

Tuesday – September 22, 2015 - 5:00 p.m.

Regular Meeting

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

Absent: Mayor Esther E. Manheimer

PLEDGE OF ALLEGIANCE

Vice-Mayor Hunt led City Council in the Pledge of Allegiance.

I. PROCLAMATIONS:

A. EMPLOYEE RECOGNITIONS

City Manager Jackson recognized Lt. Bradley Duncan, Station 11; Engineer Adam Hurdt, Station 11; Sr. Fire Fighter Justin Baker, Station 2; Sr. Brad Maselbas, Station 2; Abby Moore – NC Association of Hazardous Materials Responders Outreach and Education Chair coordinated the team organization; and Chief Joy Ponder – Member of the NCAHMR was the team leader at the Challenge, for coming in first place in the Twelfth Annual "HAZMAT CHALLENGE." This competition allows teams to practice typical HazMat responses while competing against colleagues from across the State of North Carolina. This year eleven teams competed with the Asheville Hazardous Materials Regional Response Team # 6 won first place.

Vice-Mayor Hunt thanked the employees on what they do on behalf of the City of Asheville and City Council. She was proud of City staff and looked forward to highlighting more accomplishments.

II. CONSENT AGENDA:

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

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 8, 2015

B. RESOLUTION NO. 15-182 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR A REGIONAL LAW ENFORCEMENT LIAISON

ORDINANCE NO. 4450 - BUDGET AMENDMENT TO ACCEPT FUNDS UNDER THE N.C. GOVERNOR'S HIGHWAY SAFETY PROGRAM FOR A REGIONAL LAW ENFORCEMENT LIAISON

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the North Carolina Governor's Highway Safety Program for highway safety grant funds to purchase equipment for the Traffic Safety Unit; and to cover the costs associated with the City providing an officer to serve as the Regional Law Enforcement Liaison which entails training and travel related to the liaison duties, and the associated budget amendment in the amount of \$20,000.00.

The City of Asheville Police Department (Police Department) currently participates in the Highway Safety Program campaigns. In order to maximize participation and efficiency of highway safety initiatives, a regional law enforcement network was created to enhance communication and effectiveness. The Police Department promotes highway safety statewide by designating a member of the department to serve as the regional liaison for Highway Safety Program Region 10 which covers Buncombe, Henderson, Madison, Mitchell, Polk, Rutherford, and Yancey counties.

Pro:

- Reimbursement revenue to cover the cost of obtaining the needed equipment including speed measuring instruments for police motorcycles, Crash Data Retrieval Software subscription, and laptop computers.
- Reimbursement revenue to cover the cost of necessary training and travel related to highway safety duties and operations.

Con:

- Commitment of staff hours for the officer charged with the liaison duties to accomplish the goals stated in the grant contract.

This budget amendment is fully funded with grant revenue and there is no impact to the General Fund budget.

Staff recommends that the City Council adopt a resolution authorizing the City Manager to enter into an agreement with the Highway Safety Program to provide an officer to act as the Regional Law Enforcement Liaison. The grant will provide funding for travel expenses, needed equipment cover costs associated with the liaison role.

**RESOLUTION BOOK NO. 37 - PAGE 270
ORDINANCE BOOK NO. 30 - PAGE 138**

C. MOTION TO ADOPT THE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE MODIFICATION TO A CONDITIONAL USE PERMIT FOR BILTMORE GARDENS (NOW KNOWN AS COMMERCIAL PROPERTIES AT BILTMORE)

D. RESOLUTION NO. 15-183 - RESOLUTION APPROVING A WRITTEN EXEMPTION FROM THE REQUEST FOR QUALIFICATION PROCESS AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH KIMLEY-HORN AND ASSOCIATES INC. TO PROVIDE REDEVELOPMENT OPTIONS FOR THE FORMER MATTHEWS FORD PROPERTY

Summary: The consideration of a resolution approving a written exemption from the Request for Qualification (RFQ) process and authorizing the City Manager to execute a contract with Kimley-Horn and Associates, Inc., for the amount of \$30,000 to provide redevelopment options for the former Matthews Ford property.

The City of Asheville designated the South Slope Extension as an Innovation District. Property previously known as the Matthews Ford property is located within that district. Although Duke Energy Progress currently owns the property with plans for electrical infrastructure development, they continue to evaluate other options/locations that meet their electrical system needs. The City of Asheville would like to evaluate the property to see if it can be developed in conjunction with the Lee Walker redevelopment to allow additional access to Lee Walker, include mixed-use and affordable housing.

Kimley-Horn has a proven track record of working on mixed-use, mixed income projects.

Since the scope of work of this proposed contract may include some minor design and/or engineering services, it may be viewed as a professional services contract, rather than a general services contract. The State statutes require that professional service contracts be subject to a RFQ process, but N.C.G.S. § 143-64.32, allows for a written exemption from this process for professional service contracts under \$50,000 upon local government approval. The proposed contract with Kimley-Horn will be in an amount not to exceed \$30,000.

Pro:

- The study will provide information on the feasibility for using the site as mixed-use, mixed income property.

Con:

- None.

The project budget will be an hourly rate not to exceed \$30,000.

Staff recommends City Council adopt the resolution approving a written exemption from the RFQ process for professional service contracts and authorizing the City Manager to execute a contract with Kimley-Horn and Associates, Inc., for the amount of \$30,000 to provide potential redevelopment options for the former Matthews Ford property.

RESOLUTION BOOK NO. 37 - PAGE 271

E. RESOLUTION NO. 15-184 - RESOLUTION TO EXEMPT THE FORMAL BIDDING REQUIREMENT FOR THE SUBJECT PURCHASING BID, AND AUTHORIZE THE WATER RESOURCES DEPARTMENT TO PURCHASE MID-SIZE METER BOXES FROM SOLE SOURCE FORTILINE WATERWORKS

Summary: The consideration of a resolution to exempt the formal bidding requirement for the subject purchasing bid, authorize Water Resources Department (Water Resources) to purchase mid-size meter boxes, and recognize Fortiline Waterworks as the sole source for the purchases.

North Carolina General Statute 143-129 (e) allows exceptions to formal bidding when standardization or compatibility is the overriding consideration.

On April 10, 2012, City Council passed Resolution No. 12-77 to exempt the formal bidding requirement for Water Resources to purchase mid-size meter boxes from a sole source supplier, PSP Manufacturing & Supply. PSP Manufacturing & Supply has gone out of business, and the rights to manufacture the meter boxes have been transferred to Fortiline Waterworks in Concord, North Carolina.

In November 2011, the Water Resources Department Standard Details were updated to detail new meter box requirements for 1-inch, 1 ½-inch, and 2-inch meters. The new meter box requirement would allow sizes of water meters ranging from 1 to 2-inch to fit within the same meter box, thereby reducing the various sizes of meter boxes needed. The meter boxes shown on the updated details are manufactured by Fortiline Waterworks in North Carolina. There are currently no other manufacturers who provide a box that can house meters in this range of sizes.

Water Resources staff consulted with the City's Purchasing Division on the need to sole source the purchase to Fortiline Waterworks due to compatibility issues with the Department's Standard Details. It is the consensus of the City's Water Resources Department and Purchasing Division that Fortiline Waterworks should be recognized as the sole source for this purchase and a Purchase Order should be issued to it for the purchase of mid-size meters boxes. The sole source with Fortiline Waterworks will initially be for 12 months to allow time for interested vendors

to update products to match the City's needs and provide a competitive bid. If no vendors update its products, then the sole source would continue annually thereafter.

Pros:

- Recognizing Fortiline Waterworks as the sole source for the mid-size meter boxes and authorizing the purchase from this vendor will ensure compliance with Water Resource's Standard Details.
- The meter boxes can be locked, which will deter tampering and water theft.
- The meter box has a locking mechanism that does not allow the lid to slip, slide, or otherwise dislocate, which greatly reduces pedestrian liability when located in sidewalks or other pedestrian-friendly environments.

Con:

- Sole sourcing the meter box reduces the advantage of competitive pricing through other vendors. The initial 12 month sole source will give other vendors a chance to manufacture like products that meet the Water Resource standard. The meter boxes will be more expensive than the current meter boxes. Water Resources currently pays \$671 for mid-size meter boxes. The price will increase to \$710 per meter box. Because the proposed meter box can accommodate different meter sizes, that should help compensate for the increased expense.

The funding needed for this purchase is currently allocated in the Water Resources' Operating budget.

Staff recommends City Council consideration of a resolution to exempt the formal bidding requirement for the subject purchasing bid, authorize Water Resources to purchase mid-size meter boxes, and recognize Fortiline Waterworks as the sole source for the purchases.

RESOLUTION BOOK NO. 37 - PAGE 272

F. ORDINANCE NO. 4451 - BUDGET AMENDMENT TO USE FEDERAL DRUG SEIZURE FUNDS TO FUND TRAINING, SAFETY EQUIPMENT AND EDUCATIONAL MATERIALS FOR THE ASHEVILLE POLICE DEPARTMENT

Summary: The consideration of a budget amendment in the amount of \$40,000 to authorize the use of Federal Drug Seizure Funds to purchase safety equipment and training materials for Community training for the Asheville Police Department.

The Federal Asset Forfeiture Program is an equitable sharing program which divides the illegal proceeds from criminal activities between the federal government and local law enforcement agencies. It is designed to help off-set the considerable cost of drug enforcement, and other applicable joint investigation by allowing local law enforcement agencies to use seized monies for equipment, training, and improvements that might not necessarily be budgeted for by the agency. The illegal proceeds are divided with 20% going to the federal agency adopting the seizure and 80% going to the local law enforcement agency initiating the seizure.

The Police Department has received \$40,000 in federal drug seizure funding. This proposed budget amendment would authorize the use of this funding for: 1) Training and Materials, 2) Purchase criminal justice books in partnership with AB Tech and local high schools; and 3) Safety equipment to better equip officers to render first aid to the public and each other in critical incidents. These are items which are not currently funded within the Police Department's operating budget.

Pros:

- Reduction in cost to the City of Asheville for the purchase of this equipment and training

- Increase officer and public safety by providing safety equipment to render first aid
- Support of partnership with AB Tech and Local High School Criminal Justice Programs through providing educational materials

Con:

- None noted

Accepting and allocating these State Forfeiture Funds is a financial benefit to the City and Police Department by allowing it to be better equipped and providing additional safety measures to protect the public. There is no impact to the General Fund budget.

Staff recommends City Council adopt a resolution authorizing the City Manager to adopt a budget amendment in the amount of \$40,000 authorizing the acceptance and use of Federal Asset Forfeiture Program Funds to fund training, safety equipment and educational materials.

ORDINANCE BOOK NO. 30 - PAGE 140

G. ORDINANCE NO. 4452 - ORDINANCE AMENDING THE MEMBERSHIP OF THE CIVIC CENTER COMMISSION TO (1) ADD THE ASHEVILLE-BUNCOMBE SPORTS COMMISSION DIRECTOR AND THE ASHEVILLE SYMPHONY DIRECTOR BE NON-VOTING EX-OFFICIO MEMBERS; AND (2) ALLOW THE COMMISSION TO APPOINT COMMITTEES FROM ITS MEMBERSHIP OR THE COMMUNITY AT LARGE

Summary: The consideration of an amendment to the provisions of the Civic Center Commission ordinance to allow the Commission to add additional ex-officio members and to appoint members to committees from members of the community at large.

First, in regard to ex officio membership, Sec. 2-61 of the City Code pertains to the "Creation; composition; terms of office meetings; authority" of the Asheville Area Civic Center Commission and subsection(a) of this Section states that the commission shall be composed of nine voting members and that "*the city manager, the city finance director and the civic center director, and the Asheville Area Chamber of Commerce's Director of Convention and Marketing Sales, shall be non-voting ex officio members.*" The Commission would like the ability to include additional non-voting ex officio members. The reason for this change is that currently, there are Directors of two organizations-the Asheville Buncombe Regional Sports Commission (Ben Van Camp) and the Asheville Symphony (David Whitehill) who attend and report at the Commission meetings regularly but have no formally recognized role in the Commission. These organizations engage in work that, like the work of the Chamber of Commerce, has particular impact and relationship to the functions of the Civic Center. For example, the Sports Commission was instrumental in negotiating with the Southern Conference to return to the City of Asheville and to hold the event at the civic center and the Asheville Symphony, leases space at the civic center and also is one of the primary users of the Thomas Wolfe Theatre. Therefore, the Commission would like the ability to add directors of such organizations as non-voting ex-officio members of the Commission.

Originally, the Commission requested that they be allowed to add ex officio members generally, as they saw fit, upon a majority vote. However, when the matter was heard before the Boards and Commissions Committee on September 8, 2015, the recommendation was revised to allow only the specific addition of the Sports Commission Director and Asheville Symphony Director as ex officio members.

Second, in regard to the appointment of subcommittee members from the community at large, Sec. 2-61(g) currently allows the Commission to "*provide for committees whose functions shall be fixed by the commission at the time of appointment.*" The Commission would like to revise this section to clarify that committee members may be appointed from the community at large, in addition to the Commission membership. Other City Commissions, including the

Downtown Commission and the Riverfront Redevelopment Commission, have this ability to appoint community members to subcommittees and this is often very useful. In the case of the Civic Center Commission, for example, a very experienced Commission member, Mike Burke, has reached the end of his term and therefore can no longer serve on the Commission. However, the Commission is interested in having him continue to head the Thomas Wolfe Task Force.

Pro:

- Enables the Commission to have more meaningful participation from organizations and individuals with expertise and experience that is particularly valuable to the work of the Commission.

Con:

- None known.

City Staff recommends City Council adopt the amendments to the Civic Center Commission ordinance allowing the Asheville Buncombe Regional Sports Commission Director and the Asheville Symphony Director to be added as ex-officio, non-voting members and to allow the Commission to appoint members of the community at large to committees.

ORDINANCE BOOK NO. 30 - PAGE 142

H. RESOLUTION INCREASING THE LIVING WAGE RATE FOR FULL- AND PART-TIME CITY EMPLOYEES AND INCREASING ITS APPLICABILITY TO ALL CITY EMPLOYEES

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

I. RESOLUTION NO. 15-186 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS THROUGH THE 2015 EDWARD BYRNE JUSTICE ASSISTANCE GRANT - LOCAL SOLICITATION, TO PURCHASE CONDUCTED ELECTRICAL WEAPONS

ORDINANCE NO. 4453 - BUDGET AMENDMENT FROM THE U.S. DEPT. OF JUSTICE FOR THE 2015 EDWARD BYRNE JUSTICE ASSISTANCE GRANT

Summary: The consideration of a resolution authorizing the City of Asheville (City) to enter into contract with and accept funds through the 2015 Edward Byrne Justice Assistance Grant – Local Solicitation (Byrne JAG – Local Solicitation) in the amount of \$50,434 and a budget amendment in that same amount.

The Asheville Police Department (Police Department) received authorization and applied for the Byrne JAG – Local Solicitation. On September 3, 2015 the City was awarded the grant and is requesting authorization to officially accept the grant. The related funding is a predetermined amount, based on the Part 1 Uniform Crime Reporting. Once accepted the Police Department and Buncombe County Sheriff's Department will be allocated \$50,434 based on the award matrix. The City will receive \$38,322 and Buncombe County will receive \$12,112. The distribution of funds would be approved through a signed Memorandum Of Understanding (MOU).

If approved, the Police Department plans to utilize the grant funds to purchase Conducted Electrical Weapons (CEW) for uniformed patrol officers. These devices will serve to enhance officer safety and potentially reduce the propensity for injury that offenders could be exposed to during altercations with officers. Effective CEW applications have demonstrated the capability to incapacitate threatening subjects by using an electrical charge to target the motor

nerves that control movement. Ideally, these devices facilitate effective restraint while reducing the opportunity for injury to all involved parties, thereby potentially reducing workers' compensation claims and liability claims.

There will be an expense of \$38,322 by the Police Department for the purchase of approximately 30 CEW's. The Buncombe County Sheriff's Department will be awarded \$12,112 for its identified needs. This accounts for the total allocation of \$50,434 for this grant.

This is a 100% funded non-local match grant that will serve to enhance officer safety for substantially more patrol officers and potentially reduce the probability of injury for threatening offenders.

Pros:

- Increasing the number of Conducted Electrical Weapons for patrol officers will enhance officer safety and that of the community
- Increased accountability because of the downloadable content related to deployments
- Costs of the devices could offset the costs incurred by workers' compensation or liability claims

Con:

- Additional burden on future operations budget for the cost of maintenance and replacement after the approximate five-year service life of the device
- Additional training costs associated with purchasing the training cartridges at an approximate cost of \$40 per year per device.

If the grant is accepted, there is no local match required, however there would be maintenance and replacement costs for the equipment that would need to be included in future fiscal year budgets.

Staff recommends City Council adopt the resolution authorizing the City Manager to accept grant funds through US Office of Justice Programs in the amount of \$50,434, and a budget amendment in that same amount.

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

Vice-Mayor Hunt 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, with the deletion of Consent Agenda "H". This motion was seconded by Councilman Pelly and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

H. RESOLUTION NO. 15-185 - RESOLUTION INCREASING THE LIVING WAGE RATE FOR FULL- AND PART-TIME CITY EMPLOYEES AND INCREASING ITS APPLICABILITY TO ALL CITY EMPLOYEES

Summary: The consideration of a resolution increasing the living wage rate for full and part-time employees and increasing the applicability of the living wage provisions to all City employees regardless of full or part-time status, including temp seasonal employees.

The City of Asheville's Living Wage Policy is considered annually as part of the budget process. The adopted fiscal year 2015-16 budget includes funding to set a living wage of \$12.50/hour without employer-provided health insurance and \$11.00/hour with employer-provided health insurance. Effective retroactive to July 3, 2015, the revised Living Wage Policy would apply to all City employees regardless of full or part-time status, including all temporary/seasonal employees.

Pros:

- Updates living wages to Just Economics WNC guidelines.
- Supports affordability goals for persons all incomes.

Cons:

- Cost impact.
- Reduced cost recovery for City services.

The adopted budget includes \$250,000 City-wide, sufficient funds to implement the living wage retroactive to July 3, 2015. The wage adjustments will impact cost recovery for operations of the U.S. Cellular Center and the Parks and Recreation Department. U.S. Cellular Center impacts are estimated at \$24,000 annually. The Civic Center Commission recommends consideration of adjustments to billable hour rates, box office hours and staffing to offset the cost increase. Fee increases and staffing adjustments would be considered in the process of planning the FY 2016-17 budget.

For City Council to adopt the resolution increasing the living wage rate for full and part-time employees and increasing the applicability of the living wage provisions to all City employees regardless of full or part-time status, including temporary/seasonal employees.

Councilman Davis supported living wages for full- and part-time employees. However, he raised concerns about extending it to temporary and seasonal employees because some options will need to be instituted by departments to account for this and may include the scaling back the number of hours for employees. He noted that some employees would rather have the hours rather than having the living wage. Using the U.S. Cellular Center as an example, they are trying to reduce the subsidy and it may have to be by cutting one day out of the box office hours and that may not be good for business.

City Manger Jackson responded to Council by explaining the budget impact, specifically stating that there was \$250,000 built in the budget for expenditures by various departments but there was no increase in revenues to retain cost recovery for programs and services. The revenue and cost recovery will be reviewed during the budget process.

When Vice-Mayor Hunt asked for public comment, no one spoke.

Councilman Smith moved to adopt Resolution No. 15-185. This motion was seconded by Councilwoman Wisler and carried on a 5-1 vote, with Councilman Davis voting "no."

RESOLUTION BOOK NO. 37 - PAGE 273

III. PRESENTATIONS & REPORTS:

A. FINANCIAL RATING ANALYSIS

Mr. Doug Carter, the City's Financial Advisor, updated City Council on their upgraded to triple-A bond rating. He reviewed the (1) importance of highest credit ratings and the S&P AAA; (2) what highest ratings say about Asheville; (3) City infrastructure improvements key to continuing success; (4) Economic Development - Whatever you have done keep doing it; (5) maintaining the rating; and (6) role of strong management.

Mr. Carter responded to questions raised by the Council regarding what kind of benefit will the City and taxpayers enjoy from the higher AAA bond rating.

B. BOARDS & COMMISSIONS MANUAL

Business Services Manager Jamie Matthews provided Council with an updated Boards & Commission Manual. The Manual consists of an overview of the boards and commissions; the rules and procedures for boards and commissions; roles and responsibilities of board chairs, board members and staff support; and templates.

It was the consensus of Council to (1) approve the manual as a guide for board and commission members and staff; (2) staff plan a second annual board chair meeting for mid-January prior to Council retreat; and (3) develop a long-term plan to provide regular comprehensive training to staff and board and commission members.

C. LEGISLATIVE UPDATE

Vice-Mayor Hunt updated City Council on some highlights from the legislature affecting the City of Asheville as follows: (1) **Budget- H97 2015 Appropriations Act. - Sales Tax Redistribution** - The final budget agreement does not include a redistribution of currently collected sales taxes, but provides new sales tax revenue through the expansion of the sales tax base to the repair, maintenance, and installation of tangible personal property. That new revenue will be distributed to 79 counties based on percentages found in the budget; (2) **Historic Taxes** - The budget includes a historic preservation tax credit with a sunset expiration date on Jan. 1, 2020. The provision creates a tax credit of 10 to 20 percent of rehabilitation expenses for qualifying buildings and homes. In poorer Tier 1 and Tier 2 counties and for projects under \$10 million, the higher percentage would apply; (3) **MSDs** - Legislators adopted compromise language on Municipal Service Districts (MSDs) in the final budget. This revised language set parameters on the contracts cities make with private entities to provide services within an MSD; required all moneys raised in these districts meet the needs of the district; and directed an interim study regarding whether district property owners should have the right to petition for removal from that district; (4) **Body Cams** - Legislators have set aside \$5 million in the state budget to provide matching grants to local law enforcement agencies in order to equip them with police body-worn cameras. The maximum grant that an agency can receive is \$100,000 and the grants require a 2-to-1 local match; and (5) **JDIG - H117 NC Competes Act - JDIG** - Compromise language would increase the cap on incentive awards to \$20 million a year. The cap would be increased to \$35 million for any year in which the state has a "high-yield" jobs deal where a company invests at least \$500 million and adds at least 1,750 jobs.

Councilman Smith said that there there will be a huge human cost to pay for the tax cuts in Raleigh, with mental health being one piece.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED ON 95 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR FOR ADAPTIVE REUSE OF AN HISTORIC STRUCTURE FOR OFFICE USE AND THE CONSTRUCTION OF A NEW RESIDENTIAL BUILDING, WITH CONDITIONS RELATING TO LANDSCAPING AND BUILDING DESIGN

ORDINANCE NO. 4454 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED ON 95 CHARLOTTE STREET FROM RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT TO OFFICE DISTRICT/CONDITIONAL ZONING FOR FOR ADAPTIVE REUSE OF AN

HISTORIC STRUCTURE FOR OFFICE USE AND THE CONSTRUCTION OF A NEW RESIDENTIAL BUILDING, WITH CONDITIONS RELATING TO LANDSCAPING AND BUILDING DESIGN

Urban Planner Jessica Bernstein said that this is the consideration of an ordinance to conditionally zone property located on 95 Charlotte Street from RM-16 Residential Multi-Family High Density District to Office District/Conditional Zoning for the adaptive reuse of an historic structure for office use and the construction of a new residential building, with conditions relating to landscaping and building design. This public hearing was advertised on September 11 and 18, 2015.

The project site consists of a single parcel, 1.23 acres in size. The parcel is located at 95 Charlotte Street (PIN 9649.63-1039, owned by 95 Charlotte Street, LLC) on the southeast corner of East Chestnut Street and is zoned RM-16. Adjacent zoning includes CBII (vacant) and RM-16 (vacant and multi-family apartments) with Office, CBI and CBII (retail, restaurant) zoning in the immediate area. The Charlotte Street corridor is largely commercial in this vicinity with some residential to the north and there is a residential neighborhood to the east, immediately adjacent.

The site is the location of the historic Patton Parker House - built in 1868-9 and a designated local historic landmark as well as a contributing resource within the Chestnut Hill National Register Historic District. Additionally, there are restrictive covenants on the house and site that will be managed by the Preservation Society of Asheville & Buncombe County.

Phase One - The applicant is proposing to convert the existing structure from a residential to an office use and make supporting site improvements related to access, accessibility and parking. The structure is approximately 4,931 square feet in size and two stories in height (38 feet nine inches).

Phase Two - The second phase is to construct a new building on the rear of the property. It is proposed to be approximately 2,350 square feet, two-stories in height (31 feet six inches) and will contain two residential units. The exterior design of this structure is ultimately subject to approval by the Historic Resources Commission (HRC).

Access to and from the site is currently in three locations and each will remain. The existing driveway loops from an opening on Charlotte Street across the front lawn and over to East Chestnut Street. The loop is proposed to be expanded interior to the site to create a circular drive in front of the property with parallel parking spaces in two locations. The Charlotte Street driveway would be ingress-only and the driveway onto East Chestnut would provide both egress and ingress.

The driveway cut into the rear of the site from East Chestnut will be enlarged and will provide access to a new surface parking area behind the historic structure and the accessible entrance.

Twelve parking spaces are shown in the surface lot and room for six additional spaces are proposed along the circular driveway on the front of the property, for a total of 18 parking spaces. The office use requires between 14 to 19 spaces. Due to the proximity of the residential use to downtown, designated parking is not required for the residences but should be able to be accommodated on the site with the number of spaces provided.

There are historic brick sidewalks along East Chestnut Street (six feet wide) that will be protected and remain. There are also existing concrete sidewalks along Charlotte Street that will remain in place. There is a northbound bus stop in front of project site.

Landscaping is required for this project and includes a property line buffer, street buffer, street trees, parking lot and building impact landscaping. The HRC will be evaluating the

landscaping plan according to the Local Landmark designation and has provided guidance at several meetings. The plan deviates from the UDO requirements to create a more site-specific, historically appropriate landscaped setting, preserving character defining trees and shrubs and meeting the intent of the code requirements but presenting planting areas in a somewhat “softer,” less linear layout.

The change in zoning is required because office uses are not permitted within the existing residential zoning.

The current proposal includes the following conditions that will need to be approved by City Council with a recommendation from the HRC:

1. The landscape plan does not meet the exact UDO requirements but has been evaluated and recommended for approval by the HRC based on the historical nature of the property and creating a landscape that respects the character of the site while meeting the intent of the ordinance. The plan includes a portion of the driveway (existing) and one parking spaces encroaching into the buffer area.
2. The final exterior design of the new residential building will be subject to approval by the HRC and reviewed against the Secretary of the Interior’s Standards.

As a Conditional Zoning request, this project requires a recommendation from the Planning & Zoning Commission and approval by City Council. The Planning & Zoning Commission unanimously voted to support the proposal at their meeting on September 2, 2015. The Technical Review Commission issued and approval with conditions at their meeting on August 17th and final TRC review is needed prior to issuance of a zoning permit.

Additionally, review and approval by the HRC is also required due to the historic landmark status of the property. The HRC is reviewing the site design, building alterations and new construction against the Secretary of the Interior’s Standards for Rehabilitation which will result in the issuance of a Certificate of Appropriateness upon approval of the rezoning. Preliminary reviews with the HRC were held on May 13th, August 12th and September 9th.

A Conditional Zoning was recently approved in the vicinity (1 Sunset Parkway, BP 15-0486). There have been several Level I projects underway or recently completed along the Charlotte Street corridor for new businesses.

The mix of office and residential proposed for the parcel is consistent with other uses along the Charlotte Street corridor and the mix of new landscaping material with preservation of existing plants will aid in mitigating the potential visual impact of the parking along the rear of the site.

The preservation and adaptive reuse of the historic structure allows for the historic character of this important site to remain while incorporating new uses and structures in a way that is sensitive to the history and integrated into the surrounding area.

This proposal is aligned with numerous aspects of the *City Development Plan 2025* including encouraging mixed-use and infill developments, tailoring neighborhood compatibility through the design review process and adaptive reuse of an historic structure.

This project supports goals in City Council’s 2014-2015 strategic plan, most notably in the area of *Economic Growth & Sustainability* with both the infill redevelopment aspect as well as the adaptive reuse of an historic structure to accommodate a contemporary use. The preservation of the historic Patton Parker House adds to the area of a *High Quality of Life* with the safeguarding of a significant piece of local history, retaining the character along this corridor.

Based on the above findings and the analysis provided in the staff report and as stated in the recommendation below, staff finds this request to be reasonable, consistent with the comprehensive plan and within the best public interest.

Considerations:

- The change in zoning allows for adaptive reuse and preservation of a local landmark, National Register historic structure.
- Multiple design review meetings with the Historic Resources Commissions ensures a proposal that is historically appropriate and compatible with the character of the area.
- Construction of the new building to the rear of the site provides a residential use adjacent to the residentially-zoned neighboring lot and minimizes impact to the historically significant features on the front and middle of the site.

Staff recommends approval of the proposed conditional zoning for the adaptive reuse of this historic structure and the new construction to add two residential units to the rear of the property.

Vice-Mayor Hunt opened the public hearing at 6:03 p.m.

Mr. Mark Wilson, representing the applicant, said that they are working with the Historic Resources Commission and expect to reach consensus with them soon.

Mr. Richard Liston questioned how any archeological items found will be handled and how will traffic be managed during renovations.

Mr. Frank Thomson, Director of The Preservation Society of Asheville and Buncombe County, was excited to see the project move forward. He said there would be very low impact on the rehabilitation of the existing structure and understood the work will not impede any area outside the boundary of the property, expect for tree removal.

Vice-Mayor Hunt closed the public hearing at 6:10 p.m.

In response to Councilman Bothwell, Mr. Wilson stated that the mature hardwood trees will be preserved. He did note that there are two pine trees at the intersection of East Chestnut Street and Charlotte Street that will have to be removed as they are affecting the stability of the wall. In addition, there is a maple tree at the top of the loop in the circular driveway whose branches are intertwined with a Buncombe County Treasure Tree. That may also have to be removed.

Director of Historic Resources Stacy Merten said that because this is a local landmark, if any archeological findings are located, they will be assessed and a state local historical representative would be contacted.

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

Councilman Smith moved to recommend approval of the conditional zoning request for 95 Charlotte Street from Residential Multi-family High Density (RM-16) to Office Conditional Zone (O-CZ) including the requested conditions on landscaping and final building design and find that the request is reasonable, is in the public interest and is consistent with the Comprehensive Plan and other adopted plans in that the proposal supports goals found in the City's comprehensive plan of promoting adaptive reuse of existing structures, historic preservation and using design review to ensure neighborhood compatibility. This motion was seconded by Councilwoman Wisler and carried unanimously.

B. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO A PREVIOUSLY APPROVED CONDITIONAL ZONING AT 40, 50 AND 60 GERBER ROAD TO INCREASE THE TOTAL NUMBER OF UNITS IN PHASES II AND III BY 22 FOR A TOTAL OF 142 UNITS

ORDINANCE NO. 4455 - ORDINANCE TO AMEND A PREVIOUSLY APPROVED CONDITIONAL ZONING AT 40, 50 AND 60 GERBER ROAD TO INCREASE THE TOTAL NUMBER OF UNITS IN PHASES II AND III BY 22 FOR A TOTAL OF 142 UNITS

Assistant Director of Planning & Urban Design Alan Glines said that this is the consideration of an ordinance to consider an amendment to the previously approved conditional zoning at 40, 50 and 60 Gerber Road to increase the total number of units in Phases II and III by 22 for a total of 142 units. This public hearing was advertised on September 11 and 18, 2015.

The applicant, Givens Estates, Inc., proposes to develop a multi-family senior housing complex consisting of total of 262 units. The parcel is currently zoned HBCZ having received conditional zoning approval for 240 units of senior housing in 2012. It was under this original approval that the first 120 units included Phase I were issued permits and the site is now currently under construction. Now that financing for Phases II and III are secured, the developer has submitted an application for a conditional zoning amendment that is substantially similar to the 2012 plan but differs with a proposed increase in density for an additional 22 units for a total of 262 units of senior housing, along with some modest layout changes proposed in the development. More specifically, Phases II and III will be increased from 120 to 142 units, split into two phases and two buildings. The following is a breakdown of the properties and phases:

Tract 1 – 40 Gerber Rd. (Pin 9655.26-3627)

Phase I (2012 plan)	120 units	94 1-BR; 26 2-BR
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Tract 2 – 50 Gerber Rd. (Pin 9655.26-7600)

Phase II (2015 plan)	82 units	60 1-BR; 22 2-BR
Phase III (2015 plan)	60 units	45 1-BR; 15 2-BR

Total: 262 units (20.5 units/acre)

Although density is only modestly increased, it had been limited to 240 units by the original 2012 CZ and requires re-consideration and approval by the City Council. Additionally, the affordability details are now better understood with the two new phases which had been included as a consideration demonstrating support for city adopted goals and plans.

All buildings are proposed to be 4 stories and range in overall height between 39 feet up to 43-feet, 4-inches. Collectively, the project includes 262,826 square feet of gross floor area.

All units in Phases I and III are to be affordable and a number of sustainable features are proposed for the multi-family development. Phase II is not included in the affordable unit count but will be made available at “workforce” rates (61-100% of AMI).

The subject property consists of two parcels/tracts totaling 12.75 acres located at 40 & 50 Gerber Road in South Asheville. The large majority of the site had been previously graded and slopes gently up from the front of the property. The site is bordered by properties zoned CBII (Gerber Village and a vacant property to the south) and Industrial (containing a warehouse

distribution facility and accompanying access). The recently approved Palisades multi-family development is located to the south of this site.

Principal access to the site is from Gerber Road with vehicular access to the Gerber Village development to the northwest. Pedestrian connectivity to Gerber Village is also proposed. Sidewalks are provided along Gerber Road in addition to the pedestrian walkways provided throughout the site. 337 vehicular parking spaces are shown with provisions for 18 bicycle parking spaces being noted.

Landscaping is required for this project and includes street trees, parking lot landscaping, building impact landscaping, and tree save area. Landscaping shown on the submitted plans appears to comply. The project is also required a minimum of 15% of open space be provided. The submitted plans satisfy this requirement with a combination of active open space located at the center of the project and passive open space around the perimeter.

This property was previously zoned HBCZ (2012) for a similar sized multi-family development. Prior to the passage of the 2012 conditional zoning ordinance the property was zoned Urban Village; it was a part of the original Gerber Village proposal. Property to the south that was once part of the same parcel as the subject property was recently (2012) rezoned from Urban Village to Community Business II.

Permits for Phase I have been issued under the original 2012 approval and is currently under construction.

The proposal was approved with conditions by the Technical Review Committee on August 17, 2015. A number of TRC comments have been addressed in the submittal received by the Planning & Zoning Commission, and this plan was approved unanimously (6:0) by the Commission at their September 2, 2015, meeting. Additional revisions will be worked out before the final TRC review and before final zoning approval and permit issuance.

No communication had been received from the public at the time of the completion of the staff report.

Adjacent uses include the Gerber Village mixed-use development, a warehousing/light industrial facility, suburban retail strip center, and vacant land. The zoning and use proposed are compatible with other zoning/uses in the immediate area.

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

The proposed development supports several goals stated in the *Asheville City Development Plan 2025*. These include: (1) The goal to provide affordable housing; and (2) The goal of providing higher density development in areas close to transportation corridors and services.

The proposal is aligned with the second focus area of the Strategic Plan, *Affordability and Economic Mobility*. The 82 units included in Phase III of the Givens Gerber Park project received 2015 Tax Credits and will remain affordable for a minimum of 30 years. In addition to Phase III, the 120 units in Phase I are also committed to affordability resulting in 202 affordable senior housing units in a locationally efficient area. All of the affordable units are priced to be affordable to those earning below 60% AMI with set asides for those earning below 50% and 30% respectively. The 60 units in Phase II are designed to provide needed housing to an underserved group of seniors earning between 61-100% of AMI and who would not otherwise qualify for any kind of assistance.

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

Considerations

- 202 affordable units will be created for those earning 60% or less of AMI.
- 60 units will be created for those earning 61-100% of AMI.
- The proposal furthers the goals and objectives of the City's comprehensive plan (infill, locationally efficient, affordable, multi-modal amenities, green space, etc.).
- The project meets City goals of providing affordable infill development in a strategically located area.

Staff recommends approval of the request to amend the current HB-CZ Ordinance allowing minor changes to the site plan along with an increase in density to raise the total number of units from 240 to 262.

Vice-Mayor Hunt opened the public hearing at 6:19 p.m.

Ms. Teresa Stephens, representing Givens, asked City Council for their support.

Vice-Mayor Hunt closed the public hearing at 6:20 p.m.

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

Councilman Bothwell move to approve the Highway-Business Conditional Zoning Amendment with the new proposed site plan and density allowances, and find that the request is reasonable, is in the public interest and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) Places density in strategically located area with close and easy access to employment, transportation, goods and services; (2) The Conditional Zoning will provide 202 affordable units will be created for those earning 60% or less of AMI; and (3) The Conditional Zoning will provide 60 units for those earning 61-100% of AMI. This motion was seconded by Councilman Smith and carried unanimously.

ORDINANCE BOOK NO. 30 - PAGE 155

V. UNFINISHED BUSINESS:

VI. NEW BUSINESS:

A. RESOLUTION NO. 15-187 - RESOLUTION AUTHORIZING THE CITY MANAGER EXECUTE A REVISED LAND USE INCENTIVE GRANT POLICY

Assistant Director of Community & Economic Development Jeff Staudinger said that this is the consideration of a revised Land Use Incentive Program Policy.

The Land Use Incentive Program (known as the Land Use Incentive Grant, or LUIG) was originally adopted by the City in November 2010; it was amended in March 2011, in 2012 to expand the eligible geographic area, and in 2014 to align more directly with statute and to remove a grantee contingent liability to hold the City harmless if the policy was challenged.

The LUIG was minimally applied for in its first three years; but since 2014 two applications have been approved, and more applications are expected. The interest of Council

members in potentially expanding and evaluating the effectiveness of the City's financial investments in affordable housing has led to an assessment of the policy and its goals.

Staff has discussed the program with HCD and PED Committees, the Affordable Housing Advisory Committee, developers and advocates; and has viewed comments on social media. The main point of agreement among all parties was that the policy needed to focus on affordable housing production as its goal, and the revised policy does that. Additional review was provided by the City Attorney.

Key proposed revisions include:

- Added reference to NC Statute allowing for incentives for affordable housing;
- The proposed policy does not allow waiver of eligibility requirements.
- Increase to 15 years minimum affordability, and requirement that units be leased to income eligible households.
- Flexibility on defining an eligible location: The proposed policy removes the .25 mile distance to a named corridor as a threshold, and instead suggests a definition for location and allows for a case to be made if the applicant wishes to deviate from that definition.
- Significant increase in points for affordable housing: As many as 100 points could be awarded for affordable housing
- "Workforce" housing is redefined as housing affordable to, and leased to, households making 100% or less of median income.
- Elimination of eligibility requirement and points for energy efficiency and green building.
- Elimination of points for mixed-use developments.
- Elimination of points for brownfield developments, but statement of flexibility in grant payment when used in conjunction with State Brownfield grants.
- Additional points for "superior" locations.
- Additional points for longer term affordability.
- Clarity regarding rent increases (only in line with City's published affordable and workforce rents).
- Increase maximum grant term to 15 years.
- Grant application process and reporting more clearly defined.

The Housing and Community Development Committee recommends adoption.

Pros:

- The proposed changes would significantly increase the incentive to create affordable housing.
- The scoring process becomes much more simple and predictable.
- Developers may find the program more attractive because of significantly greater incentives to provide affordable housing.

Cons:

- Projects earning more points will pay fewer taxes, having an impact on funds available for the general fund.
- Private developers may find the incentive less attractive because rental income and future value may be reduced due to the longer time period of required affordability.
- While more predictable, the opportunity to negotiate points is reduced.

The nature of the fiscal impact is twofold: first, it supports affordable housing development by delaying the availability of new taxes created by that development, and therefore delaying the general fund benefit of the growth in the City's taxable property base. Secondly, the

rebate of fees would result in a decrease of fee revenue in the year the project received its certificate of occupancy.

Staff recommends adoption of the revised Land Use Incentive Program Policy.

In response to Councilwoman Wisler, Mr. Staudinger if the project is not in compliance within 30 days of being out of compliance, the Land Use Incentive Grant agreement will become null and void and all prior grant funds must be returned to the City.

In response to Councilman Pelly, Mr. Staudinger said that there will be an annual report to City Council providing both a complete rent roll and income and household size of income qualified tenant, and unit number correlated to rent roll, establishing compliance with the Land Use Incentive Grant requirements.

Councilman Smith was pleased to see this piece of the broad comprehensive affordable housing strategy that will create some predictability for builders and also some flexibility on where the land is located.

Mr. Richard Liston felt the numbers are out of line with reality.

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

Councilman Bothwell moved for the adoption of Resolution No. 15-187. This motion was seconded by Vice-Mayor Hunt and carried unanimously.

RESOLUTION BOOK NO. 37 – PAGE 275

B. BOARDS & COMMISSIONS

Regarding the Buncombe County Tourism Development Authority, the following individuals have applied for this vacancy: Kelly Prime, Gary Froeba, Michael Adams, John Luckett, Himanshu Karvir and Dennis Hulsing. This vacancy must be an owner or operator of a hotel, motel, bed and breakfast, or vacation rental management company with more than 100 rental units. It was the consensus of Council to interview Mr. Froeba, Mr. Luckett, Mr. Karvir and Mr. Hulsing on October 13, 2015.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Richard Liston commented on the Tourism Development Authority and the need to fix intersections on state roads.

Councilman Davis recognized the Asheville Tourists for being runner up in the South Atlantic League Championship.

Councilman Smith announced early voting begins on September 24 and that the Board of Elections Main Office has moved to 77 McDowell Street.

Results of the September 21, 2015, Civil Service Board Employee Elections

One copy of the results of the Civil Service Board employee election held on September 21, 2015, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. The Board of Canvassers provided the following certified certificate on September 22, 2015: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 21, 2015, noting the

name of each person voted for and the number of votes cast for each person as follows: Alan Coxie - 89; Edward M. Hahn 85; Virginia Robinson – 56; and Sean Aardema - 1.

Closed Session

At 6:47 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(a)(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). This motion was seconded by Councilman Pelly and carried unanimously.

At 7:24 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

VIII. ADJOURNMENT:

Vice-Mayor Hunt adjourned the meeting at 7:24 p.m.

CITY CLERK

MAYOR