

Tuesday – November 23, 2010 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr. (excused from meeting at 7:16 p.m.); Councilman Gordon D. Smith; 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 Davis gave the invocation.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 9, 2010**
- B. RESOLUTION NO. 10-244 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM THE FISCAL YEAR 2008 BUFFER ZONE PROTECTION PROGRAM GRANT ADMINISTERED BY THE DEPT. OF HOMELAND SECURITY**  
  
**ORDINANCE NO. 3923 - BUDGET AMENDMENT TO ACCEPT THE FISCAL YEAR 2008 BUFFER ZONE PROTECTION PROGRAM GRANT ADMINISTERED BY THE DEPT. OF HOMELAND SECURITY**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of \$51,500 from the Fiscal Year 2008 Buffer Zone Protection Program Grant administered by the Department of Homeland Security for procurement and installation of wireless telecommunications equipment to enhance the ability of Emergency Responders to communicate while protecting Critical Infrastructure assets of the City of Asheville; specifically the North Fork and Bee Tree Water Sheds; and (2) a budget amendment, in the amount of \$51,500, to accept said grant.

The City of Asheville Fire Department has identified grant funding through the Fiscal Year 2008 Buffer Zone Protection Program for the procurement and installation of wireless telecommunications equipment. This equipment will enhance the ability of City of Asheville (COA) Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions while responding to protect COA Critical Infrastructure.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages. This action has been reviewed and approved by the Public Safety Committee.

## Pros:

- An increased ability to communicate with responders from other jurisdictions that can not operate on the COA Public Safety Radio System or who are outside the system coverage area.
- Increases responder safety and accountability of COA resources when responding to COA Critical Infrastructure assets that are not within the present coverage area of the COA Public Safety Radio System.
- The infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit the Asheville Police and Fire Departments as well as the Water Resources Department using the COA 800 MHz radio system.

## Con:

- None identified

These funds are a non-matching grant from the Department of Homeland Security and will require no initial COA resources. Annual maintenance costs will be incurred but will be minimal as infrastructure maintenance will be funded by the State of North Carolina. COA maintenance costs on the equipment should not exceed \$500 annually.

City staff recommends City Council (1) authorize the City Manager to accept grant money from the Fiscal Year 2008 Buffer Zone Protection Program; and (2) authorize a budget amendment to accept said grant.

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**C. RESOLUTION NO. 10-245 - RESOLUTION AUTHORIZING THE CITY  
MANAGER TO ACCEPT A GRANT FROM THE FISCAL YEAR 2010  
HOMELAND SECURITY GRANT PROGRAM**

**ORDINANCE NO. 3924 - BUDGET AMENDMENT FROM THE FISCAL YEAR  
2010 HOMELAND SECURITY GRANT PROGRAM**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept a grant in the amount of \$550,000 from the Fiscal Year 2010 Homeland Security Grant Program administered by the N.C. Division of Emergency Management for procurement and installation of wireless telecommunications equipment to enhance the ability of Emergency Responders to communicate locally and throughout the region; and (2) a budget amendment, in the amount of \$550,000, to accept said grant.

The City of Asheville Fire Department has identified grant funding through the Fiscal Year 2010 North Carolina Homeland Security Grant Program for the procurement and installation of wireless telecommunications equipment. This equipment will enhance the ability of City of Asheville (COA) Police and Fire Departments and other regional Emergency Responders to communicate during a disaster or other emergency that requires the coordination and communication between multiple jurisdictions. This grant is a reimbursement grant in which the City of Asheville will purchase the equipment and then be reimbursed 100% by the NC Department of Crime Control and Public Safety.

This action complies with the City Council Strategic Operating Plan in that it helps to proactively pursue funding opportunities through state and federal economic stimulus packages. This action has been reviewed and approved by the Public Safety Committee.

## Pros:

- An increased ability to communicate with responders from other jurisdictions that can not operate on the COA Public Safety Radio System or who are outside the system coverage area.
- Increases responder safety and accountability of COA resources when responding mutual aid to other jurisdictions.
- The redundant infrastructure will provide an additional margin of safety during emergency operations ensuring continued and reliable communications.
- Grant would benefit the Asheville Police and Fire Departments using the COA 800 MHz radio system.

Con:

- None identified

This equipment purchase will be fully funded by grant proceeds, so there is no impact to the City's General Fund budget. Annual maintenance costs will be incurred by the State of North Carolina or regional jurisdictions.

City staff recommends City Council authorize (1) the City Manager to accept grant money from the State of North Carolina Homeland Security Grant Program; and (2) a budget amendment to accept said grant.

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**D. RESOLUTION NO. 10-246 - RESOLUTION AUTHORIZING THE ASHEVILLE FIRE DEPARTMENT TO PURCHASE RAZOR EX BIOLOGICAL FIELD SAMPLER BASED ON STANDARDIZATION NEEDS WITH FUNDING FROM THE N.C. DEPT. OF HOMELESS SECURITY GRANT**

Summary: The consideration of a resolution authorizing the Asheville Fire Department to purchase Razor EX Biological Field Sampler based on standardization needs.

The Asheville Fire Department (AFD) has grant funds available for the procurement of equipment to be utilized by Hazardous Materials Regional Response Team 6 (RRT-6) Asheville with State Homeland Security Grant FY09. This item will be procured through a previously Council approved grant through the U.S. Department of Homeland Security and the Office of Domestic Preparedness State Homeland Security Grant Number: FY2009-SS-T9-0046 to implement the State Homeland Security Strategy. This grant approved the NC Hazardous Materials Response Team Asheville (RRT-6) to procure equipment to be better prepared and respond to manmade and natural emergencies and disasters. The equipment to be procured through this grant will be used in the field to detect and identify unknown and potentially hazardous biological agents during a hazardous material response. The RAZOR EX is the most sensitive and reliable commercially available biodetection instrument designed for field use and utilizes the same polymerase chain reaction (PCR) technology used in the Public Health labs.

The six other RRT's have procured this specific piece of equipment from Idaho Technology in order to be compatible with each other in case of a statewide emergency.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities. The Public Safety Committee has reviewed and approved this action.

Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses.
- This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

The Standardization of Equipment will have not fiscal impact on the City's current budget since it is funded entirely with grant proceeds. There will be maintenance and replacement costs for the equipment, which will be needed to be, included in future fiscal year budgets.

City staff recommends City Council adopt resolution authorizing the Asheville Fire Department to purchase Razor EX Instrumentation based on standardization needs with funding from State Homeland Security Grant Fiscal Year 2009.

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#### **E. RESOLUTION NO. 10-247 - RESOLUTION AUTHORIZING THE ASHEVILLE FIRE DEPARTMENT TO PURCHASE THE QINETIQ TALON HAZARDOUS MATERIAL RESPONSE ROBOT FROM QINETIQ NORTH CAROLINA**

Summary: The consideration of a resolution authorizing the Asheville Fire Department to purchase the QinetiQ Talon Hazardous Material Response Robot based on standardization needs.

The Asheville Fire Department (AFD) has grant funds available for the procurement of equipment to be utilized by Hazardous Materials Regional Response Team 6 (RRT-6) Asheville with State Homeland Security Grant Fiscal Year (FY) 2008 and FY 2009. This item will be procured through a previously Council approved grant through the U.S. Department of Homeland Security and the Office of Domestic Preparedness State Homeland Security Grant Number: FY08 2008-GE-T8 0033 and FY09 2009-GE-T9 0033 to implement the State Homeland Security Strategy. The grant's approved the NC Hazardous Materials Response Team Asheville (RRT-6) to procure equipment to be better prepared and respond to manmade and natural emergencies and disasters. The Hazardous Material Response Robot to be procured through these grants will be used in the field to detect and identify unknown and potentially hazardous conditions during a hazardous material response and to ensure the safety of emergency responders. The hazardous material response robot will be utilized in high risk scenarios to investigate dangerous situations giving emergency responders the tactical advantage. In certain situations the hazardous material response robot could be utilized to collect sensitive samples that in other situations placed the emergency responder in warms way.

The five other RRT's have procured this specific piece of equipment from QinetiQ Talon in order to be compatible with each other in case of a statewide emergency.

This action complies with the Strategic Operating Plan by better equipping the Hazardous Materials Team with upgraded equipment; and will assist in making Asheville a safer city, based on appropriate metrics for similarly sized cities.

## Pros:

- The Department of Crime Control and Public Safety, Division of Emergency Management, provided funds for the purpose of upgrading Asheville and Western North Carolina's terrorism response capabilities.
- The equipment is state of the art and will better address the risk of terrorist's attacks and hazardous materials incidents.
- All statewide regional response teams will be comparably equipped and interoperability will be realized should an event require the resources of additional teams.
- This equipment is immediately available to Asheville residents and businesses.
- This level of equipment would most likely not be able to be obtained through the city's general budget process.
- Firefighter and citizen safety will be enhanced.

## Con:

- The City of Asheville will be responsible for maintenance and upkeep of the equipment.

The Standardization of Equipment will have not fiscal impact to the General Fund since it is fully funded with grant proceeds. There will be maintenance and replacement costs for the equipment, which will be needed to be, included in future fiscal year budgets.

City staff recommends City Council adopt resolution authorizing the Asheville Fire Department to purchase Qinetiq Talon Hazardous Material Response Robot based on standardization needs with funding from State Homeland Security Grant FY08 and 09.

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#### **F. ORDINANCE NO. 3925 - BUDGET AMENDMENT FOR EMPLOYEE & RETIREE HEALTH CARE CONTRIBUTIONS**

Summary: The consideration by City Council of a technical budget amendment to reduce the General Fund budget by \$3,553,000 to allow for more efficient and effective accounting and reporting of employee and retiree contributions to the health insurance program.

In FY 2007-08, the City created an Insurance Fund to account for all revenues and expenses associated with the City's self insurance programs for health care, workers compensation, and liability. Prior to that time, these programs were accounted for in the City's General Fund. When the Insurance Fund was created in FY 2007-08, staff decided to continue initially recording employee and retiree contributions to the health insurance program as a revenue in the General Fund and then transfer those amounts to the Insurance Fund. This accounting process created additional work for staff, however it allowed for a more consistent presentation of General Fund revenues and expenses across fiscal years.

Staff has recently revisited this issue and decided that the efficiency gains from reducing the number of accounting transactions as well as the transparency improvements from eliminating the "double counting" of employee and retiree health care contributions in multiple funds outweigh concerns about reporting consistency across fiscal years. With the pending transition of payroll from H.T.E. to MUNIS, staff would like to execute this budgeting and accounting change during the current fiscal year. The technical impact of this change is a reduction in the FY 2010-11 General Fund revenue and expense budget of \$3,553,000. There is no impact to the Insurance Fund budget.

This action complies with the City Council Strategic Operating Plan Operate by ensuring that the City of Asheville's organization operates at the highest fiscal responsibility.

## Pros:

- Will reduce the amount of accounting transactions.
- Eliminate the double counting of revenues in two separate funds.

## Con:

- Makes comparisons with prior fiscal year budgets more challenging.

As noted above, the FY 2010-11 General Fund budget will show a reduction of \$3,553,000. However, there will be no net fiscal impact to the City's overall budget since employee and retiree health care contributions will still be recorded in the Insurance Fund.

City staff recommends City Council approve the technical budget amendment.

City Manager Jackson responded to Vice-Mayor Newman regarding the technical budget amendment.

### **ORDINANCE BOOK NO. 26 – PAGE**

#### **G. ORDINANCE NO. 3926 - BUDGET AMENDMENT FOR THE ACQUISITION OF DOWNTOWN PROPERTY LOCATED OFF OF EAGLE STREET**

Summary: The consideration of a budget amendment, in the amount of \$605,000, from the Parking Services Fund's fund balance for the acquisition of approximately 0.36 acres of downtown property located off of Eagle Street.

This budget amendment establishes a budget within the Parking Services Fund for the purchase of 0.36 +/- acres of property located off of Eagle Street, , further identified as PIN # 9649-50-1164-00000. The parcel is owned by the William and Charlotte Harrison Living Trust. The City has leased this parcel for a number of years for use as secured parking for Asheville Police Department specialty vehicles, cruisers and storage. At this point in time, the City has the strategic opportunity to purchase at a price below the appraisal value and assemble the parcel to adjoining city-owned property. This acquisition will benefit the City by eliminating the annual operating expense of leasing this parcel and maximizing the value of the parcel through assemblage.

For budgeting purposes, a total estimated project budget has been set at \$605,000 to include cost of acquisition, survey, phase one environmental review and legal fees.

This action complies with the City Council Strategic Operating Plan by demonstrating fiscal responsibility through eliminating ongoing operating costs, while maximizing the value of real property assets.

## Pros:

- Eliminates annual operating costs in the Parking Services Fund associated with leasing the parcel (est. \$30,000 per year)
- Maximizes value via assemblage
- Buyer's real estate market has allowed for a favorable purchase price

## Con:

- Requires an appropriation from the Parking Services fund balance

The City's funding for this project will come from Parking Services Fund's fund balance. The Fiscal Year 2009-10 audit is not yet complete, so the June 30, 2010 fund balance number for the Parking Services Fund has not been finalized. However, based on staff's current estimate,

available fund balance in the Parking Services Fund on June 30, 2010 was approximately \$2.5 million. This budget amendment will reduce the fund balance to approximately \$1.9 million.

City staff requests City Council to adopt a budget amendment of \$605,000 for the acquisition of 0.36+/- acres of property located off of Eagle Street.

**ORDINANCE BOOK NO. 26 – PAGE**

**H. RESOLUTION NO. 10-248 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH PAUL HOWARD CONSTRUCTION COMPANY FOR THE DEAVERVIEW ROAD BRIDGE REPAIR PROJECT**

**ORDINANCE NO. 3927 - BUDGET AMENDMENT FOR THE DEAVERVIEW ROAD BRIDGE REPAIR PROJECT**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract and any change order within the budgeted amount with Paul Howard Construction Company, Inc. for the project known as Deaverview Road Bridge Repairs; and 2) a budget amendment, in the amount of \$142,000, from savings in other capital projects to fund the contract.

The Engineering Services Division of Public Works has opened bids to do repair work the Deaverview Road Bridge. The bridge carries Deaverview Road over the Norfolk – Southern Railroad, and is adjacent to the City's Roger Farmer Park. The structure has severe corrosion on the main steel beam supports. The proposed repairs should keep the structure in service for many years to come.

The initial low bid was rejected, as there was only one bidder. The project was re advertised, and again, only one bidder submitted. The City and Contractor will share the costs for Norfolk-Southern safety personnel required when working within the Railroad Right of Way.

This action complies with the City Council Strategic Operating Plan in fully leveraging internal partnerships for pursuing capitol improvements and infrastructure projects.

Pros:

- Will repair an existing bridge to current standards.
- Provides long term investment in the City's infrastructure.
- Improves vehicular safety.
- Prolongs the useful life of a valuable City asset.

Cons:

- Project management and contract administration will consume staff time.
- A travel lane on this section of roadway may be required to be closed for a short time during the construction of the project.
- Financial obligations to Norfolk-Southern for project administration.

As a part of the FY 2010-11 adopted Capital Improvement Program (CIP), City Council approved a project budget of \$158,000 for the Deaverview Road bridge repairs. Based on the bid amount for the project, the budget needs to be increased by \$142,000 to a total project budget of \$300,000. As noted in the 1<sup>st</sup> Quarter Financial Report, during its year-end review of existing capital projects, staff identified approximately \$500,000 in savings from projects in the General Capital Projects Fund that were complete and that came in under budget. These savings have been moved to the General Capital Projects Fund's reserve account. This addition brings the total amount available in the capital reserve account to \$625,000. Staff is proposing that the \$142,000 needed for this project be taken from the reserve account. This will leave

approximately \$483,000 in the capital reserve account. Staff is recommending that the money remaining in the capital reserve be allocated for the FY 2011-12 CIP during the upcoming budget process.

City staff recommends City Council adopt (1) a resolution awarding the contract to Paul Howard Construction Company, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville the contract and any change order within the budgeted amount; and (2) the associated budget amendment in the amount of \$142,000.

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**I. RESOLUTION NO. 10-249 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE TOWN OF BLACK MOUNTAIN FOR SNOW FIGHTING MATERIALS**

Summary: The consideration of a resolution authorizing the Mayor to enter into an interlocal agreement with the Town of Black Mountain for salt and sand materials.

The Town of Black Mountain desires to partner with the City of Asheville on the procurement of snow fighting materials. Specifically, the Town desires that the City incorporate in the City's annual bid for snow fighting materials the needs of the Town. By utilizing Asheville's purchasing power, the Town will be able to reduce its overall costs.

The Town of Black Mountain would reimburse the City the full cost of materials transferred based on that current year's bids.

This action complies with the City Council Strategic Operating Plan in creating more collaborative and effective working partnerships between the City of Asheville and other key organizations.

Pros:

- Provide materials to a sister local municipality using Asheville's economy of scale bidding advantage.
- Create common goal partnerships with other key organizations.
- Increase in bid quantities could potentially leverage overall reduced costs of materials.
- Similar in scope to existing arrangement with UNCA and Mission Hospitals.

Cons:

- Mid-storm deliveries would necessitate sensitive communications to sort out needed logistics.

As a part of the FY 2010-11 adopted budget, the Public Works Department, Street Division, budgets for snow materials. There would be an additional cost in procuring the additional material; however, the corresponding revenue would offset any increase.

City staff recommends City Council adopt a resolution authorizing the Mayor to enter into an interlocal agreement with the Town of Black Mountain for salt and sand materials.

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**J. RESOLUTION NO. 10-250 - RESOLUTION AUTHORIZING SUPPORT FOR COUNTY'S GRANT APPLICATION TO THE METROPOLITAN PLANNING ORGANIZATION TO FUND AN UPDATE TO THE BUNCOMBE COUNTY GREENWAY AND TRAILS MASTER PLAN**



Summary: The consideration of a resolution authorizing support for Buncombe County's \$50,000 grant application to the Metropolitan Planning Organization to fund an update to the Buncombe County Greenway and Trails Master Plan.

Buncombe County through Parks, Greenways and Recreation Services Department is updating the Buncombe County Greenway and Trails Master Plan as a comprehensive system of interconnected trails and greenways. The update process is expected to cost \$100,000. To date Buncombe County has \$50,000 in hand to support the project. Buncombe County has applied to the Metropolitan Planning Organization for a \$50,000 grant to assist in the support of the master plan. If awarded, the grant will complete the funding needed for the plan update.

Once complete, the master plan update is designed to 1) coordinate current and future greenway development with municipalities within Buncombe Counties jurisdiction and neighboring counties, 2) provide all jurisdictions within Buncombe County with working documents to assist with prioritization and implementation of a regional greenway plan, and 3) better position all jurisdictions within Buncombe County for state and federal funding opportunities for greenways.

Buncombe County is requesting local governments located in Buncombe County to support its efforts to update its master plan by expressing their support of its application to the Metropolitan Planning Organization for funding. The City's resolution of support will not commit the City to any actions or financial expectation.

At its meeting on November 11, 2010, the Greenway Commission recommended to City Council to approve a resolution to support Buncombe County's grant application to the Metropolitan Planning Organization to fund an update to the Buncombe County Greenway and Trails Master Plan.

This action complies with the following City of Asheville master plans: (1) Asheville City Development Plan 2025 in that it demonstrates cooperation with other government agencies for recreation facilities as effective and efficient as possible; (2) Parks, Recreation, Cultural Arts & Greenways Master Plan in that it continues efforts for cooperation between the City and Buncombe County to find opportunities for partnerships; (3) Pedestrian Thoroughfare Plan in that it supports comprehensive, multi-modal transportation and congestion management program by improving connectivity of overall sidewalks and greenways; and (4) Comprehensive Bicycle Plan in that it supports future greenway development efforts as greenways have potential to provide connections with on-road bicycle facilities.

Pro:

- Demonstrate the City's support to the Metropolitan Planning Organization regarding Buncombe County's effort for developing the Buncombe County Greenway and Trails Master Plan.

Con:

- None

This action does not commit the City to any fiscal expectation or obligation.

Staff and the Greenway Commission recommends to City Council adopt a resolution to support Buncombe County's \$50,000 grant application to the Metropolitan Planning Organization for funding to update to the Buncombe County Greenway and Trails Master Plan.

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 Davis moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Manheimer and carried unanimously.

### **III. PRESENTATIONS & REPORTS:**

#### **A. NOISE ORDINANCE APPEALS BOARD UPDATE**

Chairman Jim Fink said that the mission of the Board is that people of Asheville have the right to a peaceful environment. Their goal has been to keep it that way.

Their goal will not change and he will serve as long physically possible. He said that there has been talk that the Board may be discontinued; however, to serve the City, they must keep the Board and not waste the courts time. Mayor Bellamy assured Mr. Fink that City Council acknowledges the importance of the Board and there has been no discussion to dissolve the Board.

At the request of Mayor Bellamy, it was the consensus of Council to have the Noise Ordinance Appeals Board review the usage of "Jake Brakes" in the City limits. City Attorney Oast said that when the Board meets, he will have City staff present in order to participate in the discussion.

On behalf of City Council, Mayor Bellamy thanked Mr. Fink for his service on this Board along with the service of the other members.

#### **B. QUARTERLY REPORTS**

##### **Strategic Operating Plan**

Assistant City Manager Jeff Richardson said that the Asheville City Council identified short and long term goals at the January 2010 strategic planning retreat and staff is providing its quarterly updates on progress of the five key focus areas.

City Council has asked City staff to provide quarterly updates on key strategic initiatives associated with the five primary focus areas of the City's Strategic Plan. Staff has tracked projects using performance indicators and measurement through the Fiscal Year 2010-11. In addition, staff provided Council with the Economic Development Key Indicator Report.

He then showed Council a video showing the staff's progress on the key strategic areas for this quarter.

This information is to update City Council on key operational initiatives specific to City Council's Strategic Operating Plan. No action is necessary at this time.

##### **Financial Report**

Budget Manager Tony McDowell provided Council with the City's overall financial position for the fiscal year through September 2010.

The executive summary is as follows:

**Amendments.** The General Fund budget presented in this first quarter report reflects the adopted budget of \$91,635,962; along with two budget amendments approved by Council during the first quarter that totaled \$616,757. The first amendment was a \$450,000 appropriation from fund balance for City Hall repairs. The other amendment, which totaled \$166,757, was to appropriate revenue and expenses associated with the annexation areas that became part of the City on September 30. In addition to these two amendments, the General Fund budget presented in this report reflects the \$3.5 million technical adjustment to the City's health care accounting. A summary of the budget changes since July 1 is presented below.

Adopted Budget	91,635,962
Health Care Technical Adjustment	(3,553,000)
Budget Amendments:	
City Hall Repairs*	450,000
Annexation Revenue & Expenses	<u>166,757</u>
9/30/2010 Budget	<u>\$88,699,719</u>

\* Fund balance appropriation

**Revenues.** Through September 30, 2010, the City has collected \$9,995,081 in General Fund revenue, which represents approximately 11.3% of the total General Fund revenue budget. There is no change in property tax estimates to report. Staff will receive updated property tax data in late December or early January. Sales tax estimates also appear to be on track to meet budget. The only major revenue variance to report is in the investment earnings category, where low interest rates are having a significant impact. Because of this shortfall in investment earnings, staff is currently projecting that **total FY 2010-11 General Fund revenue will come in under budget by \$786,000.**

**Expenditures.** General Fund expenditures through September 30, 2010 total \$18,811,826 or 21.2% of the budget, which is typical for this point in the fiscal year. One area to note on the expenditure side is the trend in health care expenses. Although expenditure growth in this area has slowed compared to previous years (about 6% during the first quarter compared to last year), the rate of growth may still result in expenses exceeding budget estimates. The city has implemented several management strategies to curb expenditure growth throughout the year, and the full impact of those strategies may not be realized until later in the year. Nonetheless, in order to conservatively manage expenses and address any potential under performance in revenues, the city is actively identifying additional savings in the current year budget. **These savings, representing roughly 1% of the overall budget, are expected to come from a combination of strategies that have minimal impact on public services. These strategies include further selective hiring, line item reductions, deferring capital expenses where possible, and seeking opportunities to maximize efficiency in operations.**

**Fund Balance.** Until the FY 2009-10 audit is complete, staff must rely on unaudited estimates for the final year end available fund balance figure for FY 2009-10. Based on current data, staff is estimating that available fund balance on June 30, 2010 was approximately \$11.9 million. **With implementation of the savings strategies mentioned above, FY 2010-11 expenditures are expected to equal revenues, which means available fund balance will remain at \$11.9 million or 13.6% of estimated expenditures.**

Mr. McDowell, Economic Development Director Sam Powers, Assistant City Manager Jeff Richardson and City Manager Jackson responded to various questions/comments from Council (noting that questions not readily answered will be followed-up in memo form), some being, but are not limited to: explanation of the Fund Balance analysis; is the reduction in license and fees causing a workforce reduction in the Inspections Division; more statistics on the unemployment rate (U-6 and U-3) and the rate of rental prices for housing in Asheville; when will the audit be complete; when will staff bring to Council more saving strategies; and what is

causing the high health care costs and what kind of incentives can we use to entice people with high risk to participate in our programs.

Mayor Bellamy noted that in June she suggested that if there were any cost savings she would like to put some of it toward sidewalks. Mr. McDowell recommended that Council wait and appropriate any cost savings projected as part of next year's budget process.

Mayor Bellamy said at Council's retreat it will be good opportunity to talk about some of the immediate needs we see in the community and the community's outcry for sidewalks.

In response to Mayor Bellamy, City Manager Jackson explained the status of the vacant Chief Financial position and introduced Interim Chief Financial Officer Kai Nelson, who in turn explained 2-3 areas of major focus in the Finance Department.

#### **IV. PUBLIC HEARINGS:**

##### **A. PUBLIC HEARING TO CONSIDER THE INITIAL ZONING OF PROPERTY LOCATED IN THE AIRPORT ROAD AREA TO HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT**

##### **ORDINANCE NO. 3928 - ORDINANCE ZONING PROPERTY LOCATED IN THE AIRPORT ROAD AREA TO HIGHWAY BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT**

Mayor Bellamy opened the public hearing at 5:51 p.m.

Urban Planner Julia Fields said that this is the consideration of an ordinance to zone property located in the Airport Road area to Highway Business District and Commercial Industrial District. This public hearing was advertised on November 12 and 19, 2010.

The property presented to you for initial zoning is property annexed by the City of Asheville effective September 30, 2010. The properties (a total of 17 parcels and a portion of another parcel) are located in the Airport and Rockwood Road areas. The land uses on these properties are varied with a mix of commercial, industrial, and office uses. There are also vacant parcels. The zoning on these parcels is Buncombe County Zoning (Employment District).

The Planning and Development Department recommends initial zoning in this area of Highway Business (HB) for all but one parcel for which the Department is recommending Commercial Industrial (CI) zoning. Staff has noted no nonconforming uses that would be created with the proposed zoning but recognize that some development standards will not be met with the existing development.

#### Pros:

- Supports the *Asheville City Plan 2025* goals for regional commercial corridor development.
- Is compatible with the zoning patterns (both City of Asheville and Buncombe County) in the area.
- Staff has noted no nonconforming uses that would be created with the proposed zoning.

#### Con:

- Some existing development many not meet all the city standards for the proposed zoning districts.

At a meeting on October 6, 2010, the Asheville Planning and Zoning Commission voted unanimously (6-0) to recommend this initial zoning to the Asheville City Council.

Staff recommends approval of the proposed initial zoning of the properties shown on the proposed maps and known as the Airport Road Annexation Area. Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable.

Mayor Bellamy closed the public hearing at 5:52 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 3928. This motion was seconded by Councilman Davis and carried unanimously.

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#### **B. PUBLIC HEARING TO CONSIDER A SUBSTANTIAL AMENDMENT TO 2009 AND 2010 CONSOLIDATED ANNUAL ACTION PLAN FOR COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME PROGRAMS**

#### **RESOLUTION NO. 10-251 - RESOLUTION AUTHORIZING SUBSTANTIAL AMENDMENT OF THE CITY'S CONSOLIDATED ACTION PLANS FOR 2009 AND 2010**

Mayor Bellamy opened the public hearing at 5:53 p.m.

Community Development Director Jeff Staudinger said that this is the consideration of resolution authorizing substantial amendment of the City's Consolidated Annual Action Plans for 2009 and 2010. This public hearing was advertised on November 12 and 19, 2010.

When projects approved for CDBG or HOME funding change, the Annual Action Plan that detailed the project must change. The HOME program has one 2009 and one 2010 HOME Project needing amendment.

1. Asheville Area Habitat for Humanity was granted \$130,000 of HOME funds in the 2010 Action Plan to support hard costs for a new housing development on Dennis Street in Swannanoa. The site is located near to Interstate 40, and without significant and costly noise mitigation does not meet minimum noise standards to meet HUD environmental regulations. Habitat will build this project, but will not use HOME funds in doing so. The Housing and Community Development Committee and the Asheville Regional Housing Consortium agree that these funds be allowed to be used for another Habitat project in Asheville. The 2010 Action Plan should be amended to cancel this project, and enable these funds to be used for another project, subject to Consortium approval.
2. The Community Housing Coalition of Madison County (CHCMC) was granted \$50,000 of HOME funds in the 2009 Action Plan for the construction of single-family housing. CHCMC has not been able to perform this activity, and therefore are relinquishing this grant. CHC is receiving technical assistance through a technical assistance grant funded by the USDA, and expects to bring forward development projects in the future. The 2009 Action Plan should be amended to cancel this project, and reallocate the funds to Unallocated Funds.

The Housing and Community Development Committee and Asheville Regional Housing Consortium concur with approval of the amendments.

The draft Action Plan Amendment directly relates to the Council's Strategic Goal of "Affordable."

Pro:

- Because the funds cannot be used as originally intended, this amendment allows for the funds to be returned to the pool of funds available for HOME eligible projects.

Con:

- There are no cons to this action.

By keeping the Action Plans current, funds that are able to be used for their original purposes become available for other eligible activities.

Staff recommends that Council approve the amendments to the 2009 and 2010 Consolidated Annual Action Plans.

Mayor Bellamy closed the public hearing at 5:56 p.m.

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

Vice-Mayor Newman moved for the adoption of Resolution No. 10-251. This motion was seconded by Councilman Smith and carried unanimously.

**RESOLUTION BOOK NO. 33– PAGE 263**

**C. PUBLIC HEARING RELATIVE TO UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN**

**ORDINANCE NO. 3929 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE ACCORDING TO THE RECOMMENDATIONS OF THE DOWNTOWN MASTER PLAN**

**ORDINANCE NO. 3930 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE CONCERNING REVIEW PROCESS ELEMENTS AS RECOMMENDED IN THE DOWNTOWN MASTER PLAN**

Mayor Bellamy opened the public hearing at 5:56 p.m.

Urban Planner Julia Fields said that this is the consideration of an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan.

Almost three years ago, the Asheville City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by the Asheville City Council in May 2009. The Council directed staff to work with stakeholder groups moving forward to prepare the changes to the Unified Development Ordinance (UDO) necessary to implement the plan recommendations and other implementation strategies.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to evaluate the processes for the review of downtown projects. The

proposals on processes have been on a different track from those for design standards. All ordinances are being presented to the Asheville City Council at the same time.

This ordinance details the necessary changes to the UDO concerning processes for development occurring on parcels zoned Central Business District (CBD) and located within the boundaries of the Design Review Overlay District. It adds a new section to Article V (“Development Review Procedures”) that outlines the procedures for reviewing projects proposed on parcels zoned CBD and located within the boundaries of the Design Review Overlay District (CBD/DDR). Changes that are recommended reflect the goals of the Asheville Downtown Master Plan (DTMP) and the recommendations of the Urban Design Action Committee. These changes are directly related to Strategy 6 of the plan: *Make downtown project review, transparent, predictable, and inclusive of community input.*

The new section in Article V sets forth the procedures for Level I, II and III project review in the CBD/DDR. These procedures differ from the procedures in other parts of the City’s jurisdiction as follows:

- The project level thresholds for development review in the CBD/DDR are different. Level III review will apply to those projects above 175,000 square feet or above the Intermediate Height Zone (145 feet). Level II review will apply to those projects between 20,000 and 175,000 square feet in size and up to the Intermediate Height Zone. All other projects are subject to Level I review.
- The order and format of the review process is different in the CBD/DDR except for Level I projects which are handled at staff level. Level III projects that are in the traditional downtown core go to the Technical Review Committee (TRC), the Downtown Commission (DTC), the Planning and Zoning Commission (P and Z) and to Asheville City Council through a conditional zoning process. Level III projects outside of the core follow the same review process except Council is only considering these projects for compliance with applicable standards and regulations. Level II projects go to the TRC, DTC, and P and Z for approval.
- Early developer sponsored meetings are required for the Level II and Level III projects. Such meetings are strongly recommended for Level I projects.
- All meetings where project proposals in the CBD/DDR are reviewed shall provide notification through publication in a newspaper, mailed notice and posted notice.
- Level II project approvals are valid for two (2) years.
- Large phased developments must submit a master plan.
- Variance requests for projects proposed in the CBD/DDR shall be granted by the Planning and Zoning Commission (acting as the Board of Adjustment) with a recommendation from the Downtown Commission except for landscaping requests. Alternative landscaping requests must be reviewed and approved by the Asheville Tree Commission. Planning and Development Department staff may flex up to ten (10) percent on standards concerning openings and expanses of wall.
- Appeals from decisions of the Planning and Development Department or the Downtown Commission shall be heard by the Planning and Zoning Commission (acting as the Board of Adjustment). Appeals from the decisions of the Planning and Zoning Commission shall be heard by the Asheville City Council.

At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council.

The Asheville City Council has held two work sessions on the Downtown Master Plan draft ordinances and has requested no changes to the process elements that were first presented to Council in November of last year.

Regarding compliance with the City Council Strategic Operating Plan, this wording amendment reflects proposals set forth in the Asheville Downtown Master Plan adopted by the Asheville City Council on May 26, 2009. Specifically, it implements elements of Strategy 6 of the plan. Some changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved.

At their meeting on September 1, 2010, the Asheville Planning and Zoning Commission reviewed and unanimously (6-0) recommended approval of this ordinance to Asheville City Council. The Downtown Commission also recommended approval in the fall of 2009.

Pros:

- Implements a community developed master plan.
- Sets forth a process that provides greater certainty to developers on projects in the CBD/DDR.
- Provides for a more transparent review process for projects in the CBD/DDR.

Cons:

- Some may be concerned over the elimination of City Council discretionary approval for all but the largest of projects.
- Some may be concerned that the requirement for developer sponsored meetings for Level II and Level III projects is burdensome.
- Some may feel that City Council review of Level III projects outside of the traditional downtown core (only reviewing for compliance with standards) is an unnecessary step as this review has already been conducted by the Planning and Zoning Commission.

Additional cost associated with notification of property owners for projects being considered by the Asheville Downtown Commission. First class postage for property owners within two hundred (200) feet is the proposed requirement. Actual amount will be dependent on the number of Level II and Level III projects proposed and the number of property owners to be notified.

City staff recommends approval of this wording amendment regarding the review process elements as recommended in the Downtown Master Plan.

City Attorney Oast asked for a minor amendment to the process ordinance having to do with the manner in which these decisions by the Council are appealed. He suggested the appropriate language in subsection (12) be changed to appeal to "Superior Court of Buncombe County in the manner provided by law."

Urban Planner Alan Glines said that this is the consideration of an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan. This public hearing was advertised on November 12 and 19, 2010.

Mr. Glines said that two years ago City Council approved a contract for planning services to develop a master plan for downtown to capture the community's goals for growth, redevelopment and continued vitality. The master plan consultants held numerous public meetings and forums to gather community input for downtown's future and the master plan was approved by City Council in May 2009. The Council directed the staff to work with stakeholder groups to prepare the changes to the UDO necessary to implement the plan recommendations, and other implementation strategies.

With that direction from Council, staff and stakeholder task groups have been studying the master plan and developing strategies for implementation. The Urban Design Action Committee began meeting in the fall of 2009 to evaluate the impacts of the master plan on parcels in downtown and to determine the best way to implement the recommendations in the plan. After over 20 meetings they concluded their work, and their final proposals for the Central



Business District were presented to the Downtown Commission. At their June 2010 meeting, the Commission voted to approve the changes as recommended by the Committee. The Planning and Zoning Commission after a series of meetings to review the proposals voted on September 1, 2010 to approve the wording amendment. Other stakeholder groups continue to work on implementation elements that do not require UDO changes.

The proposed UDO text amendment replaces the current development standards for the Central Business District (CBD) with new text and maps that reflect the goals of the Asheville Downtown Master Plan. Changes to the UDO are directly related to *Strategy 4: Shape building form to promote quality of place* and *Strategy 5: Update downtown design guidelines* from the master plan.

The master plan introduces regulations that are form-based rather than use-based. They focus on the basic building design elements to strengthen compatibility, ensure pedestrian orientation, and enhance the character of the skyline. The existing ordinance provides minimal direction to ensure that new building construction is compatible with neighboring properties and with downtown in general. The plan introduces concepts for the CBD that include new definitions for how height is measured, building height maximums based on location in downtown, a context transition edge adjacent to residentially zoned properties, shadow protections for certain parks, a street wall requirement, and building step-backs. The plan also provides new development requirements for the portions of new structures that exceed 75 feet in height including a maximum floor plate, and a limit on the longest dimension of the tower portion of a building. All structures will be required to include a building cap, a primary entrance along a frontage line, and requirements for windows and other openings at the ground level and upper stories.

The charge of the Council to the Urban Design Action Committee was to study how each master plan concept would work and realistically function in downtown, and to avoid any “unintended consequences” from implementation. With that charge, some changes are proposed that slightly modify the master plan recommendation while maintaining the goals of the plan. Using master plan concept maps, he explained the changes recommended for the master plan summarized below:

*Front Setback* – The master plan suggested averaging front setbacks based on street context. The Committee instead recommends retaining current requirements in the CBD for zero-foot setback from the right-of-way-line with limited exceptions to emphasize urban form in new construction and not allow master plan suggested setback averaging because many areas in downtown currently have a suburban form.

*Measurement of Building Height* – The Committee found that there are practical difficulties with the master plan recommendation to re-measure/ re-assess the height of a building based on the grade change across the site and instead recommended establishing a single height reference point at the primary pedestrian entrance.

*Height Zone Locations* – The Committee suggested adjustments to the height zone maps to reduce the locations of the tallest height zones based on compatibility with the traditional downtown core. Specifically, this reduction is in three locations – surrounding the Grove Arcade and areas below Hilliard Avenue along Church Street and Biltmore Avenue.

*Applicability* – The Committee recommends applying the master plan requirements and standards only to areas zoned Central Business District and not to other zoning districts surrounding downtown, as is shown on several maps within the plan. This will simplify implementation and aligns with community expectations to focus on downtown regulations.

*Context Transition Edge* – The Committee recommends that the Context Transition Edge be adjusted to apply only to the CBD areas most sensitive to changes in height (immediately adjacent to residentially-zoned properties) and limiting the application of the height buffer to 100 feet wide (instead of 300-400 feet wide as proposed in the plan).

*Shadow Restrictions* – Due to continuing concern about the impact of shadow requirements on building near very small parks, the staff proposed adjusting the building shadow limitations for parks and open spaces to only apply to larger park areas and exclude small pocket parks, private parks and plaza spaces, with definitions created for these uses. Additionally, the Committee recommended removing the shadow limitations on historic structures because other protections could be developed for them involving input from preservation professionals.

*Street Wall* – Because of its complexity, the committee recommends maintaining the street wall concept but reworking it to simplify understanding and provide some additional options that more completely reflect the historic fabric of downtown. City Council has also expressed interest in expanding the options for a variance from a street wall step-back for any new building. Using pictures, he showed examples of existing buildings.

*Air Rights* – The Committee, reflecting a staff recommendation, recommend removing the air rights option for side step-backs for upper stories of buildings because of legal concerns.

*Building Cap* – The Committee included clarification of the building cap requirements to measurable standards. Originally the master plan provided a number of subjective design recommendations that will be more appropriate in the Downtown Design Guidelines rather than placed in this ordinance.

*Key Pedestrian Streets* – The Committee suggested some modifications of the Key Pedestrian Streets map and requiring the primary pedestrian entrance to be placed on these streets if the option is available.

*Tower Floorplate* – The plan recommended limiting the allowable floorplate dimension for towers over 75'. The Committee agreed with this recommendation but suggested increasing the allowable square footage to 8,000 square feet or 40% of lot area as a more practical number.

The new amendment will include a type of form code that is similar in look to the other ordinances in the UDO but which introduces building envelope concepts and appropriate illustrations to convey the new standards. Maps will also be a part of the ordinance to easily identify boundaries for specific requirements in the ordinance.

#### *West Asheville UDO Changes to CBD Zone*

A related amendment has been finalized that proposes wording changes that will apply to the west Asheville CBD areas. There are two CBD sections along Haywood Road that cover about 60 parcels totaling approximately 18 acres. The proposed changes recommend a substantial height reduction for west Asheville, as there appears to be a general belief that very tall buildings are not appropriate along Haywood Road, and should be limited to the downtown CBD. Landscape buffer options are also proposed for the west Asheville CBD areas based on the scale of a specific development adjacent to residential areas. If these buffer options are adopted, these could provide a useful alternative for other areas in the city where commercial zones are directly adjacent to residential zones. These changes were worked out with the west Asheville property owners and interested residents at a series of meetings.

There are also two other isolated Central Business District-zoned parcels in Biltmore Park in south Asheville. There are no development plans for these parcels and future development will likely require rezoning as a part of a new development plan, so there is no plan for modifying them, although they will be affected by the changes to the CBD district.

The Urban Design Action Committee identified a number of items that they felt should receive additional attention but which were beyond the specific scope of their work, and not essential for the implementation of the majority of the master plan recommendations. They asked that this list be presented as unfinished items that may be studied by the Downtown Commission or other appropriate groups:

1. View Corridors to be reviewed again for specific locations
2. External Vista Points ("Vista Trail") development providing vistas into downtown
3. Expansion of the CBD along Ashland and Biltmore Avenues
4. Incentives or trade-offs for new parks, green features, etc.
5. Shadow Impacts on sunlight-dependant historic resources or sunlight-dependant "green" features
6. Transfer of Development Right possibilities
7. Protection for historic structures

The Planning and Zoning Commission considered the following clarifications based on public comments received during the review and recommended their inclusion into the proposal:

1. The ordinance will apply to all new construction and/or changes that modify the exterior walls and/or roof of an existing building. There was additional clarification that the ordinance will not apply to routine maintenance, repair or replacement of the same or similar materials on existing buildings.
2. Requests for variances will rest with the official or agency responsible for project approval and with all variance requests, the Downtown Commission will provide a recommendation as a part of the process.
3. The descriptions of several sections were edited to clarify the meaning and requirements.

During two work sessions with City Council on October 12, 2010 and November 9, 2010, staff was directed to look into a number of considerations including incentives for affordable housing and commercial units, sustainable building features for new construction, and a broader variance option for buildings seeking an alternative to the step-back requirements at the height of the street wall. After consideration of the options, the City Council decided to postpone the sustainability option. The Council then directed the staff to pursue the step-back alternative to ensure that a variety of options will be in place for new buildings and in recognition of the many existing downtown buildings that do not provide a physical step back.

Based on the comments from the Council during the work session, staff is now proposing a broader variance option for buildings seeking an alternative from the step back requirements. Originally the variance provision was limited to shorter buildings (below 75 feet) because of the need to protect the pedestrian environment at the sidewalk level. Step-backs are designed to allow air and light to reach the sidewalk and to maintain the historic character for buildings, especially in the downtown core. Factoring into the proposed change is the reality that many existing iconic downtown buildings do not 'step back' but rather provide a strong visual transition from the base of the building to upper floors by way of color and material changes and sometimes by the size and scale of entryways and windows at the base. This proposed modification will allow a building of any size to apply for the variance by showing a design that provides a clear transition between the lower portions of the building and upper floors at the street wall height.

This proposed variance option was reviewed with the Downtown Commission along with City Council's conversation about the *Transformational Projects Policy and Incentives*. The Commission did have some concerns about the change but noted that they will be involved in

reviewing the variance requests. The Downtown Commission also indicated that they would appreciate the opportunity to provide ideas relating to the Central Business District for the *Transformational Projects Policy and Incentives* when City Council is ready to consider these details.

Regarding compliance with the Strategic Operating Plan, the wording amendment being considered is in direct support of the Asheville Downtown Master Plan adopted by City Council on May 26, 2010 (Resolution 09-102). The wording amendment represents the implementation of Strategies 4 and 5 focusing on the character and scale of the built environment. Some minor changes have been proposed by the reviewing committee but the goals and intentions of the master plan are preserved. The adoption of the wording amendment is also in alignment with the goals of the Strategic Plan 2010-11 which emphasize fiscal responsibility by implementing an approved master plan. The plan has represented a strong partnership with supporters and stakeholders of downtown who were heavily involved in developing the strategies in the master plan and continue to meet to implement the plan.

Pros:

1. Implements a community developed master plan.
2. Provides a recommended form-code framework for designing new structures.
3. Assures adequate air and light at the sidewalk level and promotes compatibility with the existing historic context.
4. Encourages views between tall buildings and enhances the skyline vistas of downtown.
5. Improves the compatibility for the two areas of Central Business District zoned property located along Haywood Road in west Asheville with the single-family neighborhoods that adjoin that property.

Cons:

1. The code is more complex and may be difficult to explain and understand for the layman.
2. Developable area per lot is reduced above the height of 75 feet (may be considered a pro).
3. As with any change to the UDO regulations, the impact of the new ordinance may not be fully understood until new developments are proposed.

The Planning and Zoning Commission voted 6-0 to recommend approval of the wording amendment at their meeting on 9-1-10. The wording amendment was reviewed with the Commission over four meetings to carefully consider the details of the ordinance. The Commission recommended some clarifications to the ordinance which have already been reviewed in this staff report and are part of the proposed ordinance being considered by City Council.

The Urban Design Action Committee endorsed the wording amendment and sent it forward to the Downtown Commission for consideration. The Downtown Commission after adjustments to the height map voted to approve the amendment on June 10, 2010 and recommend it moving forward to the Planning and Zoning Commission.

This proposal has also been shared with interested stakeholders along Haywood Road and with Biltmore Farms and new concepts for landscape property-line buffers were reviewed with the Coalition of Asheville Neighborhoods (CAN).

The Planning and Development Department staff recommends approval of this wording amendment according to the recommendations of the Downtown Master Plan.

Mr. Pat Whalen, former Chairman of the Downtown Commission, hoped that Council would continue to honor all the public participation in the Downtown Master Plan to get to this point. He supported the amendments, noting that it could be fine-tuned in the future.

Mr. Steve Rasmussen, member on the Urban Design Action Committee commented on some loose ends as follows: (1) the need to find better ways to protect historic properties downtown; (2) more protection for the mountain views, view corridors and vista parks; (3) and ensure public input by keeping the Level III project thresholds at 100,000 square feet.

Ms. Raelin Hanson, resident of Battery Park Apartments, felt the Level III project threshold should be reduced to allow public comment before City Council; and was opposed to modern building caps.

Mr. Joe Minicozzi, interim Executive Director of the Asheville Downtown Association, urged Council to adopt the ordinances which create a better, more transparent and predictable process.

Ms. Susan Griffin, downtown resident, supported the changes in that this is a reasonable and organized way to look at future growth.

Mr. Larry Holt, downtown resident, spoke about the culmination of hundreds of hours of work by hundreds of volunteers. He was concerned about the public participation in the review of plans once the threshold is raised because public comment becomes even more important. He hopes that is addressed; however, he felt we needed to move forward because when development starts again we need to have a good review process in place.

Ms. Karen Van Ammon, City resident, felt we should put language in to protect the historic buildings now because once they are torn down, it will be too late.

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

Ms. Fields said that there are a number of buildings in downtown that are designated local landmarks and they are protected, to a certain extent. They can still be torn down, but you have to go through a lot of red tape and there is a waiting period. The only other thing you can do to protect historic buildings is to create a local historic district; however, the times that has been suggested there has been concern from the downtown property owners and not an interest in seeing that happen.

Vice-Mayor Newman moved to adopt Ordinance No. 3929, an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan. This motion was seconded by Councilwoman Manheimer.

All of Council commended the hundreds of volunteers across the spectrum (business, architects, renters, City residents, County residents, etc.) for the thousands of hours of work on this process.

Vice-Mayor Newman said that we have tried to create a set of policies that encourage investment and growth in downtown, rather than sprawl development across the countryside and on our mountains. When new buildings are built in our downtown, we want them to be buildings that future generations will be proud of in the same way we are very proud of the architectural legacy we have inherited from past generations. That is the intent of this plan. This is not a plan that any one person would have written - it's the work of the community. We have created much stronger design rules that developers have to adhere to build in the downtown, while Council will still be involved in the very large projects in the traditional part of downtown.

Councilman Smith too noted that consensus on 19 strict design rules were achieved by the hundreds of volunteers.

Councilman Russell did not support this process in the beginning due to questions regarding property rights, but since this process has resulted in a more objective and less political process he could support it.

Councilwoman Manheimer stated that whole concept of the Downtown Master Plan was to have a massive collaboration of citizenry come up with a uniform set of rules that reflect what our community wants - not a case by case basis, but rather put a set of rules in place so when the economy picks up, Council is not having to make a decision each time about what is best for our community. Before this Plan, we didn't have height limitations or restrictions to what a building might look like. This Plan basically covers what a building should look like down to pretty minute details. And, if you are willing to build exactly what we want and what these volunteers have decided what is best for Asheville, in exchange, you can build your project. She felt that the ordinance can be amended in the future if need be. But, in the end, this represents our best efforts.

Councilman Davis felt Council should either do away with Council review of the Level III projects outside of the traditional downtown core (since it is only reviewing for compliance with standards), or make it the same review of all Level III projects inside the traditional downtown core area.

Mayor Bellamy reiterated that the Downtown Master Plan was a comprehensive endeavor to plan for the future with public input upfront. This process was built upon other plans, including the 2025 Plan (which received a lot of community input), as well as the Council's smart growth policies. She agreed with Councilwoman Manheimer that this plan addresses specific and minute details on the building, e.g., mechanicals on the buildings. She felt that if people review the ordinance in detail, they would appreciate what Council is trying to do.

The motion made by Vice-Mayor Newman and seconded by Councilwoman Manheimer to adopt Ordinance No. 3929, an ordinance amending the Unified Development Ordinance according to the recommendations of the Downtown Master Plan carried unanimously.

#### **ORDINANCE BOOK NO. 26 – PAGE**

Councilwoman Manheimer moved to adopt Ordinance No. 3930, an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan, with the amendment outlined by City Attorney Oast. This motion was seconded by Vice-Mayor Newman.

Councilman Bothwell agreed with Councilman Davis in that Council should have the same review of the Level III projects inside or outside of the traditional downtown core. He questioned how the 175,000 sq. ft. Level III threshold was picked. He felt it was arbitrary to almost double the size of the Level III developments from the current 100,000 sq. ft. to the proposed 175,000 sq. ft. He suggested we have a 125,000 sq. ft. threshold for Level III projects and increase it through incentives. He pointed out that former Mayor Leni Sitnick felt the 100,000 sq. ft. threshold was extremely high when the current ordinance was adopted and has regretted that the Level III threshold was not lower back then. The Master Plan group started at 100,000 sq. ft. and they compromised up. City Council is the level where citizens get to have a voice in shaping our community. He felt we should keep the threshold for Level III projects at 100,000 sq. ft., or increase it in small increments. If we increase the threshold to 175,000 sq. ft. now, it will be difficult to reduce it in the future.

When Councilman Bothwell asked for a friendly amendment to keep the Level III threshold at 100,000 sq. ft., Vice-Mayor Newman explained why he did not accept it.

Councilman Smith suggested a compromise of 137,500 sq. ft. for the Level III threshold, and incentivize up to 175,000 sq. ft. for LEED certification.

Councilman Bothwell moved to amend the main motion to reduce the Level III threshold from the proposed 175,000 sq. ft. to 137,500 sq. ft. This motion was seconded by Councilman Smith and failed on a 2-5 vote, with Councilman Bothwell and Councilman Smith voting “yes.”

Councilman Smith questioned if Council was open to pursuing incentivizing within this process and felt this could be an item Council could review at their retreat.

Councilman Bothwell moved to amend the main motion to have the same review of the Level III projects inside or outside of the traditional downtown core. This motion was seconded by Councilman Davis and failed on a 3-4 vote, with Councilman Bothwell, Councilman Davis and Councilman Smith voting “yes.”

Mayor Bellamy explained that what is proposed is for those who invest in downtown will have strict rules to follow and if all those standards are met, the project will be approved. She noted that several of the e-mails she has received contain misinformed comments. Council is not abdicating their responsibilities for Level III projects. Notifications will still be sent and public comment will be accepted. This is the culmination of pretty strong ordinances and when development restarts, it will respect who we are in the City of Asheville and the mountains of western North Carolina.

At Mayor Bellamy’s suggestion, it was the consensus of Council to have staff put on the City’s website information and maps to help them understand how this will ordinances will benefit the downtown.

The motion made by Councilwoman Manheimer to adopt Ordinance No. 3930, an ordinance amending the Unified Development Ordinance concerning review process elements as recommended in the Downtown Master Plan, with the amendment outlined by City Attorney Oast, and seconded by Vice-Mayor Newman carried on a 6-1 vote, with Councilman Bothwell voting “no.”

#### **ORDINANCE BOOK NO. 26 – PAGE**

At 7:16 p.m., Vice-Mayor Newman moved to excuse Councilman Russell from the remainder of the meeting. This motion was seconded by Councilman Davis and carried unanimously.

At 7:16 p.m., Mayor Bellamy announced a short recess.

#### **D. PUBLIC HEARING TO CONSIDER A CONDITIONAL USE PERMIT FOR THE PROJECT IDENTIFIED AS US CELLULAR TELECOMMUNICATION TOWER, LOCATED AT 415 BEAVERDAM ROAD, FOR CONSTRUCTION OF AN 80’ MONOPOLE TOWER**

Mayor Bellamy said that it has been determined by the Planning and Development Director that the City’s Zoning Ordinance does not allow telecommunications towers to be located on the property that is the subject of this Conditional Use Permit application, and that this application is ineligible for consideration. This public hearing will not be held.

#### **E. 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**

Urban Planner Julia Fields said that in November 2007, the Asheville Planning and Zoning Commission reviewed a rezoning petition for the Horizons Urban Village project located on an 8.54 acre site on Merrimon Avenue. The Commission voted to recommend rezoning (7-0) and the conceptual site Plan (5-2) presented by the developers/property owners of the project, and the matter was scheduled to be heard by Asheville City Council in January of 2008. At that time, the developers requested a six (6) month continuance in order to review the site design particularly as it related to the height of some of the buildings. Building height was a significant concern for the adjoining neighbors of this project. In June of 2008, the property owners requested an additional three (3) month continuance primarily due to economic conditions. In October of 2008, and again in 2009, the property owners requested and obtained an additional twelve (12) month continuance from the Asheville City Council.

The property owners (F. Foster Shriner, AVN Developers, Member, Jasmine Development, LLC, Manager and CS Merrimon Group, LLC, Manager, submitted the following letter on November 16, 2010, withdrawing the rezoning petition "Please accept this notification that the property owners of the former DEAL property and the proposed Horizons project wish to withdraw our application. Current economic conditions have required that we abandon this project. We regret this decision and thank you and all of the staff for your patience and assistance throughout this process."

Since an Urban Village rezoning can only be done in response to a petition of the owners of the property included, this withdrawal has the effect of taking the petition out of consideration. Should the property owners wish to have the rezoning/project considered again, a new application will be required, with payment of all requisite fees. A new petition would be required to go through all steps in the process as before.

A valid protest petition for this rezoning has been submitted. The withdrawal of the project makes the protest petition of no effect.

A pre-application conference has been held concerning a proposal for a new project on this site. It is expected that there will be an application submitted for project review for this new proposal in December of this year.

Council need take no action on this matter.

#### **V. UNFINISHED BUSINESS:**

#### **VI. NEW BUSINESS:**

##### **A. RESOLUTION NO. 10-252 - RESOLUTION ADOPTING CODE OF ETHICS FOR THE CITY COUNCIL**

City Attorney Oast said that this is the consideration of a resolution adopting Code of Ethics for the City Council.

: In 2009, the N.C. General Assembly adopted N.C.G.S. 160A-86 and 160A-87. N.C.G.S. 160A-86 requires adoption of a Code of Ethics; N.C.G.S. 160A-87 requires that Council members receive regular ethics training. Council members have been fulfilling their ethics training requirement through programs by the School of Government.

N.C.G.S. 160A-86 provides for certain minimum content a Code of Ethics, to include:

- (1) The need to obey all applicable laws regarding official actions taken as a board member.
- (2) The need to uphold the integrity and independence of the board member's office.



- (3) The need to avoid impropriety in the exercise of the board member's official duties.
- (4) The need to faithfully perform the duties of the office.
- (5) The need to conduct the affairs of the governing board in an open and public manner, including complying with all applicable laws governing open meetings and public records.

The proposed Code of Ethics draws from publications by Institute/School of Government at UNC, the ethics codes and policies of other North Carolina local governments, and other sources. The proposed code covers the minimum required content, but also draws directly from applicable statutes, and covers other relevant and recurring issues.

Section 1 of the code contains definitions.

Section 2 covers the duty of Council members to know the law, and to make appropriate inquiry in the case of questions or uncertainty. The statutes are directory and cover those things that Council members must (or must not) do.

Section 3, 4, and 5 establish expected standards of behavior in meetings, on official business, and at other times. These are not mandatory or minimum standards, but rather are guidance for interacting with each other and with the public.

Section 6 is a special recognition of the open meetings and public records laws, and the importance and effect of those laws on Council's business.

Section 7 clarifies in broad terms the relationship between the Manager and Council on the Council-Manager form of government, as prescribed in the City's Charter and the General Statutes.

Section 8 codifies the manner for determining where a conflict of interest exists, and what to do if a conflict develops. Not every interest will be a conflicting interest, requiring recusal; different standards may apply to different situations, with different results.

Section 9 draws heavily on statutes regulating gifts and favors. Though not as detailed as the State Government Ethics Act, that law is cited as general guidance for appropriate conduct.

Section 10 Clarifies that Council members are responsible for knowing elections laws, and further provides that they not engage in political activity on City premises. This is drawn from a statute, N.C.G.S. 160A-169 that governs political activity.

Section 11 is a reminder of the limitations and the use of confidential information. This is likewise drawn from a statute, N.C.G.S. 14-234.1.

Section 12 describes a censure process for handling violations of the ethics policy; State law does not provide any process for enforcing the ethics policy or sanctioning violations of it. This is an optional provision, and a much more detailed process is available.

Council must adopt a Code of Ethics before the end of the year, except to maintain the required minimum content the Code may be amended as often as needed.

Adoption of a Code of Ethics is required by law.

Pros:

- Satisfies legal requirement
- Codifies and assembles in one place the legal and other provisions for Council conduct

Con:

- None noted.

The fiscal impact is negligible; cost of receiving periodic training.

He asked that the policy be revised as follows: (1) in Section 7, "Except for purposes of requesting or receiving assistance of a clerical or administrative nature from those employees assigned to provide such assistance, or for purposes of inquiry, Council members should deal with City staff only through the City Manager or his designee."; (2) further clarification in Section 9 regarding Gifts and Favors that N.C. Gen. Stat. sec. 133-32 is a regulation that applies only in situations where you are dealing with someone who is under contract with the City or anticipates being under contract with the City; and (3) deletion of subsection 1 in Section 9 regarding honoraria and re-number the following paragraphs.

Adoption of the revised resolution, and the Code of Ethics is recommended.

In response to Councilman Bothwell, City Attorney Oast said that "living as an elected official" means being aware that you are an elected official, which carries certain responsibilities. It is an expectation that you not act in such a way as to bring shame to the city.

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 Smith moved for the adoption of Resolution No. 10-252. This motion was seconded by Councilman Davis and carried unanimously.

#### **RESOLUTION BOOK NO. 33 – PAGE 264**

#### **VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:**

Councilman Bothwell thanked all the volunteers who came out on November 20 for the City-wide clean-up day. He reminded people who are physically limited in their ability to do the work that volunteers are available to help out and to contact him for that assistance. Mayor Bellamy thanked Councilman Bothwell for his leadership on this effort.

Councilman Smith announced the November 30 community meeting at W.C. Reid Center at 133 Livingston Street, at which time staff will update the community on activities taking place in their area and Council will hear from residents as well.

City Attorney Oast said that the N.C. League of Municipalities representatives wanted to meet with representatives from some of the larger cities in North Carolina to discuss their legislative agenda for this coming year. They tentatively suggested December 6 in Asheville. He asked Council to let him know if they would be interested in meeting.

Mayor Bellamy reported on her trip to Washington, D.C., as a member of the Local Government Advisory Committee. She explained what a good opportunity it was to hear the priorities of the Environmental Protection Agency on a national and regional level and for them to hear our needs on a local level.

Mayor Bellamy wished everyone a happy and safe Thanksgiving holiday.

#### **VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:35 p.m.

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CITY CLERK

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MAYOR