

Regular Meeting

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

Absent: None

PLEDGE OF ALLEGIANCE

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

INVOCATION

Councilman Russell gave the invocation.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

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

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 27, 2009**
- B. RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE ASHEVILLE-BUNCOMBE YOUTH SOCCER ASSOCIATION AND THE WESTERN NORTH CAROLINA SOCCER FOUNDATION OF FIELD LIGHTS ON THE FOUR SOCCER FIELDS AT THE JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK**

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

- C. RESOLUTION NO. 09-234 - RESOLUTION OF INTENT TO PERMANENTLY CLOSE HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET AND SETTING A PUBLIC HEARING ON DECEMBER 15, 2009**

Summary: The consideration of a resolution of intent to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street, requesting a public hearing on December 15, 2009, regarding this issue.

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

Pursuant to this statute, the adjoining property owners, Mission Health System Inc. has requested the City of Asheville to permanently close a Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

The Greenway Commission is scheduled to review the closure of Hamilton Street, a portion of Brooklet Street and Hamilton Circle at their meeting on November 12, 2009.

Regarding the City Council Strategic Operating Plan, this closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

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

- Cons:
- In consideration of the location of the closures and the proposed street realignment, staff can find no potential challenges.

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt a resolution setting a public hearing for December 15, 2009, to close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

RESOLUTION BOOK NO. 32 – PAGE 261

D. BUDGET AMENDMENT TO PROVIDE FUNDS FOR CIVIL SERVICE BOARD LEGAL COUNSEL AND CIVIL SERVICE SECRETARIAL SERVICES AS MANDATED IN THE NEW CIVIL SERVICE LAW

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

E. BUDGET AMENDMENT TO COMPLETE THE OAKLEY POLICE RESOURCE CENTER

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 Vice-Mayor Davis and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

B. RESOLUTION NO. 09-233 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A DONATION FROM THE ASHEVILLE-BUNCOMBE YOUTH SOCCER ASSOCIATION AND THE WESTERN NORTH CAROLINA SOCCER FOUNDATION OF FIELD LIGHTS ON THE FOUR SOCCER FIELDS AT THE JOHN B. LEWIS SOCCER COMPLEX AT AZALEA PARK

Summary: The consideration of a resolution authorizing the City Manager to accept a donation from the Asheville-Buncombe Youth Soccer Association (ABYSA) and the Western North Carolina Soccer Foundation (WNCSF) of field lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park.

In January 2009 City Council authorized ABYSA and WNCSF to place lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park. Since then ABYSA and WNCSF has successfully met the requirements of the lights installation agreement and the work is complete. ABYSA and WNCSF are now making a gift of the soccer field lights to the City valued at \$594,166.

The soccer field light system is the Musco "Structure Green", a leader in the outdoor field lighting industry in energy efficiency and glare control. The system complies with the City's lighting standards for outdoor sport fields as stated in the Unified Development Ordinance.

The soccer field lights complies with the City Council Strategic Operating Plan Focus Area: Green in that Asheville will be the southeastern leader in energy and environmental sustainability while preserving the city's natural beauty by making environmentally efficient capital improvement decisions and support energy efficient funding for facilities and operations.

The donation of the soccer field lights complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it maximizes the level of service available to the community by using partnerships to take advantage of existing facilities, share new facilities, and provide additional programming and services to the community.

The Recreation Board unanimously recommended the ABYSA and WNCSF proposal to City Council to install and donate soccer field lights at the John B. Lewis Soccer Complex at its meeting on November 10, 2008.

Pro:

- Further strengthens the partnership between the City, ABYSA and WNCSF to enhance facility development and programming at the John B. Lewis Soccer Complex.

Con:

- Increases the City's annual operating cost in facility maintenance and operation.

Addition of the lights at the soccer complex will increase the City's annual operating cost by \$15,000 to \$20,000 for facility maintenance and operation. ABYSA will make an annual contribution to the cost as part of the facility operating agreement between the City and ABYSA.

City staff recommends City Council adopt a resolution authorizing the City Manager to accept a donation from the Asheville-Buncombe Youth Soccer Association and the Western North Carolina Soccer Foundation of field lights on the four soccer fields at the John B. Lewis Soccer Complex at Azalea Park.

Mayor Bellamy recognized Mr. and Mrs. Lewis and thanked them for their donation to the City of Asheville. She also thanked Councilman Miller, working through the Product Development Fund, for the donation of \$1.3 Million towards this effort.

Councilman Russell moved for the adoption of Resolution No. 09-233. This motion was seconded by Councilman Miller and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 260

D. ORDINANCE NO. 3802 - BUDGET AMENDMENT TO PROVIDE FUNDS FOR CIVIL SERVICE BOARD LEGAL COUNSEL AND CIVIL SERVICE SECRETARIAL SERVICES AS MANDATED IN THE NEW CIVIL SERVICE LAW

Summary: The consideration of a budget amendment, in the amount of \$71,452, from the Fund Balance to provide funds for Civil Service Board legal counsel and Civil Service secretarial services as mandated in the new Civil Service Law.

The Civil Service law was amended on August 3, 2009, by the General Assembly. This revision contained an unfunded mandate which required the City to provide outside counsel and secretarial services for the Civil Service Board. City Council was informed of this unfunded mandate and potential fiscal impact during the negotiations and deliberations regarding the revisions to the law.

This action complies with the City Council's Strategic Operating plan by promoting the City's goal of attracting and retaining quality employees through oversight of Public Safety promotional processes and overall transparency.

Pro:

- The City is complying with the newly revised Civil Service Law as mandated by the General Assembly.

Con:

- This is an unfunded mandate.

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This budget amendment is funded with a \$71,451 appropriation from the General Fund fund balance. Based on current estimates, the City will end fiscal year 2009-10 with a General Fund fund balance total of \$14.2 million, which will equate to 15.1% of projected expenses.

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City staff recommends City Council adopt the budget amendment, in the amount of \$71,452, from the Fund Balance to provide funds for Civil Service Board legal counsel and Civil Service secretarial services as mandated in the new Civil Service Law.

After a brief discussion, initiated by Councilman Mumpower, about what brought the City to this point of action, Vice-Mayor Davis moved for the adoption of Ordinance No. 3802. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 25 – PAGE

E. ORDINANCE NO. 3803 - BUDGET AMENDMENT TO COMPLETE THE OAKLEY POLICE RESOURCE CENTER

Summary: City Council authorized staff to purchase a student built energy efficient modular home from AB Tech in April, 2009, to replace a one-hundred year old Police Resource Center in the Oakley community, and a budget amendment, in the amount of \$80,000, is needed from its Capital Reserve Fund to complete this project.

During the 2007 budget planning process, City Council allocated a one-time infusion of \$500,000 into the City's Capital Improvement Fund to address the most critical city building capital maintenance needs. The Oakley

Resource Center was in need of significant deferred maintenance and was determined to be no longer functional as the operational headquarters for the Patrol Division's East and North Districts. In order to replace this facility, staff identified a partnership opportunity with AB Tech, who had recently completed an energy efficient student-built modular home and was preparing to auction this home off in the near future.

Projected Budget (authorized by City Council)

Site Demolition Cost	\$ 10,000
Home Purchase Cost	\$110,000
Site Preparation/House Transport Cost	\$ 57,000
Landscaping and paving contingency	\$ 15,000
Total	\$192,000

Since this project's approval, City staff has purchased the home from AB Tech and demolished the existing structure. Staff has received a low bid for the site preparation/house transport, and installation finish work at \$101,000, which is significantly higher than originally anticipated. It should be noted that City staff went through the formal bid process two (2) separate times in an effort to secure the lowest and most responsible bid possible. In addition, staff has budgeted an additional \$15,000 for contingency to complete this project.

The City's capital reserve fund currently has an available balance of \$185,000; allocating \$80,000 to fund this project will reduce the available balance to \$105,000.

City staff is requesting City Council adopt a budget amendment, in the amount of \$80,000, from the Capital Reserve Fund for purposes of completing the Oakley Police Resource Center project.

In response to Councilman Mumpower, Assistant City Manager Jeff Richardson explained this unique project and the reason for the total amended budget of \$254,000, which is detailed as follows: Home purchase - \$110,000; transportation and setting contract - \$23,000; construction contract cost - \$78,000; site preparation/site completion - \$10,000; Information Technology services (network wiring) - \$8,000; furniture/fixtures - \$10,000; and contingency -\$15,000. The cost is also included for the temporary move to the alternative location for this division.

Mr. Richardson responded to various questions/comments from Council, some being, but are not limited to, what is the square footage cost for the upstairs and the basement; did the building need to be personalized for the needs of the Police Department; at \$200 a square foot, does staff feel the construction was standard or exceptional; has the house already been purchased; and explanation of the financial component of the entire venture.

Mayor Bellamy asked for an update on the West Asheville Fire Station 6 renovation project.

Councilman Miller moved for the adoption of Ordinance No. 3803. This motion was seconded by Councilwoman Cape and carried on a 6-1 vote, with Councilman Mumpower voting "no".

ORDINANCE BOOK NO. 25 - PAGE

III. PRESENTATIONS & REPORTS:

A. HILLCREST APARTMENTS FIRE

Interim Fire Chief Scott Burnette updated City Council on the current explosion and fire at Building 21 at Hillcrest Apartments. There were five families displaced from Building 21 and six families displaced from Building 20. The American Red Cross and the Housing Authority are temporarily housing those families until permanent housing becomes available. Investigators are on the scene to try to determine the exact cause of the explosion. Evidence does suggest that a natural gas release is the cause of the explosion, but how that came about is still unclear. Appliances and utilities are being examined as well as consultations with personnel from Progress Energy and mechanical inspectors from Building Safety. Additional interviews with witnesses are also being conducted. Heavy rain conditions and structural damage to the building are slowing work progress; therefore, the investigation will continue.

B. H1N1 PREPAREDNESS FOR COMMUNITY REPORT

Interim Fire Chief Scott Burnette introduced Director of Emergency Services Jerry VeHaun and Buncombe County Health

Director Gibby Harris to advise Council on what the response plan is for the H1N1 flu.

Ms. Harris updated Council with the current status of the pandemic; the H1N1 vaccinations; and public health recommendations.

Mr. VeHaun explained the emergency response plans.

On behalf of City Council, Mayor Bellamy thanked Ms. Harris and Mr. VeHaun for their informative presentation and asked if Ms. Harris would be amenable to attend a Council meeting on a monthly basis to keep the community informed of the pandemic.

B. COMMUNICATION UPDATE ON I-40 ROCK SLIDE

Councilman Miller briefed the Council on the alternate routes into Asheville due to the I-40 rock slide pointing out that we need to do keep the message out that Asheville is open for business.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-235 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS FOR THE NORTH FORK WATER TREATMENT PLANT PUMPING SYSTEMS IMPROVEMENTS AND TO AWARD THE CONSTRUCTION CONTRACT TO HICKORY CONSTRUCTION COMPANY

ORDINANCE NO. 3804 - BUDGET AMENDMENT TO AWARD THE CONSTRUCTION CONTRACT TO HICKORY CONSTRUCTION COMPANY FOR THE NORTH FORK WATER TREATMENT PLANT PUMPING SYSTEMS IMPROVEMENTS

American Recovery & Reinvestment Project Manager Brenda Mills said that as part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council approval of a resolution, and budget amendment, in the amount of \$375,722, to accept funds for the North Fork Water Treatment Plant Pumping Systems Improvements and to award the construction contract to Hickory Construction Company in the amount of \$328,474.

The Water Resources Department applied for and was awarded ARRA funding in the amount of \$510,000 for the North Fork Water Treatment Plant Pumping Systems Improvements project through NCDENR's Drinking Water State Revolving Fund (DWSRF). This loan is a 50% grant with a 50% loan requirement. Since applying for ARRA Funding, the project scope has changed to reduce the amount of work to be done and subsequent cost. Therefore, the total project cost should be significantly less than the approved \$510,000.

Water Resources issued formal bids in August 2009 for construction services relating to this project. On September 9, 2009, four (4) bids were opened from the following companies:

1. Hickory Construction Company, Hickory, NC - \$328,474.00
2. J.L. Construction Company, Piedmont, SC - \$389,500.00
3. Huntley Construction, Asheville, NC - \$496,000.00
4. Carolina Specialties Construction Inc., Hendersonville, NC - \$456,277.00

The bids have been reviewed by the Water Resources Department, Brown & Caldwell Consulting Engineers, and the City's Office of Economic Development for Minority Business Plan Compliance with all parties in agreement to award the contract to the lowest responsible bidder, Hickory Construction Company, located in Hickory, North Carolina.

On October 23, 2009, the N.C. Dept. of Environment and Natural Resources Public Water Supply Section approved the Disadvantaged Business Enterprise (DBE) Package with the next step in acquiring ARRA funds for this project is governing board approval to award the construction contract for this project.

This project is part of City Council's strategic plans to improve city infrastructure and receive ARRA Funding to aid in economic recovery and operated in a fiscally responsible manner.

Pros:

- Approval of this action will allow the city to move forward with the North Fork WTP Pumping Systems Improvements project.
- This project is 50% funded from ARRA Funding.
- This project will result in energy savings needed to pump water from the North Fork Water Treatment Plant.

Cons:

- The Water Resources Department will have to fund 50% of the project cost which will come from the Water Capital Projects fund.
- The paperwork involved in accepting ARRA funds will be time consuming for staff.

The City will be responsible to pay the loan amount not covered by ARRA Funding, which is 50% of the total project cost.

Staff recommends approval of the resolution, and budget amendment, in the amount of \$375,722, to accept funds for the North Fork Water Treatment Plant Pumping Systems Improvements and award the construction contract to Hickory Construction Company in the amount of \$328,474.

There was a brief discussion, initiated by Mayor Bellamy, about the City's willingness to use local contractors.

In response to Councilman Newman, Ms. Mills said that if the contractor goes over the amount budgeted for the project, it changes the scope of work and staff would have to come back to Council for approval.

In response to Mayor Bellamy, Water Resources Director Steve Shoaf said that there is a contingency built into the bidding process. He said that the City has used Hickory Construction Company on several projects and they have not exceeded the bid amount on any of those.

Councilman Mumpower felt we will be using borrowed money that will need to be paid back by our children and grandchildren. He also felt that even though the City can't require subcontractors to use the E-Verify System, he felt the City should be at least asking them to screen their new employees.

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 ordinance and they would not be read.

Vice-Mayor Davis moved for the adoption of Resolution No. 09-235. This motion was seconded by Councilman Russell and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 262

Councilwoman Cape moved for the adoption of Ordinance No. 3804. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

ORDINANCE BOOK NO. 25 - PAGE

D. STORMWATER & EROSION CONTROL ORDINANCE UPDATE

Mayor Bellamy said that before Council is given the update by Director of Public Works Cathy Ball, she asked the Council if they would prefer to have this ordinance amendment considered by the seated Council at a public hearing on November 24, 2009, or wait until the new Council is seated.

Ms. Ball briefly pointed out some of the recommendations made by the Planning and Zoning Commission at their October 22, 2009, meeting that will require significant evaluation to determine the City's legal and practical authority to carry out. Staff is prepared to analyze the recommendation from the Planning and Zoning Commission and to make a staff recommendations on Planning and Zoning Commission's actions at a City Council public hearing January 12, 2010. At that meeting, based on current information, staff would recommend that Council adopt the revised Stormwater and Erosion Control Ordinance as proposed.

After a brief discussion, it was the consensus of Council to set the public hearing on January 12, 2010, at which time public comment would be taken.

E. CABLE TELEVISION FRANCHISE REPORT

City Attorney Oast said that that in 1997, the City issued a franchise to Brenmor Cable Partners to operate a cable television franchise in the City of Asheville. That franchise contained provisions regarding such things as minimum service levels, repair and maintenance responsibilities, public, educational and governmental (PEG) channels, and provides the City an intranet or I-Net. The franchise fee for the franchise is 5% of gross annual revenues. The term of the franchise was set to run on July 31,

He explained the following relevant law:

- A. Local franchising authority. Prior to 2005, a city's ability to regulate the provision of cable television service was pursuant to N.C.G.S. 160A-296 and 160A-76 which provide in essence that a city may control the use of its streets and rights-of-way, and may grant franchises to allow for the use of streets or rights-of-way by private businesses. Franchise is the legal mechanism that has historically been used for this purpose, and is used in North Carolina and other states. At the same time that it granted the franchise to Brenmor, the City adopted a cable regulatory ordinance, which prescribes the terms and conditions applicable to cable television operations in the City.
- B. Federal law. In addition to federal law regulating television and other forms of electronic communication generally, the Telecommunications Act of 1996 had a major influence on cable television regulation, and affected to a large extent how local franchises were structured, including such issues as the fees that could be charged, and what constitutes "video service." With the rapid development of digital technology, federal statutes, regulations, and case law have been increasingly important in this area.
- C. State law: In 2005 the North Carolina General Assembly adopted a law that provided in essence that all cable television franchises would transition to a single franchise administered by the State. With respect to individual local franchises, this transition could occur either at the expiration of the current local franchise, or at the provider's election by giving notice of termination.
 1. Cable television. As to cable television services, the State law makes the transition to the State franchise relatively seamless; there is no change in programming for the end users, and the City's revenue stream from franchise fees is maintained essentially at current levels. The State law also provides for the maintenance of PEG channels on essentially the same basis as the existing franchise. The State law requires that cable service be provided without charge to public buildings. The State law also specifically reserves to local governments the ability to control the use of its rights-of-way.
 2. Other services / telecommunications ordinance. One thing that is not clearly addressed in the State franchise law is the non-video services that are now available through the same fiber bundles that carry television service. These services include internet service and telephone service. Another matter not clearly addressed is what happens with the I-Net.

He then explained the transition to State franchise as follows: With these issues in mind, Information Technology Director Jonathan Feldman, Media Production Manager Jeff Reble, and I began meeting earlier this year to plan for the transition to the State franchise that was anticipated to occur next July. One of the major concerns was ensuring that the I-Net, which is essential to many City services, remains operational. A number of other issues have arisen:

- A. AT&T entry into Asheville market. In late August, we received notice that AT&T would begin providing cable services in the Asheville area under the State franchise. This is one of the events that can trigger a notice by a provider under an existing local franchise that it will terminate the existing franchise, and transfer to the State franchise. Until August, Charter was the only provider of cable television service in Asheville.
- B. Termination by Charter. In mid-October we received notice from Charter Communications (the successor to original franchisee Brenmor Cable Partners) that it was terminating its local franchise with the City and transition to the State franchising, effective November 1, 2009. Charter also gave notice to Buncombe County that it was terminating its franchise with the County, effective the same date.
- C. Charter bankruptcy. In the midst of all this, Charter initiated a bankruptcy proceeding and Council, acting at Charter's request, and after determining that Charter was in compliance with the franchise, adopted a resolution in July giving its conditional approval to this bankruptcy.
- D. URTV. A peripheral issue is the public access station, URTV. As Council knows from a previous report, the management agreement with URTV is set to expire, and we are negotiating with them for a short extension, with a longer extension contemplated once other issues are addressed, including Charter's transition to the State franchise.

After receiving Charter's notice of termination of the franchise, we worked for much of October to ensure that the I-Net

would not be affected by Charter's transition to the State franchise, and that we would have the opportunity to negotiate for its continuation. On Thursday, October 29, we received a letter from Charter assuring us that the I-Net would continue. We have engaged the services of a law firm specializing in telecommunication issues to assist us with this process.

Other information that we are gathering and issues that we are researching include the following:

- A. I-Net. While Charter installed much of the I-Net pursuant to the 1997 franchise, much of it was installed by the City (or at the City's direction and cost). We are checking with Charter to ensure that information regarding the location and cost of the I-Net is as complete as possible. This information will include the fees charged to subscribers to defray I-Net costs. We will also need to obtain more information as to Charter's other services.
- B. AT&T. AT&T's cable TV service area is currently small. As AT&T's service grows, however, the City may need to consider requesting PEG channel capacity or public building service from them, in addition to the service provided by Charter, as the law allows.
- C. Local right of way ordinance. In 2003, the City adopted an ordinance that applies to the providers of telecommunication service that are not subject to regulation under the cable television ordinance. The ordinance regulates how our streets and rights of way may be used by telecommunications service providers. We think that this is part of the authority reserved to localities by the State franchise law. We are reviewing the applicability of this ordinance to Charter's other (non-cable television) operations. Charter is not the only ISP operating in Asheville. Limited service is currently being provided by ERC, and we had previously negotiated an agreement with Dukenet, although it was never finalized.

He said the summary and next steps are: The regulation of cable television and telecommunications is complicated and involves aspects of federal, State, and local laws and ordinances. The technological aspect of this work, which changes rapidly, is daunting, and the financial issues are not insubstantial.

Working to ensure a seamless transition to the State franchise while ensuring that the City and its citizens continue to receive what is now viewed as an essential service would be a challenging task in any circumstance. In this case, that task is complicated somewhat by Charter's bankruptcy, AT&T's new presence in the area, and URTV.

The chief issues at this time are to ensure the continued availability of television and telecommunications service in Asheville, protect the City's interests, and work with the service providers in a fair manner. As we get further into negotiations and staff review, we will report to Council.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR THE ASHEVILLE REGIONAL AIRPORT

ORDINANCE NO. 3805 - ORDINANCE APPROVING THE SIGNAGE PLAN FOR THE ASHEVILLE REGIONAL AIRPORT

Mayor Bellamy opened the public hearing at 6:16 p.m.

Assistant Director of Planning & Development Shannon Tuch said that this is the consideration of an ordinance to approve the signage package for the Asheville Regional Airport. This public hearing was advertised on October 29 and November 5, 2009.

On September 31, 2009, the Asheville Regional Airport submitted an extensive application for a variety of different signs to be replaced or added to the airport property as they initiate their parking lot renovations and other site improvements. This request has followed several other replacement sign requests that had been permitted through interpretations extended to accommodate the unique needs and nature of the airport operations. The extent of the most recent request has prompted staff to work with the applicant on devising a basic sign package to specifically address the airports current and future needs. Approval of this package will allow the signs on the property to be replaced and amended as needed.

This request includes:

- Parking lot & traffic control signs (variety of)
- Wayfinding monument signs (terminal parking)
- Monument entrance signs

- Vehicular directional signs (Wright Brother's Way)

The parking lot signs and traffic control signs will be post-mounted while the monument signs will be free-standing and internally illuminated. The three largest monument signs are proposed to be located at the two main entrances to the terminals with the largest at the main entrance to the north, while the two smaller ones will be located at the entrance to the south and will be mounted on ornamental stone bases. In addition to the signs specifically directing travelers to and from the main terminals, this request also includes two free-standing directional signs to be placed along Wright Brother's Way to direct motorists to individual tenants located on the airport property.

The large majority of the proposed signage is designed to replace existing signs and most can be installed without a need for a permit under the City's current standards; however, it was decided to include this signage in the request to ensure that minor relocations resulting in new visibility would not result in non-compliant signs and would provide the airport the most flexibility to grow and adjust their signs over time.

On a related note, the Planning staff has recently initiated research into the creation of an airport overlay zoning designation that is being designed to allow significant flexibility with signage as well as development activity. Given the time needed to complete this research and analysis, this request is being submitted separately in order to avoid additional delay.

As indicated above, a significant portion of the signs requested would not require a permit under the current standards because they are not designed to be seen from the boundaries of the property (i.e. parking lot signage); however, the rest of the signage would be limited to one freestanding sign at 125 square feet and one attached sign at 125 square feet. This standard is better suited for commercial, institutional and office uses and does not adequately address the unique operations of an airport facility.

In order for the airport to adequately and safely direct travelers in and out of the airport, the following signs are being requested:

Wayfinding Signs

16 total (Parking Lot)
36 square feet each
8 feet-8inches tall
Monument signs mounted on stone bases
Internally illuminated

Entrance Signs

3 total
Monument signs mounted on ornamental stone bases & frames
North (S-A): 96 square feet total, including base & frame
8 feet-8 inches tall
Internally illuminated

South (S-P): 30 square feet total, including base & frame
5 feet tall
Internally illuminated

South (S-Q): 56 square feet (not including base)
10 feet-8 inches tall
Ornamental stone base
Internally illuminated

Off-premise Vehicular Directional Signs

2 total (replacing former "red" signs on Wright Brother's Way)
36 square feet each
8 feet-8inches tall
Mounted on brick bases
Internally illuminated

Regarding the City Council Strategic Operating Plan, this proposal most closely supports the goal of *sustainability* through improved identity and wayfinding supporting the economic viability of the overall project.

Pros:

- Better addresses the unique needs of the airport operations
- Improves safety and ease of travelers reaching the terminals and other destinations on the airport property
- Individual tenants on airport property will be free to pursue separate permits

Con:

- Some tenant signage is non-conforming and may require replacement with conforming signage over time

No direct fiscal impact to the City has been identified.

Staff recommends approval of the sign package as proposed with the following additions: (1) The total number of signs may be increased to accommodate new entrances and parking areas as needed, provided they are distributed at a rate that is consistent with the current spacing established; and (2) All signs must resemble each other in character (color, fonts, stonework, etc.) to clearly communicate arrival on the airport property.

Mayor Bellamy closed the public hearing at 6:21 p.m.

When Councilman Mumpower was concerned about the City providing the Airport a “special deal”, Councilwoman Cape noted that the Airport has the opportunity to ask for a waiver, just as anyone else does and Council makes the determination if the waiver is reasonable or not.

In response to Mayor Bellamy, Mr. Kevin Howell, representing the Asheville Airport, explained the signs directing people to the Fixed Base Operators.

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

Councilwoman Cape moved for the adoption of Ordinance No. 3805, with the following conditions: (1) The total number of signs may be increased to accommodate new entrances and parking areas as needed, provided they are distributed at a rate that is consistent with the current spacing established; and (2) All signs must resemble each other in character (color, fonts, stonework, etc.) to clearly communicate arrival on the airport property. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting “no.”

ORDINANCE BOOK NO. 25 - PAGE

B. PUBLIC HEARING TO CONSIDER THE MASTER PLAN AND REZONING FOR THE PROJECT IDENTIFIED AS HORIZONS, LOCATED AT 136, 176 AND 180 MERRIMON AVENUE AND 17 AND 23 ELOISE STREET FROM HIGHWAY BUSINESS DISTRICT, COMMUNITY BUSINESS I DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO URBAN VILLAGE DISTRICT FOR A MIXED USE DEVELOPMENT

Mayor Bellamy said that this public hearing was continued from January 15, 2008, at the applicant’s request in order to work with the neighborhood, especially since a valid protest petition was submitted, which remains in effect. Then again on July 15, 2008, the public hearing was continued to October 28, 2008, at the applicant’s request in that it became necessary, due to the recent economic conditions, the ownership group is currently exhausting opportunities and trying to secure financing and/or additional partners to help with the project economics. On October 28, 2008, at the applicant’s request, this motion was continued to October 27, 2009.

Mayor Bellamy said that on September 1, 2009, Mr. Chris Peterson requested this matter be removed from City Council consideration.

On October 23, 2009, the following letter was received from Mr. Marty Kocot, PE, from LandDesign Inc.: “The ownership group (Mr. Foster Shriner, Mr. Chris Peterson and Mr. Cam Pace) of the proposed “Horizons” Urban Village project have asked me to formally request an additional twelve (12) month extension on the Urban Village Rezoning currently in progress. We realize this request to extend this project again is a bit unusual but the economic conditions we are all experiencing are bit unusual as well. It is and has always been the desire of the partnership group to create a wonderful project on the Merrimon Avenue site as a gateway point to the City and an extension of time on the Urban Village Rezoning request for this project gives us the best chance to succeed. To date thousands of dollars have been spent crafting and guiding the project through TRC and P&Z only to have the economy delay us from obtaining the needed financing. We are hopeful that this additional time will allow the economic market to improve and the project to move forward for consideration by City Council. This project has the ability to create local jobs and help with the economic recovery.”

On October 27, 2009, a motion was made to continue the matter for two weeks until November 10, 2009.

Regarding the protest petition, City Attorney Oast said that if the public hearing is continued, the protest petition will remain valid. However, at the time of the public hearing, if the percentages the property owners fail to meet the requirements of the protest petition (change in ownership, etc.), the protest petition will not be valid. Another option is that Council not continue the public hearing but to allow the application to remain active, and when the developer re-submits the application in the future, a public hearing date would be set at that time which would start the protest petition process over again.

Vice-Mayor Davis moved to continue the public hearing until October 26, 2010. This motion was seconded by Councilman Russell.

Mr. Ben Gillum, President of the Five Points Neighborhood Association, said that the neighbors are concerned with this project being continued year after year and when the public hearing date rolls around that the protest petition will be invalid due to some of the signers have moved and there are now different owners. He urged Council not continue the public hearing date in order to allow the property owners to have the opportunity to submit a new protest petition when the new public hearing date is set.

Vice-Mayor Davis withdrew his motion and Councilman Russell withdrew his second.

In response to Councilman Newman, Assistant Planning & Development Director Shannon Tuch said that the cost to re-submit the plans would be approximately \$350 and it would have to go back through the Technical Review Committee, Planning & Zoning Commission and then City Council.

Mayor Bellamy felt that because there was no representative from the developer present at the meeting, she felt it would be appropriate for staff to provide Council with the different options and continue this discussion until the November 24, 2009, meeting.

Councilman Russell moved to continue the continuance request until the November 24, 2009, meeting. This motion was seconded by Councilman Mumpower and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-236 - RESOLUTION TO CAP PARKS, RECREATION & CULTURAL ARTS DEPARTMENT FACILITY RENTAL FEE ADJUSTMENT

Director of Parks, Recreation and Cultural Arts Roderick Simmons said that this is the consideration of a resolution to cap Parks, Recreation & Cultural Arts Department facility rental fee adjustment.

Staff has completed a review of best practices for facility rental fee waivers. Staff completed summary of best practices of cities for granting facility fee waivers. As with any city policy of this magnitude it comes down to the community value and the level of expected governmental services.

Staff contacted eleven parks and recreation departments across the state with different community make-ups to get a feel for their community tolerance level for granting fee waiver requests. Reviewing the results indicates there is no straight forward best practice for handling fee waiver requests. The only constant theme is departments that allow facility fees to be waived have many different options for approving the request. The only other common theme is there is not a cap on the amount of fee waiver before it requires City Council approval.

Staff recommendations are as follows:

- ÿ Structure the facility rental fee waiver process similar to the City's outdoor special event co-sponsorship process, in that a maximum dollar value is established each budget year to award to organizations that meet the criteria for fee waivers. Once this dollar threshold is met during the budget year no more fee waivers will be granted. They recommend allocating a \$3,000 cap for the first year. The annual cap amount will be considered during the city's annual fees and charges approval process.
- ÿ The maximum amount of fee waiver that can be granted per request is \$500. The cap on the maximum amount per request would insure that all organizations granted a fee waiver receive the same amount of value from the city.
- ÿ Specialized facilities and enterprise funds will not be considerate for rental fee waivers. These facilities are the following:

Municipal Golf Course, Nature Center, Aston Tennis Center, Food Lion Skate Park.

• Events that request assistants above this threshold will be encouraged to apply through the City's annual co-sponsorship process.

Finance Committee reviewed the recommendation to cap facility rental fee waivers on October 27, 2009.

-
Pro:

• To ensure all organizations granted a rental fee waiver receive the same amount of value from the city.

-
Con:

• Potentially could reduce the annual revenue budget for facility rentals by \$3,000 per year.

Staff recommends that Council adopt the recommendations regarding request for a facility rental fee waiver for use of Park facilities.

Mr. Simmons responded to various questions/comments from Council, some being, but are not limited to: what is the average fee waiver request; what is the purpose of the waivers; is there a list of criteria that staff looks at for considering a waiver; will this be an additional cost to the City in terms of operations or will this be a waiver for space rental only; and will this open the door for more waiver request.

Councilman Russell, Chair of the City Council Finance Committee, noted this is creating a policy for better control and will be reviewed again during the fees and charges process.

In response to Councilman Mumpower, Mr. Simmons said that once the \$3,000 cap for fee waivers is reached, no more waivers will be issued.

Councilman Mumpower felt that we should have fair fees for everyone and not allow any waivers, or consider waiving fees for any requests.

Councilwoman Cape was concerned that since this is a first-come, first-served type fee waiver, events at the first of the fiscal year will have the opportunity to get a waiver; however, events near the end of the fiscal year will not have that opportunity because the cap may have already been met.

Councilman Newman would support his action; however, he agreed that the Finance Committee should review this during the fees and charges process. He supported making the fees as affordable as possible.

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

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

Councilman Newman moved for the adoption of Resolution No. 09-236. This motion was seconded by Councilman Russell and carried on a 5-2 vote, with Councilwoman Cape and Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 264

B. RESOLUTION NO. 09-237 - RESOLUTION APPROVING THE CREATION OF THE ASHEVILLE RIVERFRONT REDEVELOPMENT COMMISSION

Urban Planner Stephanie Monson said that this is the consideration of a resolution approving the creation of the Asheville Riverfront Redevelopment Commission.

Community leaders called the Riverfront Study Group have proposed a new City of Asheville commission to support the continued development and sustainability of Asheville's riverfront. The proposed Asheville Riverfront Redevelopment Commission ("Commission") would act as an advisory board and provide policy recommendations to Asheville City Council and the Buncombe County Board of Commissioners.

In addition to reinvigorating the implementation of the Wilma Dykeman Riverway Master Plan, the Commission is envisioned to support effective management of public resources for the riverfront and assist in the pursuit of private sector

investment. The Commission would also support cooperation and collaboration between property owners, merchants, residents, businesses, tenants, institutions and other members of the riverfront community.

This effort would be considered a strategic partnership and the commission as proposed includes appointees from the City, the County, RiverLink, Council of Independent Business Owners, Asheville Area Chamber of Commerce and the City's River District Design Review Committee.

A public meeting of the Study Group was convened by Mayor Terry Bellamy on October 21, 2009, to discuss the organization of the proposed commission and to receive public comment. After an hour of positive comment, the Study Group unanimously voted to recommend City Council adopt a resolution creating Asheville's Riverfront Redevelopment Commission as outlined in the draft ordinance developed by City staff.

Monthly updates on the Riverfront Redevelopment Commission proposal, including the Study Group's consideration of the draft ordinance and the stakeholder outreach process, were received by City Council's Planning & Economic Development Committee from May-September of 2009.

This action aligns with the following goals from Council's strategic operating plan: (1) Affordable: Support diversified job growth and small business development; (2) Green: Support open space preservation; (3) Sustainable: Promote sustainable, high-density, infill growth that makes efficient use of existing resources; and (4) Sustainable: Pursue a stronger riverfront redevelopment partnership and dedicated office.

Pros:

- Collaborative focus on Riverfront Redevelopment program could illuminate previously unseen opportunities to coordinate community goals in a geographic area while minimizing cost and/or maximizing public benefit.
- New Commission creation chronologically aligns with the process for the City's (funded) Wilma Dykeman Riverway Environmental Analysis, Project Development and Preliminary Design project now underway.

Con:

- Commission designed as a partnership yet will be solely dependent on City funding and staff for unknown amount of time.

Duties in the Economic Development Office were prioritized and realigned to enable an Urban Planner position to be assigned to staff the Commission and to coordinate Riverfront Redevelopment program work internally. The ordinance under consideration requires the City to create and manage an annual budget to achieve the mission and goals of the Commission. It also requires strategic partners to share in the overall cost of staffing and resource provision. If the resolution is approved, Council, along with the strategic partners, would incorporate consideration of a recommended start-up budget for the Riverfront Redevelopment Commission into their 2010-2011 budget processes.

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

Ms. Monson asked for one sentence deletion in the proposed ordinance regarding attendance as it is addressed in a different section.

Mayor Bellamy noted that she received an e-mail from Mr. Mike Plemmons, Executive Director of the Council of Independent Business Owners, and they endorse the formation of the Asheville Riverfront Redevelopment Commission as proposed.

Mayor Bellamy also noted that she received an e-mail from Mr. Richard J. Lutovsky, President and CEO of the Asheville Area Chamber of Commerce, and they adopted a resolution on October 29, 2009, endorsing the Asheville Riverfront Redevelopment Commission. He said that the Board supports the initiative taken by the City and County and acknowledges the valuable work that both have done to bring us to this point. They urged City Council and the County Commissioners to endorse the formation of the Commission and they pledged to work with us in making it a successful endeavor.

Mr. Marc Hunt, Chairman of the Greenway Commission, spoke in support of the new Commission and felt the River District is strategically the most important place in the City for development of greenways.

Ms. Pattiy Torno, Co-Chair of the River District Design Review Committee, spoke in support of this new Commission and felt that it will take the commitment of the City, County and public and private partnerships to move forward.

In response to Councilman Newman, City Manager Jackson said that funding requests will go through the normal budget process. At this time, our commitment is one full-time person (Ms. Monson) and the Economic Development Office.

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. 09-237. This motion was seconded by Councilwoman Cape and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 265

C. ASHEVILLE CITY MARKET FEE WAIVERS REQUEST

Mr. Mike McCreary, Market Manager for Asheville City Market, said that the Market is planning to participate in the Seasonal Sizzle celebrations in December and will be relocating to Pack Square for their final four weeks. This initiative has served the community well, supported BUY LOCAL investment in the local economy, and contributed to the sustainability of local food and local farms. It is projected by the end of this second year the market sales by farmers and vendors will exceed \$1 Million. They are looking forward to attracting visitors and customers to downtown and to contributing to the success of the holiday festivities.

Their relocation to Pack Square requires various City permit applications along with associated fees. Given the Market's need to move from their Charlotte Street location, he requested Council's assistance and ask that fees normally collected for permits, barricades, etc. be waived for the Market's four week holiday market.

Mayor Bellamy explained that the Seasonal Sizzle fireworks are shot from the Public Works parking lot and due to safety concerns, the Asheville City Market will have to be relocated. She noted that this request did not go through the City Council Finance Committee due to the timing. If Council does not grant the waiver, the Asheville City Market will have to raise money for the permits, etc.

In response to Councilman Miller, Mr. McCreary said that last year they did not move from their location; however, they closed early each Saturday. Ms. Ruggiero noted that the Fire Department has made it clear that they will not issue two permits at this location this year as it poses an unsafe condition.

In response to Councilman Miller, Ms. Ruggiero said that for all four dates, the approximate waiver cost would be \$1,500-\$1,700. That would include the temporary street closing permit, per metered parking spaces being closed, barricade rentals and a building and fire permit.

Mr. Fred English felt that the prices at the Asheville City Market should be reduced.

Councilman Mumpower moved to waive the fees requested by the Asheville City Market, in the amount of \$1,500-\$1,700. This motion was seconded by Councilman Russell and carried unanimously.

D. RESOLUTION NO. 09-239 - RESOLUTION APPROVING ENHANCED SUPPORT OF ANCHOR EVENTS FOR THE REMAINDER OF FISCAL YEAR 2009-10

Cultural Arts Superintendent Diane Ruggiero said that this is the consideration of a resolution authorizing the City Manager to approve, as needed, additional in-kind support up to 20% of the original projected costs for traffic control and police support services associated with the remaining Fiscal Year 2009-10 anchor events (Asheville Drum Circle, Asheville Holiday Parade and Downtown After 5).

The Asheville Holiday Parade organizers requested an increase in traffic control and police support services for the 2009 parade. The anticipated financial impact of the additional in-kind services for the Asheville Holiday Parade and the remaining Fiscal Year 2009-10 anchor, co-sponsorship events (Drum Circle and Downtown After 5) is \$7,000. The City Council Finance Committee recommends approval of the additional in-kind services.

Councilman Russell, Chair of the Finance Committee, said that the reason for the Holiday Parade request is due to the City changing some of its public safety and traffic control issues.

In response to Councilman Mumpower, Ms. Ruggiero said that the six anchor events consist of the Asheville Drum Circle, the Asheville Greek Festival, the Asheville Holiday Parade, Downtown After 5, the Goombay Festival and Shindig on the Green.

Councilman Mumpower questioned the City's investment in festivals, parades, etc.

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 Russell moved for the adoption of Resolution No. 09-239. This motion was seconded by Councilman Miller and carried on a 6-1 vote, with Councilman Mumpower voting "no."

RESOLUTION BOOK NO. 32 – PAGE 271

E. BOARDS & COMMISSIONS

It was the consensus of Council to reappoint Ms. DeRothea Williams and Mr. Ken Kaplan to the Alcoholic Beverage Control Board.

It was the consensus of Council to postpone filling the vacancy left by Mr. Harry Weiss on the Downtown Commission until Council considers the four additional end of the year vacancies.

It was the consensus of Council to reappoint Mr. Richard Leatherman and Mr. Celeste Collins to the Homeless Initiative Advisory Committee. Mayor Bellamy said that City Council has been receiving several e-mails from a Mr. Young with Quality United regarding the effectiveness of the homeless services provided to the homeless community. It was the consensus of Council to instruct City Manager Jackson to investigate the allegations regarding the services and our police officers and report back to Council and to Mr. Young. She also recommended the Homeless Initiative Advisory Committee and the Asheville-Buncombe Community Relations Council review the allegations, as well as Vice-Mayor Davis' suggestion for review by the Citizens-Police Advisory Committee.

It was the consensus of Council to appoint Mr. Hutch Kerns to the Recreation Board.

It was the consensus of Council to have Assistant City Manager Jeff Richardson remain on the Pack Square Conservancy Board and when City Council makes all their member and liaison appointments in the near future to reconsider that seat.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mayor Bellamy recognized Boy Scout Troop 91.

Mr. Fred English urged Council to attend the Veterans Day Ceremony and thanked Council for their prayers on the recent passing of his daughter-in-law Marcy Jean Rogers Stamey.

Mr. Tom Rightmyer, member on the Watershed Policy Committee, urged Council to take time to look at all the information gathered prior to their decision on the stormwater and erosion control ordinance.

Mayor Bellamy recognized Council Member Elect Cecil Bothwell in the audience.

The City received a Complaint for Declaratory Judgment on November 2, 2009, generally described as: D&J Real Estate Investments, LLC vs. City of Asheville. This lawsuit involves a dispute of a sublessee, as a hotel/motel operation, to pay rent to the City. This matter will be handled in-house.

Closed Session

At 7:34 p.m., Councilman Miller moved to go into closed session for the following reasons: (1) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); (3) 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 Charter Communications, Inc. The

statutory authorization is contained in G.S. 143-318.11(a)(3); and (4) 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 Councilman Russell and carried unanimously.

At 8:40 p.m., Councilman Miller moved to come out of closed session. This motion was seconded by Councilman Russell and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:40 p.m.

CITY CLERK

MAYOR