mumpower, member of the Boards & Commissions Committee) said that since the City of Asheville's management agreement with URTV, Inc. is set to expire November 23, 2009, he felt that after the action plan is received there would be a reasonable period of time for contract negotiation.

Councilman Mumpower encouraged City Council to note any specific concerns they have and that those concerns would be included in the informal letter to the URTV Board. It is not Council's intent to oversee the Board, but just want to raise our concerns and collaborate with them in a partner-like fashion. One specific item is that we would like for them to engage further with the vocal minority that have expressed a number of concerns in some direct fashion, with an effort on problem-solving that conflict.

Throughout discussion, the following concerns were raised by Council: concern about a concealed gun and the safety of children; need to clearly state their concealed weapons policy; was to communicate with the community about the type of programming being aired at certain times of the day (not suitable for children, etc.); clarity and transparency of roles of producers, staff, board and volunteers; if there is a disagreement with someone, there is a decorum and way to carry out those concerns; some mechanism for Board development to arrive at some core values for URTV Inc.; and clarification of the relationship role of the City Council liaison; adherence to the Open Meetings Law.

The following individuals raised concerns over URTV. These individuals were invited to e-mail City Council with their concerns and those would be given fair consideration. Some concerns raised include: interested people be included in future meetings with URTV Inc. Board and staff; problems are criminal (temporary restraining orders, assault charges, stalkers, larceny, sexual assault on children); there is harassment; allegations of brandishing a weapon; people with criminal records on URTV; vital members of the community summarily kicked off the station for no reason; and failings of the current Executive Director; and need for reinstatement of the show "Citizen Speak"; and some people get suspended for violations and some people do not.

Mr. Alan J. Rosenthal (presented Council with a document titled "Public's Authority To Make Demands)

Mr. Fred English

Mr. Harry Maroni (presented Council with a letter on his suspension dated 7-8-09)

The following individuals spoke in support of URTV. These individuals were also invited to e-mail City Council with their concerns and those would also be given fair consideration. Some concerns raised include: defamation of character; problem that management is not being heard; group of people who want to run URTV for their own personal use; safety of children when someone has a gun on the property; need for City Council to come down to the station; the vocal minority are not producers and URTV is for producers; the vocal minority has broken several basic rules; the vocal minority are thieves and liars and they should not be invited to URTV, but investigated and prosecuted; and there is a group of vocal people who do not like the Executive Director because she does her job.

Ms. Dale Joyner

Mr. John Robinson

Rev. Christopher Chiaromonte

It was the consensus of Council to accept the Boards & Commissions Committee recommendation regarding a letter being sent to the URTV Inc. Board.

VII. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of June 19-July 9, 2009: Latisha Twitty (Parks & Recreation), Jill Prescott (Police), Thrifty Muffler (Water), Anthony Cerrato (Water), Larry Nix (Water), James Mease (Police), Sheila Jones (Police), Linda Simpson (Streets), Edward Burden (Transit), Samuel C. Wright (Police) and Louise Reed (Water).

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

B. LAWSUITS

The City of Asheville filed a complain on June 26, 2009, on the following: (1) City vs. DVL Pennco, Inc., d/b/a 1-800-GOT-JUNK – This lawsuit involves collection of civil penalties for violation of the City's sign ordinance; and (2) City vs. Capel Enterprises, LLC, All Junk LLC, Joseph G. Capel Jr., and Robin M. Capel, d/b/a 77-Junk – This lawsuit involves collection of civil penalties for violation of the City's sign ordinance. Both lawsuits will be handled in-house.

The City received a Complaint in Federal Court on July 8, 2009, in the matter of Darrell Gaines v. L. Tomasetti, David Nash, J. Clinard and John Doe. This lawsuit involves false arrest and abuse. This matter will be handed in-house.

The City received a Complaint on July 8, 2009, in the matter of Robert Allen Sartori v. Buncombe County, et al.; City of Asheville, et al.; Genesis Insurance Co./Jonathan Nelson Insurance, et al.; Genesis Insurance Co./Rodney Lynch Insurance Co., et al. This lawsuit involves lack of jurisdiction for imprisonment. This matter will be handled in-house.

VIII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Closed Session

At 8:17 p.m., Councilman Newman moved to go into closed session for the following reasons: (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: City of Asheville; County of Henderson; Cane Creek Water and Sewer District; Asheville-Buncombe-Henderson Water Authority; Buncombe County; Spicewood Development, LLC; Villas at Cedar Hill, LLC; and Raintree Realty and Construction, Inc., Substitute Trustee. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(6); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property by purchase, option, exchange or lease. The property is Villas at Cedar Hill. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) 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.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Vice-Mayor Davis and carried unanimously.

At 8:38 p.m., Councilman Mumpower moved to come out of closed session. This motion was seconded by Councilwoman Cape and carried unanimously.

IX. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:38 p.m.

CITY CLERK

MAYOR