

Tuesday – March 10, 2015 - 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; Acting City Manager Cathy Ball; 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.

I. PROCLAMATIONS:

II. CONSENT AGENDA:

At the request of Councilman Davis, Consent Agenda Item "K" was removed from the Consent Agenda for discussion and/or individual vote.

At the request of Councilman Smith, Consent Agenda Item "M" was removed from the Consent Agenda for discussion and/or individual vote.

At the request of Mayor Manheimer, it was the consensus of Council to add the following resolution to the Consent Agenda: "Resolution supporting the North Carolina Historic Preservation Tax Credit Program's reinstatement in the North Carolina Tax Code."

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 24, 2015**
- B. RESOLUTION NO. 15-44 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONSTRUCTION AGREEMENT WITH HAREN CONSTRUCTION COMPANY FOR THE NORTH FORK WATER TREATMENT PLANT DAM INTAKE TOWER & CONDUIT REPAIRS PROJECT**

Summary: The consideration of a resolution that authorizes the following relative to the North Fork Water Treatment Plant Dam Intake Tower and Conduit Repairs Project (1) the City Manager to enter into a construction agreement with Haren Construction Company, Inc., for the bid amount of \$1,658,000; (2) the City Manager to execute any change orders to said contract or documents which may arise during construction of said project up to the budgeted amount; and (3) a contingency amount of \$165,800.

The North Fork Water Treatment Plan Dam Intake Tower and Conduit Repairs Project (Project) consists of the construction and installation of all materials, labor, incidentals, and equipment necessary to: (1) remove and replace selected metal features inside the intake tower; (2) prepare, prime and re-paint remaining metal features inside the intake tower, on the access bridge and inside the conduit; (3) install fiberglass reinforced plastic (FRP) platforms, designated stem guides, ladder with fall arrest, and appurtenant features in the intake tower; (4) miscellaneous removal of utilities from within the conduit; (5) construct two reinforced concrete bulkheads in the conduit; (6) fabricate and install a steel gate on the upstream bulkhead in the conduit; (7) replace a portion of the existing raw water line at the downstream end of the conduit; (8) install a new HDPE access pipe, PVC carrier pipe and PVC drainage pipe and appurtenant features in the existing conduit; (9) fill the annular space of the existing conduit with leveling and

cellular concrete; and (10) install a new filter diaphragm around the existing conduit at the North Fork Water Treatment Plant in Black Mountain, North Carolina.

In response to an Advertisement for Bids for the construction project on June 9, 2014, the Department received one bid. Pursuant to N.C.G.S. § 143-132, three competitive bids are required for formal construction projects. Upon rebidding the project on August 6, 2014, the Department received five (5) bids in response to the second advertisement. Since the proposed award of the contract was protested by a bidder, all bids were rejected and the project was rebid on January 8, 2015. In response to the second rebid, the Department received three bids from the following:

1. Haren Construction Company, Inc. – Etowah, TN
2. NHM Constructors, LLC – Asheville, NC
3. Crowder Construction Company – Charlotte, NC

Following a review of bids by the City's project engineers, Schnabel Engineering project and City Staff, Haren Construction Company, Inc., was selected as the lowest responsible, responsive bidder for the bid amount of \$1,658,000. If a contingency amount of \$165,800 is approved, the total project budget would be \$1,823,800.

Pros:

- This project will bring the intake tower and conduit up to code in preparation for construction of a new spillway.
- This project is aligned with the City and Departmental goal to provide safe and reliable service through continued investment and improvement of the City's water system through Capital Improvement Projects.

Con:

- Failure to award a construction contract would prevent the completion of this project, which is required in order to bring the intake tower and conduit up to code in preparation to construct a new spillway.

The funding needed for the construction agreement is currently allocated within the North Fork Water Treatment Dam/Tunnel Repairs Project in the Water Resources Capital Improvement Projects fund. No budget adjustment is necessary.

Staff recommends Council approval of a resolution that authorizes the following relative to the North Fork Water Treatment Plant Dam Intake Tower and Conduit Repairs Project (1) the City Manager to enter into a construction agreement with Haren Construction Company, Inc., for the bid amount of \$1,658,000; (2) the City Manager to execute any change orders to said contract or documents which may arise during construction of said project up to the budgeted amount; and (3) a contingency amount of \$165,800.

RESOLUTION BOOK NO. 37 - PAGE 47

C. RESOLUTION NO. 15-45 - RESOLUTION AUTHORIZING THE MAYOR AND DESIGNATED CITY STAFF TO PERFORM GRANT-RELATED ADMINISTRATIVE TASKS TO ACCESS FEDERAL TRANSIT ADMINISTRATION FUNDING

Summary: The consideration of a resolution authorizing the Mayor and designated City staff to perform grant related administrative tasks to access Federal Transit Administration (FTA) funding.

The City of Asheville became a designated recipient after the 2000 Census, because the region reached the 200,000 population threshold. The designation is defined by 49 U.S.C Section

5307 (A)(2) with the Federal Transit Administration for federal assistance authorized by 49 U.S.C chapter 53, Title 23, United States Code.

In order to access financial assistance through the FTA, the City of Asheville, as designated recipient of the French Broad River Metropolitan Region needs to perform administrative tasks for funding that comes to the region; this funding is made available through the FTA's website interface. Some of these tasks require specific officials and personnel to be accountable for. Tasks are as follows:

- Execute and file Certifications and Assurances, performed by the Mayor, the Deputy City Attorney or the City Attorney.
- Creation and submission of grants, performed by the Transportation Planning Manager or his/her designee.
- Grant execution, performed by the Mayor.

Last time a similar resolution was passed was on June 13, 2006. During the last Triennial Review conducted by FTA in 2013, the auditors recommended updating the titles of personnel that performs the grant administration tasks.

Pro:

- Performing FTA administrative tasks will allow access to transportation funding.

Con:

- The Federal Transit Administration funds partially transit operations, and some other transit related projects; the lack of compliance can put in jeopardy the funding allocated to those projects.

Though there is no direct impact, lack of compliance with FTA requirements can affect funding.

City staff recommends that City Council adopt a resolution authorizing the Mayor and city staff to perform FTA administrative tasks to access transportation funding, as listed above.

RESOLUTION BOOK NO. 37 - PAGE 49

- D. MOTION TO ADOPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE CONDITIONAL USE PERMIT FOR THE ADDITION TO THE HEALTH AND HUMAN SERVICES BUILDING AND NEW 650 SPACE PARKING STRUCTURE LOCATED AT 40 COXE AVENUE**
- E. RESOLUTION NO. 15-46 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE CONVEYANCE OF REAL PROPERTY AT 880 NEW HAW CREEK ROAD FROM HAW CREEK FIRE AND RESCUE INC. FOR THE CONTINUED OPERATION OF CITY OF ASHEVILLE FIRE STATION 12**

Summary: The consideration of a resolution authorizing the City Manager to accept the conveyance of real property at 880 New Haw Creek Road for the continued operation of the City of Asheville Fire Station #12.

In 1962, AR and Hazel Masters donated 0.2 acres of land (PIN# 9659953741) to Haw Creek Fire and Rescue, Inc. for the exclusive purpose of operating a fire station from the property. In 2002, an additional 0.56 acres (PIN# 9659953914) was conveyed by Edward and Julie Masters for a total site measuring 0.76 acres. Haw Creek Fire and Rescue operated out of the site until the area became part of Asheville City limits. At that point, the City extended fire service to the area, and subsequently entered into a lease agreement with Haw Creek Fire and

Rescue for use of the building and premises to operate a community fire station, known as Fire Station #12.

The lease agreement between the City and Haw Creek Fire and Rescue, Inc. has now expired and according to specific provisions of the lease, the property is to be transferred to the City. The original deed restrictions that limit the use to fire protection services will remain in place, and the City will continue to utilize the property for this purpose.

Pros:

- Donation of an existing Community Fire Station
- Fee simple ownership of fire station facilities is preferable to leaseholds, in terms of potential future capital improvements and long term maintenance of the site

Cons:

- None

No monetary consideration required for the conveyance.

Staff recommends that Council adopt the resolution authorizing the City Manager to accept the property transfer of 880 New Haw Creek Road from Haw Creek Fire and Rescue, Inc.

RESOLUTION BOOK NO. 37 - PAGE 50

- F. RESOLUTION NO. 15-47 - RESOLUTION AMENDING THE 2015 CITY COUNCIL MEETING SCHEDULE TO (1) CANCEL THE CITY COUNCIL COMMUNITY MEETINGS SCHEDULED FOR THE 5TH TUESDAYS OF ANY MONTH AND INSTEAD HOLD COMMUNITY ENGAGEMENT EVENTS ON SPECIFIC TOPICS THROUGHOUT THE YEAR; (2) ADD A COMMUNITY ENGAGEMENT EVENT REGARDING SHORT TERM RENTALS ON MARCH 25, 2015, AT 5:00 P.M. IN THE US CELLULAR CENTER BANQUET HALL; (3) ADD BUDGET WORKSESSIONS ON APRIL 28, 2015, AND MAY 12, 2015, AT 3:00 P.M. IN THE FIRST FLOOR NORTH CONFERENCE ROOM IN CITY HALL; (4) SCHEDULE A PUBLIC HEARING ON JUNE 9, 2015, TO CONSIDER THE FISCAL YEAR 2015-16 ANNUAL OPERATING BUDGET; AND (5) CANCEL THE DECEMBER 22, 2015, CITY COUNCIL FORMAL MEETING**

RESOLUTION BOOK NO. 37 - PAGE 51

- G. RESOLUTION NO. 15-48 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH HAZEN & SAWYER FOR FAIRVIEW SERVICE AREA WATER SYSTEMS IMPROVEMENTS PHASE II**

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional services agreement with Hazen and Sawyer for the proposed amount of \$967,500 plus a 5% contingency amount of \$48,375 for a total project budget in the amount of \$1,015,875 for the Fairview Service Area Water System Improvements Phase II Part 1.

The southeastern portion of the City of Asheville's (City) water system, referenced as the Fairview service area, is currently serviced with a high capacity pumping station and two major ground storage reservoirs. The South Buncombe Reservoir (5 MG) supplies suction to the South Buncombe booster pumping station, which discharges into the Concord Road reservoir (1 MG) creating the Concord Tank pressure zone. The Concord Tank reservoir pressure is reduced through a pressure reducing valve to create the Mine Hole Gap pressure zone. Formerly, the

Mine Hole Gap pressure zone was supplied by its own pumping station and reservoir. There are also several small pressure zones served by localized pump stations and ground storage tanks within these two major pressure zones.

Over time, increased growth and changes to the water system have made it more difficult to meet water capacity demands in this service area. It is the City's desire to improve capacity and delivery methods for the service area. Also, lower areas within these pressure zones, particularly along the Cane Creek Road corridor, experience operating pressures in excess of what is required or desirable. Investigating options for pressure reduction strategies in the Fairview Service area will be another component of this study.

In January of 2013, the Water Resources Department (Department) issued a Request for Qualifications (RFQ) for Engineering Services related to the project. The RFQ specified that the project would be divided into two phases and completed by the same engineering firm. In response to that RFQ, the department received ten (10) proposals. A review team, comprised of Department staff reviewed these proposals and recommended the firm Hazen and Sawyer.

The overall water system improvement initiative was subdivided into two phases. The scope of the first phase included existing facility investigations, hydraulic modeling, development of design alternatives with preliminary engineering and cost analysis. On May 14, 2013, Council approved a resolution to award an Engineering Services Contract for Phase I of the project to Hazen and Sawyer in the amount of \$95,700. A contingency amount of \$9,570 was added for a total project budget in the amount of \$105,270.

Hazen and Sawyer successfully completed Phase I of the project and Department staff selected the design alternative to best address an array of water issues in the Fairview Service Area. The selected alternative will result in the construction of a series capital improvement projects. It is anticipated that these series of capital improvement projects will be constructed in three parts over an 8 year period with a total estimated design and construction cost of \$17.6 million. Part 1 consists of a new Booster Pumping Station, a new 0.5 Million Gallon Water Storage Reservoir and 4 pressure reducing valve stations. Part 2 will consist of a new 3 mile section of 12 inch water transmission main along Hwy 74-A . Part 3 will consist of 5 miles of new 12 inch water transmission main along Cane Creek Rd and Lower Christ School Road.

This proposed professional services agreement is for the full engineering survey and design, property acquisition, permitting and contract administration work for part 1 of the capital improvements. The preliminary opinion of cost for part 1 of the capital improvements is \$3,250,000 with a construction completion date of June 2017. Department staff met with Hazen and Sawyer and negotiated an Engineering Services Contract for Phase II Part 1 of the project in the amount of \$967,500 plus a 5% contingency amount of \$48,375 for a total project budget in the amount of \$1,015,875.

Pros:

- This project will improve water capacity and delivery methods for the Fairview Service Area.
- Reliability of water delivery will be improved with an additional connection to the distribution system from a different portion of the distribution network.
- This project will also lead to strategies targeting areas of low and high pressures in the service area.

Con:

- None.

The funding needed for the professional services agreement is currently allocated within the Fairview Service Area Waterline Improvements Project in the Water Resources Capital Improvement Projects fund. No budget adjustment is necessary for the professional services agreement.

| | |
|--|-----------------------|
| Amount Available in Fairview Service Area WL Project | \$2,544,730.00 |
| <u>Amount Needed for Hazen and Sawyer Engineering Contract</u> | <u>\$1,015,875.00</u> |
| Amount Remaining in Fairview Service Area WL Project | \$1,528,855.00 |

The amount remaining in the Fairview Service Area Waterline Improvements Project will be saved for the construction portion of the project, which is estimated at \$12 million over the next eight years. The WRD is in consultation with the Finance Department to determine if the cost of this project can be added to the 2017 Revenue Bond issue, along with the \$40 million North Fork WTP Dam/Spillway Upgrade Project for a total issue of \$52 million. A requested reimbursement resolution would allow some expenditures to be recovered retroactively.

Staff recommends City approval of a resolution to (1) authorize the City Manager to enter into a professional services agreement with Hazen and Sawyer for the proposed amount of \$967,500; (2) approve a 5% contingency amount of \$48,375 for a total project budget in the amount of \$1,015,875 for the Fairview Service Area Water System Improvements Phase II Part I; and (3) authorize the City Manager to execute any change orders arising during the project up to the project budget amount.

RESOLUTION BOOK NO. 37 - PAGE 52

H. RESOLUTION NO. 15-49 - RESOLUTION AUTHORIZING THE STANDARDIZATION OF CITY OF ASHEVILLE PURCHASES WITH MUELLER SYSTEMS LLC FOR THE 5/8" RESIDENTIAL WATER METERS FOR CONSISTENCY IN OPERATION AND FUNCTIONALITY

Summary: The consideration of a resolution authorizing the standardization of City of Asheville purchases with Mueller Systems, LLC, for the 5/8" Residential Water Meter for consistency in operation and functionality.

The Water Resources Department (Department) has been utilizing the Mueller Systems 5/8" residential water meter throughout the entire water system since 2009. As the time draws near to request updated bids for water meters, the Department would like to continue to use the Mueller Systems 5/8" residential water meter. By continuing to use the Mueller Systems 5/8" residential water meter, the Department will (a) ensure compatibility with the existing system of meters and the Mueller Systems Automated Meter Reading (AMR) devices, and (b) reduce costs to maintain, repair, and test meters. The Department has been able to purchase meters with the AMR device factory-attached, avoiding in-field splices which could create problems. In the past, Mueller Systems has offered a 2% discount on invoices if paid in a timely manner.

If approved, the City's authorization for standardization shall be effective for up to 5 fiscal years (FY '19). At that point, the matter would be re-visited to determine if authorization to standardize should continue or if it should be released.

Pros:

- Standardization of the Mueller Systems 5/8" residential water meter will ensure consistency with training and equipment used.
- Standardization will ensure compatibility with the Mueller Systems AMR devices. The AMR project cost the department approximately \$8.3 million, so it is in the City's best interest that the meter be compatible with the AMR system.

Con:

- If standardization is not authorized and a bid for water meters is issued, the lowest bidder may not be Mueller Systems. The Department would then have to order a complete new

inventory of residential water meters, retraining of staff on the new equipment, and potential compatibility issues with the Mueller Systems AMR system.

The Department budgets for the purchase of water meters in the Meter Services annual operating budget. Standardizing the Mueller Systems 5/8" residential water meters will not change how their procurement is budgeted.

Staff recommends Council adopt a resolution authorizing the standardization of City purchases with Mueller Systems, LLC, for the 5/8" Residential Water Meter for consistency in operation and functionality.

RESOLUTION BOOK NO. 37 - PAGE 53

I. ORDINANCE NO. 4393 - ORDINANCE AMENDING SECTION 1-5 OF THE CODE OF ORDINANCES REGARDING CHANGES TO NOTICE REQUIREMENTS FOR ALL CIVIL PENALTIES

Summary: The consideration of amending Section 1-5 of the Asheville City Code.

1. City of Asheville Code Section 1-5

Section 1-5 of the City of Asheville Code of Ordinances (Ordinance number 2585), is entitled "General penalty; civil remedies; enforcement of ordinances; continuing violations." Subsections (j) and (k) in part read as follows:

- (j) Upon determination of a violation of any section of this Code, the penalty for which is a civil penalty, **the city shall cause a warning citation to be issued to the violator ... The warning citation shall specify that a second citation shall incur a civil penalty.**
- (k) **Upon failure of the violator to obey the warning citation, a civil citation shall be issued** by the appropriate official of the city and either served directly on the violator
....
(emphasis added)

2. City of Asheville Ordinances Assessing Civil Penalties

The City's authority to assess civil penalties to enforce its ordinances is found in N.C. Gen. Stat. § 160A-175(c). That statute reads:

(c) An ordinance may provide that violation shall subject the offender to a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty within a prescribed period of time after he has been cited for violation of the ordinance.

There are many ordinances in Asheville's City Code that subject violators to a civil penalty. Currently, pursuant to Section 1-5(j) and (k), before assessing any civil penalty for a violation of any City ordinance, the violator must be issued a "warning citation." This section is both ineffective and problematic for several reasons, including but not limited to:

- 1. Many of the City's ordinances that subject offenders to civil penalties independently require a warning citation or notice prior to assessing a civil penalty. (See, e.g., Sections 7-18-3 and 16-3(e)); and
- 2. The enforcement of other ordinances is hindered by the notice requirement of Section 1-5. For example, Section 19-143(c) makes it illegal to park a vehicle along a street or

alley in the Central Business District, unless there is a marking that designates that parking is specifically allowed within an area in the CBD. A violation of Section 19-143(c) subjects the offender to a \$10.00 penalty. Pursuant to Section 1-5, before assessing a civil penalty for illegally parking in the CBD, the violator must first be issued a warning citation. This procedure hinders the City's ability to properly enforce illegal parking in the CBD. The same result occurs with overtime parking at metered or nonmetered spaces, handicapped parking violations, safety equipment at skateboard parks, violations regarding pushcarts, outdoor dining areas and outdoor merchandise areas, animal control violations and noise violations.

3. The Transportation Department has also expressed concern with Section 1-5, as they must be able to issue parking tickets for overtime parking without first issuing a warning citation. With the proposed amendment, Staff will still be able to issue warning citations in their discretion, however, it will no longer be a mandatory requirement.

Based on all of the above, amending Section 1-5 to remove the requirement for a warning citation is in the City's best interest. Staff presented the proposed amended ordinance to the Public Safety Committee on February 23, 2015, and the Committee unanimously agreed to recommend approval of the amended ordinance to City Council.

Pros:

- Removes repetitive and unnecessary notice requirements prior to assessing civil penalties.
- Improves enforcement of ordinances.
- Complies with the authority granted in N.C. Gen. Stat. § 160A-175.
- Clarifies ambiguities.

Con:

- None noted.

There is no known fiscal impact associated with this amendment.

City staff recommends City Council adopt the ordinance amending Section 1-5.

ORDINANCE BOOK NO. 29 - PAGE 393

J. ORDINANCE NO. 4394 - BUDGET AMENDMENT TO MOVE FUNDING FOR THE DESIGN OF THE CRAVEN STREET GREENWAY PAVILION

Summary: The consideration of a technical capital project budget amendment in the amount of \$16,070 to move funding for the design of the Craven Street Greenway pavilion from the General Fund to the Craven Street Project in the General Capital Projects Fund.

Additional design is required to accommodate a pavilion at the trailhead of the Craven Street Greenway. The design contract is with Equinox Environmental. The construction will be funded by the Tourism, Product Development Fund grant.

This component of the Craven Street capital project was not included in the adopted budget for the project. Staff initially planned to fund the design by utilizing existing funds within the Economic Development Department's Fiscal Year 2014-15 General Fund budget. In order to provide more accurate fixed asset accounting, Finance Department staff is recommending that the expense instead be charged to the Craven Street capital project. In order to accomplish this, the Craven Street capital project budget must be increased by \$16,070. The amendment is funded by a transfer from the General Fund to the General Capital Projects Fund.

Pros:

- Provides budget authorization for project expenses.

- Conforms the City's financial records with generally accepted accounting and reporting standards.

Con:

- None.

There is no net fiscal impact to this budget amendment. Budget is simply being transferred from one fund to another.

City staff recommends City Council adopt the technical capital project budget amendment in the amount of \$16,070 to move funding for the design of the Craven Street Greenway pavilion from the General Fund to the Craven Street Project in the General Capital Projects Fund.

ORDINANCE BOOK NO. 29 - PAGE 395

K. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DONATION AGREEMENT WITH THE 26TH NORTH CAROLINA FOR THE RESTORATION OF THE VANCE MONUMENT. AND TO ACCEPT THE PROJECT UPON SATISFACTORY COMPLETION OF THE RESTORATION

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

L. ORDINANCE NO. 4395 - ORDINANCE AMENDING THE 2014 FEES & CHARGES MANUAL FOR FEE ADJUSTMENTS AT THE ASTON PARK TENNIS CENTER

Summary: The consideration of an ordinance amending the Fees & Charges Manual for proposed fee adjustments at the Aston Park Tennis Center (Tennis Center) for the Fiscal Year 2014-2015.

The major types of revenue available to North Carolina counties and municipalities are local taxes (including property taxes); local fees, charges and assessments; and intergovernmental and miscellaneous revenue. Municipalities have increasingly looked for appropriate opportunities to implement local fees and charges in order to align service provision directly with payment; therefore, the person or entity receiving the benefit of a service pays for the service.

A study of the Tennis Center's operations, completed by City staff, reviewed opportunities to reduce the level of subsidy. The study included a public engagement process with Tennis Center users that was conducted during the summer of 2014 and fee proposals were shared.

In a concurrent process, the City engaged Matrix Consulting Group (consultants) to conduct a Cost of Services Study (User) Fee Study (Cost of Services Study) for the Parks & Recreation Department. The consultants reviewed direct and indirect costs of providing fee-based recreation services. The Tennis Center was included as a component of the study.

Based on the results of the Cost of Services Study and staff analysis, staff recommends amending the current fees at the Tennis Center effective immediately, in order for staff to implement the change prior to the Tennis Center's opening on April 1, 2015. Amending the general user fees will help reduce the level of operational subsidy at the Tennis Center, in accordance with direction provided by the Finance Committee.

Proposed FY 2014-15 Fee Amendment:

1. *Changes to Aston Park Tennis Center pass holder fees.* If approved, the staff recommended changes to pass holder fees at the Aston Park Tennis Center would generate additional revenue as summarized below.

| Fund | Projected Range of Additional Revenue |
|--------------|---------------------------------------|
| General Fund | \$14,668 -- \$43,125 |

The proposed FY 2014-15 fee adjustments were reviewed by the Council Finance Committee on February 24, 2015.

Pros:

- Provides additional revenue to help balance the FY 2014-15 budget.
- Provides staff with time to begin communicating and implement fee changes to citizens, customers and stakeholders in advance of the April 1, 2015 opening of the Aston Park Tennis Center.

Con:

- None

The following are fiscal impacts: (1) Recreation best practices show that tennis facilities of this type shift a greater burden of the costs from the taxpayer subsidy to the individual users. The current Tennis Center subsidy is approximately \$150,000 annually. The goal of fee increase is to enhance revenues with an end goal of reducing the subsidy to \$70,000 annually. (2) The proposed set of fee increases is projected to cut the level of subsidy by at least 18% in FY 2015/16; (3) The proposed fee increase is the first phase in a 3-year step up fee proposal; and (4) The anticipated General Fund subsidy for the Tennis Center in FY 2015-16 is projected at \$135,332 based on revenue enhancements alone. Further reductions in the subsidy may be realized through operational changes impacting expenses.

Staff recommends that Council adopt the ordinance amending the Fees & Charges Manual for proposed fee adjustments at the Aston Park Tennis Center (Tennis Center) for the Fiscal Year 2014-2015.

ORDINANCE BOOK NO. 29 - PAGE 397

M. ORDINANCE AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES TO REGULATE E-CIGARETTES TO THE SAME EXTENT AS TRADITIONAL LIGHTED CIGARETTES

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

N. RESOLUTION NO. 15-51 - RESOLUTION SUPPORTING THE NORTH CAROLINA HISTORIC PRESERVATION TAX CREDIT PROGRAM'S REINSTATEMENT IN THE NORTH CAROLINA TAX CODE

Summary: The City of Asheville supports the reinstatement of the North Carolina Historic preservation Tax Credit Program back into the North Carolina Tax Code as a tool to spur economic recovery in our community.

RESOLUTION BOOK NO. 37 - PAGE 55

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

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.

Councilman Smith moved for the adoption of the Consent Agenda, with the deletion of Consent Agenda Items "K" and "M", and the addition of Consent Agenda Item "N". This motion was seconded by Councilwoman Wisler and carried unanimously.

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

K. RESOLUTION NO. 15-50 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A DONATION AGREEMENT WITH THE 26TH NORTH CAROLINA FOR THE RESTORATION OF THE VANCE MONUMENT. AND TO ACCEPT THE PROJECT UPON SATISFACTORY COMPLETION OF THE RESTORATION

Summary: The consideration of a resolution authorizing the City Manager to enter into a donation of services agreement with the 26th North Carolina (26th) for the restoration of the Vance Monument; and for staff to accept the project upon satisfactory completion of the restoration.

The Vance Monument, constructed in 1897 at the west end of Pack Square Park, commemorates the life of Zebulon B. Vance, Governor of North Carolina during the Civil War, and U.S. Senator from North Carolina.

In 2008, the City of Asheville (City) conducted a condition report of its public art collection that includes the Vance Monument. The report found the monument and its associated plaques and fence to be in fair to poor condition with deterioration in mortar joints, corrosion, deteriorated paint, and over all dirty and stained.

In 2012, the 26th North Carolina entered into an agreement with the City to adopt the Vance Monument as a preservation project in which the 26th was authorized to raise the funds to support the cost of restoration. In 2014, the 26th accomplished its fundraising goal of \$115,000 to support the project.

As cited on its website, 26nc.org., the 26th is a non-profit organization designed to commemorate the lives of North Carolina soldiers and civilians during the period of the American Civil War; and to support the preservation of land, places and structures that played a role in that historic time period.

During the project, the 26th will (a) serve as the project manager, (b) retain all funds and assume liability for the project, and (c) contract with Kestrel Construction for project management, and with Karkadoulis Bronze Art for the actual restoration of the monument. The scope of the restoration includes 1) clean granite, replace all deteriorated chalk and repoint, 2) repair and clean all bronze plaques, 3) clean and paint the iron fence surrounding the monument.

The City, which will serve as the project administrator and provide oversight, will contribute \$11,000 to the overall project cost, prepare the site for work, repair the wrought iron fence, and remove, preserve and replace the existing time capsule located in the base of the monument.

The project work will occur in April 2015 and is anticipated to take three to four weeks to complete. During that time, a construction fence will surround the base of the monument, and scaffolding will extend to the full height of the monument. A rededication ceremony is anticipated to be held by the 26th following the completion of work on May 16, 2015.

The City's Community and Economic Development Department is responsible for the overall management of the City's Public Art Program. The Parks and Recreation Department is responsible for the maintenance and repair of the public art collection.

Pro:

- Assist the city in accomplishing the restoration of the most prominent and highly valued historic landmark in downtown Asheville.

Con:

- None

The Vance Monument restoration will not increase the City's annual operating budget. Funds for future maintenance of the monument will be available in the Public Art and Maintenance Budget.

Staff recommends that Council adopt a resolution authorizing the City Manager to enter into a donation of services agreement with the 26th North Carolina for the restoration of the Vance Monument, and to accept the project upon the satisfactory completion of the restoration valued at \$115,000.

Assistant Park and Recreation Director Debbie Ivester said that the Vance Monument is part of the City of Asheville's public art collection. In 2008, the City conducted a condition assessment on the monument which revealed a significant amount of corrosion, failing mortar joints, corroded markers, and over all dirt and stain. The 26th North Carolina has made a generous donation to the City of Asheville to make restoration possible. Even though the City of Asheville is contributing \$11,000, the credit really goes to the 26th North Carolina for their \$115,000 donation. The restoration will be conducted by a professional conservator following the guidelines of the American Institute for Conservation.

Mr. Chris Roberts, representing the 26th North Carolina, said that during the restoration, the monument will be enclosed in a construction fence, and encased to its full height in scaffolding. The restoration will involve meticulous repair of mortar joints and sealant, followed by an overall cleaning of the monument and the bronze plaques. The final touch will be to repair and paint the wrought iron fence surrounding the monument. He looked forward to the opportunity of restoring the monument and restoring the story behind the lifespan of the monument.

On behalf of City Council, Councilman Davis appreciated the work of the 26th North Carolina.

When Mayor Manheimer asked for public comment, no one spoke.

Councilman Davis moved for the adoption of Resolution No. 15-50. This motion was seconded by Councilwoman Wisler and carried unanimously.

RESOLUTION BOOK NO. 37 - PAGE 54

M. ORDINANCE NO. 4396 - ORDINANCE AMENDING CHAPTER 11 OF THE CODE OF ORDINANCES TO REGULATE E-CIGARETTES TO THE SAME EXTENT AS TRADITIONAL LIGHTED CIGARETTES

Summary: The consideration of an ordinance amending Chapter 11 of the Code of Ordinances to regulate e-cigarettes to the same extent as traditional lighted cigarettes.

The use of e-cigarettes, a noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge, continues to gain popularity among

traditional cigarette smokers. Following a number of complaints from riders of the City's transit buses, pertaining to secondhand exposure to vapors released from e-cigarettes, the City's Transit Committee asked that the City's Smoking Ordinance be amended to include e-cigarettes.

Since e-cigarettes are not lighted tobacco products, they cannot be regulated the same as traditional cigarettes under Chapter 130A of the North Carolina General Statutes. Research revealed that the Federal Government and North Carolina State Government were both considering legislation to regulate the use of e-cigarettes, and perhaps totally pre-empt local regulation. Although the Federal Drug and Food Administration and the State of North Carolina have enacted rules/legislation respectively, regulating the sale and distribution of e-cigarettes to minors, neither pre-empts local regulation. According to the School of Government, the City may (and many North Carolina cities and counties have), adopt an ordinance regulating the use of e-cigarettes under Chapter 160A-174 of the North Carolina General Statutes, known as the "Police Powers." Chapter 160A-174 allows the City to define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety or welfare of citizens.

While the long term health effects of exposure to 2nd hand vapors emitted from e-cigarettes are unknown, according to a Study conducted by the Federal Drug and Food Administration, on 2 leading e-cigarette brands, there was evidence of toxic chemicals in both. Critics point to studies revealing that exhaling vapors from e-cigarettes releases measurable amounts of carcinogens and toxins into the air. Finally, in the last six months, there have been battery explosions either during charging of the e-cigarette or while in use.

The proposed ordinance prohibits the use of e-cigarettes to the same extent as traditional lighted cigarettes with enforcement being the same as traditional lighted cigarettes.

The proposed ordinance was presented to the Transit Committee on February 3, the Public Safety Committee on February 23 and the Multi-Modal Commission on February 25, with all three bodies unanimously approving and recommending placement on City Council's agenda for adoption.

Pro:

- Allows for the regulation and enforcement of e-cigarettes the same as traditional lighted cigarettes

Con:

- Require additional signage to be placed alongside the current "No Smoking" signs

Potential fiscal impacts, such as the addition of signage, are expected to be minimal.

Staff requests that City Council adopt the amended ordinance to regulate e-cigarettes to the same extent as traditional lighted cigarettes.

Councilman Smith asked to hear the Public Safety Committee's process and deliberations. Councilman Pelly, member of the Public Safety Committee, said that staff expressed concern that in our public facilities we do not allow smoking, and there are concerns that the health effects of e-cigarettes are unknown at this time. To err on the side of caution, the Committee felt it was appropriate to regulate e-cigarettes to the same extent as traditional lighted cigarettes.

Councilman Davis noted that this would regulate e-cigarettes, as traditional lighted cigarettes, in City property controlled by the City of Asheville, i.e., City parks, buses, Transit Center, etc.

Councilman Bothwell said that the FDA is still waiting to make a determination. Their concern is there are approximately 250 different e-cigarette devices available and there is no consistency on what is in them. Some don't cause the kind of second hand pollution that lighted

cigarettes are known to cause, but others may cause that. He felt the same rules should apply to e-cigarettes as lighted cigarettes until we know something different.

Deputy City Attorney Martha McGlohon provided the Council with an amended ordinance, which revised the definition of e-cigarettes. She thanked Ms. Karen Collins with the N.C. Dept. of Health and Human Services for her assistance with the revised definition.

When Mayor Manheimer asked for public comment, no one spoke.

Councilman Bothwell moved for the adoption of Ordinance No. 4396. This motion was seconded by Councilman Pelly and carried unanimously.

ORDINANCE BOOK NO. 29 - PAGE 399

III. PRESENTATIONS & REPORTS:

IV. PUBLIC HEARINGS:

- A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF GREYMONT VILLAGE APARTMENTS LOCATED ON SARDIS ROAD FROM INDUSTRIAL DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR THE CONSTRUCTION FO A MULTI-FAMILY APARTMENT DEVELOPMENT, WITH CONDITIONS REGARDING ACCESS AND LOT FRONTAGE**

At the applicant's request, Councilman Smith moved to continue this public hearing until May 12, 2015. This motion was seconded by Councilman Bothwell and carried unanimously.

- B. PUBLIC HEARING TO CONSIDER A REQUEST FOR A CONDITIONAL ZONING FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT AND RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT/CONDITIONAL ZONING FOR A NINE-LOT MAJOR SUBDIVISION LOCATED OFF OF SHELBURNE DRIVE**

At staff's request, Councilman Bothwell moved to continue this public hearing until March 24, 2015. This motion was seconded by Councilman Pelly and carried unanimously.

V. UNFINISHED BUSINESS:

- A. CONFIRMATION OF ASHEVILLE CITY BOARD OF EDUCATION INTERVIEWEES**

Vice-Mayor Hunt said that the terms of Jacquelyn Hallum and Precious Folston, as Asheville City Board of Education members, expire on April 1, 2015.

The following individuals have applied for a vacancy on the Asheville City Board of Education: Joanna Best, John S. Brigham, Martha L. Geitner, Elizabeth Hampton Jones, James "Drew" Shelfer, Melissa Sites, Greg Walker Wilson, Verita Brown Woods, Shaunda Sandford, James E. Lee III, Maceo Z. Keeling, Kate Fisher, Steve Dykes and Erica Englesman Rawls.

Ms. Sites did not submit responses to essay questions, therefore, she will not be considered for appointment.

After reviewing all applications and essay questions, and after speaking highly of all applicants who applied, Joanna Best received 4 votes; John Brigham received no votes; Steve Dykes received 7 votes; Kate Fisher received 2 votes; Martha Geitner received 4 votes; Elizabeth Hampton Jones received 2 votes; Maceo Keeling received 1 vote; James Lee received 6 votes; Erica Englesman Rawls received 1 vote; Shaunda Sandford received 6 votes; Drew Shelfer received no votes; Greg Walker Wilson received 7 votes; and Verita Brown Woods received 2 votes.

Therefore, it was the consensus of Council to interview Joanna Best, Steve Dykes, Martha L. Geitner, James Lee, Shaunda Sandford and Greg Walker Wilson. Those interviews will be held in the afternoon of March 24, 2015, with appointments being made later that evening in the formal session. Both appointments will be effective April 1, 2015.

Vice-Mayor Hunt explained how the background check process will work for those candidates selected for interviews, noting that the results will not be public record.

VI. NEW BUSINESS:

A. BOARDS & COMMISSIONS

Regarding the HUB Community Economic Development Alliance, it was the consensus of the Commission to re-advertise, since only two applicants responded to the two seats available: Kendra Penland and Ted Figura.

RESOLUTION NO. 15-52 - RESOLUTION APPOINTING MEMBERS TO THE AFRICAN AMERICAN HERITAGE COMMISSION

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that Ms. Jan Goffney and Mr. Al Whitesides have resigned from the African American Heritage Commission, thus leaving two unexpired terms - July 1, 2017, and July 1, 2016.

The following individuals have applied for a vacancy on the African American Heritage Commission: Mychal Bacoate, Jesse Junior, Georgia Shannon, Daniel Jonas Young, Viola Spells, Damita Jo Wilder, Willie Cameron Jr. DeWayne Barton, Tiffany DE'Bellott and Alberta Williams.

The African American Heritage Commission recommended, and the Boards & Commission Committee concurred, to recommend appointing DeWayne Barton and Viola Spells.

Councilman Pelly moved to (1) appoint DeWayne Barton to serve the unexpired term of Ms. Goffney, term to expire July 1, 2017, or until his successor has been appointed; and (2) appoint Viola Spells to serve the unexpired term of Mr. Whitesides, term to expire July 1, 2016, or until her successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 37 – PAGE 56

RESOLUTION NO. 15-53 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART & CULTURAL COMMISSION

Vice-Mayor Hunt, Chair of the Boards & Commissions Committee, said that Mr. Victor Palomino has resigned from the Public Art & Cultural Commission, thus leaving an unexpired term until June 30, 2017.

The following individuals have applied for a vacancy on the Commission: Jay Miller, Nancy S. Long and Irene Morris.

The Public Art & Cultural Commission recommended, and the Boards & Commission Committee concurred, in appointing Dr. Jay Miller.

Councilman Smith moved to appoint Jay Miller to serve the unexpired term of Mr. Palomino, term to expire June 30, 2017, or until his successor has been appointed. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 37 – PAGE 57

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Chef Good and Chef Liam urged City Council to ask candidates for the Asheville City Board of Education about how they feel about changing the child nutrition to healthy foods in City schools.

Closed Session

At 5:30 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. The statutory authorization is N.C. Gen. Stat. sec. 143-318.11(a)(3). This motion was seconded by Councilman Pelly and carried unanimously.

At 5:43 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Mayor Manheimer adjourned the meeting at 5:43 p.m.

CITY CLERK

MAYOR