

Tuesday – September 24, 2013- 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Assistant City Manager Cathy Ball; ; Interim City Attorney Martha Walker-McGlohon; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Troop 77 of Trinity Presbyterian Church led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Davis gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING OCTOBER 5, 2013, AS "BLUE RIDGE PRIDE DAY"

Mayor Bellamy read the proclamation proclaiming October 5, 2013, as "Blue Ridge Pride Day" in the City of Asheville. She presented the proclamation to Ms. Ashley Arrington, Blue Ridge Pride Outreach & Education Committee, and Blue Ridge Pride Board President Drew Walls, who briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING OCTOBER 6-12, 2013, AS "FIRE PREVENTION WEEK"

Mayor Bellamy read the proclamation proclaiming October 6-12, 2013, as "Fire Prevention Week" in the City of Asheville. She presented the proclamation to Division Chief Barry Hendren, who briefed City Council on some activities taking place during the week.

C. PROCLAMATION PROCLAIMING OCTOBER 6-13, 2013, AS "MENTAL ILLNESS AWARENESS WEEK"

Mayor Bellamy read the proclamation proclaiming October 6-13, 2013, as "Mental Illness Awareness Week" in the City of Asheville. She presented the proclamation to Dr. James Pitts, board member and past president of NAMI, who briefed City Council on some activities taking place during the week.

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 24, 2013

B. RESOLUTION NO. 13-204 - RESOLUTION AUTHORIZING THE CITY MANAGER SIGN A CHANGE ORDER WITH MICHAEL BAKER ENGINEERING INC. FOR THE GROVEMONT SUBDIVISION WATERLINE IMPROVEMENT PROJECT

ORDINANCE NO. 4231 - BUDGET AMENDMENT FOR THE GROVEMONT SUBDIVISION WATERLINE IMPROVEMENT PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a change order in the amount of \$133,490.00 to increase the engineering design services contract for Michael Baker Engineering, Inc., from a total in the amount of \$222,055.00 to \$355,545.00 for the Grovemont Subdivision Waterline Improvement Project; and a budget amendment in the amount of \$133,490.00 from savings in other capital projects that were completed under budget.

On October 25, 2011, City Council awarded the engineering design services contract to Michael Baker Engineering, Inc., for the Grovemont Subdivision Waterline Improvement Project. The contract originally consisted of a survey, a hydraulic analysis, engineering design, construction administration, and other related professional services for approximately 16,000 linear feet of 6-inch and 8-inch waterlines within the Grovemont area neighborhoods. During the initial design and analysis phase, it was determined that much more of the existing water system needed to be replaced in order to meet the project objectives of improved water service and fire protection. An additional 22,250 linear feet of waterline survey, hydraulic analysis, engineering design, construction administration, and other related professional services was added to the engineering design services contract.

The additional engineering services for the increased linear feet of waterline replacement creates the need for a change order to increase the contract amount by an additional \$133,490.00 for a total contract amount of \$355,545.00.

The Water Resources Department currently has \$222,055.00 budgeted for this project. The remaining funds of \$133,490.00 needed for the change order will be transferred from the General Projects capital project that accumulates remaining funds from all of Water Resources completed, inactive capital projects. In order to use the funds in General Projects, a budget amendment is necessary.

Amount in Grovemont Engineering Budget	\$222,055.00
<u>Amount Needed for Change Order</u>	<u>\$133,490.00</u>
Total Amount for Project	\$355,545.00

The amount remaining in General Projects will be reallocated to other capital projects as the need arises. 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 \$133,490.00 to increase the engineering design services contract for Michael Baker Engineering, Inc., from a total in the amount of \$222,055.00 to \$355,545.00 for the Grovemont Subdivision Waterline Improvement Project; and a budget amendment in the amount of \$133,490.00 from savings in other capital projects that were completed under budget.

**RESOLUTION BOOK NO. 35 - PAGE 462
ORDINANCE BOOK NO. 28 - PAGE 330**

**C. RESOLUTION NO. 13-205 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO ENTER INTO A CONTRACT WITH BOLTON CONSTRUCTION
& SERVICE OF WNC FOR REPLACEMENT OF THE GYM FLOOR AT THE
MONTFORD CENTER**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Bolton Construction & Service of WNC, Inc. to replace the existing gym floor at Montford Recreation Center with a hardwood sport floor for an amount not to exceed \$130,000.

The City of Asheville has determined the existing gym floor at the Montford Recreation Center has exceeded its life expectancy, is in poor condition, and poses safety hazard for users.

In response, the city has identified the need for a total floor replacement and has planned to complete the project in Fiscal Year 2014 under the parks and recreation deferred maintenance program.

The City issued an Advertisement for Bids for construction of the floor and received a bid from Bolton Construction & Service of WNC, Inc., 169 Elk Mountain Road, Asheville, N.C., who was selected as the lowest, responsible bidder. The base bid was \$125,725.00. Staff is including \$4,275 in the contract as a contingency for any unforeseen issues to complete the work.

The \$130,000 to support the Bolton Construction & Service of WNC, Inc. contract for replacement of the Montford Recreation Center gym floor is budgeted in the FY 2013-2014 Parks, Recreation & Cultural Arts Department operating budget as part of the deferred maintenance budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with Bolton Construction & Service of WNC, Inc. to replace the existing gym floor at Montford Recreation Center with a hardwood sport floor for an amount not to exceed \$130,000.

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D. RESOLUTION NO. 13-206 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CONTRACT WITH T&K UTILITIES INC. FOR THE INSTALLATION OF BACK FLOW PREVENTION DEVICES AT THE US CELLULAR CENTER

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with T&K Utilities, Inc in the amount of \$116,000 for installation of back flow prevention devices.

This contract provides that the contractor will furnish and install two six inch and two four inch RPZ backflow preventers on three fire lines and one domestic line. This installation will also include "Hot Box" enclosures at all 4 locations. Contractor will provide all equipment and installation. All equipment will meet the specifications and requirements set forth by the City of Asheville Water Department, Fire Department and meet all NFPA requirements. In accordance with HB 786 (S.L. 2013-418) T&K Utilities, Inc. has signed and returned their E-Verify Compliance Statement.

The required installation of fire suppression sprinklers in a nominally climate controlled storage area necessitated the addition of an anti-freeze line to the sprinkler system. This triggered the requirement for new Back Flow Prevention devices to be installed. Installation of the back flow preventers is very important to the safety of our City's water supply system and a necessary part of the U.S. Cellular Centers operational infrastructure.

The following bids were received on September 6, 2013:

1. T&K Utilities, Inc., Asheville NC	\$ 116,000
2. Patton Construction Group, Inc., Asheville NC	\$ 116,300
3. Bolton Const. & Svc. Of WNC, Inc., Asheville NC	\$ 181,960

Funding for this contract will come from the adopted FY 2013-14 U.S. Cellular Center capital improvement budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into a contract with T&K Utilities, Inc. for \$ 116,000 for the installation of back flow preventers at the U.S. Cellular Center.

RESOLUTION BOOK NO. 35 - PAGE 464

E. RESOLUTION NO. 13-207 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SERVICES CONTRACT WITH BUNCOMBE COUNTY FOR THE PROVISION OF PARATRANSIT SERVICES

Summary: The consideration of a resolution authorizing the City Manager to enter into a services contract with Buncombe County for the provision of paratransit services.

The American with Disabilities Act of 1990 (ADA) and Federal Transit Administration (FTA) require fixed route transit systems such as the Asheville Transit System to provide paratransit services. Paratransit services are special public transportation options for senior citizens and persons with disabilities. Buncombe County Mountain Mobility has provided these services to Asheville Transit System since the 1990's when the American with Disabilities Act was created.

Buncombe County Mountain Mobility also provides service at the county level, mainly towards the rural areas. Mountain Mobility works cooperatively with Asheville Transit to provide fixed route service in Black Mountain and Candler extending transit accessibility into the county. They also provide public transportation for a large number of non-profit and governmental agencies such as the Council on Aging, Industries for the Blind, and the Buncombe County Health Department.

Mountain Mobility contracts administrative and planning services with Land of Sky Regional Council and operation of transportation services with McDonald Transit Associates. The contract keeps the rate of \$1.30 per service mile plus 10% of the gross cost for administration and adds \$3.43 per shared service mile during the holidays and after regular work hours, which was not previously included since ART holiday service was not operational. The contract rate does not cover the fully allocated costs of providing services; costs are significantly subsidized by county, grant, and other local funding sources. Fares for general public transportation services will not increase at this time. Each party may cancel the contract with 30 days advance notice.

The total cost of the subject project to the City of Asheville for FY 2013-14 is about \$350,000. The City will be reimbursed about \$200,000 of the project cost from the Federal Transit Administration which equates to 10% of the annual Federal allocation under Section 5307. The remaining balance of \$150,000 represents the local match and is provided by the City. Both the revenue and the expense are already budgeted in the current fiscal year in the Transit Services Fund.

City staff recommends that City Council approve a resolution authorizing the City Manager to enter into a services contract with Buncombe County for the provision of paratransit services.

RESOLUTION BOOK NO. 35 - PAGE 465

F. RESOLUTION NO. 13-208 - RESOLUTION AUTHORIZING THE CITY MANAGER AND CHIEF OF POLICE TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE BUNCOMBE COUNTY MANAGER AND THE BUNCOMBE COUNTY SHERIFF TO EMPLOY PART-TIME TELECOMMUNICATORS

Summary: The consideration of a resolution authorizing the City Manager and Chief of Police to enter into an interlocal agreement with the Buncombe County Manager and Buncombe County Sheriff for the purpose of establishing a compensation agreement and contract between

the entities so that each law enforcement agency can employ telecommunicators from one another's agency on a part-time basis to provide coverage for vacancies in order to meet minimum staffing levels.

Occasionally, the Buncombe County Sheriff's Office and Asheville Police Department communications center is short staffed due to vacancies that are being carried. The telecommunications center serves a vital function in the in the public safety sector and is most often the first point of contact for the public with the agency. It is essential that adequate staffing levels are maintained so that the officers have ample contact and information sharing to ensure their safety. Additionally, when the public calls the communications center, it is necessary that those calls are answered promptly and dispatched appropriately.

The interlocal agreement would allow each agency to employ telecommunicators from the other agency on a part-time basis to prevent staffing shortages. Reimbursement to the sharing agency would be made within ten (10) business days of being invoiced.

There is no fiscal impact to the city due to the fact that the compensation that will be paid to Buncombe County for the part-time assistance will be offset by salary savings and previously budgeted overtime for this work unit. Additionally, as the vacancies are filled, it will generally remove the necessity to utilize and compensate Buncombe County telecommunicators.

City staff recommends City Council approve a resolution authorizing the City Manager and Chief of Police to enter into an interlocal agreement with the Buncombe County Manager and Buncombe County Sheriff for the purpose of establishing a compensation agreement and contract between the entities so that each law enforcement agency can employ telecommunicators from one another's agency on a part-time basis to provide coverage for vacancies.

RESOLUTION BOOK NO. 35 - PAGE 466

G. RESOLUTION NO. 13-209 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ADD ONE SWORN FULL-TIME EMPLOYEE TO THE POLICE DEPARTMENT TO SERVE SOLELY AS A SCHOOL RESOURCE OFFICER

ORDINANCE NO. 4232 - BUDGET AMENDMENT TO COVER COSTS OF SCHOOL RESOURCE OFFICER'S SALARY AND BENEFITS

Summary: The consideration of (1) a resolution authorizing the City Manager to add 1 additional sworn full-time employee to the Police Department to serve solely as a School Resource Officer; and (2) a budget amendment in the amount of \$49,842 to allocate funding from Asheville City Schools to cover the cost of the school resource officer's salary and benefits.

The Asheville Police Department (APD) will be entering into contract with Asheville City Schools to provide one additional School Resource Officer (SRO) for the 2013-2014 school year. Per the contract, the assigned officer's salary will be reimbursed by the Asheville City Schools. The SRO will be assigned to the alternative program located at the Grant Center campus. The officer selected for this position will be a senior police officer. By adding another full-time employee, that officer's position would be filled by hiring a new police officer at an anticipated entry-level salary.

As noted in the summary statement above, the salary and benefits package (\$49,842) will be fully reimbursed by Asheville City Schools; therefore there is no additional cost to the city of adding the officer.

City staff recommends City Council approve: (1) a resolution authorizing the City Manager to add 1 additional sworn full-time employee to the Police Department; and (2) a budget

amendment in the amount of \$49,842 to allocate funding from Asheville City Schools to cover the cost of the school resource officer's salary and benefits.

**RESOLUTION BOOK NO. 35 - PAGE 467
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H. RESOLUTION NO. 13-210 - RESOLUTION AMENDING THE 2013 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE OCTOBER 8, 2013, FORMAL MEETING AND CANCEL THE OCTOBER 29, 2013, COMMUNITY MEETING

RESOLUTION BOOK NO. 35 - PAGE 468

I. RESOLUTION NO. 13-211 - RESOLUTION AUTHORIZING AND RATIFYING THE EXECUTION BY THE MAYOR OF A GRANT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION

Summary: The consideration of a resolution authorizing and ratifying the execution by the Mayor of a Grant Offer from the Federal Aviation Administration (FAA) in the amount of \$2,855,596.

The FAA offered a grant agreement to the Greater Asheville Regional Airport. This grant, in the amount of \$2,855,596, is for the Design - Phase I Rehabilitate Runway 16/34 Project.

Because of the federal fiscal year, the FAA required the grant agreement to be accepted on or before September 17, 2013. Airport staff received the grant offer on September 11, 2013, and after contacting the FAA, could not get the deadline extended in order for the Mayor to have authorization to sign grant acceptance letter at the September 24, 2013, Council meeting. Therefore, the action has moved forward with the Mayor's signature and this resolution will ratify her action.

Pro:

- Supports service enhancements at Airport

Con:

- None noted

Staff recommends adoption of the resolution authorizing and ratifying the execution by the Mayor of a grant agreement for Project No. 3-37-0005-043-2013.

RESOLUTION BOOK NO. 35 - PAGE 469

J. RESOLUTION NO. 13-212 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AGREEMENT WITH DR. PAUL MARTIN D/B/A ASHEVILLE ADDICTION CONSULTANTS, PA, FOR PHYSICIAN SERVICES

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 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, DBA Asheville Addiction Consultants, PA to continue to provide physician services to employees, retirees and their families.

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

III. PRESENTATIONS & REPORTS: None.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING AGRICULTURAL USES

ORDINANCE NO. 4233 - ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES REGARDING AGRICULTURAL USES

ORDINANCE NO. 4234 - ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF ORDINANCES TO MAKE ANIMAL CONTROL STANDARDS CONSISTENT WITH AMENDMENTS TO CHAPTER 7 REGARDING AGRICULTURAL USES

Mayor Bellamy said that the following two items are related and staff will present one staff report. Council will then hold a combined public hearing and put forward two separate motions.

Planning & Development Director Judy Daniel said that this is the consideration of an ordinance amending Section 7-1-3 (Jurisdiction), Section 7-2-5 (Definitions), Section 7-8-1 (Table of Uses), and Section 7-16-1 (Uses by right, subject to special requirements) of the Code of Ordinances regarding horticultural agricultural uses, reflecting a community desire for more flexibility for these uses. This public hearing was advertised on August 16 and 23, 2013. On September 10, 2013, the public hearing was continued until this date at City staff's request.

Ms. Daniel said that the City of Asheville has seen a substantial upswing in various types of food related agricultural production in the City. Growing food has always been permitted for home sites and on commercial property, and some types of animal (fowl primarily) and insects (bees) are permitted through the animal control ordinances. Now there is increased interest in forms of production beyond what the current regulations allow and the City Council indicated its support through their adoption of a Food Policy and Action Plan in January.

Asheville's regulations regarding agriculture are already substantially supportive, but some requests relate to newer forms of production and additional support for means of production that will require changes to the regulations. Staff presented proposals for changes as a discussion item at the June meeting of the Planning and Zoning Commission, inviting the interested public to attend. No substantive changes to the proposed changes were heard at that meeting and a proposal for changes to the UDO was presented to the Planning and Zoning

Commission in July. Some proposals for changes arose at that meeting. The staff adjusted the proposed changes to reflect those concerns and the proposals presented reflect those changed.

Section 7-1-3. Jurisdiction

The proposal is to delete the paragraph in Sec. 7-1-3(c), which exempts a “bona fide agricultural use” from the provisions of this chapter. Legal staff has recommended this deletion as it is essentially no longer relevant, and as written, is confusing and subject to varying interpretations.

This provision was added in October of 2001 and was meant to address issues that arose during the new extension of the City’s extraterritorial jurisdiction area. The exemption was intended to only apply to properties in agricultural use which had a minimum acreage of 10 acres, as well as minimum income and productions standards as per State tax law. Since this provision’s definition is tied to state tax regulations, and is subject to change by the Legislature, and since agriculture in most forms is allowed in the City through the UDO and Chapter 3 of the Code of Ordinance, this exemption provision is not necessary and could lead to confusion or of greater concern, could be extended beyond its intended scope if the State tax laws pertaining to agricultural land are changed.

Delete: ~~Sec. 7-1-3(c) Bona fide agricultural use. The provisions of this chapter shall not apply to bona fide agricultural uses recognized as such for tax purposes by the State of North Carolina except that confined animal feeding operations shall be prohibited.~~

Section 7-2-5. Definitions

A change to the definition of agriculture is proposed to indicate a differentiation between raising plants vs. animals, since these uses are governed by separate ordinances. The intent is to avoid confusion about where these differing types of agriculture are regulated.

Agriculture means the use of land for agricultural purposes, including farming, dairying, pasturage agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry and the necessary accessory uses for packing, treating, or sorting the produce; provided, however, that the operation of any such accessory uses shall be secondary to that of normal agricultural activities.

Regulations addressing agriculture that does not include animals are governed by this Chapter. Regulations addressing agriculture involving animals (such as but not limited to bees, dairying, pasturage agriculture, animal or poultry husbandry) are in Chapter 3. All agricultural practices may be subject to further state and federal regulations.

Sec. 7-8-1(b)(2)(c). Table of Uses

The proposed change will add the use “Agriculture” to the Table of Uses to clarify that the use is allowed in all zoning districts. The use would be “P” (Permitted) in most zones, and “S” (Permitted with special standards) in residential zones.

Add under *Other Use Types*: Agriculture

“S” - USSR in all single family and multi-family residential districts, Urban Residential, and Urban Village districts.

“P” - Permitted in all other zoning districts.

Section 7-16-1. Uses by right, subject to special requirements.

- The first proposed change establishes that Agriculture will be governed as a USSR and the affected residential zones.

Sec. 7-16-1(b). Uses by right subject to special requirements listed (by zoning district):

Add: 4.1: *Agriculture.* All Residential districts including Urban Residential and Urban Village.

- The second proposed change in the section for Accessory structures, clarifies the difference between standards for agricultural structures and other allowed accessory structures. Also, the reference to “bona fide” farms is deleted, for the reasons noted previously.

Sec. 7-16-1(c). Uses by right subject to special requirement standards.

Modify: (2) Accessory structures.

- a. Use districts: All residential including Urban Residential.
- b. The footprint of accessory structures located on a lot shall not exceed the following maximum footprint(s):

Lot Size	One Structure	All Structures
Less than 1 acre	770 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	No limit	No limit

The footprint of the portion of accessory structures used as accessory apartments shall not be included in this calculation of footprint for accessory structures. Accessory apartments shall meet the requirements established by section 7-16-1 of this chapter.

The footprint of any accessory structures used for agricultural purposes shall not be included in this calculation of footprint for accessory structures. Such structures must meet the requirements established for agricultural uses established in section 7-16-1 of this chapter.

- c. Accessory structures shall not exceed 20 feet in height except that height may be increased one foot for every one foot of additional side and rear setback, up to a maximum of 40 feet. ~~Structures located on bona fide farms are not subject to this height limit.~~
- The third proposed change establishes the standards for the Agricultural use related to use of the property, structures, etc.

Add: 4.1: *Agriculture:*

- a. Use districts: All residential including Urban Residential and Urban Village.
- b. A site and operations plan must be submitted that includes a description of the proposed operation indicating:
 1. Type of farming proposed with list of products that will be sold on site,
 2. Location and size of structures to be built to accommodate the use,
 3. Permits for any animals regulated in Chapter 3 as a part of the use,
 4. Marketing plans (including on-site sales) if applicable, including proposed times and frequency of market operation or on-site sales,

5. Location of the intended public parking area (if applicable), and
 6. Anticipated level of agriculturally related vehicle traffic.
- c. If a market stand is proposed it must be a seasonal use, and have no weekday sales, and be limited to selling products grown on the property or created from products grown on the property. Market stands must provide off-street public parking not to exceed 5 spaces.
- d. Standards for Structures
1. If the agricultural operation is on a lot that contains a dwelling unit or other primary structure, accessory structures not used for agricultural purposes are allowed meeting the standards for accessory structures in Sec. 7-16-1(c) of this chapter but may not exceed the cumulative limit for all structures established below.
 2. Storage and production structures for vacant property or community gardens are allowed by right meeting the standards below for a lot without a primary structure.
 3. If the agricultural operation is on a lot that does not contain a dwelling or other primary structure, small storage or production structures (no larger than 12 x 12 and 10 feet tall and not within the public right of way) are allowed by right.

Larger storage or production structures may be built when there is no primary structure (home or other allowed use) on the property meeting the standards below but the applicant must submit a notarized affidavit stating and confirming that the structure will be used only for agricultural storage or production uses.

- (a) The footprint of the proposed structure located on a lot without a primary structure may not exceed the following maximum footprint:

Lot Size	One Structure	All Structures
Less than 1 acre	770 square feet	1,000 square feet
1 to 3 acres	1,200 square feet	1,600 square feet
More than 3 acres	2,500 square feet	3,000 square feet

- (b) Structures may not exceed 20 feet in height except that height may be increased one foot for every one foot of additional side and rear setback, up to a maximum of 40 feet.
- (c) On lots of more than three acres, structures may not be located in the required front yard. Structures located in side yards of corner lots whose rear or side yards are adjacent to a front yard of the adjacent lot, must maintain a setback equivalent to the front yard setback of the adjacent lot.

The *Asheville City Development Plan 2025* encourages growth that facilitates sustained and positive development that balances economic objective, social goals, and natural resources to the benefit of present and future generations. As such, while not directly discussed, the Plan supports efforts such as the emerging interest in food security to build a more sustainable future. The Council solidified this support when they adopted a Food Policy this year. Further, Goal II of

the Council's Strategic Operating Plan noted the need to support local and regional products and services.

After discussion, the Planning and Zoning Commission unanimously recommended approval of these changes at their August meeting, with a recommendation that the use be monitored and revisited in a year to determine if any adjustments should be made to the regulations. The caveat in the recommendation related to concerns on the part of some Commissioners that the size allowed for agricultural buildings and the potential for traffic from retail sales could cause concern in neighborhoods.

Staff believes these changes reflect the intent of the community and the Council reflected in the Food Policy and Action Plan adopted this year, and recommend approval.

Ms. Daniel also said that this is consideration of an ordinance amending Chapter 3 of the Code of Ordinances to make animal control standards consistent with amendments to Chapter 7 regarding agricultural uses.

Recent discussions regarding the City of Asheville's support of urban agricultural practices has revealed outdated language in the animal control ordinance as it relates to the keeping of livestock when part of a ***bona fide farm***. The term ***bona fide farm*** is used in tax statutes and is not enforced locally. To clarify where, and under what circumstances, livestock and non-compliant fowl are permitted in the city an amendment was necessary. The term "lawfully established, non-conforming use" is used elsewhere in the Code of Ordinances and can be broadly construed to allow for not just farms, but other non-farm uses such as homesteads.

A brief synopsis of suggested changes includes:

- Sec. 3-4: Delete definition of *bona fide farm* and add a definition for a *lawfully established, non-conforming use*.
- Secs. 3-10, 36, 50: Replace the term *bona fide farm* with *lawfully established, non-conforming use*.
- Sec. 3-24: Add a new section that establishes standards for lawfully established, non-conforming uses.

This amendment simply clarifies where and when existing standards are applied.

City staff recommends City Council approve the proposed text amendments regarding changes to the Animal Control Ordinance and find that these amendments are consistent with the Comprehensive Plan and other adopted plans, based on information provided in the staff report and as stated in the recommendation.

Mayor Bellamy opened the public hearing at 5:23 p.m.

Mr. Matt Shepley urged Council not to limit people from the freedom of selling their own produce only on the weekends.

A representative from the Asheville-Buncombe Food Policy Council said they supported having the market stands open seven days a week. They are pleased to work with the City and hoped that if any problems arise, that the City will contact them as soon as possible.

Mr. Timothy Sadler advocated that the market stands be allowed to be open seven days a week.

Mayor Bellamy closed the public hearing at 5:27 p.m.

Regarding limiting the sales to only weekends, Councilman Hunt felt that neighborhoods are quieter during the weekdays and would be able to handle more traffic. Ms. Daniel explained that it was staff's and the Planning & Zoning Commission's recommendation to limit market stands to weekends only due to the potential impact on neighborhoods from commercial uses.

Councilman Smith understood staff's and the Planning & Zoning Commission's caution about an adverse impact on the neighborhoods, but he felt the problem of hunger and food distribution in our City outweighs this particular caution. He supported keeping the stands open seven days a week, and was happy to support this issue being revisited in one year to see if there is an adverse impact on the neighborhoods.

Mayor Bellamy felt that since this amendment now allows market stands in neighborhoods, she felt this amendment should be reviewed by the Neighborhood Advisory Committee for their feedback.

In response to Mayor Bellamy, Councilman Pelly, liaison for the Neighborhood Advisory Committee, said that a review by the Neighborhood Advisory Committee is a good idea, but since it would be revisited in one year, he supported moving forward at this time. He was concerned about a potential proliferation of signs in neighborhoods resulting from these market stands.

At Mayor Bellamy's request, Council split the main motion on the amendment to Chapter 7.

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

Councilman Bothwell found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved to adopt the amendments to sec. 7-1-3; 7-2-5; 7-8-1 (b) (2) (c); 7-16-1 (b); 7-16-1 (c) (2) (b); 7-16-1 (c) (2) (c) and 7-16-1 (c) 4.1, with the exception of Section 7-16-1 (c) 4.1 (c) . This motion was seconded by Councilman Hunt and carried unanimously.

Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of the amendment to Section 7-16-1 (c) 4.1 (c) that market stands be open seven days a week and that this ordinance revision be revisited in one year. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Mayor Bellamy voting "no."

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Councilman Hunt found that the request is reasonable based on information provided in the staff report and as stated in the staff recommendation, and that it is consistent with the master plan and other plans adopted by the City, and moved for the adoption of Ordinance No. 4234. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE 338

V. UNFINISHED BUSINESS:

- A. RESOLUTION NO. 13-213 - RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN URBAN REDEVELOPMENT AND LOAN AGREEMENT FOR THE EAGLE MARKET STREETS REDEVELOPMENT PROJECT**

Assistant City Manager Cathy Ball said that this is the consideration of a resolution approving the execution of an Urban Redevelopment and Loan Agreement between the City of Asheville as Lender and Eagle Market Place LLC, (EMP), as Borrower, and Mountain Housing Opportunities Inc. as Guarantor.

By Resolution No. 13-193, adopted on Tuesday, August 27, 2013, City Council among other funding appropriations authorized a combined City Loan of \$3,867,618 to the Eagle Market Place Redevelopment and Renovations Project, upon condition that a redevelopment agreement be executed between MHO, EMSDC and the City to enforce the specified conditions placed on the loan approval.

The Project, located in an area known as the "Block," once served as the hub for African American Entrepreneurship, serving as host to thriving and successful African American Businesses until the federal urban renewal program of the 1970's had a dramatic and prolonged impact on the Block, leading to business relocations, business closures, blight, slum, vacancies and years of neglect. After several failed efforts to revitalize the Block, the current Project, being constructed through partnership between EMP and Eagle Market Street Development Corporation, and supported by 5 million dollars worth of federal low income housing tax credits, was deemed by City Council as only being able to succeed through the financial intervention of the City. The Project upon completion will contain 62 affordable housing units and 10,270 square feet of commercial space, of which 3,500 square feet is planned as community space.

It was initially contemplated that the City would enter into a "Development Agreement" with EMP to enforce the conditions placed on the loan approval. However, since the City has no current ownership interest in the Project, a "development agreement," under N. C. G. S. § 160A-458 (Economic Development statute), or under H 857 Session Law 2013-401, (public private partnerships for construction contracts), is not feasible. The provision of affordable housing and job creation in a distressed and blighted area of the City, such as the Block, serves a public purpose for which the City may enter into an Urban Redevelopment and Loan Agreement (Agreement). The Agreement serves the same purpose as the contemplated "development agreement." The Agreement incorporates all of the conditions specified in Resolution No. 13-193, approved by City Council.

The purpose in executing this Urban Redevelopment and Loan Agreement is to structure a performance based guarantee for the approximately \$3.9 million City investment and to provide flexibility for the City to debt finance the Loan.

The major components of the Agreement include the public purpose recitals, use of public funds, cash flow, lien holder position on the property, and the City's involvement in the construction process.

Pros:

- Defines the terms and purpose for the City's investment in the Project.
- Provides opportunity for the City to debt finance the loan.
- Clarifies the City's role in the construction process.
- Outlines the cash flow of the City's investment into the Project.

Cons:

- Some minor adjustments and clarifications will need to be made to the Agreement prior to execution. Any substantial changes to the Agreement will come back to City Council for approval.

This Agreement defines the terms and conditions of the \$3,867,618 Loan, approved by City Council on August 27, 2013. From the proceeds of this \$3,867,618 Loan, \$500,000 will be made available to the Project between January 2014 and June 2014; and an additional \$500,000 will be made available between July 2014 and December 2014. The remaining \$2,867,618 will be

available to the Project 1) once the Developer obtains a certificate of occupancy, and 2) once the Developer complies with requirements that qualify the project for full delivery of low income housing tax credits. All applicable conditions of the executed Agreement must be met to be eligible for Project funding. All change orders exceeding \$25,000 must be reviewed by City staff.

Staff recommends that City Council authorize the Mayor to execute an Urban Redevelopment and Loan Agreement between the City of Asheville as Lender and Eagle Market Place LLC, (EMP), as Borrower, and Mountain Housing Opportunities Inc. as Guarantor, subject to approval as to form by the City Attorney.

Additionally, staff recommends that City Council authorize the City Manager to execute any contracts or other instruments necessary to give effect of this resolution subject to budgetary limitations and approval by the City Attorney.

Ms. Ball said that staff has worked diligently with EMP and Mountain Housing Opportunities to make sure that we were not violating any terms; and apologized for not making the document available to the public until 2:00 p.m. today.

Councilman Smith supported this critical investment in Asheville and felt we will be reaping the benefits of affordable housing, commercial space, etc. for decades to come.

In response to Mayor Bellamy, Interim City Attorney McGlohon said that unless the urban redevelopment and loan agreement needs major changes on the terms, it will not need to come back to Council.

Mayor Bellamy said that this issue has been on Council's agenda at various times since the mid-1980's and was pleased that this meaningful project is finally coming to fruition. She felt that unlike other parts of downtown, the Block has not received the level of support for significant investment. She noted that this loan, not grant, sends a message to our community that the City invests in all parts of our community. She thanked all the various partners on this project.

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 Manheimer moved for the adoption of Resolution No. 13-213. This motion was seconded by Councilman Smith and carried unanimously.

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VI. NEW BUSINESS:

A. MOTION ALLOWING THE OFFICE OF ECONOMIC DEVELOPMENT INITIATE A REQUEST FOR INFORMATION RELATING TO THE DEVELOPMENT OF A SIGNATURE EVENT IN ASHEVILLE

Mr. Jon Fillman, Economic Development Specialist, said that this is the consideration of a motion allowing the Office of Economic Development to initiate a Request for Information (RFI) to determine interest from outside organizations in producing a signature festival, special event or similarly unique outdoor public experience in Asheville.

The City of Asheville's adopted 2013-2014 budget eliminated funding for the Bele Chere Festival. Multiple outside groups have expressed interest in securing funding through the City to seed a new signature event or to expand an existing event. The outdoor public space and the annual dates formerly held by Bele Chere are also of specific interest to event organizers.

Staff from the Office of Economic Development has met with representatives from the Asheville Downtown Association, Convention & Visitors Bureau, and the River Arts District Project Advisory Committee to discuss recommendations and gather feedback. There is a desire for the City of Asheville to continue to provide for its citizens a signature event or festival that stimulates local commerce and creates opportunities for business development, promotes improvement of properties and advances neighborhood identities, and enhances the Asheville brand in support of tourism initiatives.

As the City of Asheville does not intend to continue in the arena of direct event production nor can it become a significant funding partner, a primary consideration in selecting and supporting a signature event would be in the event's ability to minimize municipal subsidies toward fiscal independence while achieving economic development policy goals. Staff requests City Council support in allowing the Office of Economic Development to proceed with the development of an RFI to determine interest from outside parties in producing Asheville's next signature event. The RFI is neither a guarantee nor commitment of future action. Staff will return to Council at a later date to report on the response and further recommendations.

City staff recommends City Council support the Office of Economic Development in moving forward with a Request for Information (RFI) relating to the development of a signature event in Asheville.

Mayor Bellamy could not support this action because she felt the criteria that staff will use to judge the proposals is not in place.

Vice-Mayor Manheimer said that the City Council Planning & Development Committee did talk about the criteria, but were trying to make it as broad as possible because there are interesting ideas floating around. They did acknowledge the need for demonstrated measurements in terms of stimulating economic development, being able to sustain itself long-term, etc.

Mr. Fillman said that RFI is simply staff's intent to gather interest from the community and outside organizations in producing or operating a new event in Asheville. We don't intend to make any decisions or make any recommendations based on the information received back, other than what ideas we feel will help drive the development of the resulting Request for Proposals (RFP). The RFP will include the evaluation criteria, such as the scope of work, schedule and milestones, references, costs and financing requirements and points assigned. The RFI will allow us to determine the interests in this project and will help us design the RFP, that will ultimately be brought back to Council for their approval.

In response to Mayor Bellamy, Mr. Fillman said that the RFI is a 6-8 week process (before the end of 2013). The RFP will then be developed and that will be approximately an 8-week process. Feedback will be received for the City's next fiscal cycle.

When Councilman Hunt urged staff to be clear in their expectations to those that might submit proposals, Mr. Fillman responded that the RFP will require Council approval.

Councilman Smith noted that the RFI is neither a guarantee nor commitment of future action. He wanted any persons submitting proposals to be aware that the process can take a number of forms.

Councilman Davis spoke in support of the Bele Chere festival and felt that the festival brought a lot of economic development into our downtown and the community, was a lot of fun and people enjoyed good music from local bands. He hoped that at the end of this process that we find something to replace it and hopefully they will keep the name.

Councilman Bothwell hoped that we will come up with something new and different to highlight Asheville. He did note that the Bele Chere festival was costing the taxpayers ½ cent on their property tax and during our struggling budget cycle, Council had to make a determination on whether this was a good use of our financial support.

After discussing whether Council should skip the RFI and move straight into an RFP, Vice-Mayor Manheimer moved to support the Office of Economic Development in moving forward with a Request for Information relating to the development of a signature event in Asheville. This motion was seconded by Councilman Smith and carried on a 6-1 vote, with Mayor Bellamy voting "no".

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

At Mayor Bellamy's request, Police Chief William Anderson updated City Council on the recent break-ins in the Kenilworth area and issues regarding homeless arrests in downtown Asheville.

Regarding the robberies, Police Chief Anderson said that the Police Department will be holding a crime prevention meeting with the Kenilworth community to advise them on some preventive efforts and also what the Police Department is doing to address this problem. He said that if any specific community would like a crime prevention meeting, to contact the Police Department at their non-emergency number. That service is available to help keep our neighborhoods safe.

Police Chief Anderson said that the Police Department has held a couple of community meetings to try to better inform the public of some of our challenges we are facing in our Central Business District and the adjustments that law enforcement has had to make to address those issues.

Councilman Bothwell, Chair of the Public Safety Committee, said that at their September 23 meeting, the Police Department reported to the Commission their efforts on the burglaries and the allegations of stepped up policy enforcement regarding the homeless population downtown. It was noted that even though the Police Department does have vacancies, those vacancies are covered by other means, whether by overtime or other methods, because their number one priority is to have officers on the street. Regarding the allegations regarding homeless arrests downtown, he said that the Police Department policy has not changed, but that behaviors have changed significantly over the summer. There has been a lot more violent episodes in downtown, possibly connected to some of the synthetic drugs that seem to spur aggressive behavior. Therefore, there are more arrests of repeat offenders and that that is the cause of the apparent increase in police enforcement. We are simply trying to maintain civility downtown.

Councilman Bothwell said that there are about 25-30 people who have severe mental or substance issues and are hard to house. The homeless housing advocates would like to see the City find some property for them to build a facility that would house those folks. They will get grant money to build the facility if the City provides the land. Mayor Bellamy felt that is a good issue for Council to discuss at their next retreat.

Mayor Bellamy said that at the October 21 meeting with City staff and downtown merchants who are concerned about the number of women who are walking around downtown without shirts and panhandling. She asked that after that meeting, City Council receive a report on that issue and what the City can do.

Councilman Smith noted that we need better mental health treatment for those that do not have resources.

Mr. Matt Shepley, who runs a non-profit in Asheville for homeless and jobless veterans, felt that we cannot simply arrest our way out of the homeless problem, and suggested that we continue to work with our service providers.

Rev. Amy Cantrell, BeLoved House, said that she is one of 38 faith leaders in the community that sent Council a petition expressing concern over the recent increase of arrests of homeless people in downtown. She explained that the petition was a reaction to what they saw on September 12 which seemed to be a change of police activity and in light of Columbia, South Carolina, and things happening in Raleigh. There was not a lot of community and they did not understand what was going on. She thanked Police Chief Anderson for meeting with some of them to help them understand. She agreed that we don't want to spend our limited resources on the revolving door of jail.

A gentleman said that we need to work for safe, temporary housing for the homeless.

Mr. Timothy Sadler asked how much manpower and money went towards seizing 41,000 grams of marijuana. He felt that marijuana is clearing becoming permitted nationally and the City could have used those funds to help the homeless.

Results of the September 23, 2013, Civil Service Board Employee Elections

Summary: One copy of the results of the Civil Service Board employee election held on September 23, 2013, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. Human Resources Manager Derrick Swing and City Clerk Burleson provided the following certified certificate on September 23, 2013: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 23, 2013, noting the name of each person voted for and the number of votes cast for each person as follows: Virginia Robinson –73; and Anthony Alan Coxie – 82.

Closed Session

At 6:44 p.m., Councilman Pelly moved that the Asheville City Council 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. The statutory authorization is N. C. Gen. Stat. 143-318.11(a)(3); (2) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of contracts for the acquisition of real property at the Clarion Inn located at 550 Airport Road, Fletcher, NC by purchase, option, exchange or lease. The statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(6); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 7:34 p.m., Councilman Hunt moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Vice-Mayor Manheimer adjourned the meeting at 7:34 p.m.

CITY CLERK

MAYOR