

Tuesday – June 24, 2014- 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Marc W. Hunt; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Christopher A. Pelly; Councilman Gordon D. Smith; Councilwoman Gwen C. Wisler; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

Rev. Christopher Chiaromonte raised a point of order regarding prayer at Council meetings.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of City staff, (1) Consent Agenda Item "F" will be continued until July 22, 2014; (2) Consent Agenda Item "J" was removed from the Consent Agenda for an individual vote; (3) Consent Agenda Item "L" was removed from the Consent Agenda entirely until a further date; and (4) Consent Agenda Item "O" was removed from the Consent Agenda for discussion and/or individual vote.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 10, 2014**
- B. RESOLUTION NO. 14-129 - REIMBURSEMENT UPDATING THE FY 2013-14 DEBT REIMBURSEMENT RESOLUTION ADOPTED BY CITY COUNCIL ON AUGUST 27, 2013, DECLARING THE INTENT OF THE CITY TO REIMBURSE ITSELF FROM DEBT PROCEEDS FOR EXPENDITURES INCURRED IN CONNECTION WITH THE DEMOLITION OF CITY PROPERTY ON HAYWOOD ROAD (HANDY PARK) AND THE CONSTRUCTION OF A RETAINING WALL ON THE SITE**  
  
**RESOLUTION NO. 14-130 - RESOLUTION DESIGNATING THE CITY MANAGER AND CHIEF FINANCIAL OFFICER AS AUTHORIZED OFFICERS TO DECLARE THE INTENT OF THE CITY TO REIMBURSE ITSELF FOR FUTURE CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH DEBT OBLIGATIONS**

Summary: The consideration of: 1) a resolution updating the FY 2013-14 debt reimbursement resolution adopted by City Council on August 27, 2013, declaring the intent of the City to reimburse itself from debt proceeds for expenditures incurred in connection with the demolition of City property on Haywood Street (Handy Park) and the construction of a retaining wall on the site; and 2) a Resolution designating the City Manager and Chief Financial Officer as authorized officers to declare the intent of the City to reimburse itself for future capital expenditures incurred in connection with debt obligations.

City Council adopted a debt reimbursement resolution on August 27, 2013, declaring its intent to reimburse itself with debt proceeds for certain capital projects and

equipment expenditures that were authorized in the FY 2014 budget. These expenditures included the construction and improvement of streets, bridges, sidewalks and multimodal facilities, the renovations and improvements to City Hall, Pack Place, and park/athletic facilities, the acquisition and construction of park facilities and greenways, the acquisition, construction and improvement of workforce housing, the acquisition of vehicles and equipment and utility improvements.

In February 11, 2014, City Council approved a contract for the Handy Park Building Demolition and Retaining Wall Construction. As outlined in the staff report at the time, the contract will be funded with debt proceeds as part of the Community and Economic Development Capital Improvement Program (EDCIP). Since this project was not included as part of the original debt reimbursement resolution adopted last August, staff recommends that Council adopt an updated reimbursement resolution.

In addition, staff is also seeking Council approval of a resolution designating the City Manager and Chief Financial Officer as authorized officers to declare the intent of the City to reimburse itself for future capital expenditures incurred in connection with debt obligations. Currently, all reimbursement resolutions must be approved by City Council. Staff is requesting that Council approve a resolution delegating this approval authority to the City Manager and the Chief Financial Officer. The purpose of the reimbursement resolution is to provide the City with the ability to move forward with the projects and reimburse its accounts upon the issuance of the debt. The reimbursement resolution itself does not specifically authorize the issuance of the debt. Those resolutions will be drafted in connection with the actual debt issuance and will be approved by City Council.

Pro:

- Enables the City to begin spending money on the Council's approved capital projects, vehicles and equipment that were to be financed from debt proceeds.

Con:

- Lost opportunity to earn interest (although at very low interest rates in the range of 1/10 of 1% to 1/4 of 1%) on the City's unrestricted cash and investments which are temporarily diverted to pay for the capital projects pending reimbursement from the debt issuance.

The Reimbursement Resolution will result in some minimal loss of interest income. Bidding and proceeding with the authorized capital projects may result in better pricing thus lower the actual amount of the debt financing. The repayment of the debt issuance is incorporated in the debt management plan.

Staff recommends City Council adopt: 1) a resolution updating the FY 2013-14 debt reimbursement resolution adopted by City Council on August 27, 2013 declaring the intent of the City to reimburse itself from debt proceeds for expenditures incurred in connection with the demolition of City property on Haywood Street (Handy Park) and the construction of a retaining wall on the site; and 2) a resolution designating the City Manager and Chief Financial Officer as authorized officers to declare the intent of the City to reimburse itself for future capital expenditures incurred in connection with debt obligations.

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**C. RESOLUTION NO. 14-131 - RESOLUTION APPROVING AN INSTALLMENT FINANCING AGREEMENT TO FINANCE VEHICLES AND EQUIPMENT AND DELIVERY THEREOF AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS**

Summary: The consideration of a resolution authorizing execution of a \$1,810,000 installment financing contract for FY2014 CIP Vehicles and Computer Equipment.

Appropriations for FY2014 include \$1,810,000 for various vehicles and computer equipment, with the capital expenditures financed through debt proceeds.

The City distributed on May 30, 2014, a Request for Proposal ("RFP") seeking competitive bids for the financing. Twelve proposals were received, the most favorable of which was submitted by Wells Fargo Bank (the "Bank") at an interest rate of 1.22% per annum for a term of 48 months (computer equipment) and 59 months (vehicles). The loan is structured with level principal payments and semiannual payments.

The proposed resolution authorizes an installment financing contract between the City of Asheville and the Bank for the purchase of the vehicles and computer equipment, and it authorizes the City Manager, City Attorney, Finance Director and City Clerk to execute and deliver any and all necessary documents. The contract will place a security interest in the vehicles and computer equipment in favor of the Bank in order to secure the City's obligation under the contract. Pursuant to a previously adopted reimbursement resolution, proceeds from this financing contract will allow the City to reimburse itself for the cost of the vehicles and computer equipment which have already been procured.

Pros:

- Provides funding of capital expenditures at a very favorable effective interest rate.
- Financing capital purchases spreads the cost of acquisition over several years of the useful life of the asset.
- Reimbursing this capital purchase with the proceeds of the financing, as opposed to paying for the purchase by using the City's available cash balances, increases currently available funds through restoration of fund balance.
- The financing conforms to the approved Financing Plan for capital expenditures.

Con:

- Financing the purchase increases nominally the lifetime cost of the acquisition due to the payment of interest and closing costs on the amount financed.

The annual debt service payments for this financing range between approximately \$403,000 in the first year and approximately \$284,000 in the fifth year. Funds are included in the City's FY 2014-15 proposed debt service budget to cover this cost.

City staff recommends that City Council adopt the resolution authorizing the City Manager to execute an installment purchase contract and closing process with Wells Fargo Bank for the acquisition of the vehicles and computer equipment.

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**D. RESOLUTION NO. 14-132 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH TENNOCA CONSTRUCTION COMPANY INC. FOR THE CRAVEN STREET IMPROVEMENTS PROJECT**

**ORDINANCE NO. 4321 - BUDGET AMENDMENT FOR THE CRAVEN STREET IMPROVEMENTS PROJECT**

**RESOLUTION NO. 14-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO COMPLETE NEGOTIATIONS WITH NEW BELGIUM BREWERY AND MODIFY THE EXISTING MEMORANDUM OF**

## **UNDERSTANDING TO ALLOW FOR COST SAVING PARTNERSHIPS DURING THE CONSTRUCTION PROCESS**

Summary: The consideration of (1) a resolution authorizing the City Manager to enter into a contract with Tennoca Construction Company, Inc. for the construction services necessary to complete the Craven Street Improvements Project; and (2) a budget amendment in the amount of \$6,901,570.66, which includes pay-go, debt, and grant resources from the Water Resources Fund, Stormwater Fund, Parking Fund, and the General Fund CIP, to fund the contract and a 15% contingency.

In addition, City staff is requesting City Council consideration of a resolution authorizing the City Manager to revise the Memorandum of Understanding with New Belgium Brewery to include construction partnerships that will mutually benefit both the City of Asheville and New Belgium Brewery.

On June 12, 2012 City Council approved a contract with ColeJenest & Stone for professional services for the design of the Craven Street Improvement project. This project includes improvements to the existing two lane roadway by implementing a complete street approach to the design. The new facility will include bike lanes, sidewalk, stormwater improvements, stream restoration, greenway, parking areas and two-way vehicular traffic. The bids for the project were opened on June 17, 2014. Three bids were received as follows:

- NHM Constructors, Asheville, N.C. - Bid - \$6,243,708.81
- Tennoca Construction, Candler, N.C. - Bid - \$6,001,365.79
- Buchanan and Sons, Whittier, N.C. - Bid - \$6,531,727.77

The City of Asheville determined Tennoca Construction Company to be the lowest responsive and responsible bidder for the project.

The City has three funding partners on this project: (1) Golden Leaf Foundation has provided \$300,000; (2) the Economic Development Administration from the Department of Commerce has partnered to provide approximately \$1.12M; and (2) the Clean Water Management Trust Fund through RiverLink has provided \$365,000. The remaining cost of the project will be paid through the Stormwater, Water, and Parking Funds and General Fund utilizing a combination of pay-go funds and debt proceeds.

Within the scope of the project, Tennoca will perform the construction services necessary to provide improved transportation connections (including pedestrian, bike and vehicular) to the Craven Street area. New Belgium Brewery is continuing their project and anticipates being complete in the winter of 2015.

The City and NBB has an existing MOU in place, with the different elements of the construction project. The City and NBB desire to amend the MOU to allow for cost saving measures, to include but not limited to: grading, Stormwater BMP's and Stream Restoration. Further, the cost saving will address the large box culvert that is partially located within the City's right-of-way and on NBB property. A revision to the MOU will be necessary for the City to be able to complete this work and receive reimbursements.

This action meets Council goals by enhancing the city's long-term financial commitment to infrastructure maintenance and capital improvements. Additionally, this project leverages internal and external partnerships for pursuing capital improvements and infrastructure projects.

This project follows the commitment made to New Belgium Brewery to make the necessary improvements in this area. The project also further enhances the environment by placing Stormwater Best Management Practices devices to provide water quality treatment in the area. The stream restoration is part of the project.

This project complies with the Council's Strategic Plan to promote Financial Sustainability by partnering with other organizations such as Clean Water Management Trust Fund, Economic Development Administration, and the Golden Leaf Fund; and promotes a High Quality of Life by providing a safe community for our citizens. This action also meets Council goals by enhancing the City's long-term financial commitment to infrastructure maintenance and capital improvements.

Pros:

- Improvements to the transportation facility in this area, including vehicles, pedestrians and bike facilities.
- The project moves forward with a timely opening date of December 2015.
- Provides safe access for the citizens that visit this area.
- Promotes the environment through water quality devices and the stream restoration.
- Makes safety improvements to the Hazel Mill and Craven Street intersection

Cons:

- Construction will be disruptive to the area for approximately 1 year.
- Continued coordination of the project will be time consuming.

The design budget for the project, which was previously approved by Council totaled \$852,604. The construction contract amount, along with the 15% contingency that is being approved and budgeted tonight totals \$6,901,570.66, which brings the total budget for the project to \$7,754,174.66. As mentioned above, the City has secured \$1,787,401 in funding from partner agencies for this project. The remaining budget amount of \$5,966,773.66 will be divided between the General Fund, Stormwater Utility Fund, Parking Fund, and Water Resources Fund based on the cost of the various elements of the project. A complete summary of the budget for the project is shown below.

<b><u>Revenue Sources:</u></b>	
EDA Grant	1,122,401.00
Golden Leaf Grant	300,000.00
CWMTF Grant	365,000.00
Water Fund Pay-Go	344,860.75
Parking Fund Debt Proceeds	381,883.50
Parking Fund Pay-Go	97,362.00
Stormwater Fund Debt Proceeds	1,112,833.95
Stormwater Fund Pay-Go	206,810.96
General Fund Debt Proceeds	3,732,879.50
General Fund Pay-Go	90,143.00
<b>Total Revenue</b>	<b><u>7,754,174.66</u></b>
<b><u>Expenses:</u></b>	
Design	852,604.00
Construction	6,901,570.66
<b>Total Expenses</b>	<b><u>7,754,174.66</u></b>

City staff recommends City Council approve (1) a resolution authorizing the City Manager to complete negotiations and sign a contract with Tennoca Construction Company, for the

construction services necessary for completion the Craven Street Project \$6,001,365.79, and to enter into change orders to this contract not to exceed 15% of the original contract or \$900,204.87; and (2) a budget amendment, in the amount of \$6,901,570.66, which includes pay-go, debt, and grant resources from the Water Resources Fund, Stormwater Fund, Parking Fund, and the General Fund CIP, to fund the contract and a 15% contingency.

In addition, City staff recommends City Council approve a resolution authorizing the City Manager to modify the existing Memorandum of Understanding with New Belgium Brewery to allow for cost saving partnerships during the construction process.

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**ORDINANCE BOOK NO. 29 - PAGE 113**  
**RESOLUTION BOOK NO. 36 - PAGE 261**

**E. RESOLUTION NO. 14-133 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE INGLE'S INDEPENDENCE DAY CELEBRATION ON JULY 4, 2014**

**RESOLUTION NO. 14-134 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT RIVERFEST ON AUGUST 9, 2014**

**RESOLUTION NO. 14-135 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE NEW BELGIUM CLIPS BEER & FILM TOUR ON SEPTEMBER 5, 2014**

**RESOLUTION NO. 14-136 - RESOLUTION AUTHORIZING THE SALE AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT ORGANICFEST ON SEPTEMBER 7, 2014**

Summary: The consideration of resolutions making provisions for the possession and consumption of malt beverages and/or unfortified wine at Ingle's Independence Day Celebration on July 4, 2014; Riverfest on August 9, 2014; New Belgium Clips Beer & Film Tour on September 5, 2014; and Organicfest on September 7, 2014.

- The Asheville Downtown Association has requested through the City of Asheville Office of Economic Development that City Council permit them to serve beer and/or unfortified wine at the Ingle's Independence Day Celebration and allow for consumption at this event.

The Ingle's Independence Day Celebration will be held on Friday, July 4, 2014 from 2:00 p.m. – 10:00 p.m. at Pack Square Park as per the event area limits referenced on the accompanying site map.

- Riverlink has requested through the City of Asheville Office of Economic Development that City Council permit the sale of beer and/or unfortified wine at Riverfest and allow for consumption at this event.

Riverfest will be held on Saturday, August 9, 2014, from 1:00 p.m. – 7:00 p.m. at French Broad River Park as per the event area limits referenced on the accompanying site map.

- Asheville on Bikes has requested through the City of Asheville Office of Economic Development that City Council permit the sale of beer and/or unfortified wine at the New Belgium Clips Beer & Film Tour and allow for consumption at this event.

The New Belgium Clips Beer & Film Tour will be held on Friday, September 5, 2014, from 7:30 p.m. – 10:30 p.m. at Pack Square Park as per the event area limits referenced on the accompanying site map.

- Asheville Greenworks has requested through the City of Asheville Office of Economic Development that City Council permit the sale of beer and/or unfortified wine at Organicfest and allow for consumption at this event.

Organicfest will be held on Sunday, September 7, 2014, from 10:00 a.m. – 6:00 p.m. at Pack Square Park as per the event area limits referenced on the accompanying site map.

Pro:

- Allows fundraising opportunities for the Asheville Downtown Association, Riverlink, Asheville on Bikes, and Asheville Greenworks

Con:

- Potential for public safety issues

City staff recommends City Council adopt resolutions authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at the Ingle's Independence Day Celebration, Riverfest, New Belgium Clips Beer & Film Tour, and Organicfest.

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**F. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH ROYAL PINES CENTER FOR REAL PROPERTY AT JAKE RUSHER PARK AT 139 PEACH TREE STREET, ASHEVILLE, NORTH CAROLINA**

This item has been moved until July 22, 2014.

**G. RESOLUTION NO. 14-138 - RESOLUTION TO ESTABLISH THE CRITERIA FOR A DESIGN-BUILD DELIVERY METHOD FOR CONSTRUCTION CONTRACTS AND AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO REVIEW AND APPROVE THE WRITTEN CRITERIA FOR EACH INDIVIDUAL DESIGN-BUILD PROJECT**

**RESOLUTION NO. 14-149 - RESOLUTION AUTHORIZING THE CITY MANAGER TO USE THE DESIGN-BUILD DELIVERY METHOD FOR CONSTRUCTION OF THE NATURE CENTER PAVILION AND RESTROOM PROJECT**

Summary: The consideration of (1) a resolution establishing the criteria for a Design-Build Method for Construction Contracts, and authorizing the City Manager or his designee to review and approve the written criteria for each individual design-build project to ensure compliance with these adopted criteria; and (2) a resolution authorizing the City Manager to use the Design-Build Delivery Method for construction of the Nature Center Pavilion and Restroom Project.

Prior to the enactment of North Carolina General Statutes 143-128.1A (formerly Session Law 2013-401 and HB 857), state law authorized four contracting methods for large building construction projects: single-prime, separate-prime (also referred to as multi-prime), dual-bidding (bidding both sing- and separate-prime simultaneously), and construction management at risk.

Design-build was considered an alternative construction method requiring either State Building Commission approval or legislative authorization. While design-build was not statutorily restricted for either building construction projects costing up to \$300,000 or for construction projects that did not involve a building, the competitive bidding requirements of NCGS Article 8 of Chapter 143 made entering in those type of contract both legally and practically unwieldy. Consequently it was not uncommon for local governments in NC to request, and the General Assembly to enact, local bills authorizing individual local governments to use design-build for specific projects. Session Law 2013-401 eliminated the need for these types of local acts for future projects.

The design-build method is an integrated approach to a construction project that delivers both design (architectural and engineering) and construction services under one contract with a single point of responsibility. Under this delivery method, the City is provided the benefit of the design team and contractor working together to achieve the City's objectives under a single contract. That is, a designer works directly with the contractor instead of working separately for the City.

Under the design-build method, project specifications are not drawn prior to initiating the contracting process. Instead, the City advertises general information about the project and selects the design-builder based on its qualifications to design and construct the project. Once under contract, the design-builder works with the City to design the project based on the City's project criteria, usually by preparing a preliminary design followed by detailed specifications after the City's approval of the preliminary design.

To initiate the contracting process, the City must establish written criteria for determining when design-build is appropriate for a project. Further, *the statute requires that the City adopt the criteria for each individual project*. The next section of this staff report defines in Part 1 the criteria to be used for each individual project. Part 2 then applies this set of criteria to the Nature Center Pavilion and Restroom Project.

Though the statute requires that written criteria be adopted for each project that utilizes the design-build method, it does not specifically require governing board approval of such criteria. However, from a compliance standpoint, some form of higher level approval is advisable and therefore Part 1 requests authorization for the City Manager to approve individual project criteria on all future projects.

### **Criteria for Determining Whether the Design-Build Delivery Method is Appropriate for a Project:**

#### ***Part 1 – Establishment of Criteria***

*Criteria 1: The extent to which the City can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* The design-build method may be used if it is determined that, for the project, the City has professional staff that are both qualified and experienced to thoroughly define project requirements prior to the issuance of a request for qualifications (RFQ) for a design-builder. Consideration will be given to the qualifications and experience of City staff and the availability of professional staff in the areas of purchasing, finance and legal to assist in the development of an RFQ.

*Criteria 2: The time constraints for the delivery of the project.* The design-build delivery method may be used if a project has a firm date by which a facility must be operational and the normal delivery method (i.e. RFQ, study, design, bid and construct) is likely not to be timely. The size and cost of a project will dictate complexity and schedule.

*Criteria 3: The ability to ensure that a quality project can be delivered.* The design-build delivery method may be used if it is determined that, for the project, the City has professional and experienced staff to ensure that the design-build firm will provide a quality project within the



budget constraints established by Council. Consideration will be given to the qualifications and experience of City staff charged with management of the project.

*Criteria 4: The capability of the City to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* The design-build delivery method may be used if it is determined that, for the project, the City has professional and experienced staff that are knowledgeable of design-build projects or, in the alternative, experienced consultants local to Asheville are available to be retained to perform the construction management of a design-build contract.

*Criteria 5: A good-faith effort to comply with historically underutilized business participation requirements (NCGS 143-128.2, NCGS 143-128.4), and to recruit and select small business entities.* The design-build delivery method may be used if it is determined that, for the project, requirements will be imposed which ensure that contractors will comply with the M/WBE goals set by Council.

*Criteria 6: The criteria utilized by the City, including a comparison of the costs and benefits of using the design-build delivery method of a given project in lieu of the other delivery methods identified.* The criteria utilized by the City when considering a design-build delivery method for a project will be as follows:

- Is the project well defined and does it include qualitative and quantitative characteristics that make a design-build contract more appropriate than other methods of delivery?
- Is the project timeline overly constrained and will it be necessary to have the facility complete and operational within a short timeframe?
- Will it be necessary to have beneficial use of a portion of the facility while it is under construction?
- Given the scope of the project, is there a maximum budget that must be adhered to in order to allow negotiations and flexibility to make appropriate decisions on scope as the project progresses?
- Does the design-build delivery method meet the ultimate operational goals established for a given facility and the quality of product achieved as a result of a more fluid and flexible delivery method?

In general terms, if it is determined that the expected expense of a design-build project will be no more than ten (10%) greater than the expected expense of a traditional RFQ, study, design, bid and construct project, the design-build delivery method may be utilized.

## **Part 2 – Application of the Criteria to the Nature Center Pavilion and Restroom Project**

*Criteria 1: The extent to which the City can adequately and thoroughly define the project requirements prior to the issuance of the request for qualifications (RFQ) for a design-builder.* Within the Parks & Recreation Department's Planning and Development Division the City has professional personnel with extensive experience in project solicitation, project management, construction design, and contract management. Additionally professional personnel are available in the areas of purchasing, finance, risk management, minority business, and legal to assist in the development of an RFQ.

*Criteria 2: The time constraints for the delivery of the project.* Through the State of North Carolina the WNC Nature Center will receive grant funding that requires the funds to be encumbered within FY14-15. Construction of the restroom and pavilion will be complete by winter 2014-15. By utilizing the design-build method the City is able to combine RFQ and contractor selection into one-step reducing the overall project schedule by at least one month,

and reduce staff resources by preparing one solicitation. Additionally, if the design and construction phases can take place simultaneously the overall project schedule could be reduced by another month, allowing the project timeline to be compressed by 60 days or more.

*Criteria 3: The ability to ensure that a quality project can be delivered.* Within the Parks & Recreation Department's Planning and Development Division the City has professional personnel with extensive experience in project management, construction design and management. The division's staff has a proven history in budget and construction/design project management to ensure that the design-build firm will provide a quality project within the budget constraints established by Council.

*Criteria 4: The capability of the City to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.* Within the Parks & Recreation Department's Planning and Development Division the City has professional and experienced personnel that are knowledgeable of design-build projects. Should it become necessary to contract the construction management of a design-build contract, there are experienced consultants available.

*Criteria 5: A good-faith effort to comply with historically underutilized business participation requirements (NCGS 143-128.2, NCGS 143-128.4), and to recruit and select small business entities.* The City of Asheville has adopted a Minority Business Plan to encourage participation by minority businesses in the award of contacts. Bidders are hereby notified that this bid is subject to the provisions of that Plan. It is the policy of the City to (1) provide minorities an equal opportunity to participate in all aspects of its contracting and procurement programs, and (2) prohibit any and all discrimination against persons or businesses in pursuit of these opportunities.

*Criteria 6: The criteria utilized by the City, including a comparison of the costs and benefits of using the design-build delivery method of a given project in lieu of the other delivery methods identified.* As noted under criteria #2, one of the benefits of the design-build method is that it may reduce overall project timeline by more than 60 days. This has a direct fiscal impact on the project budget. The design-build delivery method is not expected to involve any additional expenses beyond those necessary to deliver a complete project through the traditional RFQ, study, design, bid, and construct project method. The budget for the proposed project is \$100,000, including preliminary planning, provided the scope of design services can be reduced. This enables more of the approved project budget to go directly towards the physical improvements of the facilities. It is expected that the design-build process will enable approximately 5% of the available funds (about \$5,000) to be allocated to the construction over what a typical design-bid-build process would allow. These benefits to both the project schedule and cost make the design-build option more appealing than the more conventional design-bid-build in this instance.

Pros:

- Criteria provides a means to determine the applicability of the Design-Build Delivery Method to any City project
- Application of the criteria to the Nature Center Pavilion and Restroom Project will expedite delivery of the finished project

Cons:

- n/a

Project is budgeted and there is no additional financial impact.

Staff recommends that City Council adopt (1) a resolution establishing the criteria for a Design-Build Method for Construction Contracts, and authorizing the City Manager or his designee to review and approve the written criteria for each individual design-build project to

ensure compliance with these adopted criteria; and (2) a resolution authorizing the City Manager to use the Design-Build Delivery Method for construction of the Nature Center Pavilion and Restroom Project.

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**RESOLUTION NO. 14-149 - RESOLUTION BOOK NO. 26 - PAGE 268**

**H. ORDINANCE NO. 4314 - ORDINANCE AMENDING THE COMPOSITION OF THE MULTIMODAL TRANSPORTATION COMMISSION**

Summary: A report on the Multimodal Transportation Commission's first year of operations; and consideration of an ordinance amending the membership composition of the Multimodal Transportation Commission.

The Multimodal Transportation Commission (MMTC) was constituted by Council on May 14, 2013. The Commission first meeting was in August 28, 2014, and it has been meeting monthly since then.

The membership is composed by three members of the Transit Subcommittee ; three members of the Greenway Subcommittee; three members of the Bike and Ped Task Force; and three ex-officio members - one each from the Planning and Zoning Commission, Neighborhood Advisory Committee and Sustainability Advisory Committee on Energy and the Environment.

During this year the Commission has worked on a variety of topics:

- Adoption of bylaws and Rules and Procedures.
- Reinstatement of the Transit and Greenway Committees, as subcommittees of the MMTC and appointed members to those sub-committees.
- Some members have participated in different procurement processes, helping staff in the hiring process; this includes the Multimodal Transportation Plan and the French Broad River Greenway and Amboy Bridge Connection.
- Members have provided valuable input and endorsed different transportation plans: Greenways Master Plan, East of the Riverway Transportation Plan, Transit operation improvements for FY15.
- Members have reviewed street closures.

Staff considers the MMTC work paramount to advance the City's multimodal transportation goals. This first year has proven to be very productive; even when there are very different backgrounds the commission is speaking with one voice, it is a very cohesive group of people and members understand the big picture. Their guidance will be very important as the City embarks in the development of the Multimodal Transportation Plan.

There have been questions about how the membership is chosen and with Legal's advice the language has been revised to make clear that it is Council's prerogative to decide the MMTC membership. The current voting membership is as follows: Three members representing transit interests; three members representing greenway interests; and three members representing Bicycle/Pedestrian interests.

The Boards & Commissions Committee, at their June 10, 2014, meeting reviewed the membership and recommended the following: Two members representing transit interests; two members representing greenway interests; two members representing bicycle/pedestrian interests; and three at-large members.

All members shall be City residents and appointed by City Council with advice from the Commission.

Candidates who are current members of the standing Subcommittees (Transit and Greenway) or active members of the Bicycle/Pedestrian Task Force and who are recommended by their respective Subcommittee or Task Force shall receive preference in the selection process but shall not be guaranteed a slot. All candidates must submit an application for consideration of appointment to the Multimodal Transportation Commission.

All Commission members selected to represent Greenway or Transit interests shall, upon appointment to the Commission, automatically be deemed members of the appropriate Subcommittee. Members selected to represent Bicycle/Pedestrian interests, if not already active in the Bicycle/Pedestrian Task Force, shall be encouraged to do so.

There is no change recommended for the three ex officio non-voting members: one member of the Planning and Zoning Commission; one member of the Sustainability Advisory Committee on Energy and the Environment; and one member of the Neighborhood Advisory Committee. The ex officio members shall be selected by their respective commissions.

Staff and the MMTC recommend adding this language for guidance into the existing ordinance.

Pro:

- The MMTC mission is aligned with City goals and their advisory role will help staff shaping the future of the City's transportation network.

Con:

- None.

Staff recommends City Council amend the membership composition of the Multimodal Transportation Commission as follows: (1) Two members representing transit interests; (2) Two members representing greenway interests; (3) Two members representing bicycle/pedestrian interests; (4) Three at-large members; and (5) Three ex-officio non-voting members (a) one member of the Planning & Zoning Commission; (b) one member of the Sustainability Advisory Committee on Energy & the Environment; and (c) one member of the Neighborhood Advisory Committee.

## **ORDINANCE BOOK NO. 29 - PAGE 89**

### **I. RESOLUTION NO. 14-139 - RESOLUTION AUTHORIZING THE CITY MANAGER TO IMPLEMENT THE ASHEVILLE SAFECAM PROGRAM**

Summary: The consideration of a resolution authorizing the City Manager to implement the Asheville SafeCam Program.

The purpose of the SafeCam Program is to encourage business and property owners within the City of Asheville to utilize their surveillance cameras and make areas safer for shoppers and the community while providing a public service to the citizens.

The program allows owners of commercial buildings to register their existing camera systems free of charge, with the Asheville Police Department, and assist in criminal investigations by providing the digital recordings upon request. This is expected to assist in identifying offenders in such crimes as vandalism, assaults, shoplifting, and other crimes. The camera system must be installed on the outside of the building to provide surveillance for the business and the public space.

In order to be eligible, applicants must be the owner of a commercially occupied property or an operating tenant business with the approval of the property owner, or an established

business association or community based organization representing a number of businesses in a particular area.

During the course of an investigation of an incident, an investigator would make contact with the person listed on the registration form. Arrangements would be made to obtain a copy of the video to assist in the investigation.

The application process will be handled at the Asheville Police Department at the Police Information Desk.

This was reviewed by the Public Safety Committee on June 2, 2014, and was unanimously supported.

Pros:

- Assist with criminal investigations
- No cost for businesses
- Proven effectiveness in other cities
- Possible crime deterrent
- Another partnership opportunity for police and community

Con:

- Staff time to review applications and register SafeCam participants

City staff recommends City Council authorize the City Manager to implement the Asheville SafeCam Program

**RESOLUTION BOOK NO. 36 - PAGE 258**

**J. RESOLUTION NAMING FIRE STATION 1 AFTER CHARLES AUGUSTUS WERHAN**

This item was removed from the Consent Agenda for an individual vote.

**K. RESOLUTION NO. 14-141 - RESOLUTION AMENDING THE 2014 CITY COUNCIL MEETING SCHEDULE TO CANCEL THE JULY 29, 2014, COMMUNITY MEETING**

**RESOLUTION BOOK NO. 36 - PAGE 260**

**L. RESOLUTION AUTHORIZING THE CITY CLERK TO ADVERTISE FOR UPSET BIDS FOR THE SALE OF 1.3 ACRES OF REAL PROPERTY LOCATED OFF OF RESERVOIR ROAD TO BEAUCATCHER HEIGHTS DEVELOPMENT CORPORATION**

This matter was removed from consideration until a further date.

**M. RESOLUTION NO. 14-143 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY AN EASEMENT OVER A PORTION OF CITY-OWNED PROPERTY AT CURVE STREET TO DAVID WILLIAMSON FOR A RESIDENTIAL DRIVEWAY EASEMENT**

Summary: The consideration of a resolution authorizing the City Manager to convey an easement over a portion of City-owned property at Curve Street to David Williamson for a residential driveway easement.

The City of Asheville owns real property at PIN 964868587800000 on Curve Street and the parcel is used for right-of-way purposes. Curve Street runs through the center of the parcel, with additional land area on either side of the street. The total parcel measures 0.17 acres. The highest and best use of this parcel is right-of-way, given the placement of the roadway and the limited residual value of the remaining land.

One of the adjacent vacant lots is currently being developed for a single-family residence. The owner of this lot, David Williamson, has requested an easement to install a driveway to his vacant lot. The area needed for this driveway easement is not currently being utilized by the city, and presents no apparent conflict with future use.

The proposed easement area is approximately 435.6 square feet. As set forth in the City's Right of Way policy, the method for calculating the value of this easement is equal to 50% of the underlying land value. Based on the tax assessed value, the total fee for the easement is \$200.

Pro:

- The easement is appropriate for the current use of the right-of-way and would not interfere with any relevant future plans.

Con:

- None noted.

Financial proceeds associated with the real property disposition are to benefit the Economic and Community Development Capital Improvement Project budget.

Staff recommends that City Council approve a resolution authorizing the City Manager to convey a 435.6 square foot easement over a portion of City-owned property at Curve Street to David Williamson.

#### **RESOLUTION BOOK NO. 36 - PAGE 262**

#### **N. RESOLUTION NO. 14-144 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT FUNDS DONATED TO THE ASHEVILLE POLICE DEPARTMENT**

#### **ORDINANCE NO. 4315 - BUDGET AMENDMENT TO APPROPRIATE FUNDS DONATED TO THE ASHEVILLE POLICE DEPARTMENT**

Summary: The consideration of (1) a resolution authorizing the City Manager to accept funds donated to the Asheville Police Department; and (2) a budget amendment in the amount of \$1,100 to appropriate these funds into the City's Special Revenue Fund budget.

The Asheville Police Department (APD) has received \$1,000 in donated funds from the Brooks-Howell Home and \$100 from Parker's Karat Patch, Inc. In order for APD to be able to spend these funds, Council must first approve a budget amendment authorizing use of those funds in the City's Special Revenue fund. These funds are to be used by the APD as needed for specific purposes. The APD has requested that these funds be applied to the APD Private Donations project account to assist with the APD Shop With a Cop Program. The APD wishes to acknowledge the generosity, and express gratitude to, the Brooks-Howell Home and Parker's Karat Patch, for their support of the Asheville Police Department.

Pros:

- Acceptance of gift from various citizen groups;
- Enhancement of the APD North Asheville Community Policing efforts.

Con:

- None

Appropriating these donations in the Special Revenue Fund has no fiscal impact on the City's General Fund Budget.

City staff recommends City Council approve: (1) a resolution authorizing the City Manager to accept funds donated to the Asheville Police Department; and (2) a budget amendment in the amount of \$1,100 to appropriate these funds into the City's Special Revenue Fund budget.

**RESOLUTION BOOK NO. 36 - PAGE 263  
ORDINANCE BOOK NO. 29 - PAGE 90**

**O. RESOLUTION AUTHORIZING THE CITY STAFF TO PROCEED WITH THE STATUTORY CONDEMNATION PROCESS FOR PROPERTY LOCATED AT 61 HAYWOOD ROAD, ASHEVILLE, N.C., FOR THE PUBLIC PURPOSE OF CONSTRUCTION OF A SIDEWALK**

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

**P. RESOLUTION NO. 14-146 - RESOLUTION REVISING THE EXISTING CONTRACT WITH PINNACLE LANDSCAPING LLC FOR GROUND MAINTENANCE SERVICES AT PACK SQUARE PARK**

Summary: The consideration of a technical resolution revision to the existing contract resolution with Pinnacle Landscaping, LCC for ground maintenance services at Pack Square Park.

On July 23, 2013, City Council approved the contract between the City and Pinnacle Landscaping, LCC in the amount of \$115,795 for a twelve (12) month period with an option for two (2) twelve (12) month renewals based on contractor performance.

The contract also included 1) \$10,000 contingency for unit cost associated with repairs to landscaping, irrigation, and seasonal maintenance items such as snow removal for a total of \$125,795; and 2) the City Manager's authorization to approve change orders not to exceed the approved contract budget. However when the contract was approved, these items were not included in the resolution.

In order for the resolution to 1) reflect the actual terms of the contract, 2) to be authorized to spend the \$10,000 contingency, and 3) for the City Manager to be authorized to approve change orders, staff is requesting City Council to approve a technical resolution revision to the existing contract with Pinnacle Landscaping, LCC for ground maintenance services at Pack Square Park.

This action complies with the City Council Strategic Operating Plan in that it supports Park Maintenance operations at the highest levels of fiscal responsibility as well as enhances a basic city service. It also complies with the Parks, Recreation & Cultural Arts Master Plan in that it provides ongoing maintenance and care for the City's park system.

Pro:

- Supports the efficient delivery of core park maintenance services.

Con:

- None

\$125,795 for the contract and any necessary change orders between the city and Pinnacle Landscaping, LCC for ground maintenance in Pack Square Park is already budgeted in the Parks and Recreation Department operating budget for Pack Square Park. Thus, there is no additional impact to the City's General Fund budget from this action.

City staff recommends City Council adopt a technical resolution revision authorizing \$10,000 contingency, and authorizing the City Manager to approve change orders to the existing contract with Pinnacle Landscaping, LCC for ground maintenance services at Pack Square Park.

**RESOLUTION BOOK NO. 36 - PAGE 265**

**Q. ORDINANCE NO. 4316 - BUDGET AMENDMENTS FOR PARK MAINTENANCE RELOCATION PROJECT AND FIRE STATION LAND PURCHASE PROJECT**

Summary: The consideration of two year-end FY2014 capital budget amendments: 1) Park Maintenance Relocation project in the amount of \$40,000; and 2) Fire Station Land Purchase project in the amount of \$11,400. Both projects will be funded with proceeds from debt issuance.

The City's FY2015 Capital Improvement Budget, which Council is scheduled to adopt at its June 24, 2014 meeting, includes funding for both the Park Maintenance Facility Relocation project and the Fire Station Land Purchase project. However, based on the timelines for those projects, the City expects to incur some minor expenses associated with those projects prior to the end of FY2014. In order to provide budget authorization for those FY 2014 expenses, staff is requesting that Council approve the budget amendments.

Pros:

- Provides budget authorization for FY2014 project expenses.
- Conforms the City's financial records with generally accepted accounting and reporting standards.

Con:

- None.

As noted above, the Park Maintenance Facility Relocation project and the Fire Station Land Purchase project are both part of the FY2015 Capital Improvement Budget, and their full expenses are included in the City's five-year capital improvement financial model. Both projects will be funded with debt proceeds.

City staff recommends City Council adopt the two year-end FY2014 capital budget amendments: 1) Park Maintenance Relocation project in the amount of \$40,000; and 2) Fire Station Land Purchase project in the amount of \$11,400.

**ORDINANCE BOOK NO. 29 - PAGE 92**

**R. RESOLUTION NO. 14-147 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH NHM CONSTRUCTORS, LLC, FOR THE BENT TREE ROAD RETAINING WALL CONSTRUCTION PROJECT**

**ORDINANCE NO. 4322 - BUDGET AMENDMENT FOR THE BENT TREE ROAD RETAINING WALL CONSTRUCTION PROJECT**

Summary: The consideration of (1) a resolution authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$594,567.50 plus a contingency of



10% (\$59,456.75) with NHM Constructors, LLC for the project known as Bent Tree Road Retaining Wall Construction; and (2) a budget amendment in the amount of \$37,994 from Federal Emergency Management Agency and the North Carolina Department of Public Safety funds to increase the existing project budget to cover the contract and the 10% contingency.

From January 1, 2013 to July 8, 2013, the Asheville area received 41.67 inches or rainfall, exceeding the City's normal annual rainfall for the same time period by 4.68 inches. More specifically, the Asheville area received almost 5 inches of rain within the 24-hour period from July 3 to July 4, 2013. During this 24-hour period stormwater runoff rapidly undermined steep soil banks, causing damage to the asphalt/pavement shoulders of many City roads due to the wearing pressure of the high-velocity stormwater flow. In particular, the stretch of Bent Tree Rd. adjacent to and above the property located at 36 Bent Tree Rd. experienced significant structural damage to the soils underlying the road surface.

Several large and complicated landslides required consultation outside the City workforce, and several consultants were chosen for the more extensively damaged areas. To reinforce the road surface, a design including a soldier pile and lagging retaining wall, bookended by soil nail slopes, was chosen for this site, and includes an extensive road rebuild. The project was advertised on May 27, 2014.

Bids were opened on June 19, 2014, with two bids received as follows:

- NHM Constructors of Asheville, NC. Bid - \$594,567.50.
- Uretex Mid-Atlantic of Colfax, NC. Bid - \$778,009.20.

NHM Constructors, LLC was the lowest responsible bidder with a bid of \$594,567.50. A 10% contingency (\$59,456.75) has been added to allow payment for any unforeseen costs that typically arise during construction. A large portion of this work will be reimbursable under federal emergency grant funding; however, City funds will need to be expended prior to reimbursement. The work produced from this contract would resolve liability issues associated with a deteriorating road structure and rebuild the road's underlying support.

Pros:

- Will remove a potential liability issue from the City's transportation network.
- Improve access to an area of valuable residences, improving the City's tax base.

Cons:

- Project management and contract administration will consume staff time.
- Temporary financial obligations of project work.

As noted above, this project will be funded as part of the reimbursements from the Federal Emergency Management Agency and the North Carolina Department of Public Safety for the declared disaster identified as FEMA-4146-DR-NC.

City staff recommends City Council adopt: 1) the resolution awarding the contract to NHM Constructors, LLC and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$594,567.50 plus a contingency of 10% (\$59,456.75), for a total of \$654,024.25, with NHM Constructors, LLC for the project known as Bent Tree Road Retaining Wall Construction; and 2) a budget amendment in the amount of \$37,994 from Federal Emergency Management Agency and the North Carolina Department of Public Safety funds to increase the existing project budget to cover the contract and the 10% contingency.

**RESOLUTION BOOK NO. 36 - PAGE 266**  
**ORDINANCE BOOK NO. 29 - PAGE 116**

Mayor Manheimer 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.

When Mr. Ken Michalove asked if there was anything on the Consent Agenda about Pack Place or the Asheville Art Museum, Mayor Manheimer replied there was none.

Councilman Bothwell moved for the adoption of the Consent Agenda, (1) with the continuance of Item F to July 22, 2014; (2) with an individual vote for Item J; (3) with the deletion entirely of Item L; and (4) with discussion and/or individual vote for Item O. This motion was seconded by Councilwoman Wisler and carried unanimously.

#### **ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES**

##### **J. RESOLUTION NO. 14-140 - RESOLUTION NAMING FIRE STATION 1 AFTER CHARLES AUGUSTUS WERHAN**

Summary: The consideration of naming Fire Station 1 after City of Asheville Firefighter Gus Werhan.

City of Asheville Firefighter Charles "Gus" Werhan tragically lost his life on December 9<sup>th</sup>, 1963, while fighting a fire at 23 Biltmore Ave. The Werhan family has requested that Gus be honored by naming City of Asheville Fire Station 1 after Charles Augustus Werhan.

Pros:

- Having a City of Asheville owned facility that has been named to honor a public servant who has died in the line of duty is an ultimate recognition of public service.

Cons:

- None have been identified or known at this time.

The purchase of a plaque commemorating the naming would be the associated expense to this consideration.

Staff recommends that the Asheville City Council name Fire Station 1 after Charles Augustus Werhan.

Fire Chief Scott Burnette was pleased to introduce Mr. Werhan's wife, daughter and brother.

Councilman Bothwell moved for the adoption of Resolution No. 14-145. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

#### **RESOLUTION BOOK NO. 36 - PAGE 259**

##### **O. RESOLUTION NO. 14-145 - RESOLUTION AUTHORIZING THE CITY STAFF TO PROCEED WITH THE STATUTORY CONDEMNATION PROCESS FOR PROPERTY LOCATED AT 61 HAYWOOD ROAD, ASHEVILLE, N.C., FOR THE PUBLIC PURPOSE OF CONSTRUCTION OF A SIDEWALK**

Summary: The consideration of a resolution authorizing City staff to proceed with the statutory condemnation process as set forth in Article 3 of Chapter 40A of the N.C. General Statutes for the property located at 61 Haywood Road, Asheville North Carolina, for the public purpose of construction of a sidewalk.

The City of Asheville is planning to make multi-modal improvements to a portion of Haywood Road, from Craven St. to the new traffic signal at Beechum's curve. This project has

garnered strong support from many in the community. The public meeting that was held on November 21, 2013, had a good turnout, with all present being in favor of the proposed work. All of the easements necessary for the project to proceed have been obtained except for the one at 61 Haywood Rd. The property owner and/or his representative have been contacted numerous times by certified letter, email, telephone and face to face meetings. After many attempts at negotiations, the property owner was not willing to donate the easement, so the City made an offer of \$3,259.05, per our Sidewalks and Related Infrastructure Right of Way Acquisitions Policy and Procedures. The owner refused to respond to the offer within the time allotted. Later, the property owner counter-offered with \$25,000. An appraisal of the property was conducted according to North Carolina General Statutes by a certified MAI appraiser. The appraised value of the easement was found to be \$6,950. An offer of \$6,950 was made to the property owner, but the owner refused and counter-offered with \$10,000. The property owner has been informed of our intent to condemn a portion of the property for the easement needed to construct the sidewalk.

This action complies with the Sidewalks and Related Infrastructure Right of Way Acquisitions Policy and Procedure and the City Council Strategic Operating Plan in that it will continue construction and maintenance of pedestrian and bicycle infrastructure.

Pros:

- Will allow for approximately 1,600 linear feet of new sidewalk within the Asheville City limits.
- Will allow for approximately 2,800 linear feet of new bike lane within the Asheville City limits.
- Project will improve pedestrian and bicyclist safety.
- Project encourages walking and biking, thereby reducing carbon emissions.

Cons:

- The condemnation cost will be taken from the project budget.
- The condemnation process will consume staff time.
- Condemning properties can create a negative image of the City.

The funds needed for the condemnation will come from the project budget of \$220,000. Once bids for the project are received, staff will evaluate the need for additional funding.

City staff recommends City Council adopt the resolution approving: (1) Condemnation to acquire an easement across the property at 61 Haywood Rd. Asheville, North Carolina, for public use and benefit as set forth in Article 3 of Chapter 40A of the North Carolina General Statutes; (2) The City Attorney's Office and/or designee, is directed to institute the necessary proceedings under applicable provisions of the North Carolina General Statutes to acquire the property interest herein described; and (3) The City Manager to execute any necessary documents related to the easement acquisition by condemnation of property.

When Mayor Manheimer asked for comments from the public on this matter, no one spoke.

Councilwoman Wisler moved for the adoption of Resolution No. 14-145. This motion was seconded by Councilman Pelly and carried unanimously.

**RESOLUTION BOOK NO. 36 - PAGE 264**

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

## **A. LEGISLATIVE UPDATE**

Assistant City Manager Paul Fetherston highlighted the following bills: S729 - Governor's Coal Ash Action Plan; H150/S139 - Zoning Design & Aesthetic Controls; S734/H1136 - Authority to Adopt Certain Ordinances; H1191 - Authority to Adopt Local Ordinances; H531 - ETJ/Zoning - Weaverville & Buncombe/Correction; S594 - Omnibus Justice Amendments; H1145 - Registration Required for Mopeds; H1113 - Bent Creek Property Sullivan Act Exemptions; H1247 - Asheville Regional Airport; S743/H1031 - NC Economic Development Partnership Modifications; S493 - 2014 Regulatory Reform Act; Extension of historic building rehabilitation tax credits included in the House's budget, but not the Senate's; and Various proposals for film incentives have appeared in the House and Senate and negotiations are ongoing. Bills of Significance signed into law are as follows: H1050 - Omnibus Tax Law Changes; includes Privilege License Tax reform; and S786 - Energy Modernization Act.

## **IV. PUBLIC HEARINGS:**

### **A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 573 FAIRVIEW ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN ART INSTRUCTION FACILITY, WITH REQUESTED LANDSCAPING MODIFICATIONS**

#### **ORDINANCE NO. 4317 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED 573 FAIRVIEW ROAD FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS I DISTRICT/ CONDITIONAL ZONING FOR AN ART INSTRUCTION FACILITY WITH LANDSCAPE MODIFICATIONS**

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone property located on 573 Fairview Road from Neighborhood Business District to Community Business I District/Conditional Zoning for the use of an existing building as an art instruction facility, with landscape modifications. This public hearing was advertised on June 13 and 20, 2014.

The project area consists of a single 0.985-acre parcel located at 573 Fairview Road with secondary frontage along Shannon Drive. The parcel is currently zoned Neighborhood Business (NB) and contains an existing building that has most recently been used for offices. The site is primarily surrounded by residential uses and residential zoning to the south, southwest and east (RS-8) as well as a number of commercial uses adjacent along Fairview Road, also zoned NB (north and west).

The proposal is to utilize the existing building and site layout for the Roots & Wings School of Art and Design, which provides instructional services to all ages, but with an emphasis on youth, including morning pre-school, artist studios and office space. The existing structure has frontage on Fairview Road and contains 8,756 square feet, primarily single-story but with a small two-story portion. There is also a small storage shed behind the building.

Access and parking will remain in the same general location as the present configuration with the exception that the driveway onto Fairview Road will become one-way egress (currently two-way). Visitors will access the site from Shannon Drive and exit onto Fairview Road.

The *minimum* number of parking spaces required when all three uses (preschool, office and studios/instruction) are active is 22. A total of 23 parking spaces are shown on plans. While the plan meets the minimum for parking, it is worth noting that uses in the CBI district are allowed a 25% reduction in number of required parking spaces (not being utilized). The proposal also

includes an accessible space as well as a loading berth and bike parking on site. On-street parking will not be permitted along either Fairview Road or Shannon Drive.

There are existing five-foot wide sidewalks along Fairview Road that will remain. A new five-foot sidewalk will be provided along Shannon Drive.

Landscaping is required for this project and includes a property line buffer, street buffer, street trees, parking lot landscaping and building impact landscaping. The applicant is requesting modifications to the property line buffer due to the reuse of the existing site layout and contextual design considerations. The proposed alternative compliance is detailed below.

Open space not technically required for this project because the lot is less than one acre in size; however with the grassed recreation area and playground, 0.17 acres of open space is provided.

*Modifications:*

1. Property line buffer – a type B (30 foot wide) property line buffer is required adjacent to RS-8 zoned properties to the south and southwest of the site as well as along Shannon Drive.
  1. There is a small portion of the southern property line directly behind the building (approximately 50 feet) where the location of the existing building is too close to the property line to provide the landscape buffer. No planting is possible in this area. *Staff is supportive of this modification due to existing site constraints.*
  2. Around the south and west sides of the grass field and playground (adjacent to RS-8), the applicant is proposing to reduce the width and materials of the property line buffer by fifty percent to 15 feet. *Staff is supportive of this modification because it is along the open space, which is a low impact area and provides an additional separation from the more active portion on the front of the site.*
  3. As a street-facing property line with RS-8 across the ROW, a 30 foot wide buffer would be required along Shannon Drive as well. The applicant is proposing to add a five-foot wide sidewalk along the entire street frontage to create a more pedestrian friendly environment. The layout will incorporate a four-foot grassed strip, the five-foot sidewalk and then an additional planting strip to accommodate street trees, the street buffer against the parking lot and additional evergreen shrubs for screening. The planting strip will be four-feet wide between Fairview Road and the entrance drive and widened to six-feet to the rear of the property, along the grass field. *Staff is supportive of this modification because it accommodates the sidewalk installation and existing utility poles along Shannon Drive. Also, street trees and shrubs in a planting strip are a more integrated and contextually-appropriate streetscape pattern in a neighborhood setting than a full property line buffer would be in this location.*

This proposal was approved with conditions by the Technical Review Committee on May 19, 2014, and requires review Final TRC review prior to zoning approval. The Planning & Zoning Commission evaluated this request at their meeting on June 4, 2014, and voted unanimously to support the conditional zoning and proposed modifications. Numerous letters of support have been received by staff. Although not technically required, the applicant held a community meeting on May 29 to present the proposal to the neighborhood and receive feedback.

The applicant is proposing to conditionally rezone the site from Neighborhood Business to Community Business I due to the fact that the current zoning designation does not permit instructional services, schools, artist studios or day care/pre-school uses. Community Business I is a similar zoning district to NB in that it is intended for smaller-scale, neighborhood-centered uses and the proposed uses listed above would be permitted. All of the uses proposed are identified in the UDO's impact table as "low."

There are a number of commercial uses located along this stretch of Fairview Road in the Neighborhood Business zone, intermixed with single-family residential uses (both in the NB zone as well as RS8). Typically this is an appropriate mix as long as the non-residential uses are community-based and low-impact. The uses proposed in this application are expected to be compatible with the residential neighbors and proposed landscaping should both improve the site and provide some buffering for the single-family homes to the east across Shannon Drive and behind the parcel. The open space provides an additional separation between the parking area and the neighbors. Utilizing the existing site layout, the parking remains closer to Fairview Road and the front of the parcel and by reconfiguring the access so that all cars leave from Fairview Road, impact to adjacent neighbors should be minimized.

Section 7-7-8(d)(2) of the Unified Development Ordinance (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 applicant is proposing to reuse the existing building and general site layout. There are no significant topographic features on the site. Improvements that will be undertaken to provide sidewalks and define the drive aprons on both frontages will improve access. Existing mature trees will remain on site and significant landscaping will be added.
3. *That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.*  
The proposed use of the land for preschool, art studio/instruction space and associated offices is not expected to injure the value of adjoining or abutting properties. The uses will be contained within an existing building and are along a section of corridor permitted for low-impact, non-residential uses. Improvements to the site, including sidewalks and landscaping, are expected to be an enhancement.
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 proposed uses for this site (preschool, art studio/instruction and associated offices) are considered to be in harmony with the scale, bulk and coverage of the area in that they are re-using an existing building and site layout and site improvements proposed (sidewalks, landscaping) will enhance the appearance of the site and mitigate impacts to neighbors. The character of the area is largely single-family residential but this site is within a portion of the Fairview Road corridor that is already zoned for (and contains) non-residential uses. Community-based, low-impact uses such as those included in the application are considered to be appropriate and compatible adjacent to neighborhoods. The proposed traffic flow change for all vehicles to exit onto Fairview Road should further protect the neighbors on Shannon Drive.

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.*

As enumerated below, the proposal complies with policies adopted by the City in several ways, most notably through the reuse of an existing building, the installation of new sidewalks and site improvements that will add native vegetation and preserve open space.

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

This project does not propose new construction and has been determined by the TRC to have adequate water supply, police protection, waste disposal and similar facilities. The site is located on the "C" transit line, with a stop right at Shannon Drive and Fairview Road.

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

The proposed uses on the site are not expected to create undue traffic congestion or create a traffic hazard. The number of trips anticipated per day was not sufficient to warrant a Traffic Impact Study and Fairview Road can easily accommodate the new users. Enhancements proposed to the site should improve access and internal flow. Also, sidewalks along Fairview Road and Shannon Drive will increase pedestrian safety.

The proposal complies with policies adopted by the City in several ways. As stated in the *City Development Plan 2025*, reusing older buildings is "the most sustainable construction" and helps to preserve and protect neighborhood vitality (pg. 74, 149) and appropriately-scaled non-residential uses should be allowed in appropriate locations (pg. 152). The addition of street trees, sidewalks and bike parking on-site as well as the location along a transit route supports users of multimodal transportation; the streetscape will be enhanced and automobile dependence may be minimized (pg. 74, 159, 163). A large amount of the site will be left as an open grassed field and additional, native landscaping will be added to the parking field, adding to sustainability and environmental goals (pg. 75, 96).

This proposal aligns with City Council's focus area on providing a "High Quality of Life" for residents by adding sidewalks that enhance safety and also reusing an existing building to provide opportunities for education, art and creativity.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff finds this request to be reasonable.

Considerations:

- The project proposes the reuse of an existing building and generally using the same site layout, with improvements to access and traffic flow.
- Sidewalks will be provided along Shannon Drive and a small portion of new sidewalk along Fairview Road.
- Trees will be preserved and additional landscaping will be added throughout the site to soften the streetscape and provide buffering to adjacent properties.
- Although not technically required, open space is preserved on the rear portion of the site.

Staff recommends approval of the proposed conditional zoning to allow for the preschool, studio/instruction space and associated offices to use the existing building at 573 Fairview Road and to improve the site with landscaping, sidewalks and access changes as proposed, inclusive of the landscape modifications as detailed above, finding that the request is consistent with City-adopted plans and strategic goals.

Ms. Bernstein said that the petition has requested that the City eliminate the description of being an "art-based" preschool and just call it a preschool in case the basis for the curriculum changes slightly over time. City staff has no problems with that.

Mayor Manheimer opened the public hearing at 5:27 p.m., and when no one spoke, she closed the public hearing at 5:27 p.m.

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

Vice-Mayor 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 in the following ways (1) Low-impact community-based uses such as those proposed are considered appropriate along corridors such as this location; (2) Reuse of the existing building and general site layout minimizes disturbance to neighbors; (3) Access to and from the site will be reconfigured to have less impact on Shannon Drive residents; (4) Sidewalks will be provided along both road frontages; (5) Open space and existing trees will be preserved on site and (6) Additional landscaping will be provided around and within the site, and moved for the adoption of Ordinance No. 4317 to conditionally zone property located on 573 Fairview Road from Neighborhood Business District to Community Business I District/Conditional Zoning for the use of an existing building as an art instruction facility, with landscape modifications, subject to the following conditions:

1. Approval is for the reuse of an existing building for offices, instructional services, art studios and preschool.
2. Signage shall be separately permitted and shall meet the standards of the City of Asheville Sign Ordinance (Article XIII of Chapter 7 of the Code of Ordinances).
3. All site lighting must comply with the City's Lighting Standards (Section 7-11-10 of the Code of Ordinances). Proposed lighting plans must be submitted at Final TRC.
4. All landscaping must meet the minimum size requirements set forth in Section 7-11-3(f)(3) of the UDO. All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans.
5. The property line buffer is modified in the following ways:
  - a. Elimination of buffer behind existing building due to existing site constraints.
  - b. 50% reduction in width and materials along the south and west boundaries.
  - c. Four-foot grass strip, five-foot sidewalk and four to six foot planting strip behind the sidewalk along Shannon Drive to accommodate street trees, street buffer and additional evergreens.
6. Traffic flow will be restricted to entry-only on Shannon Drive and exit-only on Fairview Road.
7. New sidewalks will be provided along Shannon Drive and a portion of new curb and sidewalk will be constructed on Fairview Road in front of the existing building.
8. On-street parking for the uses will not be permitted along either Fairview Road or Shannon Drive.
9. The applicant is providing 0.17 acres of open space via a grass field and playground area.
10. All activities associated with the uses will occur between the hours of 7 am to 10 pm.
11. The project shall comply with all conditions outlined in the TRC staff report as indicated below:
  - a. Plans are required to be submitted in engineering scale between 1"=10' and 1"=60'.
  - b. Please add a plan note whether existing streets are publically or privately maintained and dimension ROW width.
  - c. Street trees are required along Fairview Road (7-11-3).
  - d. Please provide calculations for street trees for Fairview Road and the front section of Shannon Drive, based on linear frontage. Please provide calculations



for street buffers for both frontages as well (7-11-3). For clarity, it may be helpful to put all of the calculations to the side of the drawing (similar to the parking calcs).

- e. Please note that shrubs are also part of the required Parking Lot landscaping (7-11-3).
  - f. The existing driveway on Fairview Rd does not meet current standards. The plans show a one-way driveway, so the opening should be between 14 and 20 feet wide.
  - g. All sidewalks, driveways, and other structures in the public right-of-way must meet the standards of the current draft Public Rights of Way Accessibility Guidelines (PROWAG).
  - h. Bike storage area is noted on plan, but please show bike parking details.
  - i. Please include wheel stops at the ADA spots to prevent vehicles from rolling into the walkway
  - j. Show tree species on plan
  - k. If planting under high voltage wires, small maturing trees are required. Move trees back from wires if possible
  - l. Make sure new trees will be planted in the appropriate season
  - m. A Grading Permit will be required. Specific comments are not covered under this zoning review, and will be covered under a separate permit review. A separate grading submittal will need to be made at the time of Final TRC Submittal. Any revisions or resubmittals are to be submitted to the Development Services Department per the instructions at the end of this letter.
  - n. This project may qualify for an exemption to the requirement for a Stormwater Permit as a redevelopment. Provide pre- and post-development pervious and impervious areas along with the percentage of pre- and post-impervious area to allow for a determination of the requirements for a Stormwater Permit.
  - o. Wastewater allocation approval issued. If any food service or non-domestic waste is produced, MSD pre-treatment group will have to review and approve.
  - p. Plumber will need to evaluate existing sewer service line and determine location & connection point. Off-site easements may be required depending on location.
12. The project will undergo final review by the TRC prior to issuance of any permits and compliance with the items listed above will be required at that time.
13. A planning inspection is required prior to obtaining a certificate of occupancy. This inspection should be scheduled through the Development Services inspection line.

This motion was seconded by Councilwoman Wisler and carried unanimously.

**ORDINANCE BOOK NO. 29 - PAGE 94**

**D. PUBLIC HEARING TO CONSIDER REZONING 226 HILLIARD AVENUE FROM REGIONAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT**

**ORDINANCE NO. 4318 - ORDINANCE TO REZONE 226 HILLIARD AVENUE FROM REGIONAL BUSINESS DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT**

**ORDINANCE NO. 4319 - ORDINANCE AMENDING THE OFFICIALLY ADOPTED HEIGHT ZONE MAP AND CONTEXT TRANSITION EDGE MAP PERTAINING TO THE REZONING OF 226 HILLIARD AVENUE**

Urban Planner Jessica Bernstein said that this is the consideration of (1) an ordinance to rezone 226 Hilliard Avenue from Regional Business District and RS-8 Residential Single-Family High Density District to Central Business District and (2) an amendment to the officially adopted

Height Zone Map and Context Transition Edge Map pertaining to the rezoning of 226 Hilliard Avenue. This public hearing was advertised on 13 and 20, 2014.

Ms. Bernstein said that the site proposed for rezoning consists of five parcels with a combined area of 1.68 acres, located at the southwest corner of Hilliard and Asheland Avenues, just outside of the Central Business District. The site contains a single-story building (approximately 24,000-square feet) surrounded by surface parking. The four larger parcels are currently zoned Regional Business (RB) and the smallest interior parcel is zoned RS-8.

The applicant is proposing a standard rezoning of the five parcels to Central Business District (CBD).

This is the third standard rezoning request received by staff in this immediate location to expand the CBD along its southwest boundary. In the past year, City Council approved similar rezoning requests across Asheland Avenue to the east (1.54 acres from RB to CBD at 86 Asheland Avenue on June 25, 2013 and 2.45 acres from RB to CBD at 172 Asheland Avenue on August 27, 2013).

Because of the repeated requests, staff and the Downtown Commission (DTC) have been exploring a multi-parcel, City-initiated rezoning on the remaining parcels along Asheland Avenue from Hilliard Avenue to Southside Avenue. Various maps provided in the Downtown Master Plan (2009) included this area along Asheland Avenue due to its proximity to the CBD, wide right-of-way and potential for urban growth. Staff and members of the DTC held a meeting with Asheland Avenue property owners in January 2014 and plan to continue the dialogue with affected neighbors this year, intending to pursue the corridor rezoning and expand the CBD.

Approval of the rezoning request requires an amendment to the Downtown Height Zones map and a recommendation by the Downtown Commission. Similar to the previous requests along Asheland Avenue, staff proposes extending the intermediate height zone in this location, which would allow for a maximum height of 145 feet. Additionally, the context transition edge would be applied along the parcel boundary adjacent to RS-8 zoning and would limit the building height allowed adjacent to that neighborhood. The Key Pedestrian Streets map has already been amended in 2013 to extend along Asheland Avenue and would apply to this site.

The Downtown Commission evaluated this proposal at their meeting on May 9, 2014, and unanimously supported the rezoning request as well as the application of the intermediate height zone and context transition edge.

The proposal was reviewed by the Planning & Zoning Commission at their meeting on June 4, 2014, and recommended for approval by a vote of 4-1. The opposing Commissioner was generally supportive of the rezoning with the exception of the small parcel currently zoned RS-8. There was one member of the public present to speak at the meeting, a resident of the nearby residential neighborhood, who expressed desire for the City to meet with neighborhood residents sooner rather than later regarding the corridor rezoning effort.

This site sits at the corner of Hilliard and Asheland Avenues at the edge of the CBD with office uses to the west (zoned CBD); offices and commercial uses (Hot Spot) to the north (zoned CBD); offices (Keller Williams) to the east (zoned CBD); and medical offices and single-family residential to the south (zoned Office Business and RS-8). Uses allowed in the CBD would be appropriate and compatible on this site. Design standards mandated by the UDO would require that any future development be pulled up towards the corner and focused on the street rather than set back with parking in the front, as seen with the current suburban-style of development on the site and along the corridor. While the maximum height permitted (145 feet) would be significantly greater than current RB zoning (80 feet), the context transition edge would limit the height of structures within 100 feet of the neighborhood and provide a gradual scale at that property line.

There are policies throughout the *Asheville City Development Plan 2025* supporting the need for higher-densities and a mix of uses, especially concentrating on downtown and areas close to the CBD for this type of development. CBD zoning allows for a greater variety of uses and higher residential densities while maintaining and requiring design elements that will encourage multi-modal transportation and an urban form of development that is more amenable to the pedestrian experience.

The *Plan* mentions the value of living in walkable neighborhoods close to the CBD for the mix of activities and opportunities within proximity and the application of the context transition edge should align with statements on needing to protect those older neighborhoods surrounding downtown.

The Land Use & Transportation section contains a specific goal to “continue to look for opportunities to expand the boundaries of the CBD to areas appropriate for that type of development”.

The *Downtown Master Plan* recommends strategies for the continued vitality of the downtown and specifically included this section of Asheland Avenue as an area of potential growth and expansion for the CBD. A number of maps in the plan expanded beyond the current CBD boundary because these edge areas were noted as having the potential to grow and improve following an urban development pattern.

Based on the above findings and the analysis provided in the report and as stated in the recommendation below, staff finds this request to be reasonable.

Considerations:

- Expansion of the CBD is generally recommended in the *2025 Plan* and specifically recommended along Asheland Avenue in the *Downtown Master Plan*
- Application of the context transition edge and development standards in the UDO pertaining to building placement should minimize some impact to the adjacent neighborhood with future development
- Two similar requests have been approved in this immediate location over the past year, leading to staff and the Downtown Commission pursuing a multi-parcel rezoning effort.

Staff recommends approval of the proposed rezoning, finding that the request to expand the CBD is consistent with City-adopted plans and strategic goals for development in this area

Mayor Manheimer opened the public hearing at 5:33 p.m., and when no one spoke, she closed the public hearing at 5:33 p.m.

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

Councilman Smith 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 in the following ways: (1) References to CBD expansion in the *2025 Plan* and the *Downtown Master Plan*; (2) Staff-led multi-parcel corridor rezoning is being pursued; (3) Design standards and the application of the context transition edge should minimize impact from future development on adjacent neighborhood, and moved for the adoption of Ordinance No. 4318 to rezone 226 Hilliard Avenue from Regional Business District and RS-8 Residential Single-Family High Density District to Central Business District. This motion was seconded by Councilman Davis and carried unanimously.

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 in the following ways: (1) the proposed map amendments are in accordance with adopted land use changes; (2) the proposed map amendments implement portions of the City Council-adopted Downtown Master Plan, 2025 Plan and supports the goals and vision plan; and (3) the map amendments will support the redevelopment of the south area of downtown and provide protection to adjacent residential uses, and moved for the adoption of Ordinance No. 4319 to amend the Height Zone Map (intermediate height zone) and Context Transition Edge Map. This motion was seconded by Councilman Davis and carried unanimously.

## **ORDINANCE BOOK NO. 29 - PAGE 102**

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

#### **A. ORDINANCE NO. 4320 - ORDINANCE ADOPTING THE FISCAL YEAR 2014-15 ANNUAL OPERATING BUDGET, INCLUDING FEES & CHARGES AMENDMENTS TO (1) INCLUDE A 3-TIERED STORMWATER FEE STRUCTURE, WITH A DELAYED IMPLEMENTATION OF 90 DAYS FOR THE RESIDENTIAL INCREASE; (2) THE PARKS & RECREATION ATHLETIC FEES; (3) TECHNICAL ADJUSTMENT (RIGHT OF WAY CUT PERMIT PENALTY); AND (4) TRANSIT MONTHLY AND ANNUAL PASS FEES**

Director of Finance & Management Services Barbara Whitehorn said that this is the consideration of an ordinance to adopt the Fiscal Year 2014/2015 Annual Budget along with changes to the Fees and Charges Manual discussed below.

The Fiscal 2014/2015 Proposed Annual Operating Budget was presented to City Council on May 27, 2014. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 30 and June 6, 2014. City Council conducted a public hearing on the Proposed Budget on June 10, 2014. The Fiscal 2014/2015 Proposed General Fund Budget is balanced while maintaining the current Ad Valorem tax rate of \$0.46 per \$100 of assessed value. All essential City services are continued in the Proposed Budget.

#### ***Technical Budget Changes***

Since the Proposed Budget was presented to City Council, there have been two technical adjustments that have altered the budget that is presented tonight for Council adoption.

- **Street Cut Utility Fund:** In order to more effectively meet customer service expectations in the street cut program, Public Works staff has requested that two additional FTE positions be added for Fiscal 2014/2015. The budget impact of these two additional positions is \$66,986. As a result of this change, the Street Cut Utility Fund budget that is presented for adoption tonight now totals \$1,650,800. The Street Cut Utility Fund budget is fully supported by charges to its users, so this budget change has no impact on the General Fund.
- **City Attorney's Budget:** After the Fiscal 2014/2015 Proposed Budget was presented to City Council, staff reviewed the City Attorney Department budget and made changes to plans for contracted legal services to accommodate the addition of one additional position (Associate City Attorney) within the original proposed budget. As a result, FTE positions in the City Attorney Department show an increase of one in Fiscal 2014/2015.
- **Capital Improvement Program:** In the 2015 capital budget, \$100,000 has been reallocated from the Town Branch Greenway project (\$50,000) and the Charlotte Street

Pedestrian and Bike Improvement project (\$50,000) to fund the Neighborhood Sidewalk Program. This is a reallocation of funds only; there is no change to the budgeted total for 2015 CIP.

Ms. Whitehorn noted that, pursuant to best practices, a section has been added into the ordinance as follows: "Section 10. Compensation for the Mayor, Vice-Mayor and Councilmembers will be \$19,743.36 - \$20,335.66, \$16,385.20 - \$16,876.76, and \$14,505.14 - \$14,940.29 respectively. Travel for official activities will be reimbursed under the same plan used for City employees." This added section has no effect on the numbers.

### ***Fees and Charges Manual Amendments***

In conjunction with adoption of the Fiscal 2014/2015 Annual Operating Budget ordinance, staff is also seeking Council approval of the following amendments to the City's Fees and Charges Manual:

- **Stormwater Rate Structure:** The current rate for single family properties is \$2.34 per month. The proposed rate structure is a tiered system - Properties from 225–2000 square feet will pay \$2.50 per month; properties from 2001-4000 square feet will pay \$4 per month and properties greater than 4001 square feet will pay \$5.50 per month. For non-single family properties, the current rate of \$2.34/ERU (Equivalent Residential Unit) per month will be increased to \$4/ERU per month. Staff is seeking Council approval of the new fee structure tonight; however the new rates will not become effective until Council also amends the stormwater ordinance. It is anticipated that the new rates will go into effect ninety days after the start of the new fiscal year.
- **Parks & Recreation Athletic Fees:** When the Fiscal 2014/2015 proposed fees and charges adjustments were presented to the Finance Committee on March 25, the Committee asked for additional information related to the proposed changes to the athletic field usage fee and the non-city athletic registration fee. At its May 27 meeting, the Committee received this additional information and heard a report from staff. The adjustments presented for adoption tonight reflect the original proposal that staff brought forward at the March 25 Committee meeting.
- **Transit Monthly & Annual Passes:** After further review, staff is recommending that Council indefinitely delay implementation of changes to the monthly and annual transit pass fees that were approved on April 8, 2014. This delay will enable staff time to further review the fee structure and avoid any potential undue hardship on transit riders.
- **Technical Adjustment (Right of Way Cut Permit Penalty):** When City Council adopted the Fiscal 2014/2015 fees and charges adjustments on April 8, 2014, staff inadvertently included with that action a new civil penalty for failure to obtain a right of way cut permit. However, all penalties must be set forth in the City's code of ordinance, not in the Fees and Charges Manual. As a result, staff is seeking Council approval of a technical adjustment to remove this item from the Fees and Charges Manual. Staff will bring this civil penalty change back to Council in July to correctly adopt it as part of the City's code of ordinance.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.
- General Fund Budget is balanced with no tax rate increase or fund balance appropriation and all essential City services are continued.

Con:

- None.

As noted above, the Proposed FY 2014/2015 General Fund budget is balanced with no property tax rate change and the maintenance of all existing programs and services. The Proposed FY 2014/2015 General Fund budget includes a \$2.0 million appropriation from unassigned fund balance. Based on revenue and expenditure projections for FY 2013/2014, staff estimates that the City's unassigned fund balance will increase by \$1.3 million to \$16.7 million. This level unassigned fund balance will provide sufficient resources for the City to appropriate \$2.0 million in fund balance as part of the FY 2014/2015 budget and still maintain an unassigned fund balance that exceeds the City's 15% policy target.

Staff requests that Council: 1) adopt the FY 2014/2015 Annual Budget Ordinance, including the changes noted above, and 2) amend the Fees and Charges Manual with the changes noted above.

When Mayor Manheimer said that the public hearing on this budget was held on June 20, 2014.

In response to Councilman Davis, City Manager Jackson said that staff will research the Eblen Foundation in-kind services in our work plan for the coming year and report back to Council.

Mr. Ken Michalove spoke about issues regarding "the hostile takeover of Pack Place".

Councilman Pelly said there are a lot of exciting projects ahead and was pleased that staff found compromises for the stormwater increases, and the implementation of the neighborhood sidewalk project.

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

Councilwoman Wisler moved for the adoption of Ordinance No. 4320. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

#### **ORDINANCE BOOK NO. 29 – PAGE 106**

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

##### **A. RESOLUTION NO. 14-137 – RESOLUTION APPOINTING MEMBERS TO THE NEIGHBORHOOD ADVISORY COMMITTEE**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Neighborhood Advisory Committee.

The terms of Robert Roepnack, Barber Melton and Elaine Poovey expire on July 1, 2014. In addition, Ms. Carmen Ramos-Kenney has resigned, thus leaving an unexpired term until July 1, 2016.

The following individuals applied for a vacancy: Nick King, Teddy Jordan and Julie Hansbury.

On June 10, It was the consensus of the Boards & Commissions Committee to reappoint Mr. Roepnack, Ms. Melton and Ms. Poovey; and interview Teddy Jordan and Julie Hansbury.

It was the consensus of Council to (1) reappoint Robert Roepnack (representing 28804 zip code), Barber Melton (representing 28805 zip code), and Elaine Poovey (at-large

representative); to each serve a three-year term, terms to expire July 1, 2017, or until their successors have been appointed.

In addition, after speaking highly of all the candidates, Teddy Jordan received 7 votes and Julia Hansbury received no votes. Therefore, Teddy Jordan was appointed, as the at-large representative, to fill the unexpired term of Ms. Ramos-Kennedy, term to expire July 1, 2016, or until her successor has been appointed.

**RESOLUTION BOOK NO. 36- PAGE 255**

**K. RESOLUTION NO. 14-148 – RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART & CULTURAL COMMISSION**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Public Art & Cultural Commission.

The terms of Victor Palomino, Jaan Ferree, Julie Calhoun-Roepnack, Gwynne Rukenbrod, Guillermo Rodriguez and Leslie Klingner expire on June 30, 2014.

The following individuals have applied for a vacancy: Denise Drury, Jay Fields, Jenny Bowen and Jay Miller.

On June 10, it was the consensus of the Boards & Commissions Committee to reappoint Mr. Palomino, Ms. Ferree, Ms. Rukenbrod and Mr. Rodriguez; and interview Denise Drury, Jay Fields, Jenny Bowen and Jay Miller. Ms. Drury was interested in appointment; however, would be unavailable for an interview.

It was the consensus of Council to reappoint Victor Palomino, Jaan Ferree, Gwynne Rukenbrod and Guillermo Rodriguez to each serve a three-year term, terms to expire June 30, 2017, or until their successors have been appointed.

In addition, after speaking highly of all the candidates, Jay Miller received 1 vote, Jay Fields received 6 votes, Jenny Bowen received 6 votes, and Denise Drury received 1 vote. Therefore, Jay Fields and Jenny Bowen were each appointed to serve a three year term, terms to begin July 1, 2014, and expire June 30, 2017, or until their successors have been appointed.

**RESOLUTION BOOK NO. 36- PAGE 267**

**C. RESOLUTION NO. 14-150 – RESOLUTION APPOINTING A MEMBER TO THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Greater Asheville Regional Airport Authority.

The terms of David Hillier and Bob Roberts expire on June 30, 2014. Due to legislation, the seat of Mr. Hillier will now be a seat for Henderson County.

The following individual applied for the vacancy: Gary Herndon.

On June 10, it was the consensus of the Boards & Commissions Committee and City Council to postpone action on this until June 24.

Vice-Mayor Hunt moved to reappoint Bob Roberts to the Asheville Regional Airport Authority and the Greater Asheville Regional Airport Authority to serve an additional four-year term, term to expire June 30, 2018, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 36- PAGE 270**

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

Mr. Timothy Sadler suggested City Council set a goal for local food production; and suggested the hiring of a new employee to analyze new development.

Mr. Dan Bridges urged Council to contact the state about upgrading handicapped placards.

**Closed Session**

At 6:01 p.m., Councilwoman Wisler moved to go into closed session for the following reasons: (1) 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); and (2) 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, but not limited to a lawsuit involving the following parties: The State of North Carolina; and The City of Asheville. The statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:27 p.m., Councilwoman Wisler moved to come out of closed session. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 7:27 p.m.

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CITY CLERK

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MAYOR