

Regular Meeting

Present: Vice-Mayor Brownie W. Newman, Presiding; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Mayor Terry M. Bellamy (representing Asheville at a White House event)

PLEDGE OF ALLEGIANCE

- Vice-Mayor Newman led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF ASHEVILLE HIGH SCHOOL QUARTERBACK BRANDON WHITESIDE

RECOGNITION OF ASHEVILLE HIGH SCHOOL DEBATE TEAM

Vice-Mayor Newman introduced Ms. Carol Ray, Principal of Asheville High School. Ms. Ray recognized the efforts of Mr. Brandon Whiteside and the Debate Team.

Councilwoman Manheimer, alumni of Asheville High School, was pleased to read a proclamation for Mr. Brandon Whiteside, Asheville High School Quarterback. Mr. Whiteside, a senior at Asheville High is a student who is uniquely capable of identifying needs in his community and working to meet those needs. A perfect example of this is his "Pass for the Cure" campaign to benefit American Cancer Association's Relay For Life. Brandon has intimately experienced the struggles and tragedies that come along with cancer; his father died of cancer and both his little sister and mother are currently in remission with different types of cancer. Instead of festering with these hardships, Brandon has decided to be a champion for his family. Brandon pledged to donate his personal money to cancer research for every successful pass he threw this season. He finished the season with a total of 1854 yards passing. Brandon raised his money by doing chores, working a part-time job, and doing everything else he could to raise money. This season, he set a school record for yards passed in a season. As a result of his pledge, outside donations have rolled in to help support Brandon's campaign. In addition to Brandon's outstanding work with Relay for Life, Brandon is also an honor roll student and involved with many other extracurricular clubs and activities at Asheville High School.

Mr. Whiteside thanked his family and friends for their support.

Vice-Mayor Newman also recognized the Asheville High School Debate Team. Ms. Ray explained that the Asheville High Debate team participates in 15 to 20 tournaments a year both locally and nationally. It has grown to over 40 members. The team is nationally ranked and is the defending state champion in debate. Accomplishments for this year include winning the University of Florida Lincoln Douglas Championship, as well as bringing home that tournament's third place Lincoln Douglas award, two Congressional Debate semifinalist awards and two Public Forum octafinalist awards. At Wake Forest the team had the runner up in Congressional Debate, as well as the fourth and seventh place winners in Congressional Debate. The team also had two octafinalists in Public Forum at Wake Forest. The team's Congress and Lincoln Douglas squads are currently ranked number one in the state and the Public Forum squad is in the top five in the state. The Congress squad is also the number seven team in the country in the Harvard rankings and will compete in the prestigious Harvard Invitational in February, which is the country's top invitational tournament. The head coach is Keith Pittman and the three assistant coaches are Larry Burke, Katie Williams and Jenni Davidson.

B. EMPLOYEE RECOGNITIONS

- City Manager Jackson recognized (1) Women's Tapping Team consisting of Michelle Massey, Brenna Cook, Myrriah Ringgenberg and Coach Phillip Buckner; and Men's Tapping Team consisting of Jason Hyatt, David Hyatt, Bryan Todd, and Noel Campbell. Both teams have taken first place in the North Carolina State Pipe Tapping Competition; (2) Excellence in Financial Reporting Award for the 29th time the City has received this prestigious award and Distinguished Budget Award for the 19th time

the City has received this prestigious award - financial reporting staff of Pat Leckey, Tia Keith, Charity Constance, Dean Luebbe, Sheri Banks and Sharlene Franklin and budget staff of Tony McDowell, Sandy Ryland and Alina Law; and (3) Fire Captain Jeremy Edmonds who was selected as State Firefighter of the Year.

On behalf of City Council, Vice-Mayor Newman thanked the employees on what they do on behalf of the City of Asheville and City Council. He was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 24, 2009, AND THE ORGANIZATIONAL MEETING HELD ON DECEMBER 8, 2009**
- B. RESOLUTION NO. 09-256 - RESOLUTION AMENDING THE FEES & CHARGES MANUAL FOR PERMITTING PRECIOUS METAL BUYERS THROUGH THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of a resolution amending the Fees and Charges Manual for permitting Precious Metal Buyers through the Asheville Police Department.

Based on North Carolina General Statute 66-165, Local Law Enforcement Agencies are to permit precious metal buyers within their jurisdiction. The permitting process requires an initial background check for the business owner and all employees. An annual renewal of the permit is also required. The statute allows fees to be charged for the background checks and administrative costs associated with the issuance of the permits. Based on a cursory overview of the businesses within Asheville that would likely purchase precious metals, staff has identified nearly 100 businesses that would require annual permits. The various businesses that set up for a few days to conduct precious metal purchasing would require special occasion permits.

The Statute sets the following fees:

- The annual fee for a permit within each jurisdiction is one hundred eighty dollars (\$180.00) to provide for the administrative costs of the local law enforcement agency, including the purchase of required forms and the cost of conducting the criminal history record check of the applicant.
- Every employee engaged in the precious metals purchasing business shall, within two business days of being so engaged, register his or her name and address with the local law enforcement agency. The agency shall issue to the employee a certificate of compliance with this section upon the applicant's payment of the sum of ten dollars (\$10.00) to the agency. The certificate shall be renewed annually for a three dollar (\$3.00) fee.
- The filing fee for a special occasion permit application is one hundred eighty dollars (\$180.00) to provide for the administrative cost of the local law enforcement agency including purchase of required forms and the cost of conducting the criminal history record check of the applicant. The fee is not refundable even if the permit is denied or is later suspended or revoked. A special occasion permit is in addition to and not in lieu of other business licenses and is not transferable. No person other than the dealer named on the permit and that dealer's employees may engage in the business of purchasing precious metals under the authority of the permit.
- A special occasion permit is valid for 12 months from the date issued, unless earlier surrendered, suspended, or revoked. Application for renewal of a permit for an additional 12 months shall be on a form approved by the Department of Crime Control and Public Safety and shall be accompanied by a nonrefundable renewal fee of one hundred eighty dollars (\$180.00).
- Effective January 1, 2010 local agencies can begin enforcing this statute.

This action complies with the City Council Strategic Plan in the area of Fiscal Responsibility in operating the City of Asheville at the highest fiscal responsibility. By charging appropriate fees to recoup administrative costs of permitting, we provide efficient services for our community.

Pros:

- This action will enable better regulation of Precious Metal Buyers and their employees
- Management of the files and documentation requirements of businesses will provide another source to review for potential stolen items

Con:

- Additional time spent by Asheville Police Department staff conducting background checks and maintaining permitting files.

Revenue generated from permitting process would likely total between \$15,000 and \$20,000.

City staff recommends that City Council approve a resolution amending the Fees & Charges Manual for Permitting of Precious Metal Purchasers.

Chief Hogan responded to Councilman Davis when he asked if we received input from dealers in our area and if other cities in North Carolina are permitting these buyers.

RESOLUTION BOOK NO. 32 – PAGE 290

C. ORDINANCE NO. 3813 - ORDINANCE AUTHORIZING THE ASHEVILLE POLICE DEPARTMENT TO ACCESS THE STATE BUREAU OF INVESTIGATION'S DIVISION OF CRIMINAL INFORMATION NETWORK DATABASE FOR CRIMINAL HISTORY CHECKS INVOLVING APPLICANTS FOR PRECIOUS METAL PERMITS WITH THE CITY AND TO CONDUCT BACKGROUND CHECKS ON EMPLOYEES WHO WORK FOR DEALERS REQUIRED TO GET SAID PERMIT

Summary: The consideration of an ordinance authorizing Asheville Police Department to access the State Bureau of Investigation's Division of Criminal Information Network (DCI) database for criminal history checks involving applicants for precious metal permits with the City and to conduct background checks on employees who work for dealers required to get said permit.

Pursuant to N.C.G.S. § 66-165, the Asheville Police Department is required to conduct criminal background checks for persons applying for a precious metal permit. In addition, the State requires Asheville Police Department (APD) to conduct criminal background checks for all employees who work for dealers required to obtain a precious metal permit. Currently, the City is doing limited criminal history checks through City County Bureau of Investigation. However, the City/County database only deals with crimes adjudicated by the State of North Carolina.

The Asheville Police Department is has access to the State Bureau of Investigation's DCI database which contains criminal background information for the entire country. The State of North Carolina has strict requirements for using this criminal database for non-criminal employment and licensing. In order to access the state database, City Council must pass an ordinance requiring the criminal history checks and the consequences for failing the criminal background check. City staff has passed similar ordinances allowing APD to access the DCI system for adult entertainment licenses and ABC permits.

Pro:

- The City will be able to access the DCI network to conduct criminal history checks on applicants precious metal permits and employee buying and selling precious metals in compliance with N.C.G.S. § 66-165.

Con:

- None

City staff recommends City Council adopts the ordinance authorizing the APD to conduct criminal history checks for precious metal permits and registration for employees buying and selling precious metals within the City's territorial limits.

ORDINANCE BOOK NO. 26 – PAGE 1

D. ORDINANCE NO. 3814 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF HEALTH AND HUMAN SERVICES, DIVISION ON AGING AND THE LAND-OF-SKY REGIONAL COUNCIL/AREA AGENCY ON AGING THROUGH THE SENIOR CENTER GENERAL PURPOSE FUNDING FOR IMPROVEMENTS AND EQUIPMENT FOR THE SENIOR OPPORTUNITY CENTER AND HARVEST HOUSE

Summary: The consideration of budget amendments in the amount of \$12,707 for Senior Opportunity Center and \$12,706 for Harvest House for an appropriation from the State of North Carolina, Department of Health and Human Services, Division on Aging and the Land of Sky Regional Council/Area Agency on Aging through the Senior Center General Purpose Funding.

Funds will be used at the Senior Opportunity Center to 1) re-paint the interior of the center, 2) replace flooring in men's restroom, front entry and office areas, 3) replace furniture in the activity area, and 4) replace stove and microwave in the kitchen. The allocation requires a 25% local match which will be provided via in-kind services in staff time to manage the project.

Funds will be used at Harvest House to 1) re-paint the interior and exterior of the building, 2) clean and re-seal the deck, 3) replace wood timbers in parking lot, 4) repair heating and air system, and 5) purchase a portable room divider for the multi-

purpose activity room. The allocation requires a 25% local match which will be provided via in-kind services in staff time to manage the project.

This action complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it 1) will increase the level of service for indoor facilities to bring older facilities up to date before building new facilities; and 2) increases department funding with alternative funding via grants.

Pros:

- Room divider will enhance the existing activity area by making it multi-purpose thereby expanding program space
- Improvements will enhance the customer experience and enhanced safety
- Replace of old and worn equipment

Cons:

- None

The allocation will increase the City's operating budget by \$25,413 in special project accounts designated for the Senior Opportunity Center and Harvest House. The 25% local match will be provided through in-kind services in staff time to manage the projects.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget in the amount of 1) \$12,707 for Senior Opportunity Center, and 2) \$12,706 for Harvest House for improvements and equipment.

ORDINANCE BOOK NO. 26 – PAGE 3

E. RESOLUTION NO. 09-257 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INTERLOCAL AGREEMENT WITH THE CITY OF HENDERSONVILLE FOR EMERGENCY WATER PURCHASE

Director of Water Resources Steve Shoaf said that this is the consideration of a resolution authorizing the Mayor to sign an Emergency Water Purchase Agreement between the City of Asheville and the City of Hendersonville.

Asheville and Hendersonville signed a wholesale agreement in January 2007 for the sale of bulk water. Under this agreement, there are provisions for the cost of the water and the terms of the sale of water. For several years, Hendersonville has purchased approximately one million gallons of water per day from Asheville. Hendersonville has notified Asheville that effective January 1st, 2010, they wish to discontinue purchasing water from Asheville on a regular basis. Instead, Hendersonville would like an agreement to purchase water under temporary, emergency conditions.

The two water systems are interconnected in two locations, so there is no need for additional connections at this time. Key features of the agreement include: (1) definitions of what constitutes emergency water purchases and (2) the cost of bulk water from either party will adjust as the price of bulk water purchases is adjusted for other wholesale customers as per City Council action. This agreement does not imply a transfer of ownership of assets or a purchase of treatment capacity for either party.

Hendersonville's Director of Utilities and Asheville's Director of Water Resources have discussed the potential collaboration between the two cities to provide water under emergency conditions and agreed upon terms for the purchase of wholesale water under temporary, emergency conditions. This agreement provides for the sale or purchase of water by either party.

This agreement reflects the City Council's strategic initiative to operate the water system in a fiscally responsible manner. This agreement promotes efficient operation and improves regional coordination of the management of our water resources with other agencies.

Pros:

- This agreement will establish the terms and conditions that will contribute to efficient regional operation of the water system.
- This agreement will allow the contract price for water to change as the price for water is adjusted for other wholesale customers.
- This agreement will allow Asheville to obtain water from Hendersonville should an emergency situation(s) arise.

Con:

- Given the loss of revenue caused by the termination of the present agreement for water sales, this new agreement will only generate revenue when there is an actual sale of water to Hendersonville.

The City will lose approximately \$35,000 per month (\$420,000 per year) in water revenue due to the termination of the existing agreement with Hendersonville. The current sales to Hendersonville represent about 5% of the total water produced making them our largest customer. The new agreement does not generate revenue unless there is a condition that would require Hendersonville to purchase water from Asheville. A portion of the lost revenue will be offset by anticipated savings of operational costs by a reduction of the quantity of chemicals used in treatment and reduced electrical costs for pumping and treatment.

City staff recommends that City Council authorize the Mayor to sign the Emergency Water Purchase Agreement between the City of Asheville and the City of Hendersonville.

In response to Councilman Bothwell, Water Resources Director Steve Shoaf explained the limitation about how long we would provide water and who determines if there is an emergency situation.

RESOLUTION BOOK NO. 32 – PAGE 291

F. RESOLUTION NO. 09-258 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY A UTILITY EASEMENT TO PROGRESS ENERGY FOR AN EXTENSION OF POWER LINES TO SERVE THE ASHEVILLE HOUSING AUTHORITY ON WALTON STREET

Summary: The consideration of a resolution authorizing the Mayor to execute an easement for electric power facilities to serve Asheville Housing Authority facility at Walton Street.

Progress Energy (herein "PEC") has been working with the Housing Authority on changes to the current service at the Walton Street Apartments. The proposal involves replacing existing and outdated overhead lines to three buildings, and adding a utility pole. Currently, PEC's responsibility for maintaining the lines ends at the existing pole; the Housing Authority maintains the service lines between the pole and the buildings. Under the new configuration, PEC would have maintenance responsibility for these service lines as well. The Housing Authority is bearing part of the cost for this work.

An easement is needed because the new pole and part of the new lines will be on the City's Walton Street Park property. A pole and lines are currently there, but no easement has been found.

This action complies with the City's Strategic Operating Plan in that it supports affordable housing and the Housing Authority. The project has been reviewed by the City's Parks Department, and the Housing Authority is of course aware of it.

Pros:

- Will improve service to Housing Authority Facility
- Will reduce Housing Authority maintenance responsibility

Con:

- Lines not underground (cost prohibitive on Housing Authority budget)

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 32 – PAGE 292

G. RESOLUTION NO. 09-259 - RESOLUTION ADOPTING THE 2010 CITY COUNCIL MEETING SCHEDULE, INCLUDING THE CITY COUNCIL ANNUAL RETREAT ON JANUARY 8-9, 2010, AT WARREN WILSON COLLEGE IN CANON LOUNGE

Summary: Formal meetings would continue to be held on the 2nd and 4th Tuesday formal meetings at 5:00 p.m. in the Council Chamber on the 2nd Floor of the City Hall Building.

The City Council annual retreat would be held on January 8, 2010, beginning at 11:00 a.m. – 5:00 p.m. and on Saturday, January 9, 2010, beginning at 9:00 a.m. – 1:00 p.m. at Warren Wilson College in Canon Lounge.

RESOLUTION BOOK NO. 32 – PAGE 293

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

Vice-Mayor Newman 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 Russell moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. H1N1 PREPAREDNESS FOR COMMUNITY REPORT

Ms. Gibby Harris, Buncombe County Health Director, briefed Council on the latest numbers of the H1N1 flu pandemic. She felt that we have started to get a good penetration of the flu vaccine in our community.

B. HOUSING AUTHORITY REPORT ON RECOVERY ACT/ENERGY EFFICIENCY PROJECTS

Mr. David Nash, Chief Operations Officer of the Housing Authority of the City of Asheville, briefed Council on their Recovery Act and Energy Efficiency Investments for 2009-10.

He explained the one time funding as follows: (1) Awarded in 2009: \$5.9 Million; and (2) Anticipated Energy Performance Contract Extension in 2010: \$3.6 Million for a total of \$9.5 Million.

Work in 2009 includes: (1) Klondyke Modernization Phase 4 (a) First 20 units are 35% complete; (b) outside contract for high efficiency gas heating system is underway; (b) 11 new employees on Modernization Crew; and unrelated (4) Extended benefits to all Modernization Crew and other full-time employees and raised HACA minimum living wage to \$10.50 per hour; (2) Request for Proposals out for Pisgah View Community Services Center Phase 3; (3) Designs complete for new roofs at Altamont and Bartlett Arms – cost estimation and pricing underway; and (4) Updated energy audit from Siemens (energy performance contractor since 2003).

Other work in 2009 includes (1) installed 10,000 CFL bulbs (last 3 years); (2) applied for and received Recovery Act competitive grants; and (3) adopting (a) integrated pest management protocols; (b) Low – VOC paints, primers, adhesives and sealants; and (c) 25% salvaged/Forest Stewardship Council certified wood.

Anticipated work in 2010 includes: (1) Complete 80-90% of construction projects discussed above; (2) Work with FLS Energy to install solar hot water systems on new roofs at Bartlett and Altamont, possibly other developments; (3) Physical needs assessment and green assessment of facilities; (4) Adopt other green operations and maintenance practices; (5) Extend Energy Performance Contract with Siemens, subject to HUD and Board approval; (6) EPC work planned: (a) Water conservation: 313 new dual flush toilets; 970 lower flow toilet retrofits; 3,600+ lower flow aerators/showerheads; (b) Weatherization: 970,000 square feet of living space in six developments; (c) Insulation: 290,000 linear feet in walls; 350,000 square feet in attics – four developments; (d) Window replacements: 900; and (e) Door replacements: 300; and (7) After approval of Energy Performance Contract, Recovery Act replacement window projects; (a) Pisgah View: 3,000; (b) Hillcrest: 2,200; and (c) Deaverview: 1,250 for a total of 6,450 windows. (scope may increase depending on final costs after the Request for Proposals)

Results expected (EPC alone) since 2003 include (1) Guaranteed annual energy savings: (a) Electricity - 680,000 kWh, (b) Natural Gas - 180,000 therms; (c) Water- 41 million gallons; and (d) Utility Bills - \$757,000; and (2) Annual Carbon Dioxide Reduction: (a) Electricity - 490 metric tons; and (b) Natural Gas - 900 metric tons. www.epa.gov/RDEE/energy-resources/calculator.html.

On behalf of City Council, Vice-Mayor Newman thanked Mr. Nash for this informative report.

C. ECONOMIC STIMULUS PACKAGE UPDATE

RESOLUTION NO. 09-260 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE AMERICAN RECOVERY AND REINVESTMENT ACT LOAN ASSISTANCE FROM THE CLEAN WATER STATE REVOLVING FUND FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-261 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE AGREEMENT WITH THE CLEAN WATER MANAGEMENT TRUST FUND TO REDUCE THE AMOUNT FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-262 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A

CONTRACT WITH BLUE RIDGE GRADING FOR THE DINGLE CREEK STORMWATER IMPROVEMENTS

RESOLUTION NO. 09-263 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT SUBGRANTEE FUNDS VIA THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FROM THE N.C. DIESEL EMISSIONS – ECONOMIC RECOVERY GRANT PROGRAM TO SUPPORT THE PURCHASE OF 5% BIODIESEL (B5) FUEL FOR THE MUNICIPAL FLEET FOR ONE YEAR

ORDINANCE NO. 3815 - BUDGET AMENDMENT ACCEPTING SUBGRANTEE FUNDS VIA THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FROM THE N.C. DIESEL EMISSIONS – ECONOMIC RECOVERY GRANT PROGRAM TO SUPPORT THE PURCHASE OF 5% BIODIESEL (B5) FUEL FOR THE MUNICIPAL FLEET FOR ONE YEAR

RESOLUTION NO. 09-264 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH LANDMARK LANDSCAPES FOR THE DOWNTOWN AND GATEWAY STREETSCAPES PROJECT

American Recovery & Reinvestment Project Manager Brenda Mills updated Council on the following applications for the economic stimulus package.

As part of City staff's recurring American Recovery & Reinvestment (ARRA) update to Asheville City Council, staff is seeking Council consideration of the following:

I. Dingle Creek Stormwater Improvements

- (1) A resolution authorizing the City Manager to accept a loan offer from the Clean Water State Revolving Fund for the Dingle Creek Stormwater Project.
- (2) A resolution and amendment to the agreement with the Clean Water Management Trust Fund (CWMTF) to reflect a reduce award amount.
- (3) A resolution awarding the construction contract for Dingle Creek Stormwater Improvements to Blue Ridge Grading in the amount of \$166,495.

II. NC Diesel Emissions - Economic Recovery (NC DEER)

- (1) A resolution authorizing the City Manager to enter into an agreement with the North Carolina Department of Environment and Natural Resources to accept sub-grantee funds from the NC Diesel Emissions - Economic Recovery (NC DEER) to support the purchase of 5% biodiesel (B5) fuel for the municipal fleet for one year.
- (2) Budget amendment, in the amount of \$30,000, accepting sub-grantee funds from the NC DEER to support the purchase of 5% biodiesel (B5) fuel for the municipal fleet for one year.

III. Downtown and Gateway Streetscapes Project

- (1) Approval of a resolution authorizing the City Manager to execute a contract with Landmark Landscapes in the amount of \$82,362.86 for the Downtown and Gateway Streetscapes project, TIP # U-5174.

I. Dingle Creek Stormwater Improvements

Staff is seeking City Council consideration of three actions related to the Dingle Creek Stormwater Improvements Project. This project was previously considered and approved by the Asheville City Council. The project's goal is to improve the quality of water released into Dingle Creek by installing a stormwater wet land and providing additional capacity for water storage during a storm event. This project will also provide a much needed stream bank restoration along this reach of Dingle Creek.

State Revolving Fund Acceptance and Assurance of Repayment

Earlier this year, the City Council authorized staff to apply for ARRA funds from the Clean Water State Revolving Loan for the Dingle Creek Stormwater Improvement Project. Asheville was awarded \$454,500 for this project, 50% of which was in the form of a grant with the remaining 50% in the form of a loan that must be paid over a 20 year period. A technical requirement of receiving these funds requires the governing body to accept the loan offer and assure repayment the 50% loan portion over a 20 year period through formal action. As a result, staff is seeking City Council consideration of a resolution authorizing the City Manager to accept the loan offer and all applicable assurances.

Amendment to the Clean Water Management Trust Fund (CWMTF) Agreement

When the Asheville applied for ARRA funding for the Dingle Creek project, staff intended to use previously awarded funding from the Clean Water Management Trust Fund for Dingle Creek Stormwater Improvements to help cover a portion of the 50% loan amount. The CWMTF award was originally made in September 2008 but was subsequently held in reserve by the State as a result of its budget shortfall. Since then, those funds have been released, but the original award amount has been reduced to from \$335,000 to \$167,500 to align with the amount awarded to Asheville through ARRA. Since the original CWMTF award has been reduced, staff is seeking Council consideration of a resolution authorizing the city manager to amend the city's agreement with the Clean Water Management Trust Fund (CWMTF) to reflect the revised award of \$167,500. The city would apply the \$167,500 grant award toward the 50% loan repayment, leaving a balance of \$59,750 as the city's repayment responsibility over 20 years.

Award of Dingle Creek Stormwater Improvements Construction Contract

Staff is seeking City Council consideration of a resolution authorizing the City Manager to execute a construction contract to complete the Dingle Creek Stormwater Improvements project. A formal request for bids for the Dingle Creek Stormwater Improvements project was issued on October 26, 2009, and bids were opened on November 24, 2009. The City of Asheville determined Blue Ridge Grading and its bid of \$166,495 as the low responsive and responsible bid. Please note that Wright Contracting withdrew their bid in keeping with GS 143-129.1.

Blue Ridge Grading will perform the construction tasks outlined in the contract set forth by the City of Asheville pertaining to the Dingle Creek Watershed. The contractor will adhere to any guidelines in accordance to the ARRA. Said contractor will also comply with any local, state, or federal requirements related to construction activity (i.e. safety, erosion control, etc.).

Bids received for this project were:

<u>Bidder</u>	<u>Address</u>	<u>Bid Amount</u>	
Wright Contracting	Lawndale, NC	\$144,500.00*	
Blue Ridge Grading	Burnsville, NC	\$166,495.00	
Appalachian Environmental	Sylva, NC	\$203,914.00	
Bryant's Land & Development	Burnsville, NC	\$221,335.80	
Spur Construction	Waynesville, NC	\$251,812.00	
Backwater Environmental	Eden, NC	\$268,600.00	Taylor &
Murphy Asheville, NC		\$290,625.00	
Tennoca Construction Co.	Candler, NC	\$244,980.00	

These actions comply with goals in the City Council's Strategic Plan in the areas of Affordability, Sustainability, and Green. They will allow the city to implement an infrastructure project that supports water quality initiatives while taking advantage of State and Federal resources.

Pros:

- Approving these items will allow for completion of the Dingle Creek Stormwater Improvements Project, which will protect and enhance water quality of the French Broad River Basin by reducing runoff pollutants released into Dingle Creek.
- Approval of these items will provide significant financial support for the project.

Con:

- Coordinating these funding sources will require staff time.

The City will be responsible for repaying the ARRA loan amount not covered by the CWMTF, which could be up to \$59,750 over a 20 year period. This remaining loan amount will be repaid through the stormwater utility fund.

\$454,500	Estimated Project Cost awarded by ARRA State Revolving Funds
<u>-227,250</u>	Less 50% State Revolving Fund Grant Amount
\$227,250	50% Loan Repayment Amount
<u>-167,500</u>	Less CWMTF Grant Amount
\$59,750	City of Asheville Loan Repayment Amount

Staff recommends: (1) City Council adopt the resolution authorizing the city manager to accept a loan offer under the American Recovery and Reinvestment Act of 2009 from the Clean Water State Revolving Fund; (2) City Council adopt the resolution authorizing the City Manager to amend the CWMTF grant agreement to reflect the award amount of \$167,500, and; (3) City Council adopt the resolution authorizing the City Manager to execute a contract with Blue Ridge Grading for the services described in a contact for \$166,495 and to allow the City Manager the ability to approve contingencies up to 10% of the original contract price.

II. NC Diesel Emissions- Economic Recovery (NC DEER)

The City of Asheville Fleet Maintenance Division conducted a biodiesel pilot project May 2007-August 2008. During this time, all 437 municipal diesel fleet vehicles used B5. This pilot project resulted in a decreased carbon footprint with without increasing fuel costs. The pilot project terminated in August 2008 during the fuel crisis at which point biodiesel was no longer cost competitive with standard diesel fuel. Through acceptance of this award, the municipal diesel fleet will resume using B5 for a period of one year.

This grant requires no match funding; however, the City budgeted \$873,000 for yearly fuel costs to which the \$30,000 grant will be added. With assistance from this grant, with City will purchase roughly half a million gallons of B5, reducing the municipal fleet carbon footprint by 223 tons or 3.7%.

This action complies with City Council's Strategic Operating Plan in the following ways: (1) it supports diversified job growth and small business development; (2) it provides leadership in buying local products and services; and (3) it achieves short term and long term energy goals to reduce city carbon emissions by 2% each year.

Pros:

- Reduce municipal fleet carbon footprint by 3.7%.
- Support the local alternative fuel economy through stimulus funding.

Con:

- Staff time will be used to implement the project.

City staff recommends City Council (1) adopt a resolution authorizing the City Manager to enter an agreement with the North Carolina Department of Environment and Natural Resources for North Carolina Diesel Emissions - Economic Recovery; and (2) adopt the budget amendment in the amount of \$30,000.

III. ARRA Downtown and Gateway Streetscapes Contract

At its November 24, 2009, meeting, City Council adopted Resolution 09-251 authorizing the City Manager to execute a contract for this project with Rivertop Contracting, Inc., in the amount of \$79,006. Upon further review and consultation with the N.C. Dept. of Transportation (NCDOT), it was discovered that Rivertop failed to meet the project's disadvantaged business enterprise (DBE) participation goals.

This project is federally funded and requires good faith efforts to involve registered DBEs. Rivertop Contracting represented itself on its bid as a DBE, however, the company was not registered as such with the NCDOT. As a result, its bid is considered non-responsive by NCDOT and not authorized to receive funding.

Staff is seeking City Council authorization to execute a contract for the project with the next lowest bidder, Landmark Landscapes, in the amount of \$82,362.86.

Bids received on this project were:

Bidder	Address	Bid Amount
Rivertop Contracting	Black Mountain, NC	\$79,006.00
Landmark Landscapes	Arden, NC	\$82,362.86
Allison Landscaping	Hendersonville, NC	\$141,648.00

This project supports the City Council's strategic plan goals of proactively pursuing funding opportunities with state and federal economic stimulus packages and leveraging funding for regional transportation improvements.

Pro:

- Fulfills the goals of this stimulus project while meeting legal requirements

Con:

- This bid from Landmark Landscapes is \$3,356.86 higher than was the non-responsive bid by Rivertop Contracting

There will be no fiscal impact to the city because the project is 100% grant-funded.

City staff recommends City Council adopt the resolution identifying the recommended lowest responsive responsible bidder and authorizing the City Manager to execute the contract with Landmark Landscapes.

When Vice-Mayor Newman asked for public comments, none were received.

Councilman Smith understood that the biodiesel provided by Blue Ridge Biodiesel is recycled vegetable oil, whereas, some of the other providers are actually shipping in virgin soybean oil from other parts of the country. Since our aim is to reduce carbon footprint, he wondered if we could stipulate that we prefer the locally produced recycled vegetable oil.

City Manager Jackson said that during this interim period between now and when the contract is up in July, staff will review the specifications with a report back to Council.

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

Councilwoman Manheimer moved for the adoption of Resolution No. 09-260. This motion was seconded by Councilman Russell and carried unanimously.

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Councilman Russell moved for the adoption of Resolution No. 09-261. This motion was seconded by Councilman Bothwell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 295

Councilman Russell moved for the adoption of Resolution No. 09-262. This motion was seconded by Councilman Smith and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 296

Councilwoman Manheimer moved for the adoption of Resolution No. 09-263. This motion was seconded by Councilman Russell and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 298

Councilman Russell moved for the adoption of Ordinance No. 3815. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 5

Councilman Smith moved for the adoption of Resolution No. 09-264. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 299

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO PERMANENTLY CLOSE HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET

RESOLUTION NO. 09-265 - RESOLUTION PERMANENTLY CLOSING HAMILTON CIRCLE, A PORTION OF BROOKLET STREET AND A PORTION OF HAMILTON STREET

Vice-Mayor Newman opened the public hearing at 6:00 p.m.

Interim Assistant Director of Public Works David Foster said that this is the consideration of a resolution permanently closing Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street (sometimes known as Hamilton Loop, Old Victoria Road and Victoria Circle). This public hearing was advertised on November 13, 20, 27 and December 4, 2009.

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

Pursuant to this statute, the adjoining property owner's, Memorial Mission Hospital, Inc., Mission Health System, Inc., and CHSA Building Partnership have requested the City of Asheville to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

The Greenway Commission reviewed these proposed closures at their meeting on November 12, 2009, and supported the closures, provided the bike lanes are installed on Victoria Road per the Comprehensive Bicycle Plan. The City Traffic Engineer has worked with Mission's engineer to develop a plan to add bike lanes to Victoria Road as well as the new proposed roadway.

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.

Con:

- 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 the resolution to permanently close Hamilton Circle, a portion of Brooklet Street and a portion of Hamilton Street.

Mr. True Morse, Director of Facility Planning for Mission Health System, explained that there is a bigger picture involved for this area – a project for cancer care in western North Carolina. He showed Council a picture of the Master Plan for the campus. The road project is to widen and actually straighten Victoria Road. They have asked for the name of Hospital Drive to be reserved and it will connect into McDowell. He noted that Hamilton Street is not actually closing, but closing for public use. In their design it will still be open, but privately maintained. He explained the need for the road closures, especially as it relates to their ability to provide proper public access to the health care campus. The closing will also set the stage for the ability to implement future projects. He explained how they have worked closely with the N.C. Dept. of Transportation, the City of Asheville, A-B Technical Community College and Asheville City Schools. He asked for Council's support of these closures.

Mr. Bill Roark, civil engineer for the project and road closures, said showed Council the existing conditions and proposed plans. He explained that since this is such an important corridor, their plan is to maintain access levels that are comparable to what is there today. They have met with the Greenway Commission and City staff and their project will include bicycle lanes on Hospital Drive and Victoria Road, along with sidewalks on both sides.

The following individuals spoke in support of the road closings:

Mr. Brian Moffitt, representing the Aycocks, who own properties on Victoria Road
Ms. Claudia Nix, representing the Bike Pedestrian Task Force
Mr. Charlie Glazener, representing Asheville City Schools
Mr. Dick Mauney, representing A-B Technical Community College
Mr. Mike Soule, representing Asheville on Bikes

City Attorney Oast explained the voting procedures due to Mayor Bellamy's absence.

Councilwoman Manheimer commended Mission Hospital for communicating with the various groups. She hoped that this cooperation will be precedent-setting when we implement the Bicycle Master Plan to have all interests and concerns met.

Vice-Mayor Newman closed the public hearing at 6:13 p.m.

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

Councilwoman Manheimer moved for the adoption of Resolution No. 09-265. This motion was seconded by Councilman Russell and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE REGARDING CHANGES TO THE SIDEWALK ORDINANCE

ORDINANCE NO. 3816- ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING CHANGES TO THE SIDEWALK ORDINANCE

RESOLUTION NO. 09-266 – RESOLUTION AMENDING THE FEES AND CHARGES MANUAL TO ALLOW DEVELOPERS ELIGIBLE FOR THE FEE-IN-LIEU OF CONSTRUCTION TO PAY 50% OF THE FEE IF SIDEWALK IS ONLY REQUIRED ON ONE SIDE OF THE STREET

Vice-Mayor Newman opened the public hearing at 6:16 p.m.

Public Works Director Cathy Ball said that this is the consideration of (1) an amendment to the Unified Development Ordinance (Section 7-11-8) pertaining to the sidewalk ordinance; and (2) a resolution amending the Fees and Charges Manual to allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

Staff recently conducted a review of the sidewalk ordinance given the recent economic conditions. Based on this review staff would recommend the following changes to Section 7-11-8 of the Unified Development Ordinance. These changes are intended to address some clerical/housekeeping changes in addition to three issues:

1. Consolidate the geographical areas where the fee-in-lieu of construction funds can be spent.
2. Allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.
3. Provide the ability for the fee-in-lieu of construction amount not to exceed 15% of construction costs even if the sidewalk is shown as a needed linkage on the Pedestrian Thoroughfare Plan.

She reviewed when sidewalks on both sides of the street are required.

This action complies with the City Council Strategic Operating Plan of sustainability by reforming and streamlining the development review process.

The requested change was presented to the Planning and Economic Development Committee (PED) at their July 2009 meeting. The PED Committee unanimously recommended that these recommendations move forward to the Planning and Zoning Commission and City Council. The Planning and Zoning Commission unanimously supported the recommended changes.

Pros:

- Allows more flexibility in where the City can spend fee-in-lieu of construction funds by combining the existing two areas into one.
- Allows developers to pay a fair amount in fee-in-lieu of construction when sidewalk is only required on one side of the street.
- Prevents the fee-in-lieu of construction fee from stopping the feasibility of a project and allows for fairer assessment of smaller impact projects.

Con:

- Potentially reduces amount of money that can be spent to build sidewalks in the fee-in-lieu of construction account.

These changes could potentially reduce amount of money that can be spent to build sidewalks in the fee-in-lieu of construction account. Staff is not able to accurately estimate the impact at this time.

Ms. Ball noted that the effective date of the ordinance will be immediately, not January 6, 2010, as the ordinance currently before Council reads.

Staff requests that City Council (1) amend the Unified Development Ordinance (Section 7-11-8) pertaining to sidewalks; and (2) adopt a resolution amending the Fees and Charges Manual to allow developers eligible for the fee-in-lieu of construction to pay 50% of the fee if sidewalk is only required on one side of the street.

Ms. Claudia Nix, representing the Bicycle Pedestrian Task Force, noted that the cost for sidewalks is low now but was

concerned about what happens when the cost goes back up. She felt we are cutting the potential growth of the funds.

Mr. Alan Ditmore felt that sidewalks increase the price of housing and that would be a detriment to the affordability of a house.

Mr. Chris Pelly, President of the Haw Creek Community Association, noted that they have worked with the City for many years to bring sidewalks to their community. He questioned if this amendment would stay in place or go back as the economic climate improves. Ms. Ball responded by saying that we are not changing the dollar amount on how much they pay per linear foot, just the percentage that they pay.

Vice-Mayor Newman closed the public hearing at 6:28 p.m.

Throughout discussion, Ms. Ball responded to various comments/questions from Council, some being, but are not limited to: a brief explanation of how the fee-in-lieu of requirement is applied; what was the rationale behind the 50% cost and would 75% still be an incentive; what was the rationale behind the cap of 15% of the construction costs; how are the sites for sidewalks prioritized when using the fee-in-lieu of funds; does the City take over the maintenance of the sidewalks that lead to nowhere; and what percentage of the fee-in-lieu funds make up the total sidewalk fund.

City Manager Jackson explained that with this incentive we are trying to increase the pool of funds to close gaps in the system, e.g., sidewalks closer to the Central Business District and in those networks that serve the schools. That is why we are really interested in gaining more payments in-lieu-of because under this current formula it's cheaper for a developer to put a sidewalk in rather than pay a fee-in-lieu of.

Councilman Bothwell understood the idea of helping people out in economic bad times; however, if we use that as a criteria to make decisions, we put ourselves into a position on who benefits and who doesn't, noting that we don't give our residents a tax cut during these economic times.

In response to Councilman Smith, City Manager Jackson said that staff will be coming to Council for a review of the different transportation plans as staff sees a need to tie all those plans together in order to move people in a multi-modal fashion.

Councilman Russell said that there are places in Asheville where the property owner has been required to build a sidewalk 300 feet and no one uses it. He felt this amendment will be a win/win in that we will take half that money and build 150 feet of sidewalk to connect to a school, etc. He felt this is a step in the right direction.

When Councilwoman Manheimer felt it would be beneficial to have a red-lined copy of the ordinance showing changes made, Ms. Ball apologized for that omission and walked the Council through the changes in the ordinance.

Councilwoman Manheimer felt that this amendment is economically driven. Since the cost to build sidewalks is cheap now and where developers that have the option, most will make a bottom-line number crunch and build the sidewalk. She did think that the incentive will be a motivating factor. Since Asheville has a priority of working on the sidewalk problem, she is concerned that a vote in support of this may be a step backwards. She sees the good intentions, but hoped that we watch this carefully since we have a meager sum for sidewalks. To just consider the issue of a sidewalk where development is going in is not the reality of it. When you grow a city's overall population and put in more infrastructure, you are creating an overall increase demand for sidewalks and pedestrian areas. She felt we need to think about this more globally in terms of an overall impact to our city. To her, if this is a positive move and does incentivize people to pay into this fund, then we have done a good thing. She would have liked to see data from other communities that have done this and see their results.

Vice-Mayor Newman felt that the value of getting sidewalks in key places where we need them is more important than getting them where development is happening.

Councilman Smith felt it would be beneficial for Council to receive a report in 12 months to see if the reality matches the theory.

Vice-Mayor Newman said that members of Council have previously received a copy of the ordinance and resolution and they would not be read.

Councilman Russell moved for the adoption of Ordinance No. 3816 with a 12-month review. This motion was seconded by Councilman Davis and carried unanimously.

Councilman Russell moved for the adoption of Resolution No. 09-266. This motion was seconded by Councilman Bothwell and carried unanimously.

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V. UNFINISHED BUSINESS:

A. RESOLUTION NO. 09-267 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H & M CONSTRUCTORS FOR THE CONSTRUCTION OF THE RECREATION CENTER AT LIVINGSTON STREET PARK

ORDINANCE NO. 3817 - BUDGET AMENDMENT TO INCREASE THE BUDGET TO SUPPORT THE CONSTRUCTION OF THE RECREATION CENTER AT LIVINGSTON STREET PARK

At the request of Councilwoman Manheimer and upon concurrence of City Attorney Oast, Councilman Russell moved to excuse Councilwoman Manheimer from participating in these actions due to a conflict of interest (firm Councilwoman Manheimer is a partner in represents two companies that participated in this bid process). This motion was seconded by Councilman Davis and carried unanimously. At this time, Councilwoman Manheimer left the Council Chamber.

City Attorney Oast then explained the voting procedures which must be met due to the absence of Mayor Bellamy and the excuse of Councilwoman Manheimer.

Parks, Recreation and Cultural Arts Director Roderick Simmons said that this is the consideration of a resolution authorizing the City Manager to 1) enter into a contract with H & M Constructors for the construction of the Recreation Center at Livingston Street Park for an amount not to exceed \$1,954,000, and 2) approve a budget amendment in the amount of \$1.83 million to increase the budget to support the construction of the center.

On October 13, 2009, City Council approved a financing plan to support the initial phase of construction for the Recreation Center at Livingston Street Park. Thereafter staff followed the procedure for contracts over \$500,000 and issued a request for proposals to construct the project. The lowest, responsive, responsible bid is H & M Constructors for a cost of \$1,954,000.

Staff determined H & M Constructors located at 187 Deaverview Road in Asheville is the lowest, responsive, responsible bidder for the project. This determination included assessing the bidder's qualifications in terms of general and specific project performance, and LEED construction experience since these skills are critical to a successful project of this unique design requirement. The evaluation team comprised of staff and the project architect deemed H & M Constructors responsible for this work due to the following qualities:

- Project Manager and Site Superintendents have managed LEED certified projects
- The LEED Accredited Professional had managed three LEED certified projects
- Their prime sub-contractors have worked on a number of LEED certified projects and geo-thermal projects

This construction contract action complies with (1) the City Council Strategic Operating Goal in that it pertains to the Green Focus Area via reduced energy consumption, and it fulfills the Sustainable Focus Area goal to address the city's aging infrastructure; (2) the Sustainability Management Plan in the Facilities Focus Area to support the City Council Resolution 07-91 for LEED certification for new City building. The center is over 5,000 square feet and will be constructed to the "gold" LEED standard which will provide an energy savings pay back period of not greater than 10 years. Construction of the recreation center will be the City's first new construction built to the LEED "gold" standard; and (3) the Parks, Recreation, Cultural Arts and Greenway Master Plan in that 1) the recreation center as the most priority capital project to fund and implement, and 2) ensures a continued high level of service in the City's park system.

The portion of the budget amendment in grants and donations complies with the Parks, Recreation, Cultural Arts & Greenways Master Plan in that it increases department funding with alternative funding.

Pros:

- Greatly enhances the City's ability to provide unique, vital and community based recreation services via this first phase of development at a site with more expansion potential
- The new location enhances the facility's linkage to the neighborhoods in the future via the Town Branch Greenway whose first phase is under construction
- The new facility will be a landmark structure that serves several the nearby neighborhoods
- The facility will meet the "gold" LEED standards and the first municipal construction to meet the standard

Cons:

- The project will require a substantial financial investment by the City beyond grants and donations
- Future construction phase(s) will be needed to meet the remaining programming needs as identified by the community

The WC Reid Center Capital Project currently has an authorized project budget of **\$600,000**. Approximately \$467,000 of this budget has already been spent or committed to be spent for design-related services, including the development of a site master plan and associated construction documents. A balance of approximately \$133,000 remains in the project budget that can be used for construction costs.

In conjunction with the award of the construction contract, an amendment to the project budget in the amount of **\$1.83 million** is needed to cover construction costs. A portion of this amendment is supported by \$737,982 in grants and donations revenue raised from various sources since 2006. The remaining portion of the amendment will be supported by \$1.09 million in installment purchase proceeds that will be secured through a private bank loan. Approval of the budget amendment, plus the \$133,000 remaining balance of funds from the original \$600,000 project budget, will provide approximately **\$1.96** in construction funds. The total project budget for the Reid Center will now be \$2.43 million.

The estimated financial impact of the \$1.09 million bank loan is to increase the city's annual debt service expenses by approximately \$110,000 per year. This is based on a financing term of 15 years and a conservative interest rate of 6%. Due to timing issues related to issuing the debt, the City is only likely to incur a half a year's debt service payment in the current year, which would reduce the Fiscal Year 2009-10 financial impact to \$55,000.

Staff recommends City Council 1) authorize the City Manager to enter into a contract with H & M Constructors not to exceed \$1,954,000 for the construction of the Recreation Center at Livingston Street Park, and 2) approve the budget amendment authorizing the City Manager to increase the budget for center construction by \$1.83 million.

Councilman Russell said that he originally supported this project but unfortunately withdrew his support due to the grant funding withdrawal and the cost escalating. The project was originally \$7-8 Million then trimmed down to \$1.2 Million with \$500,000 of City funds (which he supported). But now the project is back up to \$2.5 Million, with \$1.6 Million coming from the City. He did not think the City could afford the project at this time.

Mr. Alan Ditmore felt that given our economy he didn't think Council will have enough funds to achieve their top four goals, noting that there will also be emergency priorities that will need to be met.

The following individuals spoke in support of moving forward with the construction of the Recreation Center at Livingston Street Park for various reasons, some being, but are not limited to: the community has worked on this for several years; the current building is beyond repair; the current building is old and is not maintained (broken windows, no air conditioning, constant heat, disrepair kitchen, wasted space); this is a needed safe haven for our youth; request that people who live in that community have the opportunity to be employed to work the Reid Center; if youth in the area were employed to work on the Reid Center it would be a wonderful training opportunity; as development occurs throughout the City, no community should be left behind in redevelopment; other community centers are not as utilized as much as the Reid Center; the center has brought positive structure for the youth; and the center is a place where the youth go to escape their hardships and is a safe haven with adult supervision:

Ms. Mildred Nance Carson, Chairman of the Advisory Board at the W.C. Reid Center
Mr. Dwayne Barton
Mr. Bill Rhodes, current user of the facility
Six youth from Getting Back to the Basics Program

Vice-Mayor Newman closed the public hearing at 7:10 p.m.

Councilman Davis recognized the need for the center and noted that the new center will be a classroom complex. The gym part of the project is not in Phase I and if the new center is constructed, the City will have the expense of maintaining the new center, along with the existing center for the gym. Before Phase II is considered, he supported selling the existing building and using that money to fund subsequent phase. With that in mind, he felt he could support moving forward.

Vice-Mayor Newman felt that there has been a lot of work into this project and perhaps we could have built a building with a lower price tag, but we have over \$700,000 in private funding that will be lost if we do not move forward on this project by the end of the year.

In response to Councilman Smith, Mr. Simmons said that the Reid Center serves 300-350 youth a day. He said that there

are 20-25 youth in the After-School Program and the rest are youth that come there to have a safe place to go. He said that in that neighborhood there are roughly 3-4,000 children.

Councilman Smith said that the annual debt service of \$110,000 for 300 kids that are off the streets and are safe, is about \$350 per kid per year and that sounds like money well spent. As far as the project has come, he felt we have an obligation to keep it moving forward. He wondered how we can bring those kids in to be a part of the sustainability measure so they can have work training and feel a part of what we are trying to do as a City with moving forward with the green initiatives and the sustainability initiatives that we have. He also hoped that people at the Reid Center who have worked hard on this for years will continue to work hard to bring in grant monies.

Councilman Bothwell noted that the 300-350 kids served at the Reid Center will not be served at this new facility directly because the new facility isn't fulfilling the gym function. He agreed that the heating system in the existing building does need to be repaired and there are other repairs that need to be done as well because that building will be continue to be used.

In response to Councilman Bothwell, City Manager Jackson said that we do have in writing from the private donors that their funds will be withdrawn if construction does not begin by the end of 2009.

Vice-Mayor Newman agreed that for some time we will be managing two facilities and that is not attractive from an operational or capital expenditure standpoint. However, in the alternative we would have to spend so much money to upgrade the existing facility and still not have the facility that we want. If we commit to do Phase II there will probably be some positive economic value.

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

Councilman Davis moved for the adoption of the Resolution No. 09-267. This motion was seconded by Councilman Smith and carried on a 4-1 vote with Councilman Russell voting "no" (Councilwoman Manheimer being excused from voting).

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Councilman Davis moved for the adoption of Ordinance No. 3817. This motion was seconded by Councilman Smith and carried on a 4-1 vote with Councilman Russell voting "no" (with Councilwoman Manheimer being excused from voting).

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At 7:25 p.m., Vice-Mayor Newman announced a short recess.

At this time, Councilwoman Manheimer came back into the Council Chamber.

B. REQUEST FROM THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY TO WAIVE STREET CLOSURE PERMITS AND STREET CUT PERMITS ASSOCIATED WITH THE INSTALLATION OF THE WAYFINDING PROJECT

Transportation Planner Dan Baechtold said that this is the consideration of a request from the Buncombe County Tourism Development Authority (BCTDA) for a waiver of permit fees associated with the installation of the wayfinding signs.

Per City Council's direction, staff has been working with area partners for the past three years on a comprehensive wayfinding and signage program for Asheville and Buncombe County. The project is in the implementation phase, which includes the installation of pedestrian level signs, informational kiosks, and directional and destination signs within Buncombe County, of which the majority are in the City of Asheville. City-owned facilities such as parks, parking decks, and the Civic Center are included in the project.

The installation process for wayfinding signs requires Street Closure Permits and Street Cut Permits from the City of Asheville. Because the project has been a partnership between the City and the BCTDA, the BCTDA has asked for a waiver of the fees associated with these permits. This could result in as much as \$10,000 in savings to the project.

The following is some background information:

- In 2006, the City joined with the Convention and Visitors Bureau, the Towns of Weaverville, Woodfin, and Black Mountain, and Buncombe County to form the Partnership on Wayfinding.

- The partners jointly funded the development of the Wayfinding Master Plan.
- Through a public input process, designs were selected that included pedestrian level signs and kiosks, vehicular signs, and gateway signs.
- In December 2007 Buncombe County Tourism Development Authority approved funding for construction of the wayfinding system in the amount of \$1.65 million.
- In September of 2008 City Council adopted the Wayfinding Master Plan, and approved an interlocal agreement to cover the ongoing maintenance of the wayfinding signs.

Pros:

- Supports a successful regional partnership
- Makes a relatively small contribution to a project investing \$1.65 million in the City.
- Allows Wayfinding funds to be invested in infrastructure instead of administrative costs.

Con:

- Processing the permits requires staff time, which will not be covered if the fees are waived.

This action complies with the City Council Strategic Operating Plan as the wayfinding program aims to address several identified City Council goals: 1) improving signage into and out of City facilities; 2) providing information kiosks in the downtown; 3) removing sign clutter and obsolete signage; 4) improving directional signage for residents and visitors.

Granting the fee waiver request would be a loss of potential revenue for the General Fund up to as much as \$10,000. The waiver would be a savings, however, to a project to which the City is a primary partner. The City's budgeted contribution toward this project totals \$107,240, which is included in the Parking Services Capital Fund. The BCTDA is contributing the majority of the capital funds toward a project that benefits the City.

City staff requests City Council consider a motion to waive permit fees associated with the installation of the wayfinding signs.

In response to Councilman Bothwell, Mr. Baechtold said that the total project is approximately \$1.8 Million and the City's portion is \$107,240.

Councilman Russell moved to waive the street closure permits and street cut permits associated with the installation of the Wayfinding Project. This motion was seconded by Councilman Davis and carried unanimously.

VI. NEW BUSINESS:

A. RESOLUTION NO. 09-268 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONSTRUCTION CONTRACT WITH CAROLINA SPECIALTIES CONSTRUCTION LLC FOR THE WILLIAM DEBRUHL WATER TREATMENT PLANT BACKWASH LAGOON PROJECT AND A CHANGE ORDER INCREASING BROWN AND CALDWELL'S AGREEMENT FOR ENGINEERING SERVICES FOR SAID PROJECT

ORDINANCE NO. 3818 - BUDGET AMENDMENT FOR FUNDING OF THE CONSTRUCTION CONTRACT WITH CAROLINA SPECIALTIES CONSTRUCTION LLC AND BROWN AND CALDWELL'S CONSTRUCTION ADMINISTRATION AND ENGINEERING COSTS

When Councilwoman Manheimer disclosed that Carolina Specialties Construction has been, but is not currently, a client of her law firm, City Attorney Oast felt that this does not rise to the level of a disqualifying conflict of interest for Councilwoman Manheimer.

Water Resources Director Steve Shoaf said that this is the consideration of a resolution authorizing the City Manager to (1) sign a construction contract with Carolina Specialties Construction, LLC in the amount of \$405,874.35 for the William DeBruhl Water Treatment Plant (WTP) Backwash Lagoon Project; and (2) sign a change order increasing Brown and Caldwell's agreement for engineering services to \$107,766 for said project; and adopt a budget amendment, in the amount of \$93,410, for funding of the construction contract with Carolina Specialties Construction, LLC (\$34,732), and Brown and Caldwell's construction administration and engineering costs (\$58,878).

When the filters are cleaned during the water treatment process, the dirty water is discharged into a holding pond, or backwash lagoon. The N.C. Dept. of Environment and Natural Resources (NCDENR) has declared the backwash lagoon at the William DeBruhl Water Treatment Plant in a state of disrepair and in need of replacement in the current fiscal year. The Water

Resources Department (WRD) issued an Advertisement for Bids for the furnishing of labor, materials, equipment, incidentals, site work, piping, structures, erosion/sediment control, and demolition for the construction of the 500,000 gallon backwash holding lagoon at the William DeBruhl WTP. In response to that Advertisement for Bids, the WRD received six (6) bids.

Companies responding were:

- Bryant's Land and Development Industries, Inc. – Burnsville, NC
Total Base Bid: \$453,480.50
- Carolina Specialties Construction, LLC – Hendersonville, NC
Total Base Bid: \$405,874.35
- MacKenzie Company – Asheville, NC
Total Base Bid: \$473,106.70
- Patton Construction Group – Arden, NC
Total Base Bid: \$477,000.00
- Spur Construction – Waynesville, NC
Total Base Bid: \$563,690.05
- Turner Murphy Company, Inc. – Rock Hill, SC
Total Base Bid: \$609,919.81

A review team, comprised of staff from multiple City departments including James Lee, the City of Asheville Minority Business Coordinator, reviewed these bids and selected Carolina Specialties Construction, LLC as the lowest responsible bidder at a bid of \$405,874.35.

In addition, Brown and Caldwell was originally hired by the City through a competitive process to provide the Design, Permitting, Bidding, and Construction Services for said project in the amount of \$49,088. The initial contract dated June 5, 2009, provided for the Design, Permitting, and Bidding services only. The Change Order in the amount of \$58,678 will allow Brown and Caldwell to perform Construction Services, which will include a preconstruction meeting, inspections, record drawings, and other construction-related tasks. With the change order, the total agreement amount with Brown and Caldwell will be \$107,766.

This project is part of City Council's Strategic Operating Plan to improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the construction contract and engineering change order will allow the City to move forward with the project in the current fiscal year in order to ensure compliance with applicable state/federal laws.
- Approval of the construction contract to the lowest responsible bidder will invest City funds in the local economy.
- This project will result in improved infrastructure.

Con:

- Failure to award a construction contract and engineering change order may delay the project beyond the current fiscal year, which may result in fines from NCDENR for being out of compliance with applicable state/federal laws.

A majority of the funding needed for this project is available in the project budget (\$371,143). The remaining funds needed for this project (\$93,410) will be reallocated from the Allen Mountain Tank (serving the Town of Black Mountain) upgrade project that will receive replacement funding in a future fiscal year.

City staff recommends City Council approval of the City Manager (1) to sign a construction contract with Carolina Specialties Construction, LLC in the amount of \$405,874.35 for the William DeBruhl Water Treatment Plant Backwash Lagoon Project and (2) to sign a change order increasing Brown and Caldwell's agreement for engineering services to \$107,766 for said project; and (3) adopt a budget amendment, in the amount of \$93,410 for funding of the construction contract with Carolina Specialties Construction, LLC (\$34,732), and Brown and Caldwell's construction administration and engineering costs (\$58,878).

When Councilman Smith asked if there anyway to alter the permitting of this site to reflect the actual volume that is being treated there, Mr. Shoaf said that we are not close to the threshold. The issue is if we re-rate the plant down to what we actually doing now, it will handicap us in terms of future water treatment capacity. The prudent thing to do is to retain that capacity. The

Bee Tree Reservoir came on line as an additional source of water and we found that we do need it during drought periods. In 2007, which was a very severe drought year, we needed to run the plant at full capacity. We do have a Drought Management Plan and the Bee Tree Plant is written into that Plan.

When Vice-Mayor Newman asked for public comments, none were received.

Vice-Mayor Newman said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Russell moved for the adoption of Resolution No. 09-268. This motion was seconded by Councilwoman Manheimer and carried unanimously.

RESOLUTION BOOK NO. 32 – PAGE 305

Councilman Russell moved for the adoption of Ordinance No. 3818. This motion was seconded by Councilwoman Manheimer and carried unanimously.

ORDINANCE BOOK NO. 26 – PAGE 13

B. STATUS ON MASTERS PARK PLAN

City Manager Jackson said that the December 15, 2009, agenda includes an item at the request of Mayor Bellamy to consider policy issues related to the Masters Park.

On November 27, 2007, City Council approved the acquisition of the Masters Park in partnership with private donors, State of North Carolina, Buncombe County and the Haw Creek Community Association. The acquisition occurred on October 20, 2008.

Since the acquisition, City staff from multiple departments have collaborated in developing an action plan to perform environmental assessments in-house and enable park development to begin.

On November 5, 2009, in response to an e-mail from Mr. Chris Pelly to Mayor Bellamy, staff provided the following timeline for the environmental assessments and park design work:

- Task 1 – Field Site Visit – November 2009
- Task 2 – Preliminary Design – December 2009
- Task 3 – Review/Comment on Design – January/February 2010
- Task 4 – Final Design – April/May 2010

Upon completion of the design, the Haw Creek Community Association may undertake clearing of trails and the parking area.

Councilman Russell felt this was a great collaboration of the City and the Haw Creek Community Association.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

The following claims were received by the City of Asheville during the period of November 13-25, 2009: Cecilia Johnson (Sanitation), Crystal Snyder (Transit), B&B Pharmacy (Police), Linda J. Kush (Streets), Mary Trauner (Sanitation), Lewis Blodgett III (Transit), Amber Moran (Water) and Matt Lillibridge (Water). These claims have been referred to Asheville Claims Corporation for investigation.

Mr. Alan Ditmore supported domestic partner benefits.

VIII. ADJOURNMENT:

Vice-Mayor Newman adjourned the meeting at 8:05 p.m.

CITY CLERK

MAYOR

