

Tuesday – August 25, 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; City Manager Gary W. Jackson; City Attorney Robin T. Currin; and Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING SEPTEMBER 18, 2015, AS "2015 ASHEVILLE BUNCOMBE TIME CAPSULE DAY"**

Councilman Davis read the proclamation proclaiming September 18, 2015, as "2015 Asheville Buncombe Time Capsule Day" in the City of Asheville. He presented the proclamation to Ms. Constance Richards, member of the Public Art & Cultural Commission and member of the Time Capsule Selection Panel, who briefed City Council on some activities taking place during the day.

**B. PROCLAMATION PROCLAIMING AUGUST 25, 2015, AS THE 75TH ANNIVERSARY OF THE HOUSING AUTHORITY OF THE CITY OF ASHEVILLE**

Mayor Manheimer read the proclamation proclaiming August 25, 2015, as the "75th Anniversary of the Housing Authority of the City of Asheville" in the City of Asheville. She presented the proclamation to Mr. Gene Bell, Executive Director of the Housing Authority of the City of Asheville, and Mr. Lewis Isaac, Chair of the Housing Authority of the City of Asheville, who briefed City Council on some activities taking place during the day.

**C. RESOLUTION NO. 15-156- RESOLUTION NAMING THE U.S. CELLULAR LOBBY AS THE "JAN DAVIS LOBBY"**

Economic Development Director Sam Powers said that this is the consideration of naming the U.S. Cellular Center Lobby after Asheville City Council Member Jan Davis.

City of Asheville Council Member Jan Davis has been a community leader and supporter on behalf of the Asheville Civic Center/US Cellular Center for over 30 years. City Council received a naming petition request from civic center members that a suitable area of the facility be named for Mr. Davis in recognition of his contributions towards the facility. City Council referred the request to the Civic Center Commission for a recommendation as to location of the area to be named. The Asheville Civic Center Commission voted unanimously to recommend renaming the Lobby area of the U.S. Cellular Center to the 'Jan Davis Lobby'.

Pro:

- The naming of this public property is in accordance with the City Of Asheville's Naming City Public Owned Property Policy dated March, 25, 2014.

Con:

- None

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

Staff and the Civic Center Commission recommends City Council approve naming the U.S. Cellular Center lobby as the 'Jan Davis Lobby.'

On behalf of the Civic Center Commission, Mr. Joel Storrow, Chairman of the Civic Center Commission, was proud to recommend the naming of the lobby in honor of Councilman Jan Davis.

Council members expressed how proud they were of Councilman Davis' service not only to the U.S. Cellular Center, but to the City of Asheville.

Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Smith moved for the adoption of Resolution No. 15-156. This motion was seconded by Councilman Bothwell and carried unanimously (with Councilman Davis recusing himself).

#### **RESOLUTION BOOK NO. 37 - PAGE 229**

#### **II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JULY 28, 2015**

**B. RESOLUTION NO. 15-157 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT A GRANT FROM RAFTELIS FOUNDATION ELEMENTARY FOR THE ACCEPTANCE OF A SCHOLARSHIP**

**ORDINANCE NO. 4437 - BUDGET AMENDMENT FROM THE RAFTELIS FOUNDATION ELEMENTARY EDUCATION SCHOLARSHIP FOR ACCEPTANCE OF A SCHOLARSHIP**

Summary: The consideration of (1) a resolution allowing the City Manager to receive funds from the NC-AWWA-WEA Raftelis Foundation Elementary Education Scholarship and to execute any necessary documents that may be required; and (2) a budget amendment in the amount of \$1,000 to budget the scholarship money in the Stormwater Fund.

The City of Asheville, NC, currently has a stormwater educational program which ultimately involves protecting our water resources by educating school age kids on the importance of protecting the environment. Staff continues to provide education to the community as to how stormwater affects the environment.

Staff had the opportunity to request funding from the Raftelis Foundation Elementary Education Scholarship program. This program is targeting elementary awareness to promote water resource stewardship. The goal of this program is to promote educational programs, provide reading and video materials and fund environmental sustainability and water stewardship educational initiatives. The efforts the City continues to promote partners well with the goals of the foundation. As staff has found one of the most successful educational tools concerning environmental issues is through water stewardship programs that work to educate school age students. Students take this knowledge and materials back home and discuss them with their

parents/gardens. Some items staff utilizes to promote the educational program during this past fiscal year (July 1, 2014 – June 30, 2015) included:

- EnviroScape Presentations – This watershed model shows students the effects that pollution can have on water quality. It is a great education tool that teaches the watershed concept in addition to point and non-point source pollution. We exposed 90 students to this activity and they figured out how human activities in a watershed affect water quality.
- Project Wet activities and tours of our water treatment plants – There were 450 participants that toured our water treatment plants through this partnership with the water department. During these tours staff focused on sustainability, wise water use, water production and treatment. Staff also did either an enviroscape presentation or included project wet activities where students learn about water quality and how to protect their watershed.
- Mills River Day – Stormwater staff participated in the Mills River Day and shared our message with approximately 800 participants. We distributed brochures that included the following: dumping & illicit discharge; what stormwater runoff is; benefits of minimizing stormwater pollution; best management practices; flood safety; and the harm that pet waste can cause to our waterways.
- Adopt-a-Street Program – We partner with Asheville Greenworks to provide this program. Groups and organizations are encouraged to help reduce litter by participating in Asheville's Adopt-A-Street program. Participants agree to pick up litter from their adopted street at least six times per year. Greenworks provides groups with bags, vests, gloves, and pick-up sticks. The City of Asheville provides garbage pickup and signs on the street to recognize the litter reduction efforts.
- Adopt-a-Stream Program – The City of Asheville partners with RiverLink for this program. This is a hands-on way for local residents and businesses to get actively involved in improving the water quality of the French Broad River Watershed. Participants are required a minimum of two cleanups per year and report any water related issues/problems to RiverLink. The City of Asheville provides garbage pickup and installation of signs on the streams to recognize the litter reduction efforts. There are a total of 40 active stream cleanup teams.
- Storm drain marking – Stormwater staff partnered with Mountain True to work with volunteers and placed storm drain markers on 500 storm drains in downtown Asheville. These items note that the drains flow into the rivers and streams.

In order to improve these ongoing educational efforts for school-aged students, we applied for and were awarded the Raftelis Foundation Elementary Education Scholarship for \$1,000. This money will be used to purchase educational material to further assist the programs currently in place.

Pros:

- Accepting this scholarship money will improve the ongoing education efforts for school-aged students.

Con:

- None

The scholarship from the Foundation will assist in funding existing programs.

Staff recommends Council approve (1) a resolution allowing the City Manager to execute any necessary contracts or documents associated with the Raftelis Foundation Elementary Scholarship for the acceptance of this scholarship in the amount of \$1,000; and (2) a budget amendment in the amount of \$1,000 to budget the scholarship money in the Stormwater Fund.

**RESOLUTION BOOK NO. 37 - PAGE 230  
ORDINANCE BOOK NO. 29 - PAGE 88**

**C. RESOLUTION NO. 15-158 - RESOLUTION AUTHORIZING THE CITY OF ASHEVILLE TO BE THE LOCAL GOVERNMENT PARTNER FOR THE ASHEVILLE AREA ARTS COUNCIL GRANT APPLICATION TO THE NATIONAL ENDOWMENT FOR THE ARTS 2016 OUR TOWN GRANT**

Summary: The consideration of a resolution authorizing the City of Asheville to be local government partner for the Asheville Area Arts Council grant application to the National Endowment for the Arts 2016 *Our Town* grant and consideration of match funding request for this grant.

The [National Endowment for the Arts \(NEA\)](#) offers numerous grants in a variety of art and design categories. For 2016, the NEA is offering the *Our Town* grant for projects that contribute toward livability of communities. To submit an application, eligible primary partners must be eligible local governments and local arts agencies or other departments, agencies or entities within an eligible local government. Only one application per city/town/county will be accepted. The grant requires a non-federal dollar for dollar match, which may include in-kind, cash and volunteering. Matching funds for this grant must be confirmed prior to award (August 1, 2016).

The AAAC has worked with the Buncombe Cultural Alliance (BCA) to seek matching funds in addition to the funds requested from the City of Asheville. The BCA has agreed on an initial project to conduct a cultural asset inventory. It is a cross sector collaborative assessment of Buncombe County's cultural resources.

A Cultural Resources Asset Inventory captures important information about the scope of the economic activity of creative industry not captured in the area using traditional industry codes.

1. The data captured provides new information about the scale and nature of economic activity that is related to cultural and creative industry based businesses.
2. Information gathered provides feasibility for arts based development and related uses.
3. The inventory creates a common use, business to business database of arts and culture partners.
4. Increases the area's eligibility for additional Creative Place making funding from the National Endowment for the Arts, ArtPlace, SmArt Initiative, and similar funds.

The request to the National Endowment for the Arts will be \$80,000. Support is being sought from the City as part of the match in the amount of \$25,000.

Staff Review:

- If awarded funds, AAAC and its partners will conduct a public process, coordinating with other national and local processes, to capture the scope of activity in Buncombe County.
- This application was approved by the Public Art & Cultural Commission on July 23, 2015.
- Staff recognizes the need for the AAAC to build capacity and AAAC understands NEA Our Town Grant is to support collaborative efforts that bring results for community goals.

Request for consideration of this grant partnership was presented to PED at their meeting on July 21, 2015. They approved this item for consideration and approval with the following:

- Continue efforts to outreach to other local government to assist in supporting the work and consideration of matching funds as benefit will have an impact to all of Buncombe County.
- If approved, the city's match will be contingent upon support from other local governments.
- Funding support should be a combination of cash and in-kind support since City staff resources will be required.

- Consider how to sustain this work once the initial investment is made for the inventory.

Pros:

- The City of Asheville will not have fiduciary responsibility on this grant.
- The City would partner with the Asheville Area Arts Council and other arts, culture and entertainment agencies in the fulfillment of this grant programming.
- It provides a compass for the development of the identified Innovation Areas, especially the River Arts District.

Cons:

- None noted at this time.

The City's support is grant matching funds in the amount of \$25,000. If Council approves this request, staff will include funding for the match in the proposed budget for FY 2016-17. Additionally, staff time and resources will be required in the performance of this grant.

Planning & Economic Development Committee (1) approval by City Council for the local government partnership; and (2) consideration of the matching funds requested in the amount of \$25,000, subject to (a) other local government match funding; and (b) combination of cash (no amount specified) and in kind.

Councilman Smith thanked the Asheville Area Arts Council for making this effort. The work for the grant will provide a foundation for future artists as well as new collaborations in the River Arts District.

#### **RESOLUTION BOOK NO. 37 - PAGE 231**

#### **D. RESOLUTION NO. 15-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH CAVANAUGH AND ASSOCIATES P.A. FOR THE VAULT RENEWALS AND DISTRICT METERING AREAS ZONE METERING PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Cavanaugh and Associates, P.A., (Cavanaugh) to increase the engineering design services contract in the amount of \$8,000 from a total project budget of \$190,136 to \$198,136 for the Vault Renewals and District Metering Areas (DMA) Zone Metering Project.

On December 10, 2013, City Council (Council) awarded the engineering design services contract to Cavanaugh, for the Vault Renewals and DMA Zone Metering Project. The contract originally consisted of a survey, engineering design, construction administration, and other related professional services to replace existing substandard and failing large water meters and vaults with new metering infrastructure designed and constructed in accordance with the City of Asheville (City) standards. The initial time for the construction contract was 150 days. However, due to unknown site issues, meter technology issues and weather impacts, the construction contract has been extended by 43 days for a total of 193 days. The extension of the construction contract requires that Cavanaugh spend additional time providing construction administration. Also, due to the encountered unknown site conflicts and meter technology issues, Cavanaugh is being required to perform some additional redesign and troubleshooting to resolve these issues.

The additional engineering services for the increased construction contract time and site issues creates the need for a change order to increase the contract amount by an additional \$8,000 for a total project budget of \$198,136.

Pro:

- Approval of the change order will allow the city to complete the engineering services for the entire project.

Con:

- If the change order is not approved, then the project cannot be finished.

The funding needed for the change order is currently allocated within the Meter / Vault Repair Project in the Water Resources Capital Improvement Projects fund. No budget amendment is necessary.

Current Amount of Cavanaugh and Assoc. Contract	\$190,136
<u>Amount Needed for Change Order</u>	<u>\$ 8,000</u>
Total Amount for Project	\$198,136

The amount remaining in the Meter / Vault Repair Project will be saved for the construction portion of the project. Staff will seek Council approval of contracts associated with this project if the amount of the contract requires Council approval per the City's Procurement, Purchasing and Contracting Policy.

Staff recommends Council approval of the resolution authorizing the City Manager to execute a change order with Cavanaugh to increase the engineering design services contract in the amount of \$8,000 from a total project budget of \$190,136 to \$198,136 for the Vault Renewals and District Metering Areas (DMA) Zone Metering Project.

**RESOLUTION BOOK NO. 37 - PAGE 232**

**E. RESOLUTION NO. 15-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR THE NORTH CAROLINA APPALACHIAN REGIONAL COMMISSION EMERGING OPPORTUNITIES GRANT PROGRAM**

Summary: The consideration of a resolution authorizing the City of Asheville to submit a grant application for the North Carolina Appalachian Regional Commission Emerging Opportunities Grant Program.

The North Carolina Appalachian Regional Commission (NC ARC) offers numerous grants to create opportunities for self-sustaining economic development and improved quality of life for the people of Appalachia. Buncombe County is categorized as a Transitional County, and one of twenty-nine counties in the Appalachian portion of North Carolina. For 2015, the NC ARC is offering the new *Emerging Opportunities* grant for projects that help create a region with:

1. An economy where employment in the manufacturing sector is growing;
2. Vibrant main streets and robust retail activity centers;
3. Communities that use technology to break down barriers of geographic isolation and enable rural communities to market locally-produced goods and services around the world;
4. An economy that respects the importance of heritage, history and place, and recognizes that an asset-based approach to economic development integrates these features at every opportunity;
5. Development of a skilled workforce where improving levels of education and training result in increased opportunity for all residents.

Projects must address ARC Goal 1, to increase job opportunities and per capita income in Appalachia and target a specific NC Strategy comprised of the following:

- Develop leaders and strengthen community capacity
- Diversity the economic base

- Enhance entrepreneurial activity in the region
- Develop and market strategic assets for local economies
- Increase the domestic and global competitiveness of the existing economic base
- Foster the development and use of innovative technologies
- Capitalize on the economic potential of the Appalachian Development Highway System
- Encourage sustainable and effective economic use of natural resources
- Encourage investments in energy projects that create jobs

Applicants must be a 501(c)(3) non-profit or governmental/educational institution. Applications are due by August 28, 2015. Matching funds must be confirmed prior to application submittal. Projects that are selected by the Governor will be recommended to ARC headquarters in October, 2015.

Staff Review:

- Economic development studies are identified as a qualifying project.
- The City of Asheville submitted a pre-application proposing an economic development study on special events to Land of Sky Regional Council and was selected to submit a full application by NC ARC.
- *The Entrepreneurial Impact of Outdoor Special Events* study will:
  - Quantify the impact of special events on local entrepreneurship
  - Generate data to support the development of policy recommendations designed to motivate entrepreneurship and job creation through special events
  - Create a practical, research-based survey tool that can be shared with surrounding communities in the region.
- The proposed study is in alignment with NC ARC Strategic Objective 1.4, to develop and market strategic assets for local economies.
- The proposed study seeks to address NC ARC Strategy 1.4.3, to provide new opportunities to demonstrate cooperation with the private sector, which have the potential of directly creating new jobs and are replicable in other areas of the region or the state.
- The maximum project estimate is \$50,000 and requires a 1:1 cash match (\$25k/\$25k).
- The proposed project performance period is March 2016 – March 2017.

This proposal was presented and approved by the Planning and Economic Development Committee at their meeting on August 18, 2015. They approved this item to be place on your agenda for consideration and approval.

If awarded funds, a Request for Proposal will be issued to secure a contract with a strategic research consulting firm. Staff will work closely with the research consultant to identify the most appropriate analytical techniques and assist in the development of unique survey instruments for each event selected for participation. Staff will serve as a liaison between local businesses, the event organizers, and the research consultant to assure successful implementation, transparency, and optimal inclusion in the survey process.

The proposed research study will encompass a practical examination of various event types, sizes and lengths. The study will identify the most popular events for attendees and vendors, the distance they travel, and to what measure special events contribute to their lives and livelihoods. The study will analyze the most profitable events for local brick & mortar businesses, impact on attendee response and behavior, and pinpoint unique attributes of events that provide the most ideal climate for local business support that drives and motivates entrepreneurship and job creation.

The final report will reveal recommendations as to how local governments can leverage their outdoor public spaces and public-owned land to encourage special events that support job creation and motivate entrepreneurship. The data generated will be used to support

recommendations on incentives for special events that maintain the strongest overall return on investment. The data will be used to support new policies that enhance entrepreneurial activity through outdoor special events. The City will distribute a copy of the final report and surveys to each of the 6 counties adjacent to Buncombe County, and will make an electronic copy of the report available to all other counties in the Western North Carolina Region.

The grant will support City Council's goal to create economic development and community investment opportunities through partnerships, planning and incentives, continue to support Asheville as a culturally diverse city, and continue to develop communications and partnerships with citizens, community leaders, the media and elected officials.

Pros:

- Strengthens the City's relationship with the North Carolina Department of Commerce and the Appalachian Regional Commission
- Provides critical data with which to base sound policy recommendations
- Creates opportunities to engage, support and partner with the private sector
- Establishes a platform to share City efforts and provide assistance throughout the region

Con:

- None noted at this time.

The fiscal impact of the City's support to this grant application is grant matching funds an amount not to exceed \$25,000 from the existing Community and Economic Development budget funds. No budget amendment would be required.

City staff recommends City Council (1) approve the NC ARC *Emerging Opportunities* grant application; and (2) consider matching funds requested in the amount not to exceed \$25,000 from the existing Community & Economic Development budget.

#### **RESOLUTION BOOK NO. 37 - PAGE 233**

**F. RESOLUTION NO. 15-161 - RESOLUTION AUTHORIZING THE POSSESSION AND/OR CONSUMPTION OF ALCOHOLIC BEVERAGES AND/OR UNFORTIFIED WINE AT THE LEXINGTON AVENUE ARTS & FUN FESTIVAL ON SEPTEMBER 6, 2015**

**RESOLUTION NO. 15-162 - RESOLUTION AUTHORIZING THE POSSESSION AND/OR CONSUMPTION OF ALCOHOLIC BEVERAGES AND/OR UNFORTIFIED WINE AT OKTOBERFEST ON OCTOBER 10, 2015**

**RESOLUTION NO. 15-163 - RESOLUTION AUTHORIZING THE POSSESSION AND/OR CONSUMPTION OF ALCOHOLIC BEVERAGES AND/OR UNFORTIFIED WINE AT HOWLIN HALLOWEEN ON OCTOBER 31, 2015**

Summary: The consideration of a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at Lexington Avenue Arts & Fun Festival on September 6, 2015; Oktoberfest on October 10, 2015; and Howlin Halloween on October 31, 2015.

- Arts 2 People has requested through the City of Asheville Office of Economic Development that City Council permit them to serve beer and/or unfortified wine at Lexington Avenue Arts & Fun Festival and allow for consumption at this event.

Lexington Avenue Arts & Fun Festival will be held on Sunday, September 6, 2015 from 11:00 a.m. – 9:00 p.m. at Lexington Avenue, Walnut Street & Hiwassee Street as per the event area limits referenced on the accompanying site map.



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

Asheville Oktoberfest will be held on Saturday, October 10, 2015, from 1:00 p.m. – 6:00 p.m. on Woodfin Street between the intersection of Central Avenue & Oak Street as per the event area limits referenced on the accompanying site map.

- Brother Wolf Animal Rescue has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at Howlin Halloween and allow for consumption at this event.

Howlin Halloween will be held on Saturday, October 31, 2015 from 12:00 p.m. – 4:00 p.m. at Carrier Park as per the event area limits referenced on the accompanying site map.

Pro:

- Allows fundraising opportunities for Arts 2 People, Asheville Downtown Association and Brother Wolf Animal Rescue

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 Lexington Avenue Arts & Fun Festival, Oktoberfest, and Howlin Halloween.

**RESOLUTION NO. 15-160 - RESOLUTION BOOK NO. 37 - PAGE 234**  
**RESOLUTION NO. 15-161 - RESOLUTION BOOK NO. 37 - PAGE 237**  
**RESOLUTION NO. 15-162 - RESOLUTION BOOK NO. 37 - PAGE 240**

**G. ORDINANCE NO. 4438 - FIRST READING OF AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO SPIRIT COMMUNICATIONS FOR INSTALLATION OF TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF ASHEVILLE**

Summary: The consideration of an ordinance granting a franchise to Spirit Communications pursuant to the City's Telecommunications Ordinance (3056).

The City of Asheville (City) adopted Article III of the Code of Ordinances (the Telecommunications Ordinance) in 2003 to provide for the granting of revocable and non-exclusive franchises to install telecommunications facilities in the City's right-of-way. Spirit Communications wishes to begin operations in Asheville and requires the granting of a franchise agreement under the Telecommunications Ordinance.

Most of the substantive terms applicable to this or any telecommunications franchise are set forth in the Telecommunications Ordinance, and Spirit Communications, by accepting the franchise, agrees to abide by the provisions of the ordinance. The main issues to be determined in connection with this particular franchise are the fee that the City will receive and the length of the franchise term.

*Franchise Fee:* In accordance with §4.5-85(a) of the City's Code of Ordinances, the grantee of any franchise shall pay a franchise fee or may provide non-monetary consideration including additional facilities and excess capacity to be reserved for the city's use.

With regard to a franchise fee, the Information Technology Services Department determined that a two-tiered fee structure based on density would reflect the value of the right-of-way in high density areas while encouraging the extension of service into under-served and less dense areas. Within the downtown area (defined as Charlotte/South Charlotte Streets on the east; Beaumont/Hilliard Streets on the south; Clingman/Haywood Streets on the west; and I-240 on the north), the rate is proposed to be \$.10 per foot per month for each linear foot of right-of-way used for the installation. Outside of this core area, the rate drops to \$.02 per foot per month. In lieu of an estimated fee of approximately \$10,000/year for the proposed installation of approximately 3 miles of fiber running from the intersection of Charlotte St and I-240 along College Street and ending up at the West Gate Mall area, Spirit Communications has agreed to provide the City with the exclusive use of 8 strands of fiber. The estimated value of this fiber is over \$90,000. Spirit Communications also has agreed to provide 8 strands of fiber in all subsequent fiber build requests.

*Franchise Term:* Spirit Communications has requested a 10-year term, renewable for two 10-year terms, unless either party terminates.

*Installation:* Pursuant to §4.5-85(d), any installation relative to a franchise in the public rights-of-way must submit a construction plan and receive approval from the City Engineer.

Considerations:

1. This will be the City's fourth franchise agreement of this type.
2. The City has the obligation to protect and preserve its right-of-way for public use, and the right to expect fair compensation for its use by profit-making enterprises. The compensation that we receive should be fair and equitable, and we may not prefer one provider over another.
3. There is significant public interest in enabling telecommunications providers to provide their service, and especially to enable, or at least not obstruct, provision of such service to less densely populated and underserved areas.

In lieu of an estimated fee of approximately \$10,000/year for the proposed installation of approximately 3 miles of fiber running from the intersection of Charlotte St and I-240 along College Street and ending up at the West Gate Mall area, Spirit Communications has agreed to provide the City with the exclusive use of 8 strands of fiber. The estimated value of this fiber is over \$90,000. Spirit Communications also has agreed to provide 8 strands of fiber in all subsequent fiber build requests.

Staff, recommends that Council grant a franchise to Spirit Communications by adoption of the ordinance, will be available to assist in determining options relative to the proposed fee schedule and the term if requested by Council. Since this is a franchise ordinance, a second reading of it will be required which will occur during the September 8 Council meeting, after which Council will be in the position to act.

**ORDINANCE BOOK NO. 30 - PAGE 90**

**H. RESOLUTION NO. 15-164 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PATTON CONSTRUCTION GROUP INC. FOR THE HAYWOOD ROAD MULTIMODAL IMPROVEMENTS PROJECT**

**ORDINANCE NO. 4439 - BUDGET AMENDMENT FOR THE HAYWOOD ROAD MULTIMODAL IMPROVEMENTS 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 \$243,750.00 plus a contingency of

15% (\$36,562) with Patton Construction Group, Inc. for the project known as Haywood Road Multimodal Improvements, City of Asheville Project # ENG-12-13-013; and (2) a budget amendment in the amount of \$82,128 from debt proceeds to fully fund the contract and the contingency.

Haywood Road is a busy corridor with vehicular, bicycle and pedestrian traffic. The existing infrastructure is insufficient to handle the growing demands of the area. Partnering with the City in making multimodal improvements on Haywood Road, New Belgium Brewery has donated \$50,000 to the project. The project was advertised on July 15, 2015 and on August 6, 2015, bids were opened with the following results:

- |  |           |
|--|-----------|
| 1. Patton Construction Group, Inc., Asheville, NC        | \$243,750 |
| 2. Armen Construction LLC, Charlotte, NC                 | \$255,630 |
| 3. Moore and Son Site Contractors, Inc., Mills River, NC | \$261,550 |

Patton Construction Group, Inc., of Asheville NC, was the lowest responsible bidder with a bid of \$243,750. A 15% contingency (\$36,562) has been added to allow payment for any unforeseen costs that typically arise during construction.

Pros:

- Will construct approximately 1,700 linear feet of new sidewalk within the Asheville City limits.
- Creates a new bike lane from Craven Street to Beecham's Curve.
- Improves pedestrian and bike safety.
- Encourages walking and biking, thereby reducing carbon emissions.
- Will create a needed linkage between West Asheville and the River Arts Districts.
- New Belgium Brewery donated \$50,000 towards the project.

Cons:

- Project management and contract administration will consume staff time.

The contract (\$243,750) and the 15% contingency (\$36,562) total \$280,312. From the original project budget of \$220,000, there is currently a remaining balance of \$198,184. The budget amendment will increase the project budget by \$82,128. With a twenty year amortization schedule for the debt, this budget amendment will have a negligible impact on future annual debt service payments.

City staff recommends City Council adopt (1) the resolution awarding the contract to Patton Construction Group, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$243,750.00 PLUS a contingency of 15% (\$36,562) with Patton Construction Group, Inc. for the project known as Haywood Road Multimodal Improvements, City of Asheville Project # ENG-12-13-013 and further authorizing the execution any change orders to said contract which may arise during construction of said project up to the budgeted amount of \$280,312; and (2) a budget amendment in the amount of \$82,128 from debt proceeds to fully fund the contract and the contingency.

**RESOLUTION BOOK NO. 37 - PAGE 243  
ORDINANCE BOOK NO. 30 - PAGE 103**

**I. RESOLUTION NO. 15-165- RESOLUTION AUTHORIZING THE CITY  
MANAGER TO NEGOTIATE AND EXECUTE A CHANGE ORDER WITH  
COLEJENEST & STONE FOR THE CRAVEN STREET IMPROVEMENTS  
PROJECT**

**ORDINANCE NO. 4440 - BUDGET AMENDMENT FOR THE CRAVEN STREET  
IMPROVEMENTS PROJECT**

Summary: The consideration of (1) a resolution authorizing the City Manager to negotiate and execute a change order in the amount of \$195,052.50 to the previously approved contract with ColeJenest & Stone for professional services for the Craven Street Improvements project for completing the design and construction administration of the project; and (2) a budget amendment in the amount of \$195,052.50 from debt proceeds to provide sufficient budget authorization for the change order.

On June 12, 2012, City Council approved a contract in the amount of \$852,604 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 adding the following complete street facilities: bike lanes, sidewalks, stormwater improvements, stream stabilization, a greenway section, trailhead and public parking areas. The City had previously selected ColeJenest & Stone through a Request for Qualifications process in which 14 other teams had submitted. This change order will increase the original contract amount by \$195,052.50 to \$1,047,656.50.

The City currently has four funding partners on this project: Golden Leaf Foundation at \$300,000, the US Department of Commerce at \$1.12M, and the NC Clean Water Management Trust Fund through RiverLink at \$365,000, and the latest funding partner, Buncombe County Tourism Development Authority at \$160,000. The remaining cost of the project will be paid through the Stormwater, Water, and Parking Funds and General Fund debt proceeds.

As the construction project has progressed there have been many challenges that have resulted in additional services required by the professional services team. The project area is a Brownfield site and special requirements are necessary in dealing with the construction activities associated. Staff and the professional services team have worked diligently to stay within the existing budget. As the site conditions change, additional professional services outside of the original scope are needed.

As this site is a Brownfield, the material must be either hauled off site to a permitted landfill in Lenoir, or the material must be utilized within the existing footprint of the Brownfield site. New Belgium Brewing has worked diligently with City Staff to find locations for as much of the material as possible on their site. If the City has to transport this material off site, the cost is estimated at \$500,000. City staff, New Belgium Brewing and the Clean Water Management Trust Fund have partnered to find a solution to keep this material on site by creating an earthen berm where a proposed stormwater bio-swale was designed to go. The partnership will still incorporate a stormwater component in an oversized pipe (stormwater quantity) and a filter system at each drop inlet. By incorporation this into the project, new designs are necessary.

Additional professional services are needed to re-design the trail head to shift away from a potential future Craven Street Bridge Improvement that will support critical bicycle and pedestrian facilities and fulfill Council's resolution to address truck traffic issues in the area.

As the project had developed, additional services have been identified for the design, construction inspection and material testing of the project. As this is a Brownfield site, specialized construction activities have taken longer than originally anticipated requiring inspectors on site more.

Pros:

- Allows the project to continue to move forward and meet the opening date of operation for our partner New Belgium Brewery of December 2015
- Provides additional professional services necessary for the completion of the project which includes a complete street approach to roadway design, provides a greenway linkage, installs bike lanes, provides parking facilities and improves stormwater management

- Allows the City to be sustainable by maintaining as much of the Brownfield material on site as possible and not hauling that material away to a permitted landfill.
- Continue to be proactive in leveraging partnerships for the ongoing project.

Con:

- The project management and contract administration will consume staff time and City Funds

The total additional professional services amount is \$195,052.50. A budget amendment in this amount is included with the change order resolution. The City's share of the cost of the Craven Street Improvements project is being funded with debt proceeds. This budget amendment will increase the amount that the City borrows by \$195,052.50. With a likely amortization period of twenty years on this debt, the impact on future annual debt service payments of this budget amendment are minimal.

The consideration of 1) a resolution authorizing the City Manager to negotiate and execute a change order in the amount of \$195,052.50 to the previously approved contract with ColeJenest & Stone for professional services for the Craven Street Improvements project for completing the design and construction administration of the project; and 2) a budget amendment in the amount of \$195,052.50 from debt proceeds to provide sufficient budget authorization for the change order. The total professional services contract is not to exceed \$1,047,656.50.

**RESOLUTION BOOK NO. 37 - PAGE 244  
ORDINANCE BOOK NO. 30 - PAGE 105**

**J. RESOLUTION NO. 15-166 - RESOLUTION RATIFYING AN AGREEMENT WITH PATTON CONSTRUCTION GROUP FOR EMERGENCY REPAIRS TO A FAILED DRAINAGE SYSTEM AT ON CITY-OWNED REAL PROPERTY LOCATED AT 174 S. CHARLOTTE STREET**

**ORDINANCE NO. 4441 - BUDGET AMENDMENT FOR EMERGENCY REPAIRS TO A FAILED DRAINAGE SYSTEM ON CITY-OWNED REAL PROPERTY LOCATED AT 174 S. CHARLOTTE STREET**

Summary: The consideration of a resolution ratifying an Agreement between the City and Patton Construction Group for emergency repairs to a failed drainage system causing a hole on City owned real property and a budget ordinance amendment, in the amount of \$190,233 to set up a project budget for the contract and the 15% contingency, with 50% of the funding coming from White Labs and the remaining amount coming from reserves in the Stormwater Fund and the Water Resources Fund.

On July 15, 2015, the City of Asheville was notified of a failure in the storm drainage system, resulting in a large hole, had formed on City owned real property, known as the Water Maintenance Facility, located at 174 S. Charlotte Street, currently leased to White Labs. The hole was due to the rock culvert failure on this property. Public Work staff immediately met onsite with three contractors to assess the urgency and provide bids. As heavy rain continued to fall, the hole grew, placing the Water Maintenance Facility along with equipment located therein, in dire jeopardy of being flooded and public safety compromised.

Immediately thereafter, two of the three contractors provided the City with bids:

- Patton Construction Group, Arden, NC \$101,250\*
- Steppe Construction, Mills Springs, NC \$182,300

\*Please note that additional unforeseen items have been added to the contract to increase the amount to where it is today versus where we originally bid it.

The City entered into a contract with Patton Construction Group, who was the lowest responsive and responsible bidder. Patton was authorized to move forward with the construction of the repair and instructed to open the hole at the failed drainage system in order to allow the stormwater to flow-into the existing closed system. The repairs included realigning the drainage system to minimize conflict with White Labs' future silos and improve the hydraulic capacity of the system. Staff has proposed to tie into the existing system with two manholes joined by approximately 80 feet of 54" reinforced concrete pipe and abandoning the previous connection and to also provide for future connections of the existing system. Once this is complete the area is to be backfilled and the parking area repaved.

The current repairs were the minimum needed to mitigate the present, immediate and existing emergency. However, a more permanent fix is warranted. City Staff and representatives from White Labs have communicated about the Project and also have discussed the requirement for a Phase Two to support the emergency repairs and provide a more permanent and long term fix, that will be based upon an engineering analysis of the drainage system, with every effort having been made to incorporate the emergency repairs into a larger, more holistic future permanent repair project.

The total cost of the emergency contract with Patton Construction is \$165,420 with a contingency of \$24,813, for a total project cost of \$190,233. White Labs has agreed to pay 50% of the actual costs for repairs. The remaining 50% will be paid from the Stormwater and Water Resources Funds.

Pros:

- Remove a potential liability issue from the City's stormwater system and protect the public's safety.
- Improve hydraulic capacity of the system.
- Continue a partnership with White Labs

Con:

- Unforeseen financial obligations to fund project.

As noted above, the City will pay 50% and White Labs will pay 50% of this project. The City's portion of the budget, which totals \$95,116.50, will be shared equally between Stormwater and Water funds by appropriating reserves in those two funds.

City staff recommends City Council ratify the contract between the City and Patton Construction Group for emergency repairs to City-owned property located at 174 S. Charlotte Street, and a budget amendment in the amount of \$190,233 to set up a project budget for the contract and the 15% contingency, with 50% of the funding coming from White Labs and the remaining amount coming from reserves in the Stormwater Fund and the Water Resources Fund.

**RESOLUTION BOOK NO. 37 - PAGE 245  
ORDINANCE BOOK NO. 30 - PAGE 107**

**K. RESOLUTION NO. 15-167 - RESOLUTION AUTHORIZING THE CITY  
MANAGER TO ENTER INTO A CONTRACT WITH RIVERTOP CONTRACTING  
INC. FOR THE FISCAL YEAR 2016 DOWNTOWN CLEANING PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to execute, on behalf of the City of Asheville, a contract in the amount of \$250,026 PLUS a contingency of 15% (\$37,504) with Rivertop Contracting Inc. for the project known as Downtown Cleaning – Fiscal Year 2016, City of Asheville Project #DC-16-01, and further authorizing the execution of any

change orders to said contract which may arise during execution of said project up to the budgeted amount of \$300,000.

The project was advertised on June 12, 2015, and bids were opened on July 15, 2015, with the following results:

Perfection First Services, Marion NC	\$48,080 (Bidder withdrew bid)
Diversified Industry Services, Albany, GA	\$83,718 (Bidder did not sign several forms)
Rivertop Contracting, Inc. Swannanoa, NC	\$250,026
Treece Pressure Washing, Inc. Ringgold, GA	\$256,260
Appalachian Paving and Concrete, Swannanoa, NC	\$305,120

The contractor will pressure wash sidewalks in the Central Business District. The contractor will also pressure wash City owned street furniture and garbage cans in the Central Business District. This will be the third year that this contract is in place. In addition, the contractor will remove weeds and other undesirable vegetation from City owned sidewalks, curblines and tree grates. This will be the first year that undesirable vegetation removal is included as part of the contract.

The City may elect to renew the contract for two additional one year periods.

Pros:

- Will result in the most heavily used areas of the CBD being pressure washed completely 4 times in the life of the contract and the lesser used areas being pressure washed completely 2 times in the life of the contract.
- Will result in undesirable vegetation being removed from City sidewalks, curblines and tree grates

Con:

- Project management and contract administration will consume staff time.

\$300,000 was budgeted for Downtown Cleaning in the general fund. This amount was approved by City Council and included in the Fiscal Year 2015-2016 budget.

City staff recommends City Council adopt the resolution awarding the contract to Rivertop Contracting Inc. and authorizing the City Manager to execute, on behalf of the City of Asheville, a contract in the amount of \$250,026 PLUS a contingency of 15% (\$37,504) with Rivertop Contracting, Inc. for the project known as Downtown Cleaning – Fiscal Year 2015, City of Asheville Project #DC-16-01 and further authorizing the execution of any change orders to said contract which may arise during execution of said project up to the budgeted amount of \$300,000.

Councilman Davis was pleased that the vegetation removal from City owned sidewalks, curblines and tree grates will be a part of this contract as it will make a huge difference.

**RESOLUTION BOOK NO. 37 - PAGE 246**

**L. RESOLUTION NO. 15-168 - RESOLUTION TO ACCEPT ADDITIONAL EMERGENCY SOLUTIONS GRANT FUNDS TO EXPAND EXISTING RAPID REHOUSING PROGRAM**

**ORDINANCE NO. 4442 - BUDGET AMENDMENT FOR THE RAPID REHOUSING PROGRAMS FROM THE EMERGENCY SOLUTIONS GRANT**

Summary: The consideration of a resolution accepting additional 2014-2015 Emergency Solutions Grant (ESG) funds in order to expand existing Rapid Rehousing Program and increase

administrative support, and a budget amendment in the amount of \$40,188 to the budget for the Emergency Solutions Grant in the City's Special Revenue Fund..

City Council approved the acceptance of the 2014-2015 Emergency Solutions Grant in the amount of \$194,492 on November 11, 2014, on the recommendation of the Housing and Community Development Committee.

Additional funds in the amount of \$40,188 have been allocated to the City of Asheville by the State Division of Aging and Adult Services (DAAS), Housing and Homeless Unit. \$35,648 is available for Rapid Rehousing for Homeward Bound due to high performance of their existing program, and \$4,548 for administrative costs to the City of Asheville.

The Housing and Community Development Committee approved the recommendation of these additional funds at their August 18, 2015, meeting.

Pro:

- ESG funding is a key funding resource for emergency shelter, and is now becoming an important resource for rapid re-housing of persons experiencing homelessness.

Con:

- None noted.

Program funding is entirely from the US Department of Housing and Urban Development, through the State of North Carolina. Existing Community Development Division staff will administer the program. No general funds are requested to support this program.

City staff recommends City Council (1) accept these funds, and sub grant those funds to the agencies for the programs approved by the State Division of Aging and Adult Services (DAAS), Housing and Homeless Unit; and (2) adopt a budget amendment in the amount of \$40,188 to the budget for the Emergency Solutions Grant in the City's Special Revenue Fund.

**RESOLUTION BOOK NO. 37 - PAGE 247  
ORDINANCE BOOK NO. 30 - PAGE 109**

**M. ORDINANCE NO. 4443 - BUDGET AMENDMENT FROM INSURANCE  
RECOVERY FUNDS FOR A DAMAGED BUS SHELTER**

Summary: The consideration of a budget amendment in the Transit Capital Fund in the amount of \$9,421.10 from insurance recovery funds for a damaged bus shelter to utilize towards the repair of the bus shelter.

On March 8, 2015, a bus shelter located at the corner of Merrimon Avenue and Larchmont Road was damaged by a third-party and the City settled the property damage claim for \$9,421.10. The Transportation Department seeks to utilize the settlement funds to repair said bus shelter.

Pro:

- Provides funding for Transportation Department bus shelter repair.

Con:

- None.

The insurance recovery funds are held in the City Property & Liability Fund. Upon City Council approval, the funds will be transferred to the City Transit Capital Fund to be utilized to repair the bus shelter.



City staff recommends City Council adopt the budget amendment in the Transit Capital Fund in the amount of \$9,421.10 so funds may be applied towards bus shelter repairs located at the corner of Merrimon Avenue and Larchmont Road.

**ORDINANCE BOOK NO. 30 - PAGE 111**

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

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

**III. PRESENTATIONS & REPORTS:**

**A. LEGISLATIVE UPDATE**

**RESOLUTION NO. 15-169- RESOLUTION REQUESTING THE LOCAL DELEGATION OF NORTH CAROLINA GENERAL ASSEMBLY FOR THE CITY OF ASHEVILLE OPPOSE SALES TAX REDISTRIBUTION LEGISLATION**

Mayor Manheimer explained the passage of the sales tax redistribution legislation threatens to take an estimated \$1-3 Million in sales tax revenue from the City of Asheville, and asked for Council's support in adoption of a resolution opposing that legislation. Several cities across North Carolina have signed resolutions opposing this legislation.

Mayor Manheimer said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

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

Councilman Bothwell moved to adopt Resolution No. 15-169. This motion was seconded by Councilwoman Wisler and carried unanimously.

**RESOLUTION BOOK NO. 37 - PAGE 248**

**B. MAYOR'S COMMITTEE FOR VETERANS AFFAIRS**

Mr. Ron Kennedy, representing the Mayor's Committee for Veterans Affairs, briefed Council on their activities and urged the community to consider joining the Committee.

On behalf of City Council, Mayor Manheimer thanked Mr. Kennedy and Committee members for their efforts and hard work.

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING ON PROPERTY LOCATED AT 39 ELM STREET FROM COMMUNITY BUSINESS II DISTRICT TO COMMUNITY BUSINESS II DISTRICT/CONDITIONAL ZONING, WITH**

**CONDITIONS TO BUILDING SIZE, IMPERVIOUS AREA AND SETBACK, FOR THE CONSTRUCTION OF A 5-STORY HOTEL WITH PARKING**

At the applicant's request, Councilman Smith moved to continue this public hearing until November 10, 2015. This motion was seconded by Councilman Pelly and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING FOR PROPERTY LOCATED AT 960 AND 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND OFFICE DISTRICT/CONDITIONAL ZONING TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE OPERATION OF OFFICES AND OTHER USES WITHIN TWO EXISTING STRUCTURES**

**ORDINANCE NO. 4444 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 960 AND 966 TUNNEL ROAD FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT AND OFFICE DISTRICT/ CONDITIONAL ZONING TO COMMUNITY BUSINESS I DISTRICT/CONDITIONAL ZONING TO ALLOW FOR THE OPERATION OF OFFICES AND OTHER USES WITHIN TWO EXISTING STRUCTURES**

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone property located at at 960 and 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District and Office District/Conditional Zoning to Community Business 1/Conditional Zoning to allow the operation of offices and other uses within two existing structures. This public hearing was advertised on August 14 and 21, 2015.

Ms. Fields said that the applicant is requesting review of a conditional zoning submittal proposing to rezone property from RM-6 Residential Multi-Family Low Density District and Office District/Conditional Zoning to Community Business I/Conditional Zoning in accordance with Section 7-7-8 of the Unified Development Ordinance, to allow for the potential use of two properties/buildings for office, health and fitness, residential, low impact artist studios, and instructional services purposes.

The project site (PINs 9658.97-8942 and 9658.98-9020) consists of two separate lots, .212 and .649 acres in size. The properties are addressed 960 and 966 Tunnel Road East. The smaller parcel, 960 Tunnel Road, is currently zoned RM-6 (Residential Multi-Family Low Density District) and contains a vacant residential structure. The .649 acre parcel, 966 Tunnel Road, is zoned Office Conditional Zoning and contains a building that is used for offices and instructional services.

The applicant, Monmovin, LLC, proposes to continue to utilize the structure at 966 Tunnel Road for offices and instructional services (with the potential for residential use) as was established through a conditional zoning process that occurred in 2005. Additionally, they propose to renovate the structure at 960 Tunnel Road for potential use for offices, instructional services, health and fitness facilities, low impact artist studios, or residential purposes. The applicant is requesting rezoning of both parcels, to CBI CZ (Community Business I Conditional Zoning), to allow for this new development and to provide for shared parking and ingress and egress. The parcels will remain separate.

Access to the site is proposed off of Tunnel Road (ingress and egress) at the existing access point for Tract 2. It is proposed that a new access point (one-way, egress only) be established onto Governor's View Road. Eighteen parking spaces are proposed (8 existing) on the properties. An agreement will be entered into to allow for the use of additional spaces on the Groce United Methodist Church property across Governor's View Road. A raised pedestrian crosswalk with high visibility markings will be provided from the subject properties to the church parking area. There are existing sidewalks on Tunnel Road. A sidewalk will be provided along

the Governor's View Road frontage for Tract 1 and either a sidewalk will be constructed or a fee in lieu and 10 foot easement will be provided to the city for the remaining 160 linear feet of frontage along Governor's View Road.

Landscaping is required for this project and includes street trees, parking lot landscaping, and building impact landscaping on Tract 1. Primarily the landscaping on this tract is provided for with existing vegetation. Landscaping planted and required for the previous conditional zoning on Tract 2 is to remain, with the exception of the existing buffer between the properties and landscaping that is in conflict with the proposed egress onto Governor's View Road or any sidewalk construction. Open space is not required as the property is less than an acre in size.

This proposal was approved with conditions by the Technical Review Committee (TRC) on June 15, 2015. Most of the TRC comments have been addressed in the plans that are before the Asheville City Council.

The Asheville Planning and Zoning Commission reviewed this proposal at a meeting on July 16, 2015. At this meeting the commission voted unanimously (5-0) to recommend approval of the conditional zoning to Asheville City Council with conditions as presented (Exhibit B-1).

City Council will have the final review of the conditional zoning. It will return to the TRC for Final TRC review, if approved by Asheville City Council.

The applicant held a meeting for residents and property owners in the area on July 14, 2015, to introduce this proposal to the community. Those in attendance were generally supportive of the proposal.

Tract 2 is currently zoned Office CZ and the building on this parcel will continue to be limited to use for offices and instructional services (with the potential to be used for residential purposes). While properties to the north, east, and across Tunnel Road to the south are zoned residentially and contain single-family homes, the corner parcel (Tract 1) is wedged between the Office CZ parcel and a large place of worship (across Governor's View Road) which is adjacent to properties zoned Community Business I along Tunnel Road. Staff feels this property can be utilized for limited business uses without disturbing the surrounding residential area. Buildings on both properties will remain of a design and scale that is compatible with the residential structures found in the area.

The Planning and Zoning Commission recommended approval of the conditional zoning request with conditions as presented at their meeting on July 16, 2015.

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 adaptive reuse of a dilapidated residential structure for limited business purposes.
- The project has compliant parking on site but will provide a parking agreement with the neighboring place of worship to handle any potential overflow parking.
- The project is being designed to be compatible in design and scale with the residential structures found in the vicinity.
- The proposal will result in the loss of one dwelling unit (currently vacant and in need of repair) in the city.

Staff recommends approval of the proposed conditional zoning to allow for the renovation of one structure at 960 Tunnel Road for office, health and fitness, instructional services, residential, or low impact artist studio purposes with shared parking and ingress/egress with another structure at 966 Tunnel Road used for offices, instructional services, or residences. This

recommendation includes all conditions listed on Exhibit B.1 (which includes limitations on signage and hours of operation in addition to use).

Mayor Manheimer opened the public hearing at 5:40 p.m.

Ms. Terry Hasty, Vice-President and co-owner of MindSpring Consulting, Inc. explained their plans are to expand the leadership development for the WellSpring Wellness Center.

Mr. Allen Queen, property owner of 11 Bull Mountain Road, asked what other uses might be allowed within the two existing structures and why does 960 Tunnel Road look like it is being gutted.

Ms. Hasty responded to Mr. Queen and said that Precision Pilates will be moving their business into 960 Tunnel Road. And, that building will look very similar to the current property.

Urban Planner Julia Fields said that this is a conditional zoning and the site plan and conditions will be made a part of the ordinance. She then read the potential uses, from the conditions, noting that everything will remain residential in character.

Mayor Manheimer closed the public hearing at 5:47 p.m.

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

Councilman Pelly moved to approve the conditional zoning request of Monmovin, LLC for property located at 960 and 966 Tunnel Road from RM-6 Residential Multi-Family Low Density District and Office District/Conditional Zoning to Community Business I District/Conditional Zoning, and find that the request is reasonable, is in the public interest, and consistent with the Comprehensive Plan and other adopted plans in that (1) The proposed uses on the properties are limited in scope and additional parking, although not required, is provided for so as not to impact the surrounding residential areas; and (2) The proposal supports the goal found in the City's comprehensive plan of pursuing compatible adaptive reuse of properties. This motion was seconded by Councilman Bothwell and carried unanimously.

#### **ORDINANCE BOOK NO. 30 - PAGE 113**

#### **C. PUBLIC HEARING CONSIDER AMENDING SECTIONS 7-2-5, 7-8-1, 7-16-1(C)(9) AND 7-18-2(B) OF THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO THE DEFINITION OF "HOMESTAY" AND THE DISTRICTS IN WHICH HOMESTAYS ARE PERMITTED IN THE TABLE OF PERMITTED USES; THE STANDARDS REQUIRED FOR HOMESTAYS WHICH ARE DESIGNATED AS A USE BY RIGHT SUBJECT TO SPECIAL STANDARDS**

Mayor Manheimer clarified that City Council is considering an ordinance governing homestays. A homestay is where you rent out some portion of your home for a short period of time. Homestays have been legal in Asheville since 2006. The short term rental issue is not before City Council at this time. A short term rental is the renting of a stand alone home for overnight stays less than 30 days and those have been illegal in residential districts for many years. The City of Asheville does not the receive room tax and we don't get any more sales tax.

Principal Planner Shannon Tuch said that this is the consideration of an ordinance to revise and simplify existing regulations for Homestays to expand the opportunity to a greater number of residents in the City. This public hearing was advertised on August 14 and 21, 2015.

Ms. Tuch said that Asheville's appeal as a tourist destination has helped to support a growing interest in home based lodging as an alternative to visitors travelling to the area. While

Asheville does not allow a stand-alone vacation rental, it does allow a *Homestay* rental as an alternative. Both typically rent a residential home for periods of less than 30 days, however, the stand-alone rental is often an investment property that remains unoccupied (except by visitors) while the *Homestay* requires that the owner of the property, or a full-time resident, reside in the home with the guests.

With the amazing success and growth in the Air B&B, Vacation Rental by Owner (VRBO) and other internet reservation websites, the number of unpermitted short term rentals has skyrocketed in the last several years. This unregulated growth has resulted in numerous nuisance complaints raising concern in a city where quality of life in our residential areas is a top community priority. Another high priority in the City has been the preservation and creation of safe and affordable housing for all residents. The issue of short term rentals heightened awareness and concern over the lack of available rental housing in the area, and a consultant was hired to review this and other concerns and offer options for consideration. While the research into the short term rental market's impact on available housing was inconclusive, the report offered a number of other thoughtful considerations and sound research into the practices in other communities.

The proposed standards strive to achieve two things:

- 1) Clarify that a non-resident occupied short-term rental is prohibited in residential districts, and
- 2) Provide increased opportunity for residents in Asheville to operate resident occupied and run *Homestays* while protecting the character of the residential neighborhoods

(A third goal of supporting pro-active enforcement and increased penalties for violating the Unified Development Ordinance are addressed through a separate draft ordinance.)

Clarifying that non-resident occupied rentals are prohibited in residential districts is achieved primarily by amending the current definition of a *Homestay*. The current definition reads:

*Homestay* (formerly known as 'bed and breakfast homestay') means a private, owner occupied dwelling with one to three guest rooms where overnight accommodations and a morning meal are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building.

The amended definition reads as follows:

*Homestay* means a private, resident occupied dwelling, with up to three guest rooms where overnight lodging accommodations are provided to transients for compensation and where the use is subordinate and incidental to the main residential use of the building. A homestay is considered a "Lodging" use under this UDO.

This new definition clarifies that the renting of a residential dwelling to transients is considered a lodging use and can be classified as a *Homestay* only if it is a resident occupied, and resident run operation. If it is not resident occupied and run, then it is classified as a lodging facility which would not be allowed in residential districts.

The second goal is accomplished by updating and clarifying the development standards, and by removing existing standards that have proved difficult for a great number of residences to satisfy. The complete list of standards is detailed in the Ordinance but can be summarized as follows:

#### Removed

- 500-foot separation requirement
- Minimum home size
- Additional off-street parking
- Need to provide a morning meal
- Option for a full-time employee
- Option for signage

#### Added

- Urban Residential (UR) as a zoning district where the Homestay use will be permitted
- Only one homestay shall be permitted per lot/parcel
- Homestay may not be operated concurrently with a home occupation
- Must carry liability insurance for the homestay use
- Must pay all applicable taxes
- Must comply with all building codes
- Will be permitted and inspected annually

#### Retained/Clarified/Updated

- No displays of goods or services
- Manager/Operator of the Homestay shall be a full-time resident of the dwelling
- A maximum of 25% of the home may be used exclusively for the Homestay guests
- No activities other than lodging shall be allowed
- No accessory structures or dwelling units shall be used to accommodate guests
- Exterior lighting shall be residential in nature

In an effort to understand the position of the community at large, the City of Asheville has supported and held numerous public input sessions including three different meetings of the Planning and Economic Development Committee, a hearing at the Planning & Zoning Commission, and more recently, the Asheville City Council held a community forum on March 25, 2015. This forum allowed residents, through a variety of media, the opportunity to voice their opinions on the subject of a stand-alone rental, homestay, or other related issues. The Asheville City Council reviewed the results of these public discussions in the context of other city goals and priorities and provided staff direction at their meeting on May 12, 2015.

The Planning & Zoning Commission reviewed this amendment at their June 18, 2015, meeting where it was approved 4-2 (Ms. Carter & Mr. Koon opposed). A moderate amount of public comment included the following concerns:

- Commercial activity impacting the quality of life (harmony) in neighborhoods
- Problems with availability of on-street parking
- Loss of housing units
- Need for more public review and input
- Challenges to effective enforcement

The Commissioners also posed several questions, including:

- How will the inspection process work?
- What is the rationale for restricting the use of accessory units for guests?
- Are accessory units in a home treated differently than detached units? Why?

In response to these questions and some of the concerns raised, a Frequently Asked Questions page has been drafted.

This proposal was also shared with the Affordable Housing Advisory Committee at their August 6 regular meeting and whose members supported the clarification that no accessory dwelling units be used for the homestay operation. This sentiment was also supported by the Coalition of Asheville Neighborhoods when the proposal was shared at their August 10 regular meeting. The Coalition of Asheville Neighborhoods raised a number of other concerns including:

- On-street parking congestion
- The inability to enforce against large groups of unrelated people
- Removing the separation requirement or other consideration of another cap or limit
- The difficulty with enforcement, particularly ensuring that the operator is on-site

Increased opportunity for Homestays in Asheville will increase the number of applications placing a greater burden on staff resources. This combined with the effort to increase pro-active regulation and enforcement requires the addition of one full-time staff person. Estimated impact is approximately \$60,000.

This proposal is consistent with goals outlined in the Comprehensive Plan and City Council Strategic Plan, and because allowing and regulating homestays is a reasonable response to a social and economic phenomenon that effectively seeks to balance a variety of city adopted goals, Staff recommends approval of the wording amendment modifying *Homestay* standards with the following clarifications:

- 1) Clarify that no Accessory Dwelling Unit (ADU) may be used for either guest or host accommodations.
- 2) Remove language specifying that the owner/operator be on-site during "overnight accommodations".

As this proposal is consistent with goals outlined in the Comprehensive Plan and City Council Strategic Plan, and because allowing and regulating homestays is a reasonable response to a social and economic phenomenon that effectively seeks to balance a variety of city adopted goals, City staff recommends approval of the revised wording amendment modifying Homestay standards, as recommended by the Planning & Zoning Commission, with the following changes: (1) Sec. 7-16-1(c)(9)(c) shall read: *c. The homestay operation shall be managed and carried on by a full-time resident of the property; and* (2) Sec. 7-16-1(c)(9)(g) shall read: *g. No accessory structures or accessory dwelling units shall be used as any part of the homestay operation.*

In response to Mayor Manheimer, Ms. Tuch said that the ordinance reads that Homestays must be managed and carried on by a full-time resident property. She explained that a homestay operator is not required to own the home but must have the owner's permission to operate the homestay. She said that the language specifying that the owner/operator be on-site during "overnight accommodations" was removed because there was some concern that people would interpret that too strictly (physically present during every minute that the guest was there). So, "full-time" resident language was inserted.

In response to Councilwoman Wisler, City Attorney Currin said we changed the ordinance from owner-occupied to resident operator because that standard is to comply with state law.

When Councilman Pelly asked about the removal of the additional off-street parking, Ms. Tuch said that previously there was a requirement that they provide some off-street parking based on the number of bedrooms. That requirement is being removed. In discussing the most significant barriers for people obtaining a homestay permit, the off-street parking was more of the common ones. In order to make this an opportunity that is available to a larger number of residents in Asheville, a policy recommendation by the Planning & Economic Development Committee, and Council direction in May, was it would be best to remove the requirement.

Councilman Bothwell suggested clarity by rewording that a homestay may not be operated concurrently with a home occupation if the occupation requires a home occupation license.

In response to Councilman Bothwell, City Attorney Currin explained the rationale behind no kitchen facilities in homestays. The term "dwelling unit" is defined in the UDO as being an independent housekeeping establishment with separate toilets, and facilities for sleeping and cooking. A dwelling unit is not a homestay and cannot be rented for less than a month. Just having a kitchen or stove is very hard to regulate but when these components are added, the use becomes a dwelling unit and is a separate short term rental.

When Councilman Bothwell asked about the enforcement program, Ms. Tuch said that City Council supported an enforcement program which will consist of a full-time position (\$60,000) to perform proactive enforcement, both with permitting and inspections. That position is currently being advertised. After the rush of applications (which they may bring in another person to help), that position may be able to take on other work. The renewal of permit will be a more simplified, more expedited process. She was not sure about anticipated revenues associated with the permitting for homestays; however, permitting fees are intended to be cost recovery - what it would cost the City to actually review and administer the permit. All of our enforcement costs are not necessarily cost recovery. Our standard level on one permit is \$104.00

Councilman Davis asked if there has been thought given to grandfathering those people in who are currently operating a home occupation in a homestay. Ms. Tuch said that would be a policy decision on whether to craft language for a grandfather exemption.

Mayor Manheimer opened the public hearing at 6:25 p.m.

Leaving out comments regarding short term rentals, the following individuals expressed concern on the proposed homestay regulations as follows: restrict the homestays to owner-occupied; one full-time person is not adequate to manage the enforcement of homestay requirements; if kitchens are not allowed in homestays, that should be written into the ordinance; retain additional off-street parking; retain the 500-foot separation requirement; residents should not have to police the ordinance by complaints; with the revised definition of "homestays" individuals who own multiple properties in Asheville will now be allowed to utilize a resident property manager to operate homes as full-time commercial inns under the auspice of a homestay; proposed changes are insufficient to protect the residential character of neighborhoods; need for definition of "full-time resident" and provide a specific mechanism for verification of residency; no more than 25% of bedrooms, not square footage (which is unverifiable) be used exclusively for homestay guests; limit the number of annual stays; require off-street parking at the rate of 1 parking spot per bedroom rented out; prohibit signage advertising the homestay and prohibit the sale of goods; prohibit homestays in all single-family residential neighborhoods, in all low-density residential multi-family districts, and in all residential historic districts; reduce the maximum number of guest rooms from 3 to 2; reduce the maximum number of lodgers at one time to 2; need thoughtful approach on additional burdens on infrastructure; homestay rules need to stand up in court; wealthy people will find loopholes in the ordinance; accessory dwelling units should be allowed to be used as a homestay; possible future decrease in property values; housing units should be for those who live and work in Asheville; possibly consider allowing accessory dwelling units on a case by case basis; and reinsert the phrase that the full-time resident that manages the property must be present during overnight stays:

Geneve Bacon  
Barber Melton, representative of the Coalition of Asheville Neighborhoods  
Stuart Alford  
Jane Mathews  
Alice Helms



Carole Saltzman  
Leon DeJournatt  
Jeff Johnson, read letter by Rita Hayes  
Sue Schweikart, President of the Five Points Neighborhood Association  
Brandee Boggs  
Mike Lewis  
Helen Powell-Busch  
Patricia Lord  
Doris Sgan  
Doug Ellingson  
Bob Pierce  
Ann Walsh  
David Rodgers  
Pamela O'Connor  
Iz Webb  
Ron Carlson  
Julie Nelson  
A resident on Craig Circle  
Andrew Lawler  
Michael Greene

Mr. David Nutter, Montford resident, felt there are two sets of values in this case - a well-regulated amount of Internet-based lodging can improve the connectivity with the broad world and help protect us from civic and fiscal damage in the face of serious opposition by the State vs. the traditions of localness, authentic neighborhoods, history and character and stability that we must preserve. He felt the two actually support each other.

Lisa Shoemaker, representative of Asheville Sharable Short Term Rental Association, supported the proposed homestay regulations.

Leaving out comments regarding short term rentals, the following individuals felt City government should not be involved in this process or be told what they can do with their properties:

Laurie Fisher  
Christopher Chiaromonte  
Brian Monteleone  
William Stanhope  
Greg Meade

Mayor Manheimer closed the public hearing at 8:26 p.m.

Vice-Mayor Hunt recommended we continue this discussion and provide staff with additional policy direction before a vote is taken. He noted there are compelling arguments on both sides. He explained his results from his research from other cities to see how other communities are addressing this issue. He asked that staff do further research to help ensure that the ordinance we pass meets the test of casual and incidental and not commercial. He suggested staff revisit the number of bedrooms; number of nights per year; limit the number of guests in any one homestay; definition of "full time resident"; reconsider whether the phrase full-time resident that manages the property should be present during overnight stays; and revisit the elimination of off-street parking. He said that enforcement is important and we need to move forward with that piece. He has found from his research that cost of enforcement was more than they anticipated, so he wanted to be sure that the cost of the permits cover the amount we need to enforce the regulations.

City Attorney Currin said that if a motion is made today to continue this matter without a date certain, it will need to be re-noticed for another public hearing. If moved to a date certain, it will depend on how extensive the amendments are that it might be required to go back to the Planning & Zoning Commission for review.

Councilman Bothwell suggested one way to address the question of commercial interests moving in and establishing resident managers might be to only allow one permit per land owner. He felt that accessory dwelling units should be allowed to be homestays, especially since we are encouraging people to build them. He continued to be concerned that we don't allow a kitchen facility in a homestay. He said that in every city he has researched, the enforcement is complaint-based. He felt the enforcement piece needs to be revisited.

Mayor Manheimer said that one purpose of living in a city is to have the protection of zoning. It protects your investment. We can argue what kind of zoning or what kind of regulation is appropriate; what serves to protect your interest; and what is too much of an intrusion on your life and how you want to run your home. We need to try to find that balance to ensure that we have the integrity of our neighborhoods, since our great sense of community is in large part to our neighborhoods. She is very much concerned about protecting the integrity of our neighborhoods, and wondered how we can make a decision that looks more broadly at the whole picture in Asheville. The City hired the School of Government to do a study to look at other cities and how they handled this issue. From research, she learned that Asheville has more short term rentals (the term captures homestays and short term rentals) on-line than any other city in North Carolina by hundreds. She felt this is a major issue for our community. No one knows what the long-term effect will be for these in Asheville. Another community similar to ours (Duluth, Minnesota) allows short term rentals and they recently had a Council meeting where they were trying to decide whether or not to have a moratorium because it had gotten so out of control. They permitted 30 and had 50 on-line. They were worried that 20 of them were advising on-line and weren't permitted. Asheville has 900. We do not want to get our ordinance wrong. Using the example of visiting the beach, every single house is a rental and people rent one a week. No one knows each other but the owners are making a mint. It's just a resort community - it's not a community where people raise children, or a place where you know your neighbor. She wanted to balance the private interest of what you should be able to do with your house with the broad interest of preserving the integrity of the community. She feels that homestays do provide an opportunity for people to afford to live in their home that need other means of providing some income, but crafting that ordinance is difficult. We are close to getting it right, but we need to look at making sure we prevent the commercialization. She was not interested in limiting the nights per year or the number of bedrooms or the number of guests. She felt we accomplished that through the maximum of 25% of the home rule. She did think we need to revisit looking at whether to require off-street parking. This is a very serious issue for our community and we need to look thoughtfully at it.

Councilwoman Wisler supported a slower approach. She felt we are moving in the right direction, but would like to revisit the removal of additional off-street parking; craft a definition of a "full-time resident;" look at whether the phrase full-time resident that manages the property should be present during overnight stays; revisit the number of guest rooms. She did want enforcement of what is currently on our books more rigorously than we have.

Councilman Smith wanted locals who need housing to be able to find it and for them to have direct access to some of these tourist dollars. What he didn't want is predatory investors to gobble up our neighborhoods and our housing stock, which is happening in other cities. Let's not pretend it won't happen here. Investors who are seeking to buy up housing are ready to kick out renters, and we need to consider them. Air B&B, VRBO and other internet reservation websites are multi-billion dollar corporations who don't care about Asheville, so we have to take care of ourselves. He felt this issue is too big to get wrong and supported taking a go slow approach. He is open for this to look different, but the bottom line is we have to protect ourselves from the predators and offer some of these opportunities to locals.

Councilman Davis felt that taking time to make the right decision is important. He also noted that Buncombe County collects the hotel/motel tax and then it goes to the State to be redistributed. The Buncombe County Tourism Development Authority received their first check from Air B&B and he will be interested in seeing that amount.

Councilman Bothwell calculated that if there are 900 short term rentals within the City limits it's 1.6% of the houses in the City, so it's not an enormous problem at present.

Councilman Pelly also agreed this is this s complex issue. He too has heard the valuable contributions for homestays, but also heard clear from the neighbors that zoning should mean something and that the integrity of the neighborhood should be protected. He did not think we should make property owners police the ordinance.

Regarding any amendments, Vice-Mayor Hunt hoped they would be in place in advance of next spring and summer, which would be helpful to the people operating homestays.

Vice-Mayor Hunt wanted to reaffirm that the majority of Council wants to move away from purely reactive complaint driven enforcement to something more proactive.

Vice-Mayor Hunt moved to defer consideration. This motion was seconded by Councilman Bothwell and then carried unanimously.

### **Closed Session**

During the lengthy public hearing, Mayor Manheimer announced a closed session during the Council's break. Therefore, at 7:26 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(3). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1); (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); and (3) To discuss matters relating to the location or expansion of industries. The statutory authorization is contained in N.C. Gen. Stat. § 143-318.11(a)(4). This motion was seconded by Councilman Pelly and carried unanimously.

At 7:58 p.m., Councilman Smith moved to come out of closed session. This motion was seconded by Councilman Bothwell and carried unanimously.

### **D. PUBLIC HEARING TO CONSIDER AMENDING SECTION 7-18-2(B) OF THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO THE CIVIL PENALTIES FOR VIOLATIONS OF THE CITY'S ORDINANCES RELATING TO THE USE OF RESIDENTIAL STRUCTURES FOR A LODGING USE**

#### **ORDINANCE NO. 4445 - ORDINANCE TO AMEND SECTION 7-18-2(B) OF THE UNIFIED DEVELOPMENT ORDINANCE RELATING TO THE CIVIL PENALTIES FOR VIOLATIONS OF THE CITY'S ORDINANCES RELATING TO THE USE OF RESIDENTIAL STRUCTURES FOR A LODGING USE**

Principal Planner Shannon Tuch said that this is the consideration an ordinance to consider amending Section 7-18-2(b) of the Unified Development Ordinance relating to the civil penalties for violations of the city's ordinances relating to the use of residential structures for a lodging use. This public hearing was advertised on August 14 and 21, 2015.

A. Summary of City's authority to access civil penalties for violations of its ordinances.

The General Assembly grants the City the authority to enforce its ordinances, including zoning ordinances, by assessing fines and civil penalties for ordinance violations. Penalties for a violation of that ordinance. The General Assembly does not determine the amount of the civil penalties assessed for violations of the City's ordinances, but instead, defers to the City to decide what amount is appropriate. The City has the discretion to determine what amount is reasonable to deter violations, encourage compliance and enforce its ordinances.

B. Asheville's ordinances relating to the use of a residential structure for a Lodging Use.

The UDO addresses and regulates certain "Lodging Uses," including but not limited to "Lodging Facilities" and "Homestays."

The UDO defines "dwelling unit" as follows:

one or more rooms physically arranged so as to create an independent housekeeping establishment for occupancy by one family with separate toilets and facilities for cooking and sleeping. In no case shall a dwelling unit be rented or leased for intervals of less than one month.

See UDO Section 7-2-5 (definition of a "dwelling unit."). A "dwelling unit" rented or leased for less than one month does not fall within the definition above, therefore, is considered a "Lodging Facility" under the UDO. Pursuant to UDO Section 7-2-5, a "Homestay," is a resident occupied dwelling, in which rooms are rented to guests for overnight lodging. See UDO Section 7-2-5 (definition of a "homestay"); Section 17-16-1(c)(9) (special requirements for homestays in certain districts).

Currently, if a person violates the ordinances set forth above he or she is subjected to a penalty in the amount of \$100.00 per day, for each day the violation continues. See UDO Section 7-18-2(b). This penalty, however, has proved to be an ineffective method to enforce these ordinances and to deter violations. Specifically, due to the proliferation of internet lodging websites, such as Air BnB and Vacation Rental by Owner, dwelling units illegally used as Lodging Facilities and Homestays, often provide the owners with rates far in excess of the \$100.00 per day fine. City enforcement staff reports that violators are willing to pay the fine because the illegal lodging uses still provide sufficient profit to justify the violation. As a result, the current penalty has not proved to be a deterrent. Increasing the daily penalty to \$500.00 per day would not allow violators to benefit (or will at least decrease the benefit) from disregarding the requirements of the UDO.

By deterring violations and promoting enforcement, the proposed amendment will further the Comprehensive Plan and other adopted plans, because it will preserve residential neighborhoods, ensure neighborhood compatibility, and protect against non-residential encroachment.

For the reasons set forth above, staff recommends increasing the civil penalty for violations relating to the use of residential structures for a Lodging Use; including: 1) the renting or leasing of a dwelling unit for less than one month; and 2) the use of property as a Homestay, to \$500.00 per day. Given the nature of the offense and the City's goal to deter violations of these ordinances, a \$500.00 per day fine is reasonable.

This amendment was reviewed by the Planning & Zoning Commission at their June 18, 2015, meeting where it was approved unanimously (6-0).

Pros:

- Complies with the City's authority under N.C. Gen. Stat. § 160A-175 to assess civil penalties for violations of the City's ordinances.
- Proposed fine is more reasonably related to the nature of the offense.
- Allows more effective enforcement of the City's ordinances.
- More efficiently deters violations.

Con:

- None noted.

Staff recommends approval of the text amendment to the UDO which revises Article XVIII, Section 7-18-2(b) to increase the fine for violations of the City's ordinances regulating and restricting the use of a residential structure for certain Lodging Uses.

Mayor Manheimer opened the public hearing at 9:06 p.m.

Leaving out comments regarding short term rentals, the following individuals spoke in opposition of the increase of the fine for violations, some requesting this action be deferred until the homestay amendment is adopted:

Arwen Hawes  
 Stuart Tait  
 Melissa Crouch  
 Brandee Boggs  
 Michael Greene  
 Julie Nelson  
 Carol Saltzman  
 Patricia Lord  
 Paul Heathman

Leaving out comments regarding short term rentals, the following individuals spoke in support of increasing the penalty and encouraged proactive enforcement:

David Rodgers  
 Derek Wiles  
 Jane Mathews

Mayor Manheimer closed the public hearing at 9:29 p.m.

Vice-Mayor Hunt felt it's clear that City Council will not move to allow short term rentals, and there is direction for staff to amend the homestay ordinance. In May, Council agreed to step up enforcement and directed staff to increase the fines to \$500. He felt we need to move forward in a seriously way.

In response to Vice-Mayor Hunt, Ms. Tuch said that the enforcement process always begins with a notice of violation (sent to the tenant and property owner), informing the property owner that a violation has been discovered, what the violation is, and an invitation to discuss how to cure the violation. There is a 30-day period of time to cure the violation, and at times they have extended that 30 days to add an additional 30 days. It's only after that, if they fail to comply that any citations are considered. Fines are not common. We pride ourselves about bringing properties into compliance without fines, but when it is necessary, having it is an effective tool.

In response to Councilman Smith on how staff follows-up to make sure the violation is cured, Ms. Tuch said that it depends on the circumstances. In some instances, the short term rentals have adjusted their occupation and they either get a homestay permit, they shut down the operation and turn it back into a long-term rental, or find some other solution. Staff makes sure

the website is closed and might ask for an Affidavit stating that the operation is shut down. City Attorney Currin also said there is the ability to appeal to the Board of Adjustment within the first 30 days.

In response to Vice-Mayor Hunt, Ms. Tuch said that the enforcement has been on a case by case basis. We have approximately 28 cases in the last 6-9 months. Some of the 28 cases have been resolved, and two or three of the 28 had to pay the citation.

Councilman Davis wasn't sure we have a big problem, but felt better that they are getting a notice of violation and an opportunity to correct.

Councilman Bothwell expressed concern with how the violation days would be determined. He noted that Council is not united on this amendment. He felt we should legalize license, inspect and regulate short term rentals than stalk the internet. He felt we are aiming for an enforcement policy that will be ineffective and really hurt a few people who get caught.

Councilman Pelly wanted to see how this fits into the full context of the proposed homestay ordinance.

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

Councilman Smith moved to approve the text amendment to the UDO which revises Article XVIII, Section 7-18-2(b) and find that the amendment is reasonable, in the public interest and is consistent with the Comprehensive Plan and other adopted plans because the amendment: a) will more efficiently deter UDO violations and improve enforcement; b) will preserve residential uses in residential areas of the City; and c) will ensure neighborhood compatibility and non-residential encroachments. This motion was seconded by Councilwoman Wisler and carried on a 5-2 vote, with Councilman Bothwell and Councilman Pelly voting "no".

## **ORDINANCE BOOK NO. 30 – PAGE 120**

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

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

#### **A. CONFIRMATION OF THE PLANNING & ZONING COMMISSION CANDIDATE ESSAY QUESTIONS AND DEADLINE TO ACCEPT APPLICATIONS EXTENDED**

It was the consensus of City Council that all applicants, including the incumbents, respond in writing to the following five questions: (1) Please take time to review the City's 2025 Plan land use plan. How strongly does your own vision align with that plan, and in what ways might it differ?; (2) Name one Planning & Zoning Commission decision in the last 18 months you've agreed with and one you've disagreed with or would have struggled with. Please explain your rationale for each; (3) What are some of the positive or negative effects of Asheville's zoning regulations?; (4) How has existing zoning promoted/inhibited the construction of affordable housing in Asheville? What changes could be made to further the creation of affordable housing?; and (5) Are there any changes to the City's processes, including but not limited to public input, for addressing zoning changes that you would like to see made?

Councilman Bothwell moved to confirm the Planning & Zoning Commission essay questions. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

City Council, with a focused interest in effective public engagement, wanted to ensure that the applicant pool represents a broad cross section of the community, and therefore, it was

the consensus of Council to re-opened the application process, with a deadline of Tuesday, September 29, 2015.

After the deadline and all written responses have been received, the City Clerk will send all responses to City Council to narrow the field for interviews. Those interviews will take place in the afternoon of October 27, 2015, with appointments to be effective immediately.

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

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 9:51 p.m.

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CITY CLERK

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MAYOR