

Tuesday – August 23, 2011 - 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.; 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:

A. PRESENTATION TO CITY OF ASHEVILLE FROM EMPLOYEES WHO ARE ACTIVE MILITARY RESERVISTS

Senior Firefighter Barnaby Raikes and other military reservists presented a plaque to City Manager Jackson thanking the City of Asheville for its support to activated military employees. The plaque reads "Presented to the City of Asheville for its continuing support of your employees who serve in the Armed Forces of the United States, we thank you".

Mayor Bellamy thanked City Manager Jackson for making sure that our military employees have a job when they come back. On behalf of City Council, she said we are proud of everything our military employees do.

B. PROCLAMATION PROCLAIMING AUGUST 27, 2011, AS "TRANSITION ASHEVILLE DAY"

Mayor Bellamy read the proclamation proclaiming August 27, 2011, as "Transition Asheville Day" in the City of Asheville. She presented the proclamation to Mr. Stan Corwin, Ms. Kathy Scott, Mr. Chas Jansen and Ms. Jeanie Martin, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of Councilwoman Manheimer Consent Agenda Items "G" was removed from the Consent Agenda due to a conflict of interest.

At City staff's request, Mayor Bellamy added (with the consensus of Council) an item on the Consent Agenda which will rescind Resolution No. 11-151 due to an accounting error, and authorize the City Manager to execute a contract with SPL Integrated Solutions for the installation of a new sound reinforcement system in the Asheville Civic Center arena.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 9, 2011

B. RESOLUTION NO. 11-168 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BRANTLEY CONSTRUCTION COMPANY LLC FOR RENOVATIONS OF THE ASHEVILLE CIVIC CENTER

ORDINANCE NO. 3998 - BUDGET AMENDMENT FOR CIVIC CENTER RENOVATIONS

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Brantley Construction Company, LLC in the amount of \$ 4,077,921 for renovations of the Asheville Civic Center, and a budget amendment in the amount of \$4,105,000 from debt proceeds and box office revenue.

This contract incorporates major components of the overall renovation of the arena, locker rooms, concourse, banquet hall, museum area and concessions areas are some of the most integral elements of the Civic Center renovation plans. The overall renovations are being done in preparation to host the Southern Conference Basketball Tournament beginning in March 2012 and through 2015. These renovations will give patrons and promoters a much improved experience when attending or scheduling concerts, sporting events and other special events throughout the years to come. The improvements will also provide a much better experience for the athletes and entertainers when they come to compete and entertain. The overall renovations will provide a much brighter and inviting venue for many years to come.

The following bids were received:

• Melloul Blamey Construction SC Ltd., Greenville, SC:	\$4,548,000
• The Harper Corporation, Greenville, SC:	\$4,491,220
• Kearey Builders, Inc., Statesville, NC:	\$4,450,070
• H & M Constructors, Asheville, NC:	\$4,346,800
• Brantley Construction Company, LLC, Canton, NC:	\$4,077,921

By approving this contract, total project expenses under contract to date will be \$6,126,382. The table below summarizes existing contracts in place along with the construction contract under consideration.

<u>Funding Uses/Project Components</u>	<u>Amount</u>
Design	\$ 480,000
Seating Replacement	\$ 775,000
Scoreboard Replacement	\$ 255,000
Sound System	\$ 418,461
Technology Upgrades and Asbestos Abatement	\$ 120,000
Construction	\$4,077,921
TOTAL	\$6,126,382

In order to fund this contract, staff is also seeking approval of a budget amendment in the amount of \$4,105,000 to budget revenue from debt proceeds and the Civic Center box office. Approval of this budget amendment will bring the total budget for Civic Center renovations to \$6,975,000. The table below summarizes the project budget including the proposed budget amendment.

FY 2012 CIVIC CENTER PROJECT BUDGET	
EXISTING BUDGET	
Funding Sources	Amount
Tourism Development Authority	\$ 1,750,000
Buncombe County	\$ 320,000
City of Asheville Capital Contributions	\$ 800,000
Total Existing Budget	\$ 2,870,000
PROPOSED BUDGET AMENDMENT	
Funding Sources	Amount
Civic Center Box Office Proceeds	\$ 580,000
Debt Proceeds	\$ 3,525,000
Total Budget Amendment	\$ 4,105,000
TOTAL PROJECT BUDGET PENDING	\$ 6,975,000

The remaining project budget is anticipated to be used for additional design fees and the procurement of equipment and furnishings such as folding chairs, concession equipment, etc.

The remaining scope of the project is contingent upon continued partnership funding and could include stage and seating improvements, mezzanine improvements, mechanical system upgrades, and exterior and lobby renovations. Discussions with funding partners are ongoing.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project provides for a much better experience for the athletes and patrons alike.
- Energy efficiency improvements to existing lighting system will meet national television broadcast standards while creating cost savings.
- Improved flow of patron traffic to and from the arena floor through the use of a new elevator and additional access points from the concourse area.
- Improved concession revenues through increased number of concession points of sale and improvements to existing locations.
- Much needed improvements to the locker rooms for athletes and officials.
- Much needed improvements to the Banquet Hall.
- Increase in useable space with the renovation of the Museum area located under the Thomas Wolfe Auditorium.
- Enhancements to safety equipment such as Smoke Exhaust system upgrades and fire suppression upgrades around the concourse.
- Project bid is below budget.

Con:

- None.

Based on current estimates, the annual debt service for the \$3.525 million in loan proceeds will be approximately \$307,000 beginning in FY 2012-13. Payments will likely extend over 20 years with the annual debt service amount decreasing over this time. The funding for this

debt service will come from the annual capital contribution that the General Fund makes to the Civic Center.

The current favorable construction climate, the ability to leverage partnerships, and capital already raised has created opportunities for additional funding and partnerships to address remaining important components of the renovations. These components include additional energy improvements and components to increase the ability of the venue to be a tourism destination. These currently unfunded items are approximately two million dollars.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Brantley Construction Company, LLC for \$4,077,921 for the Renovation of the Asheville Civic Center arena, and a budget amendment in the amount of \$4,105,000 from debt proceeds and box office revenue.

**RESOLUTION BOOK NO. 34 – PAGE 132
ORDINANCE BOOK NO. 27 - PAGE**

C. RESOLUTION NO. 11-169 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE EAST ASHEVILLE YOUTH ACTIVITIES BOOSTER CLUB INC. FOR THE PROPERTY LOCATED AT NEW HAW CREEK ROAD AND BELL ROAD, KNOWN AS THE CHARLIE BULLMAN PARK

Summary: The consideration of a resolution authorizing the City Manager to execute a Lease Agreement between the East Asheville Youth Activities Booster Club, Inc. and the City of Asheville for real property located at New Haw Creek Road and Bell Road.

The subject property (PIN # 9659-92-4876-00000) at New Haw Creek Road and Bell Road is owned by the East Asheville Youth Activities Booster Club, Inc. and has been utilized by the City for many years as Charlie Bullman Park. This park is approximately 5.27 acres containing three ball fields and a parking area.

The proposed term for this lease is five years, at a rental rate of \$1.00 per year. The City will also be responsible for paying related tenant expenses, including utility bills and upkeep.

This action complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it maximizes the level of service available to the community by using partnerships as a way to offer parks and recreation services.

Pro:

- Continue a community partnership as an affordable means to provide a public park

Con:

- None

Funding for utilities and upkeep of the park are included in the Parks, Recreation, and Cultural Arts FY 2011-12 budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the East Asheville Youth Activities Booster Club, Inc. on behalf of the City of Asheville.

RESOLUTION BOOK NO. 34 – PAGE 133

D. RESOLUTION NO. 11-170 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE 2011 FEDERAL TRANSIT

ADMINISTRATION APPORTIONMENT AND FOR THE MAYOR TO EXECUTE SAID GRANT

Summary: The consideration of a resolution authorizing the City Manager to apply for the 2011 Federal Transit Administration (FTA) apportionment in the amount of \$1,958,256; and for the Mayor to execute said grant.

The City of Asheville is going to apply for the 2012 annual apportionment using a Federal Transit Administration apportionment under the Department of Defense and Full-year Continuing Appropriations Act 2011. The annual apportionment (Section 5307) authorizes Federal funding for capital and in some cases, for operating assistance, and planning activities for transit in urbanized areas. The City was reclassified as Urbanized Area, as part of the 2000 Census and therefore restricted in its ability to use operating assistance. However, the City, among others, will be allowed to use part of this year's allocation in operating assistance, in the amount of \$484,022.

As part of the reclassification Henderson County's Apple Country became part of the transit systems in the Metropolitan Area. As such the City and the County share the federal allocation. The County will receive approximately \$440,000 of the total allocation. The City and the County had signed a Sub-recipient Agreement in which it is specified how the funds are disbursed as well as the oversight of these funds. The city is responsible before FTA of the use of these funds and owns all the capital items Henderson County purchases with the allocation.

The City intends to use these funds for FY 2012 expenses, such as operating assistance, and for capital items allowed under the Master Agreement, such as preventive maintenance, Americans with Disabilities Act (ADA) service, and for other minor capital items (automated vehicle location system, small equipment for the buses, etc.). One percent of the allocation must be used for security purposes.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- These funds were budgeted in the FY 2012 City Budget and will offset costs related to operations, preventive maintenance and ADA services.

Con:

- The city has to contribute with 20% of the capital items, including preventive maintenance and ADA services; and 50% of the operational expenses.

The total amount of FTA transit funding available to the City in FY 2012 will be \$1,958,256. Approximately \$440,000 of this amount will be allocated to Henderson County, leaving \$1,518,256 for City transit expenses. The FTA transit apportionments are already included in the FY 2012 adopted budget.

City staff recommends City Council authorizing the City Manager to apply for the 2011 Federal Transit Administration apportionments in the amount of \$1,958,256; and for the Mayor to execute said grant.

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- E. RESOLUTION NO. 11-171 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LICENSE AGREEMENT WITH RIDING PARTNERS INC. (D/B/A BIOWHEELS RTS) FOR THE PURPOSE OF INSTALLING AND OPERATING AN ELECTRIC VEHICLE CHARGING STATION ON A PORTION OF CITY-OWNED PROPERTY AT 161 S. CHARLOTTE STREET**

Summary: The consideration of a resolution authorizing the Mayor to execute a License Agreement with Riding Partners, Inc. (dba BioWheels RTS) for the purpose of installing and operating a solar-powered electric vehicle charging station on city-owned real property at 161 S. Charlotte Street, Asheville, NC.

Riding Partners, Inc. was awarded an NC Green Business Fund Innovation Grant in early 2011 to develop and install three prototype solar powered electric vehicle charging stations in Western North Carolina. This innovation infrastructure increases the benefits of electric vehicles by providing fuel from renewable energy sources. Riding Partners approached the city to solicit a public private partnership to locate one station through a public property land lease (license agreement). Through the NC Green Business Fund Innovation Grant and public private partnerships, Riding Partners intends on refining a sustainable business model for electric vehicle fueling infrastructure.

The proposed License Agreement will enable Riding Partners to install a 31.5' x 16.5' solar PV awning at the corner of S. Charlotte and Eagle Streets. The roof will include 20 solar panels that will generate 4.9 KW of electricity for the station. At the base of the support piers for this awning, Riding Partners, Inc. will install 3 electric vehicle charging units, with access to these charging units available from six adjacent parking spaces within the city parking lot. Riding Partners, Inc. will have the ability to sell "charge events" (i.e. fueling events) to electric powered vehicles and will be fully responsible for the ongoing maintenance for the equipment. The term of the agreement is proposed for ten years total, with a 5 year initial period, with the option to renew for an additional 5 years.

At present, it is recognized that there is strong demand for employee and customer parking during the normal business hours of the Public Works Department and Development Services Center. Therefore, during the initial two years of the license agreement, parking in the six spaces adjacent to the electric vehicle station will be open use and non-exclusive. In year three of the license agreement, it is contemplated that there will be an increased demand for designated access for these spaces, as electric vehicle parking only. Based on industry metrics, the license agreement will include language that provides for one of the six spaces to be designated as "Electric Vehicle Parking Only" at the point that there are 50 such vehicles registered in Buncombe County. Designating additional spaces will be reviewed each additional year of the license agreement, using the same metric (e.g. 2 designated spaces per 100 registered electric vehicles, etc.) Additionally, City staff notified the operators of the downtown farmer's market, Appalachian Sustainable Agriculture Project (ASAP), of this proposed use and there are no conflicts with the electric vehicle charging station and the ongoing use of the parking lot for the downtown City Market.

The City and Riding Partners, Inc. agreed to set the rental rate a \$1 per year in order to support development of this fueling infrastructure and commit public leadership to renewable energy and alternative transportation. As an in-kind service, Riding Partners, Inc. has proposed to allow City employee and fleet vehicles free electric charge events for the first two years of operation, and a 20% reduced rate thereafter.

The Notice of Intent to enter into a License Agreement with Riding Partners, Inc. was published on August 12, 2011, in the Asheville Citizen-Times. Ten days have passed since the publication and authorization to execute the License Agreement is being requested.

This action complies with the City Council Strategic Operating Plan Objectives to work with regional partners to create incentives for green building, energy conservation and energy independence.

Pros:

- Demonstrates continued national leadership in developing the electric vehicle market through providing fueling infrastructure.

- This maximized the use of public land for the purpose of local renewable energy production.

Con:

- Commits a portion of the Public Works parking lot for a minimum of five years.

No expenses or in-kind services are required of the city for this license agreement. The city will receive no rental income from this lease. In-kind service provided to the city through this lease agreement includes: free charging events for municipal fleet vehicles for the first two years after which point municipal fleet vehicles will receive a 20% discount on charge events.

City staff recommends City Council adopt a resolution authorizing the Mayor to execute a License Agreement with Riding Partners, Inc. (dba BioWheels RTS) for the purpose of installing and operating a solar-powered electric vehicle charging station on city-owned real property at 161 S. Charlotte Street, Asheville, NC.

RESOLUTION BOOK NO. 34 – PAGE 135

F. RESOLUTION NO. 11-172 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL OF GOVERNMENTS TO OVERSEE THE COMPLETION OF THE LONG RANGE TRANSPORTATION DEMAND MANAGEMENT STUDY

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Land of Sky Regional Council of Governments (COG) to oversee the completion of the Long Range Transportation Demand Management Study.

The Long Range Transportation Demand Management (TDM) study is the application of policies and strategies that attempt to optimize existing transportation resources and infrastructure by mitigating single occupancy vehicle use in a defined area. TDM programs have the potential to deliver better environmental outcomes, lower parking demands, improved public health, stronger communities, and a more prosperous and livable city.

The TDM program was hosted by the city from FY2005 until FY2011, focusing on promoting alternatives to single occupancy vehicles mainly inside the City limits. The program was paid by the city (50%) and the N.C. Dept. of Transportation (NCDOT – 50%). NCDOT expressed the need to set regional goals to improve the quality of life for the citizens of Western North Carolina by providing education, support and resources that enhance and promote alternatives to driving alone. In order to evaluate the adequacy of these goals and to continue the program, the NCDOT wants to perform an analysis, the Long Range TDM study, and provide new strategies that will allow TDM to grow accordingly to regional needs.

Due to the regional nature of the study, the NCDOT recommended the COG to manage the study. The COG will hire a consultant to develop this study and will be responsible for completion. The estimated cost is \$100,000 and will be funded by Section 5307 of the Federal Transit Administration (FTA), with existing funding that will otherwise be lost, in the amount of \$80,000. The 20% or \$20,000 match is provided by NCDOT.

The City, as designated recipient, will be responsible for overseeing the use of these funds according to FTA and NCDOT regulations. This task will require the use of city resources, mainly staff.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility and green and sustainable focus areas, specifically operating the City of Asheville to the highest levels of fiscal responsibility, leveraging funding from Federal and State

agencies; and setting and developing a plan for implementing a community energy reduction goal.

Pros:

- The project will be funded by the FTA in the amount of \$80,000 and the NCDOT in the amount of \$20,000.
- This plan will address NCDOT and City concerns about the future of the TDM program.
- This plan will provide guidance for future TDM initiatives regarding regional needs.

Con:

- The City oversees the project and uses city resources, mainly staff time to do so.

The total project cost is \$100,000; 80% of this total will be paid by the FTA and 20% by the NCDOT. The city will seek reimbursement from both agencies. The budget for this project was approved by City Council in January 2011.

City staff recommends City Council to adopt a resolution authorizing the City Manager to enter into an agreement with the Land of Sky Regional Council of Governments to oversee the completion of the Long Range TDM Study.

RESOLUTION BOOK NO. 34 – PAGE 136

G. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION CO. INC. FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT

BUDGET AMENDMENT FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT

This item was removed from the Consent Agenda due to a conflict of interest by Councilwoman Manheimer.

H. RESOLUTION NO. 11-174 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH PATTON CONSTRUCTION GROUP LLC, FOR THE VIEWMONT ACRES WATER SYSTEM EXTENSION PROJECT

Review: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$4,484.35 to increase the construction contract for Patton Construction Group, LLC, from \$318,363.24 to \$322,847.59 for the Viewmont Acres Water System Extension Project.

On June 8, 2010, City Council awarded the construction contract to Patton Construction Group, LLC, for the Viewmont Acres Water System Extension Project. The City of Asheville has received a grant from NCDENR to replace the existing, private, failing water system at the Viewmont Acres Mobile Home Park. Upon completion of the water system improvements project, the City of Asheville will own and maintain this new water system. The project consists of the construction and installation of approximately 2,850 linear feet of a new 8-inch waterline, fire hydrants, valves, and other appurtenances as well as the installation of five (5) private residential booster pump stations.

An initial change order #1 was needed to increase the contract amount by an additional \$23,413.24 for a total contract amount of \$318,363.24 because of overruns to the original quantities estimated and to cover changes to the scope of the work, which were requested

through work change directives issued by the Water Resources Department. In order to complete the construction and close out the project, a second change order is needed to increase the contract amount by an additional \$4,484.35 for a total contract amount of \$322,847.59 to cover additional changes to the scope of the work as requested through work change directives issued by the Water Resources Department. There is sufficient budget within this project to fund the needed change order, so no budget amendment is required.

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

Pros:

- Approval of the change order will allow the city to complete construction of the water system and close out the project, which will provide twenty-three (23) customers with a safe reliable drinking water source and much improved fire protection.
- The contract amount is fully reimbursable by the committed grant money, including the change order amount.

Con:

- If the change order is not approved, it would lead to forfeiture of part of the NCDENR grant funds and the existing failing private water system would not be upgraded.

The Water Resources Department will initially fund the construction cost of \$322,847.59 (includes the change order amount) for this project until full reimbursement is received from the State. Funds for these upfront costs are already included in the Water Resource's Capital Improvement Program budget. Cost summary until reimbursement:

Viewmont Acres Construction Budget	\$582,171.00
<u>Original Construction Amount</u>	<u>\$294,950.00</u>
Amount in Const. Budget Before Changes	\$287,221.00
Change Order Amount 1	\$ 23,413.24
<u>Change Order Amount 2</u>	<u>\$ 4,484.35</u>
Amount Remaining After Change Order	\$ 259,323.41

After the project is completed and closed out, the remaining funds will be returned to the Water Resource's Capital Reserve Fund for reallocation to a current or future capital project. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council approval of the resolution authorizing the City Manager to execute a change order in the amount of \$4,484.35 to increase the construction contract for Patton Construction Group, LLC, from \$318,363.24 to \$322,847.59 for the Viewmont Acres Water System Extension Project.

RESOLUTION BOOK NO. 34 – PAGE 138

I. RESOLUTION NO. 11-175 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN MD FOR PHYSICIAN SERVICES PROVIDED THROUGH THE CITY'S HEALTH SERVICES DIVISION

Summary: The consideration of a resolution authorizing the City Manager to sign an agreement for physician services provided through the City's Health Services division.

In January 1995, Council authorized the City Manager to enter into an agreement for part-time physician services in the Health Services division. Dr. Paul Martin entered into a contractual agreement with the City of Asheville to provide three clinic days to City employees and their families. These clinic days have been very successful for Health Services.

This action complies with the Fiscal Responsibility prong of the City of Asheville's Strategic Operating Plan for 2010-11. By offering city employees clinic hours and complimentary health services for non-critical issues, Health Care funds are saved in unnecessary doctor and emergency room visits, maintaining the city's long term financial commitment to high levels of fiscal responsibility.

Pros:

- The Health Services Clinic and Health Services Satellite Clinic provides on-site care for non-critical health needs
- Onsite care and services for employees saves the City of Asheville money in expenses that are not paid in unnecessary doctor and emergency room visits
- Dr. Martin is a trusted member of the Health Services staff team

Con:

- There are no foreseen cons for these services

This is a one year \$120,000 contract, and funds have been budgeted and will be encumbered from the Health Care Fund to cover the cost of this contract.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign an agreement for physician services with Dr. Paul Martin, MD to continue to provide physician services to employees and their families.

RESOLUTION BOOK NO. 34 – PAGE 139

J. RESOLUTION NO. 11-176 - RESOLUTION AUTHORIZING CONVEYANCE OF EASEMENT TO PROGRESS ENERGY ACROSS CITY RIGHT-OF-WAY ON RIVERVIEW CHURCH ROAD

Summary: The consideration of a resolution authorizing Progress Energy to cross a City right of way, with an electric service line

Progress Energy Carolinas, Inc. (herein "PEC"), needs to relocate an electric service line to a residence on Riverview Church Road, out near Richmond Hill Park. In order to do this with the least amount of disruption, and to get the service line off of the actual travelled road, PEC proposes to extend the line from an existing pole on private property and cross the City's right of way to the service point.

The City does not own the fee interest in the property, but has a right of way acquired back in 1951. Primary access to Richmond Hill is from Richmond Hill Drive, on the other side of the park. A field inspection indicates that the right of way in question is not improved, is heavily forested, and in no obvious use. The proposed use by PEC would not interfere with any current use by the City. Provided the line is installed to a sufficient height, it would not interfere with any use that the City is able to make of the right of way. This condition can be incorporated in the instrument of conveyance.

This action complies with the City's plans in that it removes a segment of power line from the travelled portion of a public right of way.

Pro:

- Will marginally improve public safety.

Con:

- Will cross the City's (unused) right of way

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 34 – PAGE 140

K. RESOLUTION NO. 11-177 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED CONTRACT WITH KIMLEY-HORN AND ASSOCIATES INC. TO PROVIDE ADDITIONAL CONSTRUCTION INSPECTION/MANAGEMENT SERVICES FOR THE PARKING GARAGE AT 51 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of \$175,000 to provide additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with Kimley-Horn and Associates, Inc., in the amount of \$42,000 to evaluate the feasibility of constructing a parking garage at 51 Biltmore Avenue in July 2008. In October 2008, the City amended the contract to include design review, value engineering and construction inspection/management of the project. The approved amendment was in the amount of \$215,000 for a total contract amount of \$257,000. The total amount of the contract including this increase would be \$432,000.

Staff is recommending an additional amendment in the amount of \$175,000 for the following purposes:

1. The original contract did not account for the lag in the design period and the start of construction. During this period of time, Kimley Horn provided services necessary to secure the financing of the project.
2. The contract with Kellogg and Kimsey, Inc. (the contractor) provides for the release of the 5% retainage of several items in the contract at the completion of that item, as opposed to the final completion. The purpose for releasing the retainage sooner was to get better pricing from the sub-contractors on these items. In efforts to make sure these items were constructed in accordance with the design, we requested Kimley-Horn provide weekly site inspections as opposed to monthly inspections as stated in the original contract. We also asked them to provide additional oversight as needed to sign off on each pay application request.
3. We have requested that Kimley-Horn provide a formal maintenance plan for the parking garage to increase the life of the garage and reduce major maintenance costs.

This action complies with the City Council Strategic Operating Plan in Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth. This project also complies with the City's Parking Action Plan.

Pros:

- Insures that proper oversight and inspection is performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.
- Documented maintenance plan provides for the extended life of the parking facility.

Con:

- Additional cost of \$175,000.

The parking garage portion of the project is approximately 35% complete. We have paid \$2.6 million of the \$7.5 million contract amount. To date we have approved \$12,000 in change

orders (less than 0.2%). The budget includes a 10% contingency as part of the project cost. This increase will reduce the amount of contingency from \$738,000 to \$563,000. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff recommends that City Council authorize the City Manager to execute an amended contract with Kimley-Horn and Associates, Inc. in the amount of \$175,000 to provide additional construction inspection/management services for the parking garage at 51 Biltmore Avenue.

RESOLUTION BOOK NO. 34 – PAGE 142

L. RESOLUTION NO. 11-178 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED CONTRACT WITH AMEC (PREVIOUSLY MACTEC) TO PROVIDE SPECIAL INSPECTION AND CONSTRUCTION MATERIALS TESTING FOR THE PARKING GARAGE AT 51 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with AMEC (previously MACTEC) in the amount of \$27,500 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with AMEC (formally MACTEC) in the amount of \$46,000 to perform special geotechnical and material inspections as well as testing. Since that time, we have encountered some issues on the site that have increased the need for additional geotechnical testing and inspections. These issues include additional fill material on the site that required additional excavation. Additional testing had to be performed to make sure the sub-surface was compacted. In the same vain, the soil wall had to be extended. This required additional soil nail installation and inspection. Finally, due to the compressed schedule of the project, more overtime hours are required to perform these inspections. Some of these overtime cost will be reimbursed by the contractor in a change order deduct. The total amount of the contract including this increase would be \$73,500.

This action complies with the City Council Strategic Operating Plan in Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth. This project also complies with the City's Parking Action Plan.

Pros:

- Insures that proper oversight, inspection and testing are performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.

Con:

- Additional cost of \$27,500.

The parking garage portion of the project is approximately 35% complete. We have paid \$2.6 million of the \$7.5 million contract amount. To date we have approved \$12,000 in change orders (less than 0.2%). The budget includes a 10% contingency as part of the project cost. The increase in the Kimley-Horn amendment will reduce the amount of contingency to \$563,000. This amendment will decrease the contingency to \$535,500. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff recommends City Council authorize the City Manager to execute an amended contract with AMEC (previously MACTEC) in the amount of \$27,500 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

RESOLUTION BOOK NO. 34 – PAGE 143**M. RESOLUTION NO. 11-178 - RESOLUTION SUPPORTING SUBMISSION OF THE HUD SUSTAINABLE COMMUNITY CHALLENGE PLANNING GRANT**

Summary: The consideration of a resolution that the City of Asheville submit an application for the HUD Sustainable Community Challenge Planning Grant in the amount not to exceed \$3 million.

HUD just announced a second year of availability of *Sustainable Community Challenge Planning Grants*. These grants are available for local efforts that “foster reform and reduce barriers to achieving affordable, economically vital and sustainable communities.” HUD funds of \$28.6 million are available this year. Unlike last year, when HUD and DOT combined their grant programs in one application round, this is a HUD opportunity only. The City was awarded \$850,000 from the DOT TIGER II pool of funds last year. Our proposed application this year would build on the activities funded by DOT in the East of the Riverway, with special emphasis on those activities not funded, although proposed, in last year’s competition.

The East of the Riverway target area is roughly bounded by the French Broad River to the west, Patton Avenue (but including Hillcrest) to the north, the CBD and McDowell Street to the east and the Swannanoa River to the south. We propose adding the Lee Walker Heights public housing community to the target area, to actively support the City’s collaboration with the Housing Authority in their Choice Neighborhoods grant application.

Like last year, the proposed project outcomes are to complete pre-development activities that will lead to an increase in the supply and diversity of housing in that area, and to create new economic opportunities and job creation in the target area. The goal is to advance projects to the point of being “shovel ready.”

Specific activities to be proposed this may include:

- Create “form-based” zoning for the area;
- Building on the Energy Plan to be developed using TIGER II funds, support the advancement of legislation or other governmental rules that will enable Asheville to employ public financing tools to achieve large scale community participation in energy conservation and alternative energy. Examples of tools needing enablement include PACE and Energy Utility creation.
- Fund land purchases for affordable housing development in the City’s East of the Riverway area; this is the only “implementation” activity that is an eligible use for Challenge Grant funding;
- Support planning for increased sustainable economic development, including market analysis, business plan development, entrepreneurial training and other activities to increase neighborhood commercial activity, support for the arts-based economy and the provision of healthy food products in the target area;
- Continue to Involve the community- especially residents, property owners and businesses operators in the area- in determining the direction of development there;
- Continue to support a broadly representative and effective partnership to perform the work under the grant, including City departments, non-profit organizations, the Riverfront Redevelopment Commission, Housing Authority and others

The Housing and Community Development Committee will review this recommendation at their August 22 meeting.

This opportunity will support the following goals and objectives of Council's Strategic Plan: (1) Affordable: this project will (a) Help create and preserve affordable housing by creating UDO and other code reforms to encourage and align affordable housing with access to transit; (b) Explore opportunities for public/private partnerships and innovative financing for affordable housing; and (c) Support the Housing Authority to pursue redevelopment of public housing; (2) Fiscal Responsibility: This project will explore alternatives for master plan implementation and position the City to proactively seek funding opportunities for infrastructure maintenance and capital improvements; (3) Green, Sustainable: This project will create opportunities to work with regional partners to create incentives for green building, energy conservation and energy independence; and (4) Job Growth and Community development: This project will (a) Expand partnerships in economic development around common goals of sustainable economic development; and (b) Support local and regional Sustainable Community Initiatives and seek investments in target areas, such as the East of the Riverway.

Pros:

- This grant seeks funding for already articulated community needs that were not funded initially;
- The practical partnership being formed will lead to projects that are comprehensive and coordinated;
- Targeting the East of the Riverway area will lead to “transformational investment” that will create new opportunities for people already living there, as well as incentivize new housing and economic development that will spur the sustainable reuse of existing property, including property now owned by the City;
- This grant will support the activities of the Riverfront Redevelopment Commission to further sustainable economic activity;
- The opportunity to fund the acquisition of land for future affordable housing development will enhance the ability of our partners to plan development that will be accessible to jobs, training and services, and for the City to plan for the efficient use of its resources to support that development.

Cons:

- Although the nature of this grant lends itself to a targeted focus, targeting one area of the City may cause concern that other City areas are not being treated fairly;
- New resources can create expectations of immediate future funding; although HUD and other agencies have implied that this funding will be available, it will depend on the federal (and state and local) budget processes and constraints;
- New development brings inherent conflicts between competing interests. The success of any planning activity will be the ability to create win-win relationships.

The City must provide evidence of commitment of 20% matching funds. Some federal funds are eligible (such as CDBG and HOME); in-kind contributions are also eligible. Staff is confident that the proposed activities either already have sufficient matching commitments from other federal funds or staff, or that the match will be provided by project partners who originally committed their leverage to the last year's application. No new funding is requested from the City to meet these match requirements.

Because no new funding is requested from the City, and existing City staff are preparing the application, there is no immediate fiscal impact. If awarded, the City will assess the benefit and impact of accepting funding. We expect the City to be better positioned to leverage future state and federal funding, especially in very competitive funding environments.

Staff recommends making application for funding as described above.

RESOLUTION BOOK NO. 34 – PAGE 144**N. ORDINANCE NO. 4000 - TECHNICAL BUDGET AMENDMENT TO SUPPORT THE HIRING OF AN ADDITIONAL CUSTOMER SERVICES REPRESENTATIVE POSITION**

Summary: The consideration of a technical budget amendment in the Water Resources Fund in the amount of \$45,000 for funds being transferred from the Stormwater Fund to support the hiring of an additional Customer Services Representative position.

Beginning with the start of the 2011-12 fiscal year, stormwater charges are now included on the bi-monthly water utility bills. As such, staff anticipated an increase in the volume of stormwater-related customer service inquiries and issues. To accommodate this additional workload, funding of \$45,000 was included in the adopted FY 2011-12 budget in the Stormwater Fund to pay for additional staffing in the Customer Services Division of Water Resources. Even though this expenditure was included in the Stormwater Fund adopted budget, the transfer could not be completed until the budget became effective and thus was not included in the Water Resources Fund budget. The additional Customer Services Representative (CSR) position was not requested until the funds were available. This technical amendment will correct that oversight. The full-time employee (FTE) position count in the Customer Services Division will also be adjusted from 22 to 23.

This project is part of City Council's strategic plan to provide excellent service and to operate at the highest levels of fiscal responsibility.

Pros:

- Establishes correct revenue and expenditure budgets in the Water Resources Fund.
- Allows for the addition of one FTE in Customer Services to help cover the call volume and reduce call wait times for customers.

Con:

- None.

As noted above, the \$45,000 in funding is already included in the adopted FY 2011-12 Stormwater Fund budget; therefore there is no fiscal impact to this action.

City staff recommends City Council adopt a technical budget amendment in the Water Resources Fund in the amount of \$45,000 for funds being transferred from the Stormwater Fund to support the hiring of an additional Customer Services Representative position.

ORDINANCE BOOK NO. 27 – PAGE**O. ORDINANCE NO. 4001 - TECHNICAL BUDGET AMENDMENT AFFECTING ONE OF THE CITY'S SPECIAL REVENUE FUNDS, THE GENERAL CAPITAL PROJECTS FUND AND THE STORMWATER CAPITAL PROJECTS FUND**

Summary: The consideration of a technical budget amendment affecting one of the City's Special Revenue Funds, the General Capital Projects Fund and the Stormwater Capital Projects Fund in the amount of \$5,612,369, \$5,157,869 and \$454,500, respectively.

The Governmental Accounting Standards Board (GASB) is the independent organization that establishes and improves standards of accounting and financial reporting for U.S. state and local governments. The GASB has issued a new statement, GASB 54 that has revised the governmental fund type definitions. Statement 54 makes clear that, for financial reporting purposes, a special revenue fund may only be established around one or more revenue sources

that are restricted or committed to purposes other than capital projects or debt service. In order to comply with this statement's new fund definitions, the City needs to move several special revenue projects out of the Grants Program Special Revenue Fund into either the General Capital Projects Fund or the Stormwater Capital Projects Fund because the projects are principally capital in nature or are funded from unrestricted revenue sources.

Currently and for years the City has correctly reported some capital projects in the Grants Program Special Revenue Fund largely due to the fact that the majority of the projects were to be funded by special and/or restricted revenue sources. With the new GASB 54 special revenue fund definition, the ability to continue this practice has been eliminated. In order to comply with the new standard, the City will need to move some of these projects out of the Grants Program Special Revenue Fund and into the more appropriate funds.

The FY11 budget amendment identifies the aforementioned projects contained in the Grants Program Special Revenue Fund which require realignment into either the General Capital Projects Fund or the Stormwater Capital Projects Fund.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pro:

- Compliance with GASB 54

Con:

- None.

There is no fiscal impact; project budgets that have been previously approved by City Council are simply being moved from the Special Revenue Fund into either the General Capital Projects Fund or the Stormwater Capital Projects Fund. Since this amendment will affect the overall budgets in each fund, meaning the amendment crosses funds, City Council's approval is required.

City staff recommends City Council adopt the technical budget amendment affecting the City's Grants Program Special Revenue Fund, the General Capital Projects Fund and the Stormwater Capital Projects Fund in the amount of \$5,612,369, \$5,157,869 and \$454,500, respectively.

ORDINANCE BOOK NO. 27 – PAGE

P. ORDINANCE NO. 4002 - BUDGET AMENDMENT FOR THE BLACK MOUNTAIN TRAILBLAZER PROJECT, OPERATED BY MOUNTAIN MOBILITY

Summary: The consideration of a budget amendment, in the amount of \$96,881, from the Federal Transit Administration, to set up the project budget for the Job Access and Reverse Commute project Black Mountain Trailblazer, operated by Mountain Mobility, and the City's administrative costs.

The City of Asheville is the designated recipient of the Job Access and Reverse Commute (JARC) funds, a program of the Federal Transit Administration (FTA). JARC is a formula grant program oriented to provide job access in the urbanized and suburbanized area. The formula is based on the number of eligible low-income and welfare recipients in these areas.

The job access refers to projects relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment.

The reverse commute refers to a public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities.

To be eligible, the program requires an intensive planning process and the development of a Coordinated Public Transportation and Human Services Transportation Plan or CTP-HSTP based on community participation. The CTP-HSTP was developed in conjunction with the French Broad Metropolitan Planning Organization, Buncombe, Henderson and Haywood Counties, human services agencies, public and private transportation providers, NCDOT and general public to assess current transportation needs, identifies gaps and sets goals. The plan was adopted on April 17, 2008 by the French Broad River MPO's governing body, the Transportation Advisory Committee (TAC), which is made up of elected representatives from each of the eighteen local governments which make up the MPO. They include Buncombe, Haywood, and Henderson County, and each of the incorporated municipalities in the three counties. The CTP-HSTP set the rules to apply for projects and the projects are selected in a competitive process that is approved by the TAC.

In January 2011 Buncombe County's Mountain Mobility was selected as subrecipient of the JARC funding and received \$73,449 in JARC funds to operate the Black Mountain Trailblazer. The funding will pay for two years of operation, beginning in January 2011 and ending in December 2012. The city needs to set up a project budget in order to pass through the funds and will seek reimbursement directly from the FTA. This funding covers 50% of operations, the other 50% is provided by Buncombe County as local match.

The City will be responsible for the Program Management and, as designated recipient, to oversee the utilization of these funds according to FTA regulations. The program management will require the use of city resources, mainly staff. As a designated recipient the city will use additional \$23,432 of JARC funds for administration purposes, which will cover the program management expenses for a period of two years.

This action complies with the City Council Strategic Operating Plan by supporting the fiscal responsibility focus area, specifically operating the City of Asheville to the highest levels of fiscal responsibility.

Pros:

- Project funding is provided by the FTA (50%) and Buncombe County provides the local match (50%).
- The city can use \$23,432 for administration purposes.

Con:

- The project cost is \$73,449 and the city will seek reimbursement from FTA.

The total financial impact for the subject project is \$96,881 and it will be funded with Federal Funds. \$23,432 will be reimbursed to the city for administrative costs.

Staff recommends that City Council adopt a budget ordinance amendment in the amount of \$96,881 from Federal Funds to set up the project budget for Job Access and Reverse Commute project, the Black Mountain Trailblazer operated by Mountain Mobility and the administrative costs.

ORDINANCE BOOK NO. 27 – PAGE

Q. ORDINANCE NO. 4003 - BUDGET AMENDMENT FROM THE NORTH CAROLINA ARTS COUNCIL

Summary: The consideration of a budget amendment, in the amount of \$49,850, for the North Carolina Arts Council Grassroots Arts Program Grant.

The North Carolina Arts Council operates the Grassroots Arts Program Grant that provides per capita-based funding for arts programming to all 100 counties across North Carolina ensuring opportunities for citizens to experience the arts in their own communities. In counties without Designated County Partners, the North Carolina Arts Council invites an organization to serve as a Provisional County Partner in order to manage the distribution of Grassroots funds.

The City of Asheville Parks, Recreation and Cultural Arts Department will annually serve as the Provisional County Partner to manage the distribution of Grassroots Arts Program funds as approved by the North Carolina Arts Council. The funds will be awarded to eligible organizations in Asheville and Buncombe County who will then provide community art programs. Per grant guidelines, the City may retain 10% of the grant funds to support administrative cost associated with the grant program.

The action complies with the City Council Strategic Plan in that it creates more collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the city's regulatory environment while accomplishing economic development goals and fiscal responsibility of exploring alternative for enhancing the city's long-term financial commitment to master plan implementation, infrastructure maintenance, capital improvements, and public facilities. The action also complies with the Parks, Recreation, Cultural Arts and Greenways Master Plan in that it enhances public confidence for and appreciation of the arts, and enhance facilitation and resources among arts interests.

Pro:

- Provides additional funds to support the arts in Asheville and Buncombe County

Con:

- None

The \$49,850 grant from the North Carolina Arts Council Grassroots Arts Program will be received by the City and passed on to the designated sub grantees. The grant will be budgeted in the General Fund.

Staff recommends City Council to approve the budget amendment authorizing the City Manager to establish a budget of \$49,850 for a grant from the North Carolina Arts Council Grassroots Arts Program Grant.

Superintendent of Cultural Arts Diane Ruggiero responded to Councilman Smith regarding how the City will utilize their partnership with the Asheville Area Arts Council in administering this grant.

ORDINANCE BOOK NO. 27 - PAGE

R. ORDINANCE NO. 4004 - BUDGET AMENDMENT FOR THE 4TH & FINAL YEAR OF FUNDING FROM THE N.C. DEPT. OF PUBLIC INSTRUCTION FOR THE 21ST CENTURY COMMUNITY LEARNING CENTER S WHICH WILL OCCUR AT REID COMMUNITY CENTER

Summary: The consideration of a budget amendment in the Grant Fund, in the amount of \$78,000, for the fourth and final year of funding from the N.C. Dept. of Public Instruction for the City of Asheville 21st Century Community Learning Center which supports the West Riverside Operation Weed and Seed Initiative.

In October 2004, elected officials, city staff and Asheville citizens mobilized to develop comprehensive strategies to address crime, neighborhood restoration, and

prevention/intervention/treatment programs and activities in the West Riverside area of Asheville as part of a Weed and Seed initiative. The program was introduced to the community via a series of public meetings to determine the concerns of residents living in the targeted area and was received favorably with the understanding that residents would be integrally involved in the planning and implementation of the initiative. In July 2006, the U.S. Department of Justice announced the designation of Asheville as an "Officially Recognized" site for the federal Weed and Seed initiative which focuses on reducing crime and improving quality of life in neighborhoods experiencing high crime.

Weed & Seed sites are required to leverage additional funds to carry out goals and objectives of the initiative. The 21st Century Community Learning Center grant directly relates to the Weed & Seed prevention/intervention/treatment strategy and provides funds for afterschool programs serving Asheville High and Asheville Middle students who are academically at risk. Community-identified goals such as increased parent involvement in education and afterschool activities and increased community input on programming are addressed through the program.

Programs will take place at the Reid Community Center and will be part of the IRL (In Real Life) network of programs functioning out of Asheville Middle School. During the 2010/2011 school year, the City of Asheville 21st CCLC program served 211 middle and high school youth with a majority of students (178) attending Asheville Middle School. Youth living in the Weed & Seed designated area made up 16 percent of participants.

During the 2009/2010 school year, the City of Asheville 21st CCLC program served 161 middle and high school youth with a majority of students (121) attending Asheville Middle School. During this year, 13 percent of participants lived in the Weed & Seed designated area.

Opportunities for increased positive interactions between law enforcement officers and program participants continue to grow with 12 contact hours per week budgeted for the proposed grant cycle.

This action complies with the City Council Strategic Operating Plan in that it implements a strategy to significantly improve public safety in neighborhoods in Asheville with the highest levels of crime and supports recreation and employment alternatives for youth at risk of gang exposure. This action also complies with the community-based Weed & Seed goals of 1) reducing crime and improving public safety, 2) enhancing the relationship between the community and law enforcement, 3) providing accessible programs for youth, 4) increasing parent involvement in education and afterschool activities and 5) increasing job readiness among youth and adults.

Pros:

- Continued funding will bring much needed academic assistance to middle school students who are struggling in school and/or reside in high risk neighborhoods.
- Program works with community resources to affect change.
- Program will enhance the Weed & Seed strategy of providing a comprehensive crime prevention plan to address law enforcement, neighborhood restoration and prevention/intervention/treatment programs for residents of the targeted area.
- Partnering agencies are committed to sustaining the vision of the City of Asheville 21st CCLC program through current programming and the continuation of trust building opportunities between youth and law enforcement officers.

Con:

- The City of Asheville will have little control over the financial resources for the program in the 2012-2013 school year since the 4-year funding cycle will have come to an end.

Grant revenue in the amount of \$78,000 will cover all personnel and operating expenses related to the afterschool program at no additional cost to the City. Expenses include, but are not limited to: salary for a full time program director, part-time site assistant, APD overtime, contracted site management agency, contracted teachers, and supply costs.

City staff recommends City Council adopt a budget amendment in the Grant Fund, in the amount of \$78,000, to establish a budget for the 21st Century Community Learning Centers which will occur at Reid Community Center.

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S. RESOLUTION NO. 11-182 – RESOLUTION TO RESCIND RESOLUTION NO. 11-151 DUE TO AN ACCOUNTING ERROR IN THE BID DOCUMENTS AND TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH SPL INTEGRATED SOLUTIONS FOR THE REVISED AND CORRECTED AMOUNT OF THE NEW SOUND REINFORCEMENT SYSTEM PROJECT IN THE CIVIC CENTER ARENA

Summary: The consideration to rescind Resolution No. 11-151, approved on August 9, 2011, and issue a new resolution authorizing the City Manager to enter into a revised contract with SPL Integrated Solutions (AVI-SPL, Inc), in the amount of \$ 418,461.03 for the installation of a new Sound Reinforcement System in the Asheville Civic Center arena.

On August 9, 2011, City Council adopted a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions, in the amount of \$368,233.71. After a review of the originally submitted bid the Contractor discovered an accounting error (\$50,227.32) that neglected to properly add all of the Equipment Costs correctly. After a careful review by the contractor and staff it was determined that the contractor is still the lowest responsible bidder and meets the criteria of the contract.

The following bids were received:

SPL Integrated Solutions, Columbia, MD	\$418,461.03
Musicraft Inc., Roebuck, SC	\$425,675.00
Daktronics Inc., Ossian, IN	\$497,680.00

This change still falls within the projected budget and does not create any issues with the funding of the project.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Project allows replacement of an obsolete sound system.
- New sound system will create a much clearer sound experience during events.
- Project bid is below budget.

Con:

- None noted.

Funding for this contract is included in the Civic Center Capital Fund as part of the budget for the Southern Conference renovations.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with SPL Integrated Solutions (AVI-SPL, Inc), for \$418,461.03 for the installation of new sound reinforcement system in the Asheville Civic Center arena and concourse.

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

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

G. RESOLUTION NO. 11-173 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TAYLOR & MURPHY CONSTRUCTION CO. INC. FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT

ORDINANCE NO. 3999 - BUDGET AMENDMENT FOR THE EAST OAKVIEW ROAD BRIDGE REPLACEMENT PROJECT

Councilman Russell moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously.

Summary: The consideration of 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 Taylor & Murphy Construction Co., Inc. for the project known as East Oakview Road Bridge Replacement, TIP# B-4343; and a budget amendment in the amount of \$325,000 with 80% of the needed funds (\$260,000) coming from the N.C. Dept. of Transportation and 20% (\$65,000) coming from the City's General Fund.

A formal request for bids was issued on June 27, 2011, and bids were opened on July 27, 2011. Taylor & Murphy Construction Co., Inc., a local company, was the low bidder at \$1,142,616.20. This bid was squarely in line with our Engineer's Estimate of \$1,249,486.96. The disadvantaged business enterprise goal of 8% was met with 8.07%. The City will be able to invoice the N.C. Dept. of Transportation (NCDOT) monthly for reimbursement of payments made to the contractor. This is a unit price contract and not a lump sum contract.

The East Oakview Road bridge collapsed in 2001, leaving residents of that neighborhood stranded. A gravel temporary access road was constructed from a nearby highway on/off ramp until NCDOT was able to loan the City a Bailey bridge to use as a temporary means of crossing Hominy creek. That borrowed bridge has been in service ever since. The City has obtained a grant from NCDOT and the Federal Highway Administration through the Municipal Bridge Program. The City will be required to pay 20% of the project cost and the grant will pay the remaining 80%. One of the City's inspectors will be on-site for the duration of the project and will receive valuable training from NCDOT employees. The City will be able to be reimbursed for the salary of City inspector working on the project. This new bridge, and the included sidewalk across it, will be a permanent solution for the citizens living on East Oakview Road.

The budget for the East Oakview Bridge project, which was initially adopted in FY 2004-05 is currently \$1,363,000. Approximately \$340,000 has been spent to date on design and right of way acquisition; leaving \$1,022,000 in available budget to complete the project. In order to be able to award the contract and include funding for a 15% contingency, the project budget needs to be increased by \$325,000. As mentioned above, the City is required to pay 20% of the project

cost and NCDOT pays the remaining 80%. Therefore, \$260,000 of the additional funding needed for this project will come from NCDOT, with the City responsible for the remaining \$65,000. The City's \$65,000 share will come from funding that was approved in the FY 2011-12 budget for street resurfacing and repair.

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

Pros:

- Provides long term investment in the City's infrastructure.
- Permanent solution to a decade old problem
- 80% funded by NCDOT.
- City inspector will receive valuable training and salary funded by project grant.
- New sidewalk across structure.

Cons:

- The City will be responsible for future maintenance of the project.
- Project management and contract administration will consume staff time.
- 20% match (\$65,000) needed for the budget amendment will come from City street maintenance funding.

The \$325,000 budget amendment will increase the total budget for the East Oakview Bridge project to \$1,688,000. 20% of the project budget (\$337,600) is funded with City money, and 80% of the project budget (\$1,350,400) is funded with an NCDOT grant. As noted above, the additional \$65,000 in City funding needed for the current budget amendment will be taken from funding that was included in the adopted FY 2011-12 Public Works budget for street resurfacing.

City staff recommends City Council adopt the resolution awarding the contract to Taylor & Murphy Construction Co., 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 the accompanying budget amendment

Councilman Russell moved for the adoption of Resolution No. 11-173. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being recused).

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Councilman Russell moved for the adoption of Ordinance No. 3999. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilwoman Manheimer being recused).

ORDINANCE NO. 27 - PAGE

III. PRESENTATIONS & REPORTS:

A. ADVANTAGEWEST ECONOMIC DEVELOPMENT UPDATE

Mr. Scott Hamilton, President and CEO of AdvantageWest, updated City Council on AdvantageWest's 2010 programmatic activity on five core program areas (1) advanced manufacturing; (2) entrepreneurial development; (3) AdvantageGreen; and the (4) WNC Film Commission. He said all these accomplishments mean that our region is growing economically and our efforts are making a difference. They are committed to using all our resources, ingenuity and time to build business and create and retain jobs throughout our entire 23-county region.

Mayor Bellamy thanked Mr. Hamilton for their partnership with the City.

In response to Councilman Smith, Mr. Hamilton explained that regarding locally grown food, there are a lot of opportunities and they will continue to look at innovative ways the Blue Ridge Food Ventures can support and diversify the agricultural economy.

Mayor Bellamy noted that AdvantageWest is also addressing food security.

In response to Mayor Bellamy, Mr. Hamilton said that you can subscribe to the Winter Sun Farms CSA up to the first of December at AdvantageWest.com.

B. QUARTERLY REPORTS

Finance Committee

Councilman Russell, Chairman of the Finance Committee, updated Council on some major accomplishments during the first quarter of FY 2012. Below is a bulleted list that highlights some of the committee's accomplishments during that time: (1) During the FY 2012 budget adoption, City Council recommended that the Finance Committee review the adopted water rate structure and its impact on large manufacturers as well as the possibility of creating a manufacturing customer class. The committee began its discussion on this item on July 12. As a first step in an overall feasibility analysis, the committee directed staff to produce a financial analysis illustrating the financial impact an alternative rate for a manufacturing customer class would have on overall revenue projections. The finance committee further discussed the importance defining a "manufacturing class." The committee asked staff to report back to the committee in early October. The committee expects to bring forward its analysis and any recommendations to City Council by the end of the calendar year; (2) Staff provided the first FY 2011 audit update to the Finance Committee at the July meeting. During that presentation, staff provided the committee with a general overview of the financial audit process as well as an update on progress with the FY 2011 audit and preparation of financial statements. Feedback from the accounting firm, Dixon Hughes, has been positive so far. The lead accountant from Dixon Hughes will be at the Finance Committee meetings in August, September and October. The audit is scheduled to be presented to City Council on November 22, 2011; (3) The committee has reviewed Asheville's FY 2012 debt issuance schedule, which will combine the permanent financing for 51 Biltmore Avenue garage, the refinancing of the some existing debt, and the issuance of new debt for capital projects approved with the fiscal year 2012 budget. The Reimbursement Resolution, which provided for expenditure reimbursements to the City prior to the actual debt issuance, was approved by City Council at the July 26, 2011, meeting. It is anticipated that the debt will issued in the March 2012 timeframe; and (4) The deadline for community media development proposals was August 1, 2011, and the City received seven submissions. The joint city-county evaluation panel is currently reviewing proposals, and the Finance Committee will review results at its meeting in September. A final recommendation will be brought forward to City Council in at the second meeting in September or the first meeting in October.

Mayor Bellamy asked that when the Finance Committee reviews water rates that they consider a one-year out implementation date and that any increase not be on the City's fiscal year, but on a calendar year so people can plan for the increase. Councilman Russell said that he would be glad to add that to their discussion.

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 has continued to provide its quarterly updates on progress of the five key focus areas.

City Council 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 measurements through the Fiscal Year 2010-11.

In addition, City Council has asked for an activity report on a quarterly basis of the Domestic Partner Registry. Since the Registry began on May 2, 2011, a total of 24 couples have registered.

Mr. Richardson then highlighted the major accomplishments for the end of the year focus areas of (1) Safe (A) review of the 2009 and 2010 Asheville Crime Index, compared to comparable cities; (B) track and monitor Nuisance Court progress; (C) significantly improve public safety in neighborhoods with the highest level of crime; and (D) maintain accreditation and the Asheville Fire and Rescue Department; (2) Affordable (A) enhance affordability of Asheville's Bus Pass Program; (B) implement reforms to Unified Development Ordinance to encourage affordable housing development; and (C) continued to provide funding for affordable housing through the Housing Trust Fund; (3) Green and Sustainability (A) implement new ways to reduce City-wide solid waste; (B) integrate and implement multi-modal transportation plan; (C) reduce the City's annual energy usage; and (D) expand community education programs; (4) Job Growth and Community Development (A) Development Services Center survey; (B) attract and retain quality employees; (C) enhance workforce diversity; (D) pursue models for re-formatting the Unified Development Ordinance; and (E) City of Asheville Youth Leadership Academy; (F) AT&T surface parking lot – 49 spaces; (G) Linamar Announcement; (H) Public Partnership with the UNC School of Pharmacy; and (I) Civic Center partnership with Tourism Development Authority, Buncombe County and ABC Board; and (5) Fiscal Responsibility (A) revenue stream diversification; (B) operate Asheville with the highest level of responsibility; (C) leverage/external partnerships for pursuing capital improvements and infrastructure projects; and (D) operate the City to the highest levels of fiscal responsibility.

Mr. Richardson responded to various questions/comments from Council, and for those which he could not readily answer, he said he would provide Council with that information. Some questions/comments were, but are not limited to: comparison of other cities Asheville's size in North Carolina on their turn-over rate; why did we pay for Budweiser wristbands for Bele Chere when there are so many local breweries; request for copy of PowerPoint given to the Airport Authority by Mr. Richardson and Fire Chief Scott Burnette; confirmation that if we had a joint fire station located at the Airport, all businesses in the City of Asheville would see a 2-5% decrease in their fire insurance premiums on a year to year basis, due to the potential ISO upgrade in 2013; and request to continue to improve the racial diversity so that our workforce mirrors our community.

Mayor Bellamy thanked the team members for the partnership with UNC-Asheville.

Councilman Davis also thanked key City staff for the partnerships in bringing the Southern Conference back to Asheville.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR SUNSET PARK, LOCATED AT 2 SUNSET DRIVE

ORDINANCE NO. 4005 - ORDINANCE AMENDING A CONDITIONAL USE PERMIT FOR SUNSET PARK, LOCATED AT 2 SUNSET DRIVE

City Clerk Bureson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast said that this process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

When City Attorney Oast asked if any Council member had special knowledge of the site, other than visiting the site, no one spoke.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 6:06 p.m.

Technical Review Manager Kim Hamel submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Ms. Hamel said that this is the consideration of an amendment to the conditional use permit for Sunset Park, located at 2 Sunset Drive, for the reduction in the number of units from 19 to 17 and changes to the building design, elevations and footprints.

On February 27, 2007, City Council approved a Conditional Use permit with an "Exceptional Development Density Bonus for the construction of a 19 unit condominium project located at 2 Sunset Park Drive (Attachment to City Exhibit 3 – Site Plan). Four (4) of the units were to be sold at prices meeting the City's definition of affordability.

To date, two duplex units (Units 1-4) at the corner of Baird and Sunset Park and two single family structures (unit 8 and 11) have been constructed to meet Healthy Built certification standards. Each of the four units housed within the duplex structures are occupied and were sold at a price that met the City's Affordable housing rate at the time construction was completed. With the exception of grading for the future construction of foundation pads for the remaining units, all storm drainage, sewer, grading and disturbance on the site is complete.

In 2008, after the construction of the last single family dwelling was completed on site (unit 11), the property went into foreclosure. In March 2011, Chris Carson of AVL Associates assumed ownership of the property from the bank and is now returning to City Council to seek several minor site modifications to the master plan and is also proposing changes to the building elevations that were approved.

The following is a list of minor site plan changes that the applicant is requesting with this amendment request:

- A reduction in density from 19 units to 17 units
- A reduction in the total number of parking spaces for the development: from 36 spaces to 32 spaces
- The addition of an accessory structure for unit 12

- Provide for a mix of footprint sizes between 600 square feet and 1,250 square feet – some of these footprints are smaller than what the previous approval proposed.

As stated above, this amendment request also includes proposed changes to the approved building elevations; and it is the primary reason the application is returning for Council's consideration (Attachment to City Exhibit 3 - 2 samples of front elevation) (Attachment to City Exhibit 5 – sample of rear elevation). While the new design proposed by the applicant is very similar in style, the former application proposed a mix of moire, slender "tree-house like" structures that were to be constructed with high quality building materials and included significant interior upgrades to produce a fully sustainable housing design (each unit was required to be Energy Star and Healthy Built certified). The prior design also proposed varying footprint sizes ranging in scale from 700 - 1250 square feet, 2-3 stories in elevation and up to 44-feet in height. Because the "high quality building materials and designs" was a primary feature included in the original proposal's exceptional development features, staff felt that reconsideration by Council was necessary.

The new design proposed by the applicant incorporates many of the same Arts and Crafts style elements that were approved with the original design and also includes: front porches and rear decks, exposed rafters, decorative brackets, and roof pitches that mimic the character of homes found within the neighborhood. As stated above, homes will remain in the same location as the prior approval to utilize the existing footprints (and disturbance) from the original development. The homes will also be 2-3 stories in elevation and constructed to not exceed 40-feet in height.

In addition to the design features noted above the owner is retaining the requirement that the homes be Energy Star Certified; and in addition, will require homes to be either WNC Healthy Built or National Green (NAHB) certified.

The changes noted above are not expected to negatively affect the findings for the seven conditional use standards that were presented with the original application.

Staff recommends approval of the amendment pursuant to the site plans, elevation character sketches and supplemental design features proposed with this application.

Mr. Michael Lavoy, engineer of record and the property owner's representative, spoke in support of the amendment and stated that he would like to build homes that reflect the community that is in the area.

Rev. Christopher Chiaromonte felt that developers should build according to the rules and not ask for any exceptions by City Council.

After rebuttal, Mayor Bellamy closed the public hearing at 6:16 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4005, amending the conditional use permit for Sunset Park, located at 2 Sunset Drive, for the reduction in the number of units from 19 to 17 and changes to the building design, elevations and footprints. This motion was seconded by Councilman Davis and carried unanimously.

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- B. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING OF THE PROJECT IDENTIFIED AS DOLLAR GENERAL MARKET, LOCATED AT 1131 SMOKY PARK HIGHWAY FROM COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A TWO PHASE RETAIL PROJECT**

ORDINANCE NO. 4006 - ORDINANCE TO CONDITIONALLY ZONE THE PROJECT IDENTIFIED AS DOLLAR GENERAL MARKET, LOCATED AT 1131 SMOKY PARK HIGHWAY FROM COMMUNITY BUSINESS II DISTRICT TO HIGHWAY BUSINESS DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF A TWO PHASE RETAIL PROJECT

Urban Planner Nate Pennington said that this is the consideration of an ordinance to conditionally zone the project identified as Dollar General Market, located at 1131 Smoky Park Highway, to rezone from Community Business II District to Highway Business District/Conditional Zoning for the development of a two phase retail project. This public hearing was advertised on August 12 and 19, 2011.

Urban Planner Nate Pennington oriented the Commission to the site location and said that the applicant is requesting a Conditional Zoning for three (3) parcels zoned CB-II (Community Business II) to HB-CZ (Highway Business – Conditional Zoning) for the development of a new shopping center in accordance with Section 7-7-8 of the Unified Development Ordinance (UDO). The subject property is located outside the City limits but within Asheville's extra-territorial jurisdiction.

The project site consists of three parcels comprising 5.52 acres according to the submitted site plan. The site is currently vacant but once contained a Winn-Dixie grocery store that has now been demolished. A large asphalt parking lot and concrete slab are all that remain onsite. The former building flooded heavily during the 2004 floods and the subject property is almost entirely located within the 100 year regulated floodplain.

The applicant is requesting a conditional zoning to allow for parking to occur in front of the proposed buildings along Smoky Park Highway. CB-II zoning only allows for parking to occur to the side or rear of buildings while HB zoning allows for parking to occur in the front of buildings. Two separate buildings are proposed to be built: the first would accommodate a Dollar General Market and the second (to be built a later date) would house an undetermined retail store.

Vehicular access to the site is proposed along Smoky Park Highway by utilizing two existing curb cuts and one existing cut along Rutherford Road would be used to allow patrons to utilize the traffic light at the intersection of Rutherford Road and Smoky Park Highway. Two additional existing cuts along Rutherford Road are proposed to be closed.

The project is proposed to be built in two (2) phases. The Dollar General Market will be built first and the second building will be constructed when a tenant is secured.

According to the site plan, 146 spaces are provided inclusive of required ADA parking. This amount of spaces is within the minimum and maximum thresholds as prescribed by the UDO. Nine (9) bicycle parking slots are available and dispersed between two bike racks that are to be located in front of the proposed buildings.

An off-street loading zone is proposed to be located in front and to the side of the Dollar General Market. One additional loading zone will be required for the second building that is proposed to be built as part of phase II of the development. Further, the applicant must depict the proposed truck route (ingress and egress) in relation to Smoky Park Highway and Rutherford Road on the site plan.

Sidewalk construction is required and proposed to be built along Rutherford Road. The applicant has requested to pay a fee in lieu of construction along Smoky Park Highway because of a stream that runs parallel to the road and the inherent requirement to maintain a 30 foot wide stream buffer. The Transportation Department noted in the Technical Review Committee (TRC) staff report that Smoky Park Highway is a needed linkage and therefore this option is not available. The Transportation Department conducted a field visit and verified that there are no

viable options for the required along Smoky Park Highway. Therefore, the developer may wish to appeal to the City Council for a waiver (as indicated in the Standards and Specifications Manual. Staff recommends that if a waiver is granted for the sidewalk that a fee-in-lieu of this requirement still be paid by the developer.

Street trees are required and provided along Smoky Park Highway and Rutherford Road. A 20 foot wide Class "A" property line buffer is required along the northeast portion of the property along Rutherford Road where a single-family residence is located across the street. The proposed parking areas are appropriately landscaped and no modifications are being requested.

The open space requirement for this type of development is 15% of the total site size; a total of 36,037 square feet for this site. The site plan illustrates that 36,070 square feet has been reserved to meet this requirement.

This proposal was recommended for approval with conditions by the TRC on June 20, 2011. A neighboring property owner expressed concerns related to the retention of the curb cut along Rutherford Road and the associated traffic that would utilize this street.

At their regularly scheduled meeting on August 3, 2011, the Planning & Zoning Commission unanimously approved this project with the conditions outlined in the staff report. As previously noted, at the TRC, a neighboring property owner expressed concerns related to increased traffic on Rutherford Road which were addressed by Ken Putnam, Director of the Transportation Department.

Section 7-7-8(d)(2) of the UDO states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. **That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.
2. **That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The proposed project makes use of a previously developed site along an active commercial corridor. The previous building was built in 1978 and flooded heavily in 2004 given its location in the 100 year floodplain. The proposed buildings are required to meet flood standards that require the structures to be elevated two feet above the base flood elevation. Appropriate stream buffers have been provided for the associated streams along the eastern and southern boundaries of the subject property.
3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
The single-family residence across Rutherford Road to the rear of the property will be further separated by a Class "A" property line buffer. The remaining portions of the property are surrounded by similar commercial developments of similar zoning along the Smoky Park Highway Corridor. Furthermore, the proposed zoning will allow for parking to occur in front of the proposed buildings

and away from the residential properties along Rutherford Road.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.

The site is adjacent to a mobile home/modular sales business to the east, commercially zoned vacant property to the west and a number of commercial/industrial uses along the Smoky Park Highway corridor including offices, retail, warehouse, restaurant and the Vulcan materials site. The proposed use is consistent with both the existing zoning and character of the Smoky Park Highway commercial corridor in which it is located while maintaining sensitivity to the residences along Rutherford Road behind the proposed buildings through the use of mitigating factors including additional landscaping, open space and concentrating parking fields towards Smoky Park Highway.

5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.

Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment of the site is consistent with the goals of infill development along an established commercial corridor.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.

The site is located near the intersection of Rutherford Road and Smoky Park Highway with frontages along both roads and within two (2) miles of Interstate 40. The closest City of Asheville bus stop is located almost 3.5 miles away on Smoky Park Highway in front of the DMV office. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Although the anticipated project traffic exceeded 100 vph during the afternoon peak hour, we do not anticipate that the project will create any adverse traffic congestion along the existing street infrastructure. A draft traffic impact study was submitted to the City Traffic Engineer after the completion of this staff report and is currently being reviewed. Additional requirements may apply based on the review of this report.

Based on the above findings and the analysis provided in the report, staff finds this request, with conditions noted, to be reasonable.

Pros:

- Provides an opportunity to redevelop and upgrade a previously developed infill site.
- Will enhance a vacated site with new buildings and a landscaped parking lot that has lied dormant for many years.

Con:

- Although this site was in commercial use previously, that use has ceased for a number of years and some of the residential neighbors along Rutherford Road have expressed concerns about the potential for traffic generation originating from the proposed development onto Rutherford Road.

Based on the above findings, staff recommends approval of the project as requested by the applicant.

Mayor Bellamy opened the public hearing at 6:20 p.m.

An engineer with Patton Development Company, owner of the site, said Dollar General would like to bring one of their modern stores to this location.

Mayor Bellamy closed the public hearing at 6:22 p.m.

Councilman Davis felt this project fits the community well and is an appropriate development for the area.

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

Councilman Davis moved for the adoption of Ordinance No. 4006, to conditionally zone the project identified as Dollar General Market, located at 1131 Smoky Park Highway, to rezone from Community Business II District to Highway Business District/Conditional Zoning for the development of a two phase retail project. Phase I consists of a 20,700 square foot Dollar General Market; Phase II consists of approximately 10,000 square feet of future retail space, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance and be equipped with cut-off fixtures or full cut-off fixtures and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; and (6) A fee in lieu of be paid by the developer for the sidewalk along Smoky Park Highway. This motion was seconded by Councilman Smith and carried unanimously.

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At 6:26 p.m., Mayor Bellamy announced a short recess.

C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY AND EXPAND REQUIREMENTS FOR MOBILE FOOD VENDING

ORDINANCE NO. 4007 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO MODIFY AND EXPAND REQUIREMENTS FOR MOBILE FOOD VENDING

Director of Planning & Development Judy Daniel said that this is the consideration of an ordinance to amend Chapter 7 of the Code of Ordinances to modify and expand requirements for mobile food vending citywide, including regulations specific to the downtown Central Business District (CBD). This public hearing was advertised on August 12 and 19, 2011.

She said that mobile food vending (in trucks, not carts) have been regulated in the rest of the city for some time and in most instances operate under temporary use permits. The use is allowed in commercial areas in most parts of the city but not the central business district where a

general prohibition has existed since the Unified Development Ordinance (UDO) was adopted in the late 1990's.

During the summer of 2010 the Planning staff was contacted multiple times by several mobile food vendors interested in an expansion of the regulations for mobile food vending to allow them to work downtown. They were advised that this would need to be evaluated by the Downtown Commission. By late October various stakeholders (primarily restaurant owners and mobile food vendors) were contacting members of City Council requesting the City to consider the issue. Because the primary issue of concern centered on the potential for mobile food trucks in downtown, the staff felt the Downtown Commission was the proper forum for that discussion.

By early November of 2010 with requests from a widening range of stakeholders and widening community interest, the staff requested that the issue be placed on the agenda of the Downtown Commission for an initial discussion. Following that discussion at the November 12 meeting the Commission created a subcommittee to study the issue. After four meetings of that subcommittee (January through June of 2011) and four Commission meetings discussing the issues; the Commission voted 7-2 on July 8 to support proposed modifications to the regulations. Although the work resulted in substantial agreement on elements related to regulating mobile food trucks in most of the city, there continues to be substantial disagreement (strong support for and opposition to) the concept of allowing mobile food vending in the CBD.

The proposed changes fall into two major categories: regulations for mobile food vending sites, and regulations for mobile food vending trucks. Within those changes are the more substantial policy changes that would allow mobile food vending in the downtown CBD area on a limited basis (a limit of ten truck permits), with a review to be conducted within a year after adoption or if substantial problems are found in enforcing the regulations. That review and the elements of enforcement were of particular importance to members of the Commission.

Community Comment: Interest in this issue has been high since it was first discussed at the Downtown Commission in November of 2010, although the primary issue of concern has been about the potential for this use in downtown Asheville. Because the proposed changes reflect helpful new standards for this use citywide, it is important to remember that there was general support for most of the elements of these changes; and the controversy has centered around two provisions allowing food trucks to operate in downtown.

Support came from truck operators and area residents who would like to have this choice available. A survey conducted by the Asheville Downtown Association (ADA) showed strong general support for the concept. The ADA did not take an official position for or against the regulations, stating in a June letter to the Commission that their members are split in their feelings on the issue. That letter expresses support for the majority of recommendations in the proposals (related to mobile food vending citywide), but their representative on the Commission voted against the modifications stating concern about enforcement issues.

The two main groups expressing general concern have been representatives of Downtown Asheville Residential Neighbors (DARN) and members of the Asheville Independent Restaurant Association (AIR). Several downtown residents have commented, and a DARN letter written by a steering committee formed to research this issue was received in August and expresses concerns related to enforcement, noise, and activity. A letter from the Director of the Grove Arcade was received in June expressing concerns essentially similar to those expressed by AIR and DARN.

AIR members have been very involved in the process of reviewing the regulations for Mobile Food Vending. While not taking an official position until the end of the process, since the beginning they have expressed a range of concerns related to the use of Mobile Food Trucks in downtown Asheville. Four downtown restaurant owners attended most of the meetings on this issue including the AIR President Steve Frabitore (of Tupelo Honey), Anthony Cerrato (of Flores),

Michel Baudouin (of Bouchon), and Anoop Krishnan (of Mela). Downtown Commission Chairman Dwight Butner (owner of Vincenzos) has also been deeply involved in the issue. Many of the issues they thoughtfully raised were addressed in the ordinance proposal recommended by the Downtown Commission such as:

- Proposing the use of “plug-in” devices rather than relying on generators
- Requiring decibel limits for generators
- Limiting the size of food trucks that can be permitted
- Limiting locations and hours of operation for the vendors
- Limiting sales from trucks to food only
- Limiting truck vending locations to private property, no on-street parking spaces
- Limiting the number of trucks to be permitted downtown
- Denying the placement of tables and chairs in the proximity of truck vendors
- Emphasizing the importance of Health Department regulations
- Requesting details on how enforcement would be handled

Their concerns remain intense however, related to certain topics that include:

- Not allowing food truck vendors downtown
- Regulating the appearance of food trucks
- Limiting food trucks to local owners only
- A system for determining the quality and variety of food offered
- A requirement for restroom access for food truck patrons
- A distance requirement, keeping food trucks away from restaurants
- A requirement prohibiting chain restaurants from getting a permit
- A lower limit on the number of trucks permitted citywide and downtown
- A specific liability insurance requirement for food trucks

The Downtown Commission and the Subcommittee appointed to consider regulations discussed all these (and many other issues) at length. Ultimately the Commission did not choose to recommend these (and other) restrictions for various reasons such as:

- Commission members discussed the suggestion of not allowing food truck vendors in downtown Asheville several times, but ultimately did not vote to include that restriction in their recommendation to the Council. The Commission members agreed that allowing the mobile food trucks in downtown should be in the nature of a “pilot program” and recommended limiting permits for the trucks to 10, and a study/evaluation of how the program was working after a year of operation.
- Food trucks will have to be tied to a local restaurant or commissary, so they will be tied to local ownership. The Commission members also seemed to believe that practical matters (like the cost of fuel) would realistically limit the number of out of town truck owners who would want to apply for a permit. There is also a practical challenge to verifying residency.
- Restroom access is not required in the building code, and is not required for downtown food carts already operating.
- Distance requirements between retail businesses of similar types are not required for any other type of business; and chain businesses of any type are not prohibited in the City and it would be questionably legal to prohibit chains with food trucks.
- Commission members declined to require liability insurance. The reasoning appeared to be that legally permitted vending trucks would be responsible. The City only requires liability

insurance for City owned land/property/easements/rights-of-way or in other situations where the City is a party to the activity.

- An appearance standard and food quality/variety evaluation methods would be difficult and perhaps premature if only 10 trucks are to be permitted downtown. After the first year, the issue could be revisited to determine if mobile food vending is successful enough to warrant creating a new review body and guidelines for evaluation.

Ultimately, the most substantial and continuing grievance expressed by AIR members is that the decisions of the Downtown Commission did not address AIR philosophical / policy based concerns about food truck operations in downtown Asheville sufficiently. AIR members stated that they do not believe the Downtown Commission spent sufficient time considering whether food trucks should be allowed downtown at all, before they started developing regulations to govern them downtown and called for an economic impact study to be performed prior to adopting standards (no funding existed for a study). Because of this, they believe the process was flawed and as a result the ordinance, if enacted, could easily cause harm to both individual restaurants and the reputation of downtown as a place for high quality dining experiences. To them this is an issue of equity, fairness, and a responsibility of the Commission to fully research issues before changing restrictions that have existed for many years.

The Downtown Commission reviewed the wording amendment informally over multiple meetings and after lengthy discussion voted 7-2 to recommend approval of the proposed ordinance at their regular meeting on July 8, 2011. The Commission included a number of amendments to the ordinance language which are noted in the summary document and the proposed ordinance. In their approval the Commission has concerns about the following items: enforcement of the regulations including trucks operating without permits and enforcing the rules approved in the ordinance; having sufficient permit fees to provide some cost recovery for enforcement; that the ordinance be reviewed for its effectiveness after a one-year period allowing for a full season of operation.

Commission Chairman Dwight Butner was particularly disappointed with the vote and expressed a range of reasons for his concerns and vote against the measure, as noted on the summary timeline review, he provided to Council. The other 'no' vote was from Mr. Greiner who stated that he was primarily concerned about enforcement issues.

The Planning and Zoning Commission recommended disapproval of the ordinance with a vote of 3-3 at their meeting on August 3, 2011, after substantial public testimony from the public. Concerns centered on enforcement of the ordinance and competition from established restaurants.

The proposal for enforcement was reviewed the Public Safety Committee at their meeting on Tuesday August 16, 2011, and was supported by a vote of 3-0.

This action complies with the City Council Strategic Operating Plan in that the amendment supports the Council goal of broadening opportunities for entrepreneurial activities while managing community character.

Pros:

- Provides new and expanded opportunities for a new entrepreneurial activity during difficult economic times.
- Would contribute to the vitality of downtown
- Could activate under-utilized properties and/or under-developed areas of the city.
- Clarifies the existing rules to govern this use with consistency and efficiency.
- Expands eating options in Asheville.

Cons:

- May place pressure on established restaurants some of whom are already struggling with a slower economy.
- Without proper management trash and noise could be a concern.
- Enforcement has been identified as a concern especially 'after-hours' and weekends primarily from vendors without approved permits.

Depending on the level of interest from this business opportunity there may need to be additional enforcement resources, particularly during late night hours and weekends.

She said that staff urges support for the regulations that affect vending citywide as these advance and update the standards reflecting current trends and observed concerns. There appears to be broad general support for these standards. Substantial disagreement persists on the potential for allowing mobile food vending in downtown Asheville, even on a limited basis and as a one year "pilot program". Those recommendations reflect a substantial policy change that is at the heart of the continuing public debate.

Urban Planner Alan Glines reviewed the existing and proposed regulatory standards. There are several existing options in the *Unified Development Ordinance* (UDO) to permit mobile food vending at the present time in areas outside of the downtown, including operating under a temporary use permit or establishing a permanent vending use through the Level I site plan review process.

Temporary Use Permits are the most commonly pursued option for food vending with regulations outlined in the Temporary Use Section, found in 7-14-2 of the UDO. This section describes general specifications such as: a limit on the number of days of operation during a year, a limit on the hours of operation, a requirement that the activity be conducted on private property, that health department licenses be obtained, and standards for basic setback requirements and also identifies a specific prohibition on mobile food vending in the Central Business District.

The wording amendment proposes limited changes to the Temporary Use section permitting mobile vending that would expand options for vending outside of the downtown areas. Those standards are proposed for changes as they appear to have been limited because of concerns about the potential for activity in downtown that don't seem to be shared in other areas of the City. The most significant of these changes is a proposal to allow extended hours of operation (from 10:00 p.m. until midnight or 3:00 a.m.) for locations some distance from residential uses. The display of permits will be required to facilitate enforcement.

Permanent Mobile Food Vending is another existing option available in most commercial zoning districts for a mobile kitchen to establish a permanent mobile food vending operation on a regular basis. In this case, the kitchen is mobile, and therefore temporary, but the use is permitted on a permanent basis. The most well known example is the mobile food vendor that operates on the parking lot of the Home Depot on Fairview Road. It was approved in early 2008 as a Level I permit application. This application was reviewed for compliance with UDO standards and as the Home Depot site was fully compliant and had ample parking the application was easily approved. To establish this, two permits would be required – one for the site and one for the truck. The permit for the site will be treated like a Level I permit which means that it will be treated like other small scale development – setbacks will be considered, access to the site is looked at, site improvements, if any, would be reviewed, the parking demands of other uses on the parcel will be considered, if permanent electrical service will be brought to the site for the trucks to use, the locations will be reviewed, etc. A permit for the truck will also be required. The permit will be tied to a specific approved site, and operating without a permit will be a Class III misdemeanor and enforced by the Police Department. Permitting for this policy would apply City-wide in commercial districts, except in the downtown Central Business District, as the Downtown Commission recommended limiting permits to 10 individual trucks for the pilot period. Other

areas of the City will not be limited by the number of permits for trucks. The truck permits will be reviewed annually.

Development of the proposed ordinance began with a review of current regulations, studying examples from other cities and working through a variety of details with the Downtown Commission study group, the Downtown Commission and other stakeholders.

Ultimately the staff provided information to the Subcommittee and Downtown Commission based on information derived from ordinances in six North Carolina cities (including but not limited to Charlotte, Durham, Raleigh, Greensboro, and Winston-Salem), and 12 cities throughout the rest of the country (including, but not limited to Savannah, Charleston, Austin, Portland, Madison, and Seattle); as well as multiple on-line and in-print magazines and newspaper stories submitted for staff review by other staff and members of the Downtown Commission and the Subcommittee members and stakeholders. Information and alternatives from all of these cities were used to provide alternative options for consideration by the Subcommittee and full Commission as questions and requests for additional information and research arose during the nine month process that led to the Commission's recommendation to the City Council.

Some of the ordinance amendments for permanent mobile food vending were based on the Home Depot example, borrowing from the concept that you can have a permanent use without a permanent structure. This concept was then explored further with additional research and input provided by the mobile vending discussion subcommittee of the Downtown Commission and area stakeholders including the Downtown Commission, the River Arts Business Group, citizens working on planning issues for Haywood Road, and the Asheville Downtown Association. The purpose of the new ordinance is to make a set of rules that apply city-wide that everyone can understand and follow. Some of the most substantial changes include:

- To establish mobile food vending on a permanent basis a total of two permits are required: one for the site and one for the truck. The permit for the site will ensure maneuvering onto the site, spacing, setbacks and required site improvements.
- The permit for the truck will ensure that Buncombe County requirements are met, that power sources and the noise level of the generator (if applicable) are acceptable, an approved site is identified, and that signage and other standards noted in the ordinance and pertaining to trucks are complied with.
- Even though the use may receive permanent approval to operate on a parcel, the mobile kitchen is temporary in nature and requirements from the building code such as accessibility features and restrooms, will not apply because there is no permanent structure.
- Hours of operation are proposed to be from 6:00 a.m. to 3:00 a.m. to capture a wide array of meal times and late night food vending, but are reduced to 12 a.m. (midnight) when located within 200 feet of a residential use.
- Access to the site is being considered with each application so partial access for patrons will be assured.

It is also important to note that under a separate permit, Buncombe County Department of Health approves the mobile kitchens and inspects them on a regular basis. Some of these State health regulations affect the operation such as the requirement that single-use utensils, plates and cups be used to serve patrons.

Proposals affecting Downtown: Representing a policy change for the City, mobile food vending would be expanded as a permanent allowable use in the Central Business District zoned

areas of the city for the first time. The regulations affecting downtown include the following major elements:

- They would be limited to a total of ten trucks for the entire downtown Central Business District as an introductory number that can be expanded, reduced, or eliminated depending on any issues or notable successes.
- Although there has been some cursory review of potential sites downtown for mobile food vending, negotiations for these operations will be between the interested mobile food vendors and the owner(s) of the property; however, it has been noted that there is marked demand for surface parking especially in the heart of downtown and this may inherently limit the availability of vendor locations.
- The proposed hours of operation of 6:00 a.m. to 3:00 a.m. are not reduced to a midnight closing when proximate to residential uses in the CBD. This CBD exemption has generated some comment from DARN; however, the Central Business District is primarily a business district and after discussion the Downtown Commission decided to not impose this limit as most other businesses are not limited in their hours of operation.

Mr. Glines then reviewed the following new definitions to the ordinance (as amended by the Downtown Commission), noting the Downtown Commission changes specifically:

- *Mobile food site* means an individual parcel where mobile food vending is permitted to occur on a permanent basis
- *Mobile food vending* means commercial food service sales by a mobile food vendor on a parcel of land outside of right-of-way areas. Sites approved for permanent mobile food vending are classified as a mobile food site.
- *Mobile food vendor* means an individual who owns and operates a vehicle (truck or trailer with a maximum of two axles) that includes a mobile kitchen that supports the sale and/or preparation of food and non-alcoholic beverages which is licensed and approved to walk-up customers.

Mr. Glines said that in order to establish the use of making mobile vending a permanent use on a site, the following regulations must be followed, specifically outlining the Downtown Commission changes:

a. Use Districts: Office, Office II, Office Business, Community Business I, Community Business II, Institutional, Highway Business, Regional Business, Central Business, River, Commercial Industrial, Light Industrial, Industrial, Urban Village, Neighborhood Corridor, Urban Place

b. Permitting: Permitting to establish mobile food vending as a permanent use will incorporate the following permits:

1. Permitting the mobile food site: Mobile food vending will only be allowed on parcels with an approved development permit and the actual number of vendors permitted will be dependent on site conditions and the ability to comply with spacing requirements in section 'c' below.
2. Permitting the mobile food vendor: A mobile food vendor is required to obtain a permit for each separately approved mobile food site where vending will occur, according to the following regulations:

- a. A mobile food vendor is permitted to vend at more than a single site but

- each location must be approved by individual permit.
- b. The Mobile Food Vendor permits will be renewed annually along with requirements for the Buncombe County Health Department.
 - c. The number of permits issued to individual mobile food vendors for the downtown Central Business District will be limited to 10. Vendors may vend from multiple locations subject to the ability to meet other requirements.
 - d. Mobile food vendor permits will run with the calendar year and existing vendors will have the option to renew.
 - e. Permits from Buncombe County and the City of Asheville shall be visually displayed on the mobile kitchen.
 - f. Copies of other required permits will be submitted with the mobile food vendor permit application.
- c. Site Improvements: The permit to establish a mobile food site will require approval of a site plan illustrating the proposed placement of the mobile food vendor(s) and the following items:
1. Access into the site and parking for vendor patrons at the rate of one parking space per mobile food vendor (applicable only if off-street parking is required in the zoning district).
 2. Landscaping - The site will be improved to meet the standard for street trees. In addition the affected area of the site will provide a minimum eight-foot wide property line buffer when directly adjacent to residentially zoned and used parcels. This buffer should be planted to include a mix of evergreen and deciduous trees and shrubs to result in a vegetative screen that is 75% opaque year-round. As an alternative, the buffer may be reduced by 50% with the installation of an opaque fence. Existing buildings that screen the impacts of the mobile food vendor(s) will be considered a substitute for the property line buffer or portions thereof.
 3. Sidewalks - Sidewalks will be required along the frontage lines of the parcel if the road is designated on the City's needed linkages sidewalk list.
 4. Site maneuvering - Each mobile food vendor will need sufficient space for maneuvering onto the lot, for safe access by pedestrians, and for emergency response.
 5. Setbacks - Setbacks for individual mobile food vendors will be ten feet from side and rear property lines and other parked vehicles (if any). There is not a required setback from the frontage line except that no portion of the mobile food vendor will be permitted to encroach into the right-of-way.
 6. Other site features - Permitting for the mobile food site will take into consideration the ability for the primary site user to maintain compliance with minimum parking standards (if there is one) referencing the specific zoning district standards as described in the UDO.
 7. Permanent electric power infrastructure is the preferred method for supplying power at the mobile food site. If this is pursued, then the applicable permits must be obtained.
- d. Other requirements for mobile food vendors:
1. No mobile food vendors will be permitted to vend in a public street, sidewalk or right-of-way.
 2. All mobile food vendors are required to maintain permits issued by the Buncombe County Health Department and the City of Asheville will defer to Buncombe County for health and food safety regulations.
 3. All mobile food vendors shall leave the mobile food site when they are not in operation.

4. Aside from festivals or special events that are permitted under separate event permits, the mobile food vendor will be required to maintain a list of the location(s) for operating the vending unit.
5. Mobile food vendors will be limited to the sale of food and non-alcoholic drinks. The sale of other merchandise or services will not be permitted.
6. Mobile food vendors are encouraged to use recyclable and/ or compostable containers, cups and utensils.
7. Hours of operation: (a) Mobile food vendors will be limited to the hours of 6:00 a.m. until midnight if they are within 200 feet of a residential use (locations in the downtown Central Business District excluded); (b) Mobile food vendors who are not located within 200 feet of a residential use or are located in the downtown Central Business District may not operate between the hours of 3:00 a.m. and 6:00 a.m.
8. The mobile food vendor(s) will be required to remove trash and litter from the mobile food site each day and to maintain the cleanliness of the site during hours of operation. The vendor must provide a receptacle for use by patrons.
9. The mobile food site will be subject to the outdoor lighting and noise ordinance standards established by the City of Asheville.
10. Outside power for the mobile food vendors may be provided by electric power pedestals as a preferred method or by a generator(s) operating at 65 decibels or less and which are properly attached per manufacturer's standards to the mobile food vehicle. Mobile food vendors utilizing a generator may not operate closer than 100 feet to a residential use, unless the generator operates at less than 50 decibels in which case distance will not be restricted except by other setbacks.
11. Vendors may not bring tables and chairs to the mobile food site except that a single chair may be brought by the vendor for use by staff. In addition stand-alone tents, shade clothes, steps, etc. may not be brought to the site by vendors.
12. Mobile food vendors shall maintain 20 feet between other mobile food vendors based on fire code separation.
13. Vendors will be subject to random inspections to ensure compliance with all applicable requirements.
14. Signage: Mobile food vendors may have signage on their vehicle, not to exceed 32 square feet total per vehicle including letters and/or logo advertising the business. Square footage may be divided between a maximum of two faces. No roof signs will be allowed. A single attached menu board totaling 6 square feet is also allowed for each truck.

Assistant Planning & Development Director Shannon Tuch said that enforcement in general can be challenging and there's no perfect formula to enforcement that works in all, or even most situations. Add to the normal challenges of enforcement, a mobile activity is inherently more difficult to track and regulate so it certainly warrants some special attention.

The majority of the concern related to enforcement has revolved around the fear that adopting standards would create a culture of acceptance for unpermitted or illegal food trucks – especially late night and after hours when there is less monitoring. Recognizing that our normal zoning enforcement has its limitations and that there may be a heightened public welfare concern related to unpermitted trucks, we knew that there was more work that we had to do with this issue and, it was clear that the Downtown Commission, while in support of adopting standards overall, remained concerned about enforcement and directed staff to investigate stronger options. In response to this, Planning staff arranged for a discussion with the Police Department to see if there was a way to better address these enforcement concerns through a collaboration.

These conversations were very informative and productive. Both Planning and the Police felt that monitoring this new activity could be absorbed into our normal patrolling and enforcement responsibilities and would not be overly burdensome, particularly if certain parts of the

enforcement could be shared. To accomplish this, the ordinance would have to be written in such a way as to assign both entities some specific authority. After some discussion and recognizing the nature of the community's concerns and the strengths of the two departments, it made sense to assign the enforcement of the illegal trucks to the Police Department and so that all unpermitted (or illegal) food trucks would be a Class III misdemeanor. All other violations related to the standards of the permit would be handled by zoning enforcement.

For an example, if someone sets up late night operating from an alley somewhere and the Police comes across them, and they don't have a permit, this would be a felony misdemeanor and the Police officer on the scene would be able to handle that situation per their normal protocol. And it should be easy for the Police to identify those who don't have a permit because it is a requirement of the ordinance that the trucks post their permit so it will be very recognizable for all who approach the truck. But, if someone has a valid permit and is just operating too late, or leaving trash behind, or are operating on a day that they hadn't been permitted for, then Zoning would handle these per our normal civil enforcement process. Additionally, for those who are permitted, our staff would be arranging for periodic but random inspections to ensure that the vendors are operating within the parameters of their permit.

This general enforcement concept was supposed to go before the Public Safety Committee for some additional review and feedback prior to Planning & Zoning Commission; however, due to a canceled meeting, staff was unable to receive this review prior to the Planning & Zoning Commission meeting. Additionally, the timing of the discussions with the Police Department did not provide enough time to include this information into the staff report and ordinance that the Planning & Zoning Commission reviewed, so staff had to share the concept (verbally) during the Commission meeting. Despite these positive steps regarding enforcement, the Planning & Zoning Commission remained concerned.

With some new questions raised by the Commission regarding the mechanics of enforcement, staff then developed an outline of exactly how we expected the enforcement process to work. This, along with the overall general concept was, ultimately reviewed before the Public Safety Committee, where the general idea and process was well received. With this positive review, staff was then able to incorporate the enforcement concept into the report and ordinance that Council received (so the Council has the benefit of some information that was not available to the Planning & Zoning Commission).

Again, our concern is not so much with the permitted vendors as those who are unpermitted; and the proposed standards are simple and clear enough that we don't anticipate a lot of zoning enforcement. But, in the event that we do experience an influx of unpermitted vendors, the Police will be in a better position to deal with these violators and can offer a stronger disincentive.

To summarize, it is largely through the assistance of the Police Department that we feel that we are better equipped to adequately regulate this new proposed land use.

She stressed that it is staff's intent to return in a little over a year to provide a report on mobile food vending. If staff experiences significant issues before the one year, they will come back to Council with an ordinance amendment.

Mayor Bellamy opened the public hearing at 6:59 p.m.

Mr. Michel Baudouin, owner of Bouchon restaurant on Lexington Avenue, expressed deep concerns about the process and outcome of the proposed ordinance. Due to the special character of Asheville's downtown, he asked Council to leave the ordinance as is or extend the decision-making process in considering the ordinance as it is proposed. If adopted, he suggested (1) reducing the hours from 6:00 a.m. to Midnight on weekdays and 6:00 a.m. to 10:00 p.m. on weekends; (2) reduce the initial number of trucks from 10 to 5 which will allow the City staff to

become more acclimated to their new enforcement responsibilities; (3) develop an enforcement plan for City sales tax collection; (4) investigate why restaurants are limited to a 20 pound heater tank while food trucks carry 100 pound heater tanks; (5) require compostable/recyclable disposables; (6) review why there is no stated limit on the number of times a mobile food vendor can change their operating hours; and (7) also prohibit site landlords from supplying the site with tables and chairs. He felt the ordinance ignores the 2000 downtown residents and the concerns of the business owners who are not only paying top dollar for their real estate, but who also contribute the largest tax revenue per square foot in the City.

Chef Andrew Maykuth supported permitting mobile food vendors in downtown Asheville. He felt competition is a good thing and Asheville needs to live up to its potential.

Dr. Milton Byrd supported mobile food vending felt Asheville is great for the opportunity of culinary expression.

Rev. Christopher Chiaromonte spoke in support of downtown mobile food vending and was concerned about the amount of insurance required for the vendors and that the downtown restaurant owners will purchase the allotted 10 permits.

Mr. Larry Holt, downtown resident, supported mobile food vending downtown; however, was concerned with the proposed hours of operation. He felt 3:00 a.m. is unreasonable for downtown residents who already have enough noise. He suggested limiting their closing hours to 10:00 p.m. or Midnight at the latest. He was also concerned that there are no restroom facilities late in the evening. He also wondered who would be cleaning up the trash. He hoped Council would consider the concerns from the residents downtown and make special exceptions.

Mr. Dwight Butner, owner of Vincenzo's Ristorante & Bistro, member of the Downtown Commission, and found member of AIR, said that mobile food vending downtown was banned several years ago because people thought it was important to put tenants in our historic buildings to revitalize downtown. He said the ordinance applies to the City as a whole and creates a whole new category of street food vending. It does limit the number of permits downtown, but there is no limit to the number of locations downtown that you can do it. It also does not limit the number of locations outside of downtown. He noted that Fire Codes restrict restaurants throughout the City not to use propane heaters more than 25 pounds, but this will allow food trucks in downtown with 100 pound propane tanks. He felt the 65 decibel level for generators should be lower. Finally, he felt allowing mobile food vending downtown will deter residential development in the downtown.

Mr. Nate Kelly, mobile food vendor, felt that mobile food trucks are part of the future and are a good alternative to fast food chains. He felt they will draw people to downtown and they will be exposed to other downtown venues. Change is vital to avoid stagnancy.

Ms. Gail Childress, downtown resident, was concerned with the late hours that the mobile food vending trucks will be allowed to operate from a noise standpoint.

Ms. Mary Ann West, representing the Downtown Asheville Residential Neighbors, said they request the hours be limited to 6:00 a.m. to Midnight with a buffer zone. She said that to allow the vendors to operate until 3:00 a.m. will adversely affect their quality of life downtown and also hurt the value of their condominiums. She also felt there should be mandatory regulations regarding trash pick-up, restrooms and clean-up of the entire area around the food truck. She hoped Council would take the time to work out all the details before adopting the ordinance.

Mr. Joe Minicozzi, Executive Director of the Asheville Downtown Association, explained the Downtown Commission's survey results regarding mobile food trucks. The Association has not taken a position on this issue, but the Issues Committee validated the following recommendations: (1) no mobile food vending be allowed on public streets; (2) any property that

should utilize mobile food vending shall be brought to the City's parking lot landscaping standard; (3) we suggest a required and measurable decibel limit (per unit and/or combined for the site) for generators, as measured from the adjacent sidewalk or habitable neighboring structure, whichever is closest; (4) require on-site trash and recycling; (5) we support the "no Styrofoam" recommendation; (6) a limit on the size of truck (we suggest "no mobile food vending vehicle shall be more than two axles and trailers no more than one axle"); (7) the state requirements for health inspection must be met and enforced; and (8) we encourage permitted, inspected, and approved electrification of site as part of the landscaping requirements, where possible, to help mitigate the generator issue.

Mr. Joe Cauble, downtown resident, spoke in support of mobile food vending downtown.

Ms. Allison Murphy, mobile food truck owner, was looking to expand food options to healthy, organic foods.

Mr. Barry Summers spoke in support of allowing mobile food vendors downtown. He wanted to make sure that one vendor can't monopolize all 10 locations downtown.

Ms. Susie Phillips, mobile food truck owner and founder of the Asheville Street Food Coalition, felt that mobile food vending is a "to-go" food which will target people more at night after the bars close at 2:00 a.m. Great food and small business owners deserve to be embraced and fostered by the community. She explained that progressive cities have mobile food trucks and felt this is a stepping stone for some who start small and then graduate into a restaurant building. Food trucks provide job opportunities, obtain licensing and permit certifications and pay taxes, just like restaurants. We need to foster positive communication between street vendors, residents and businesses downtown. In addition to the Police Department and Planning staff enforcement, the Coalition would like to create something similar to a neighborhood watch.

Mr. Tim Peck felt that with the City's enforcement and the vendor's own interest in following out the rules and pointing out violators, the enforcement concerns have been addressed. He supported the mobile food vending downtown.

Ms. Marnie Graves, mobile food truck owner, said she buys local and tries to provide healthy alternatives to fast food.

Ms. Kim MacQueen, downtown business owner, expressed concerns regarding trash, lack of restroom facilities, noise and competition with existing restaurants.

A gentleman felt this is a way to cater creativity and Asheville should foster this type of movement.

Ms. Audrey McMurray, mobile food truck owner in the River Arts District, explained an incident where she was permitted; however, her permit was revoked due to an oversight error in the issuance.

Mr. Sadler supported the vendors being allow to remain open until 3:00 a.m.

A food and beverage worker supported relaxing restrictions on mobile food vending downtown.

Rev. Lisa Landis felt the mobile food vendors want to support themselves and the City should help them like they do other economic developments that come to Asheville.

Mayor Bellamy closed the public hearing at 7:48 p.m.

Councilman Russell, Chairman of the Public Safety Committee, felt the process has been good. He said that no one person can buy all ten permits. The property owner will have to work with the vendors on keeping their property clean. He noted that there is no time that a person cannot call the Police if they feel someone is violating the noise ordinance. He address the potential concerns and noted that if Council or staff identify problems, Council has the authority to make changes.

Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District and that an application cannot be submitted until the truck is approved by the Health Department which would prevent someone from buying all 10 permits and not owning a single truck. This motion was seconded by Councilman Smith.

Staff responded to various questions/comments by Council, some being, but are not limited to: why do the vendors have to specify their hours of operation on the permit and what if their hours change; explanation of the temporary use permit option vs. this new ordinance which would allow multiple vendors on a single site; confirmation that the City is not requiring any liability insurance for mobile food vendors since they will be on private property; confirmation that the City does not require any liability insurance for brick and mortar restaurants, unless they have an encroachment agreement for use of the sidewalk; are food truck vendors required to pay food sales tax; and confirmation that the land owner and the mobile food truck must both obtain a permit.

Councilman Smith felt we should provide an incentive to encourage vendors to get a permanent electrical power infrastructure and use recyclable and/or compostable containers, cups and utensils, since it is the City's preferred method. Planning & Development Director Judy Daniel said that every time they meet someone has an idea or another concept, and perhaps staff could work on those ideas during this one-year trial period.

Councilwoman Manheimer noted that food trucks are only allowed on ten private property locations. She did have concerns about the hours of operation and personally felt Midnight is when the vendors should close. She felt that as long as setback requirements are met, she could support a few tables and chairs. Regarding the generator noise, she felt that should be revisited after the trial period. She noted concern with the portion of the motion what requires someone to own a food truck before they apply for a permit. She felt that most people would apply for permits before they begin constructing or making substantial investments. That would be a financial leap without knowing the outcome.

In response to Councilwoman Manheimer's concern with the motion, Councilman Russell and Councilman Smith both accepted an amendment to the motion that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. City Attorney Oast said that the Planning Director can extend that time as she can for other types of permits for an additional 30 days. The amended motion now reads "Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. This motion was seconded by Councilman Smith."

Councilman Davis, member of the Downtown Commission, felt staff has crafted an ordinance from a lot of public participation. He said that we did benchmark food trucks in various cities, but did not feel that we had a clear benchmarking of cities in similar situations to Asheville. It's not easy for anyone to go into business, but he is concerned for those who do pay property taxes and worked hard to make downtown Asheville successful. Food trucks will bring another food venture to the table, but there is worry in our struggling economy of the health of existing downtown businesses. We have tried to urge people to live downtown yet we are going to treat it as a non-residential area. He was very familiar with the sound of generators and felt that 3:00

a.m. with a 65 decibel generator is not a pleasant sound. He felt there should be some incentive for not using generators. He said that trash is a problem, noting that people do not stand at the food truck and eat. The City's expense will be more trash cans in the downtown area. He was also concerned with 10 permits in the downtown CBD because that's 10 points of sale in a 50 block area. He would like to be supportive, but he has heard from a large part of the community who is less vocal.

When Councilman Davis questioned cost recovery of permit costs, Ms. Tuch said that the permit for the site is \$104 and the permit for the truck is \$104. He hoped that the Finance Committee will review that amount.

Vice-Mayor Newman was also concerned about noise during the late hours of operation when a vendor is using a generator. It has been his observation that the noise ordinance is hard to enforce. Therefore, he asked for an amendment to the motion to restrict the hours of operation to 11:00 p.m. for a vendor using a generator, but 2:00 a.m. if the vendor is using an electric power pedestal. This motion was seconded by Councilwoman Manheimer.

In response to Councilman Russell, City Attorney Oast said that the City's noise ordinance has no decibel limit. It is complaint driven and based on a reasonable person's sensitivity.

Councilman Smith liked the idea of the amendment to the motion in that it creates an incentive for using an electrical power pedestal; however, he asked if Vice-Mayor Newman and Councilwoman Manheimer would be willing to change the hours from Midnight for those using a generator and 3:00 a.m. for those that use an electric power pedestal.

Vice-Mayor Newman could not think of any other business activity that Council would allow to run a generator until 3:00 a.m. in our downtown area. He would not be willing to extend the hours from his amendment.

The amendment to the motion made by Vice-Mayor Newman and seconded by Councilwoman Manheimer carried on a 5-2 vote, with Councilman Russell and Councilman Smith voting "no."

The amended main motion is as follows: "Councilman Russell moved to adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to 11:00 p.m. for a vendor using a generator, and 6:00 a.m. to 2:00 a.m. for a vendor using an electric power pedestal; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked. This motion was seconded by Councilman Smith."

In response to Councilman Bothwell, Ms. Tuch said that staff is relying on the already established application process fees, explaining that a permit will be required for each site, as well as the truck. Councilman Bothwell felt the only other site specific permit is for our adult entertainers because we assign them to the place they can entertain. Those permit fees are \$500. He liked the idea of mobile food vending and understood the concerns of downtown residents, but could not support the motion unless it requires the vendors to use electric power pedestals. He felt that would help with air and noise pollution. He asked for an amendment to the amended main motion that only electric power pedestals be allowed in the Central Business District. This motion was seconded by Councilwoman Manheimer and carried on a 4-3 vote, with Vice-Mayor Newman, Councilman Russell and Councilman Smith voting "no".

The amended main motion is as follows: "adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to

2:00 a.m.; that only electric power pedestals be allowed in the Central Business District; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked.”

In response to Mayor Bellamy, Ms. Daniel said that staff will modify the ordinance to include the prohibition of mobile food vendors in City parking decks, because it was staff’s intent to prohibit them on any City property.

Mayor Bellamy wondered if the penalty was high enough and what the likelihood would be for an illegal food vendor, possibly from out of town, paying a Class III misdemeanor violation. In response, City Council Oast said that the penalties can be less than a Class III misdemeanor, but they can’t be any higher. Mayor Bellamy also questioned the lack of the Planning & Zoning Commission, Downtown Commission and Public Safety Committee minutes for Council to review.

In response to Mayor Bellamy, Ms. Tuch said that the application fee of \$104 is for a Level I site plan – similar to a small site review. It seemed appropriate to charge that same level of fee because the review is not anymore significant. We are also charging an additional \$104 fee for the truck itself so staff can review the truck standards and then follow-up with an inspection of the truck. This is consistent with our existing permitting process. We do recognize that there is an opportunity to review fees and charges in the summer and staff’s intent is to follow this and see if we are doing cost recovery and if not, they would go to the Finance Committee with a recommendation, or bring forward a recommendation after the one-year trial period.

Mayor Bellamy did understand staff’s reasoning with the \$104 permit fee, but bricks and mortar restaurants downtown pay \$200,000 in property taxes. And, for individuals who want to do business in downtown are asking to pay only \$104. The vendors pay no property tax and no food & beverage tax but they are benefitting from the Asheville brand. She felt that was unfair.

In response to Mayor Bellamy, Mr. Glines said that every truck that receives a permit from the Buncombe County Health Department has to tie their permit to a bricks and mortar restaurant. The truck has to report to the restaurant at least once each day for preparation, disposal of wastewater, grease disposal, rubbish removal, etc. They also have to have an arrangement with a restaurant to even operate as a food truck. That issue is handled by the Buncombe County Health Department.

Mayor Bellamy recommended the Boards & Commissions Committee consider discussion of an oversight committee to look at this new initiative going forward. Even though this is a pilot program in downtown, it is still allowed in other areas in our community.

When Mayor Bellamy questioned the disparity regarding propane tanks on mobile food trucks vs. brick and mortar restaurants, Ms. Tuch said that when the propane heater is attached to the vehicle, that is a NC Dept. of Motor Vehicle issue. The recommendation is that it just has to comply with the manufactured instructions and be covered under the NC Dept. of Motor Vehicles. Mayor Bellamy asked for a representative from the Fire Department or the Building Safety Department to respond to that question.

Mayor Bellamy agreed with Councilman Davis that additional trash cans were needed in the downtown area and it was the consensus of Council to have staff bring forward a budget amendment, if necessary.

Mayor Bellamy wondered if the age of the mobile food trucks has been an issue raised since Asheville is trying to reduce their carbon footprint. The Airport is looking at making age requirements on the vehicles that bring people into Asheville and she felt we should at least consider that for people that are being fed.

In response to Mayor Bellamy, Ms. Tuch explained the instance with Ms. McMurray in the River District.

When Mayor Bellamy asked if permit would be issued tomorrow if the ordinance is adopted at this meeting, Ms. Tuch said that people can come in and apply for the permits. Staff would then review the application and if it meets all the standards then the permit would be issued. She noted that trucks can't be permitted until the sites are established.

Mayor Bellamy was concerned with the permit fee of \$104. She felt it was too low for the benefits immediately reaped.

In response to Mayor Bellamy, Ms. Tuch said that we have approximately 17 sites downtown for pushcarts, but not all the sites are occupied.

In response to Mayor Bellamy's concern of no separation requirements for the food trucks, Ms. Daniel said that was extensively discussed by the Downtown Commission; however, they decided to not have separation requirements.

Mayor Bellamy was also concerned of the transit nature of the ordinance. She felt we needed to get some of the remaining issues resolved before opening the door for business.

In response to Vice-Mayor Newman, Ms. Tuch explained that we already have the fee for what staff is calling a Level I. Our permit fees for a Level I escalate based on the square footage. The lowest fee for a Level I is \$104 for projects less than 1500 sq. ft.

Vice-Mayor Newman agreed with Mayor Bellamy in that the permit fee is too low. He felt we need to have this endeavor come close to covering the operational expenses that the City will carry over the year as we look at this issue. City Attorney Oast cautioned Council to be cautious in setting these fees because under N.C. law the fees have to approximate cost recovery. He said it may be possible to establish a separate and higher business license fee, but he would have to investigate that issue.

At 8:57 p.m., Councilman Smith called the question.

The following amended main motion made by Councilman Russell and seconded by Councilman Smith carried on a 4-3 vote, with Mayor Bellamy, Councilman Bothwell and Councilman Davis voting "no" – "adopt the ordinance as proposed by the Downtown Commission allowing 10 independent mobile food vending trucks in the Central Business District except that the hours of operation for mobile food vendors are from 6:00 a.m. to 2:00 a.m.; that only electric power pedestals be allowed in the Central Business District; and that the permit will require the vendor to begin their operations within 30 days after receipt of the permit or the permit will be revoked."

City Attorney Oast said that because the ordinance was not adopted by a 2/3 vote of Council, it is necessary to bring the ordinance back at the next meeting for a second and final reading. This will allow some time to investigate some of the concerns of Council. He noted that the second reading does not require a public hearing unless substantive changes to the ordinance.

In response to Councilwoman Manheimer, City Attorney Oast said the ordinance can be further amended when considered on its second and final reading.

It was the understanding of Council that the following concerns would be addressed on the second reading: appropriateness of the review fees; the possibility of adopting a business privilege license fee; a plan to supplement trash collection downtown; provide the Council with the

Planning & Zoning Commission and Downtown Commission minutes; and the difference of propane tank requirements.

ORDINANCE BOOK NO. 27 – PAGE

Closed Session

At 9:03 p.m., Councilman Smith moved to go into closed session for the following reasons: (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including a lawsuit involving the following parties: City of Asheville; J. Jerome Jensen, et al (Biltmore Lake Annexation). The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a) (3); and (2) To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Russell and carried unanimously. This motion was seconded by Councilman Russell and carried unanimously.

At 9:41 p.m., Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 11-180 - RESOLUTION AUTHORIZING THE MAYOR TO APPROVE A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

City Manager Jackson said that we routinely consider the Federal Aviation Administration (FAA) grant offers; however, since the grant offer materials were not made available prior to placing this on Council's agenda, a list of questions were submitted to the Airport, which answers have been received and provided to Council. As a courtesy to the Airport, the item was placed on the agenda.

Mr. Lew Bleiweis, Airport Director, asked for Council to consider a resolution authorizing the Mayor to approve a Grant Offer from the Federal Aviation Administration (FAA) in an amount not to exceed \$1,669,030. He explained this grant is for the following projects: (1) Purchase of new Aircraft Rescue Firefighting Vehicle to replace existing fire apparatus which has exceeded its useful life - total cost of this vehicle is \$382,965 (2) Design services associated with a new Aircraft Rescue Firefighting Facility – total cost of these services is \$541,409; and (3) Conduct of an Airport Master Plan Update for the Asheville Regional Airport – total cost of services is \$832,500. The total FAA grant is expected to be in the amount of \$1,669,030, which represents 95% of the total share of eligible costs of these projects. The remaining 5% of the total costs will be funded by the Airport Authority.

When Vice-Mayor Newman asked if Council's approval in this in any way would prejudice or close down any options relative to consideration of a joint use fire facility at the Airport, Mr. Bleiweis replied it does not. He said any continuation on discussions with a joint fire house with the City has no impact on that at all.

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.

Vice-Mayor Newman moved for the adoption of Resolution No. 11-180. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 145

B. RESOLUTION NO. 11-181 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION

Vice-Mayor Newman said that the terms of Cindy Weeks, Darryl Hart and Jerome Jones, as members on the Planning & Zoning Commission, expire on August 14, 2011.

The following individuals applied for vacancies on the Commission: Britt Lippard, Joseph Minicozzi, Kenneth Fulford, Mark Mathews, Bruce Greene, David Mosrie, Jeremy Goldstein, Dustin Pulliam, Tony Hauser, Jane Gianvito Mathews, Kristy Carter, Jeff McGahee, Michael Bragg, Pete Hildebrand, Terry Meek, Abigail Emison, Ellen Nutter, Steve Rasmussen, and Barber Melton. Ms. Lippard, Mr. Hauser and Mr. Bragg did not submit written responses to questions sent to all candidates, and were not considered for the next step of interviews.

At the August 9 meeting, it was the consensus of Council to interview Joseph Minicozzi, Mark Mathews, Bruce Greene, David Mosrie, Jeremy Goldstein, Jane Gianvito Mathews, Kristy Carter, Abigail Emison and Steve Rasmussen.

Vice-Mayor Newman said that earlier in the day each of the nine candidates received a 20-minute interview.

At the request of Vice-Mayor Newman, it was the consensus of Council that each Council member identify 3 candidates and any candidate that receives 4 votes will be appointed to the Commission. He then explained the voting process.

After other Council members spoke highly of the strong candidates, Joseph Minicozzi received 3 votes; Mark Mathews received no votes; Bruce Green received no votes; David Mosrie received 2 votes; Jeremy Goldstein received 4 votes; Jane Gianvito Mathews received 4 votes, Kristy Carter received 4 votes, Abigail Emison received 3 votes; and Steve Rasmussen received 1 vote. Therefore, Jeremy Goldstein, Jane Mathews and Kristy Carter were appointed as members of the Planning & Zoning Commission, to each serve a three-year term respectively, terms to begin immediately and expire on August 14, 2014, or until their successors have been appointed.

Mayor Bellamy thanked Cindy Weeks, Darryl Hart and Jerome Jones for their hard work on the Planning & Zoning Commission.

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VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte spoke about harassment by the Asheville Police Department.

Mr. Timothy Sadler expressed concerns as he felt there was a certain level of profiling against the homeless. In addition, he hoped that the City was prepared for any potential damage from Hurricane Irene. Mayor Bellamy said that City Manager Jackson would investigate Mr. Sadler's profiling concern. She also felt it would be appropriate for Council to have an emergency response update and invite a representative from the Land-of-Sky for an update on their fuel effort.

The following claims were received by the City of Asheville during the period of July 22 – August 11, 2011: Kelly Nash (Parking Services); Jennifer Westmoreland (Parks & Recreation); Sheila Thibodeaux (Fire); Alexey Zalakov (Transit); James Graves (Fire); Cotina L. Smith (Fire, Prestige Motors of Asheville (Streets); Cynthia Messer (Sanitation); Andrea L. Griffin (Police) and Christopher Hess (Police). These claims have been referred to Asheville Claims Corporation for investigation.

The City was served with the following Complaint on August 12, 2011, which is generally described as follows: Buncombe County v. Ridgeline Reclamation Corp., City of Asheville, leinholder. The nature of the proceeding is a complaint for a tax foreclosure. This matter will be handled in-house.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 10:07 p.m.

CITY CLERK

MAYOR