

Tuesday – June 19, 2018- 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Brian D. Haynes; Councilman Vijay Kapoor; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; Interim City Manager Cathy Ball; City Attorney Robin T. Currin; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

Mayor Manheimer announced ground rules for the meeting and announced that Consent N. 1 will be amended to a motion setting a special meeting to hold a public hearing on July 2, 2018, at 5:00 p.m. to consider an ordinance amending the Water Resources System Maintenance and Capital Fee for Fiscal Year 2018-19.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MAY 22, 2018**
  
- B. RESOLUTION NO. 18-124 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MODIFICATION TO AN EXISTING AGREEMENT WITH BUNCOMBE COUNTY FOR THE PURPOSE OF BILLING AND COLLECTING PROPERTY TAXES ON BEHALF OF THE CITY OF ASHEVILLE**

Summary: The consideration of a resolution directing the Mayor to execute a modification to an existing Agreement (“Modification Agreement”) with Buncombe County for the purpose of billing and collecting property taxes on behalf of the City of Asheville.

In June, 2005, the City and County entered into an Agreement instructing the County to bill and collect property taxes on behalf of the City. In return for the billing and collection services provided, the City agreed to pay the County a fee of 1.5% of the City-related tax amount collected.

However, as property values and resulting property taxes rose over the last several years, so too did the billing and collection fees paid by the City. For fiscal year 2018, property tax billing and collection fees amounted to roughly \$895,000 - an increase of approximately 13% over the previous fiscal year.

Following negotiations between the County and the City, both sides have agreed to a proposed Modification Agreement that contains the following key points:

- The Modification Agreement replaces a percentage based fee with a flat rate of \$795,000 for the upcoming fiscal year. The flat rate will be paid in 4 equal installments at the beginning of each quarter.

- The County will continue to transfer tax revenue to the City's NCCMT account on a daily basis during the heaviest collection periods (Nov 01 - Jan 15). In lighter collection periods, the County will transfer funds on a weekly basis. Finance does not view this as problematic as it represents only a small loss in time value of money.

- The Modification Agreement is interim in nature and only applicable for the upcoming fiscal year. Finance and the County will continue to negotiate a more permanent agreement and will complete it for Council approval by the end of January, 2019.

Pro:

- Lower property tax billing and collection fees.

Con:

- None noted.

The negotiated flat rate fee of \$795,000 represents a savings for the City of \$100,000 when compared to the current year's percentage based fee.

Staff recommends that City Council approve the resolution as it is proposed and execute the Modification Agreement.

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**C. RESOLUTION NO. 18-125 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FRENCH BROAD PAVING INC. FOR THE FISCAL YEAR 2018 ASPHALT PAVING IMPROVEMENTS - RESURFACING CONTRACT**

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 \$1,889,265 plus a contingency of 15% (\$283,389) with French Broad Paving, Inc. for the project known as Fiscal Year (FY) 2018 Asphalt Paving Improvements – Resurfacing, City of Asheville Project K1801.

A list of warranted streets was assembled to be addressed by this contract. The project was advertised on April 23, 2018. Bids were opened on May 10, 2018, with the following results:

French Broad Paving, Inc. of Marshall, NC	\$1,889,265.00
Harrison Construction Company of Asheville, NC	\$2,485,786.25
Rogers Group, Inc. of Nashville, TN	\$2,517,049.40

A 15% contingency (\$283,389) has been added to allow payment for any unforeseen costs that typically arise during construction and to do additional street resurfacing. The work produced from this contract would fix a number of roads that are in need of repair. This contract is part of our annual Capital Improvement Program funded resurfacing program.

Pros:

- Will repair approximately 4.3 miles of roadways within the Asheville City limits.
- Will improve mobility and safety on city streets.

Con:

- Construction will be disruptive to adjacent residences and businesses.

The total budget for the FY18 Streets Program is \$2.8 million. This funding is our annual repaving project and is not bond funded. The total cost of this contract, including contingency, is \$2,172,655. The remaining funds in this budget will be used for other paving needs.

City staff recommends City Council adopt the resolution awarding the contract to French Broad Paving, Inc. and authorizing the City Manager to execute on behalf of the City of Asheville a contract in the amount of \$1,889,265 plus a contingency of \$283,388.00 (15%) for the contract known as FY18 Asphalt Paving Improvements – Resurfacing, City of Asheville Project K1801.

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**D. ORDINANCE NO. 4672 - BUDGET AMENDMENT TO RECEIVE INSURANCE RECOVERY FUNDS RECEIVED FOR HAIL DAMAGE OCCURRING AT THE NORTH FORK WATER TREATMENT PLANT**

Summary: The consideration of a budget amendment in the Water Resources Capital Projects Fund in the amount of \$146,246.40 from insurance recovery funds received for hail damage occurring at the North Fork Water Treatment Plant.

On May 1, 2016, multiple roofs located at the North Fork Water Treatment Plant sustained considerable hail damage. The City of Asheville (City) filed an insurance claim with the City's property insurance carrier, Berkley Southeast Insurance Group (Berkley) to consider funds to repair/replace the damaged roofs, minus a \$25,000 deductible. The City received \$121,246.40 from Berkley and deposited them into the City's Property & Liability Fund. The related roof replacement project is complete and City Council authorization is sought to reimburse the Water Resources Capital Projects Fund with the received insurance claim funds.

Pro:

- Payment issuance will result in allocating insurance funds to reimburse the operating department that issued full payment related to the insurance claim.

Con:

- None.

Fiscal impact is \$25,000 deductible. Insurance proceeds were received via insurance claim.

Staff recommends City Council authorize insurance funds received and deposited into the City Property & Liability Fund in the amount of \$146,246.40 be allocated via budget amendment into the Water Resources Capital Projects Fund to reimburse expended funds for an insurance-related claim.

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**E. RESOLUTION NO. 18-126 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MULTI-YEAR AGREEMENT WITH PAYMENTUS FOR THE WATER RESOURCES DEPARTMENT INTERACTIVE VOICE RESPONSE PAYMENT ACCEPTANCE AND ELECTRONIC BILLING AND PAYMENTS SYSTEM**

Summary: The consideration of a resolution authorizing the City Manager to execute a multi-year agreement with Paymentus for the Water Resources Department Interactive Voice Response Payment Acceptance and Electronic Billing and Payments system.

On August 9, 2017, the Water Resources Department (WRD) issued a Request for Proposals (RFP) for an Interactive Voice Response Payment Acceptance and Electronic Billing and Payments system for the Customer Services Division. Currently, customers pay their utility bills over the phone, in person, online, or by enrolling in autopay. The WRD needed to update, improve, and add more user-friendly and flexible ways for customers to pay their utility bills.

The scope of the project includes an interactive payment and billing system that would provide a variety of flexible and user friendly options for customers to access and pay utility bills, including: (1) Interactive Voice Response (IVR) system, which would provide outgoing automated calls as well as acceptance of debit/credit card and e-check payments; (2) Pay-by-Text; (3) Online Quick Pay, which would not require the user to register an account; (4) Paperless eBilling; (5) Pay-by-Email; (6) AutoPay; (7) Kiosk; and (8) Mobile via an in-browser mobileWeb or downloadable mobileApp.

In response to the RFP, the WRD received 7 proposals on October 2, 2017. Companies responding were:

1. Paymentus Corporation; Charlotte, NC
2. Invoice Cloud; Braintree, MA
3. Utilli, LLC; Bethesda, MD
4. Value Payment Systems; Nashville, TN
5. Milsoft Utility Solutions; Abilene, TX
6. Vocantas, Inc.; Ottawa, Ontario, Canada
7. eConn Solution and Services, LLC; Nashville, TN

Following a review of the proposals, City Staff selected two companies for interviews and demonstrations - Paymentus and Invoice Cloud. Based on the interviews and demonstrations, Paymentus was selected because their product provides real-time integration with Munis.

Pro:

- This agreement will provide customers with additional interactive methods to pay their utility bills via text, email, and mobile app.

Con:

- The exact annual cost is hard to predict at this point because it is based on the number of credit/debit card and eCheck transactions, which are expected to increase once the text, email, and mobile app capabilities are in place.

The cost for Paymentus includes a: (1) service fee - full pass through of interchange and assessments plus \$0.50 per authorization for all Visa, MasterCard and Discover credit/debit card transactions; and (2) \$0.75 flat fee for eChecks, after the first 4,000 each month. That equates to approximately \$350,000 annually for the first year with a standard inflationary increase each year thereafter. The annual operating costs for the current system are \$250,000. The additional \$100,000 per year for this system will allow Water Resources to modernize its options for payment and help to greatly improve customer service with a more user-friendly billing system interface. The funding needed for this agreement will be funded from the Bank Fees line item in the Water Resources Operating Fund and will be adjusted for inflation each year like other operating line items.

Staff recommends City Council adopt a resolution authorizing the City Manager to execute a three-year agreement with Paymentus starting in Fiscal Year 2018-19 with an option to renew annually for an additional two one-year extensions for the Water Resources Department Interactive Voice Response Payment Acceptance and Electronic Billing and Payments system for an amount not to exceed the City's approved budget for each applicable fiscal year period.

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**F. RESOLUTION NO. 18-127 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXERCISE THE THIRD-YEAR OPTION TO RENEW THE CONTRACT WITH MS LEAN LANDSCAPING LLC FOR GROUNDS MAINTENANCE SERVICES IN VARIOUS PARKS, GREENWAYS AND FACILITIES IN THE WEST TWO DISTRICT IN ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to exercise the third-year option to renew the contract with MS Lean Landscaping LLC in the amount of \$31,740 for grounds maintenance services in various parks, greenways and facilities in the west two district in Asheville in the cumulative amount of \$95,220.

The Parks and Recreation Department contracts for ground maintenance services in various parks, greenways and facilities in the City's park system. The City entered into a one-year contract with MS Lean Landscaping LLC in Fiscal Year (FY) 2016-17 in the amount of \$31,740 for ground maintenance service in the west two district, and exercised the option to renew for a second one-year contract in FY17-18 with the option to renew for a third year based on contractor performance. By electing to exercise the third year in the amount of \$31,740 increases the cumulative amount of the contract to \$95,220, an amount which requires City Council consideration and approval.

Pro:

- Supports the efficient delivery of core park maintenance services.

Con:

- None

The \$31,740 funding required to support this ground maintenance contract is budgeted in the FY 2018-2019 Parks and Recreation Department operating budget as part of the Parks Maintenance division budget.

Staff recommends City Council to adopt a resolution authorizing the City Manager to exercise the third-year option to renew the contract with MS Lean Landscaping LLCi in the amount of \$31,740 for grounds maintenance services in various parks, greenways and facilities in the west two district in Asheville in the cumulative amount of \$95,220.

**RESOLUTION BOOK NO. 39 - PAGE 450**

**G. ORDINANCE NO. 4673 - ORDINANCE AMENDING AND REPLACING ORDINANCE NO. 4615 GRANTING A FRANCHISE FOR "HERE TO THERE ADVENTURES" TO OPERATE A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE**

Summary: The consideration of an ordinance amending and replacing the franchise agreement that was approved for "Here To There Adventures" on October 24, 2017, via Ordinance No. 4615 (second reading).

"Here To There Adventures" was approved to operate in the same service area as Asheville Bike Taxi, LLC which includes the Central Business District, the River Arts District, and the Historic Montford District. In addition, it would be allowed to use SR 3548 (Clingman Avenue) from Clingman Avenue Extension to Hilliard Avenue in order to gain access to the River Arts

District. The N.C. Dept. of Transportation has confirmed that the subject service can use state-maintained streets except for fully-controlled access streets like the interstate system.

The service is prohibited from operating on public streets that have a speed limit of 35 mph or higher. The one exception is the section of Clingman Avenue that provides access to the River Arts District. This section of street has a bicycle climbing lane and the pedal bicycle taxis are required to use it.

The hours of operation would be Monday through Thursday 4:00 pm until 12:00 am with three vehicles operating, Friday 4:00 pm until 3:00 am with three vehicles operating, Saturday 12:00 pm until 3:00 am with one vehicle operating between 12:00 pm and 4:00 pm and three vehicles operating between 4:00 pm and 3:00 am, and Sunday 12:00 pm until 12:00 am with three vehicles operating.

The owner has requested that the operating hours be changed to Monday through Sunday from 8:00 am until 3:00 am with one to three vehicles operating.

In addition, the business owner has changed from Michelle Kelly, 82 Crestfield Avenue, Asheville, NC 28804 to Jude Luc Richard (same mailing address). Michelle Kelly is the administrative member.

The Transportation Department and Police Department have reviewed this request and at this time, there are no concerns. The Police Department would like to reassess the new hours after one year to be sure that no issues were created by the additional hours.

This item was reviewed by the Public Safety Committee on May 21, 2018, and they unanimously recommended that it move forward to City Council for review and approval.

Pros:

- Supports diversified job growth and business development.
- Enhances the visitor experience to downtown Asheville.
- Franchise agreement fees in the amount of \$365 per year.

Con:

- Could impact vehicular traffic flow.

There is no fiscal impact for the subject franchise agreement amendment.

Staff recommends that City Council approve an ordinance amending and replacing the franchise agreement that was approved for "Here To There Adventures" on October 24, 2017 via Ordinance # 4615.

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#### **H. RESOLUTION NO. 18-128 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE ASHEVILLE DOWNTOWN ASSOCIATION FOR SPACE AT 29 HAYWOOD STREET**

Summary: The consideration of a resolution authorizing the City Manager to execute a lease agreement between the City of Asheville (City) and the Asheville Downtown Association (ADA) for an office and storage space located at 29 Haywood Street.

The Asheville Downtown Association is a non-profit organization committed to preserving the vitality of Asheville's downtown area. For several years, ADA has occupied a portion of

City-owned property at 29 Haywood Street for offices and storage space under a verbal agreement. At this time, the City intends to formalize a written lease with ADA. The City's Real Estate Coordinator and the ADA's Executive Director have been working together to negotiate the terms of that lease and to ensure that ADA is complying with the terms of the City's lease guidelines, as adopted in 2017. In addition to the office and storage space, ADA proposes to lease the interior wall of the hallway that connects the Wall Street parking garage to Haywood Street for the purposes of installing and maintaining a placemaking mural.

The proposed lease has a term of five years with one renewal for four additional years. The lease can be terminated by either party with 180 days written notice. The space was valued using local commercial leasing rates for the downtown area of Asheville. The rate applied for office space in this area is \$21.57 per square foot. ADA will be occupying 811 square feet, which yields a value of \$1,458 per month. This rate was discounted by 20% because the space does not have private restroom facilities and ADA must share facilities with the Asheville Police Department in the adjoining office, thus reducing the monthly office rate to \$1,166. ADA also uses 1,500 square feet of storage space that is valued at \$5.97 per square foot or \$746.00 per month. The total monthly fair market rent would be \$1,912 per month or \$22,944 a year. The mural wall is not included in the rent calculation.

ADA presented a detailed proposal that documented the in-kind services that they provide for the benefit of the public. ADA demonstrated how the in-kind services aligned with the City Council 2036 Vision and requested that these in-kind services should be deemed as acceptable compensation for the value of the lease over the lease term. The Real Estate Division recommends that City Council authorize the lease without charge to ADA provided that ADA continues to offer community services throughout the term of the lease.

Pros:

- Continued partnership with the Asheville Downtown Association through a lease of City-owned property.
- This lease contains specific insurance requirements to protect the City's liability.
- Provision of civic events and other activities designed to promote downtown as a community gathering space, a destination, and a business support environment.

Con:

- City incurs a portion of the maintenance costs for this City-owned building.

ADA proposes in-kind services in exchange for rental fees. The City will continue to have maintenance responsibilities for the building, but provisions of the lease protect the City's interests and limit liability.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute a lease agreement with the ADA for a downtown office in exchange for conducting a wide array of services for the public good throughout the term of the lease.

#### **RESOLUTION BOOK NO. 39 - PAGE 451**

#### **I. RESOLUTION NO. 18-129 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE LAND-OF-SKY REGIONAL COUNCIL TO CONDUCT ENERGY AUDITS ON WATER RESOURCES FACILITIES**

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Land of Sky Regional Council to conduct energy audits on 2 water treatment plants and 3 pump stations.

Waste Reduction Partners, a division of Land of Sky Regional Council (“Land of Sky”), provides energy audits on various governmental facilities across the state at no cost to the municipality using grant funds. Land of Sky, which is a multi-county, local government, planning and development organization, has offered to audit two of the City’s water treatment plants (North Fork and Mills River) as well as three pump stations (South Buncombe Pump Station, Enka Lake Pump Station, and Beaverdam Pump Station). These sites were prioritized by staff due to their energy intensity and equipment that potentially needs to be replaced or repaired. The City and Land of Sky desire to enter into an interlocal agreement in order to conduct these energy audits.

Pros:

- Supports Resolution 11-77, reducing the City’s municipal carbon footprint
- Service is offered at no cost to the City
- May lead to procedures and projects that reduce Water Resources operating costs

Cons:

- None identified

As noted above, there is no cost to the City. Land of Sky is utilizing grant funds to conduct the audits.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into an interlocal agreement with Land of Sky to conduct energy audits on select water resource sites.

**RESOLUTION BOOK NO. 39 - PAGE 452**

**J. ORDINANCE NO. 4674 - BUDGET AMENDMENT TO TRANSFER FUNDS FOR THE RESTORATION OF THE TWO TROLLEY HOUSES AND ONE ROCK WALL STRUCTURES AT E.W. GROVE PARK**

Summary: The consideration of a technical budget amendment in the amount of \$81,700 to transfer funds from Parks and Recreation’s deferred maintenance operating budget in the General Fund to the General Capital Projects Fund for the restoration of the two trolley houses and one rock wall structures at E.W. Grove Park.

The Parks and Recreation Department deferred maintenance cost center in the General Fund is used for minor repairs and improvements for parks and recreation facilities. There are items budgeted there in the current fiscal year that relate to larger projects that should be accounted for in the General Capital Projects Fund. These items include \$81,700 for historic restoration assessment, construction observation, and restoration construction of the trolley houses and rock wall at E.W. Grove Park.

Staff is requesting City Council to approve a technical budget amendment to establish a budget of \$81,700 in the General Capital Projects Fund from the Parks and Recreation Department deferred maintenance budget.

Pro:

- This action will allow each capital project to reflect all the expenditures related to the construction and design of the project.

Con:

- None



The technical budget is to complete the design and construction of the improvements to the trolley houses and rock wall at E.W. Grove Park. The project budget will authorize expenditures up to \$81,700. These expenditures have been fully funded through the transfer of funds from the Parks and Recreation Department deferred maintenance operating budget.

City staff recommends City Council approve the technical budget amendment authorizing the Interim City Manager to establish a budget for \$81,700 to support the improvements to the trolley houses and rock wall at E.W. Grove Park.

Ms. Suzanne Escovitz spoke in support of this project.

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**K. RESOLUTION NO. 18-130 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE THE THIRD-YEAR OPTION TO RENEW THE CONTRACT WITH LOCUST PROPERTY MANAGEMENT, LLC FOR GROUNDS MAINTENANCE SERVICES IN VARIOUS PARKS, GREENWAYS AND FACILITIES IN THE EAST TWO DISTRICT IN ASHEVILLE**

Summary: The consideration of a resolution authorizing the City Manager to exercise the third-year option to renew the contract with Locust Property Management, LLC in the amount of \$31,300 for grounds maintenance services in various parks, greenways and facilities in the east two district in Asheville in the cumulative amount of \$93,900.

The Parks and Recreation Department contracts for ground maintenance services in various parks, greenways and facilities in the City's park system. The City entered into a one-year contract with Locust Property Management, LLC. in Fiscal Year (FY) 2016-17 in the amount of \$31,300 for ground maintenance service in the east two district, and exercised the option to renew for a second one-year contract in FY17-18 with the option to renew for a third year based on contractor performance. By electing to exercise the third year in the amount of \$31,300 increases the cumulative amount of the contract to \$93,900 an amount which requires City Council consideration and approval.

Pro:

- Supports the efficient delivery of core park maintenance services.

Con:

- None

The \$31,300 funding required to support this ground maintenance contract is budgeted in the FY 2018-2019 Parks and Recreation Department operating budget as part of the Parks Maintenance division budget.

Staff recommends City Council to adopt a resolution authorizing the City Manager to exercise the third-year option to renew the contract with Locust Property Management, LLC. in the amount of \$31,300 for grounds maintenance services in various parks, greenways and facilities in the east two district in Asheville in the cumulative amount of \$93,900.

**RESOLUTION BOOK NO. 39 - PAGE 453**

**L. RESOLUTION NO. 18-131- RESOLUTION SETTING A PUBLIC HEARING ON JULY 24, 2018, FOR AN ECONOMIC INCENTIVE GRANT TO GENERAL ELECTRIC CORPORATION AND UNISON ENGINE COMPONENTS INC.**

Summary: The consideration of a resolution authorizing a public hearing to be held on July 24, 2018, to consider an economic development incentive grant for General Electric Corporation and Unison Engine Components, Inc.

City of Asheville has been requested by Asheville-Buncombe EDC for consideration of a performance based incentive grant under the City Economic Development policy to an existing Asheville manufacturing facility, operated by General Electric Corporation (“GE”), and Unison Engine Components, Inc. (“Unison”). The purpose of the City’s participation would be to induce GE to make additional investments in the City for expenditures to acquire and install machinery/equipment, make facility improvements which increase the tax value as determined by the Buncombe County Tax Department in the amount of \$105,000,000, and create 131 new median wage jobs with benefits. The City of Asheville is considering offering a performance based grant in an amount not to exceed \$900,960. North Carolina state law requires a public hearing be held before an incentive grant can be officially awarded.

Pros:

- Performance driven grant that is distributed after job and investment is achieved or mutually agreed performance benchmarks are established;
- Supports job creation and capital investment in Asheville;
- Supports regional and state cooperation in the project.

Con:

- Grant is formulated based on use of a portion of the new incremental increase from property tax revenue generated by the project for a 5 year period.

The project has an overall positive fiscal impact on tax revenues received by the city. Initially (during the grant period), the City will receive 50% of the new incremental property tax revenues, as well as the existing property tax revenues from the project. After the grant period of 5 years, the City will henceforth receive 100% capture of all city taxes.

City staff recommends Council approve a resolution authorizing a public hearing to be held on July 24, 2018, on an economic development incentive grant agreement to support existing industry expansion of GE/Unison.

#### **RESOLUTION BOOK NO. 39 - PAGE 454**

#### **M. RESOLUTION NO. 18-132 - RESOLUTION AUTHORIZING AN AMENDMENT TO THE ECONOMIC DEVELOPMENT AND PURCHASE OPTION AGREEMENTS FOR WHITE LABS LOCATED AT 172 AND 174 S. CHARLOTTE STREET**

Summary: The consideration of a resolution approving amendments to the economic development agreement and option agreement with White Labs, Inc. regarding 172 & 174 S. Charlotte Street to reflect a new option renewal period and that additional economic development activities may take place at either 172 S. Charlotte, 174 S. Charlotte or a combination of both.

In January 2015, City Council authorized an economic development incentive agreement with White Labs Inc., a world leader in fermentation sciences for the brewing and winemaking industries, for a new Asheville facility. This agreement included a five year lease of a City-owned building at 172 S. Charlotte with an option to purchase at the end of the lease term, and an option to purchase the adjacent City-owned property at 174 S. Charlotte Street. Since that time, White Labs has invested over \$8.1 Million in machinery, equipment and facility improvements on

City-owned property at 172 S. Charlotte Street and has created 37 new jobs. White Labs has until 2020 to meet all the requirements of the economic development agreement and both job creation and capital investments are on target or exceeding the City's requirements as stated the economic development agreement.

The option agreement on the adjacent site at 174 S. Charlotte Street has now expired and White Labs has requested that the option be renewed for an additional one-year period for a non-refundable fee of ten thousand dollars (\$10,000) applicable to the purchase price. The existing terms of the option state that White Labs has the exclusive option to purchase the adjacent 1.67 acre City-owned parcel for 80% of fair market value if substantial additional improvements and jobs are committed to by White Labs, or for fair market value if no additional economic benefits are committed. In order to qualify for the discounted land price, White Labs must enter into another economic development incentive agreement with at least an additional investment of \$8.1 Million in improvements and the creation of at least 65 additional median wage jobs. White Labs is requesting that this term is clarified so that the discounted land price can be invoked if additional jobs and improvements are created at 172 S. Charlotte, 174 S. Charlotte or combination of both. As currently written, the Option requires that such improvements and jobs occur only on the 174 S. Charlotte Street property. If approved, the Option will be extended for an additional year and will expire on May 1, 2019 unless exercised by White Labs.

Pros:

- Supports continued job creation and capital investment in Asheville
- If exercised, the sale of the property will activate an underperforming City asset and convert the asset into a taxable property
- Supports development of an identified economic cluster in the City

Con:

- None noted.

An additional non-refundable option fee of \$10,000 will be paid upon execution of the amendment and will benefit the City's General Fund. If the Option is exercised, then the City will receive the fair market value of the property or 80% of fair market value plus economic development impact, which will benefit the General Fund.

City staff recommends Council approve a resolution authorizing an amendment of the economic development agreement and option to purchase between the City and White Labs.

**RESOLUTION BOOK NO. 39 - PAGE 455**

**N. MOTION SETTING A SPECIAL MEETING TO HOLD A PUBLIC HEARING ON JULY 2, 2018, AT 5:00 P.M. IN THE COUNCIL CHAMBER TO CONSIDER AN ORDINANCE AMENDING THE WATER RESOURCES SYSTEM MAINTENANCE AND CAPITAL FEE FOR 2018-19 FISCAL YEAR**

**RESOLUTION NO. 18-133 - RESOLUTION AUTHORIZING THE CREATION OF A CAPITAL RESERVE FUND FOR WATER DEVELOPMENT FEES**

Summary: The consideration of: 1) a motion setting a special meeting to hold a public hearing on July 2, 2018, at 5:00 p.m. in the Council Chamber to consider an ordinance amending the Fiscal Year (FY) 2018-19 fees and charges to adopt the Water Resources Department (WRD) "System Maintenance and Capital Fees" and rename it to "Development Fees" and 2) a resolution authorizing the creation of a capital reserve fund to account for all proceeds received from the Development Fees.

System development fees are one-time charges assessed to new water customers for their use of system capacity and serve as an equitable method by which to recover up-front system capacity costs from those using the capacity. North Carolina General Statute 162A Article 8 (“Article 8”) provides for the uniform authority to implement system development fees for public water systems in North Carolina, and was recently passed by the North Carolina General Assembly and signed into law on July 20, 2017.

North Carolina General Statute 162A Article 8 (“Article 8”) also provides that all proceeds from these fees be accounted for in a capital reserve fund. Therefore, staff is requesting Council approval of a resolution establishing a capital reserve fund (CRF) to meet this statutory requirement. The City may not expend monies directly out of a CRF. Instead, Council must amend the CRF to withdraw the monies and then amend the budget ordinance or project ordinance to recognize the revenue and authorize its expenditure for specific water projects or debt service payments associated with these projects.

Raftelis Financial Consultants, Inc. (RFC) completed the required analysis for establishing system developments fees and a public hearing will be held on July 2, 2018, to adopt the analysis and fees.

Pro:

- Establishes a Capital Reserve Fund to meet statutory requirements.

Con:

- Failure to comply with the conditions and limitations of NCGS 162A Article 8 – “System Development Fees” will constitute a violation of the State statute.

The proposed fund is estimated to capture new revenue of \$100,000. As noted above, this capital reserve fund will be used to pay debt service on past water projects or to pay for current and/or future capital projects.

City staff recommends City Council adopt: 1) a motion setting a special meeting for a public hearing on July 2, 2018, at 5:00 p.m. in the Council Chamber to consider an ordinance amending the Fiscal Year 2018-19 fees and charges to adopt the Water Resources Department “System Maintenance and Capital Fees” and rename it to “Development Fees, and 2) a resolution authorizing the creation of a capital reserve fund to account for all proceeds received from the Development Fees.

#### **RESOLUTION BOOK NO. 39 - PAGE 456**

#### **O. RESOLUTION NO. 18-134 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROJECT PARTNERSHIP AGREEMENT WITH THE US ARMY CORPS OF ENGINEERS FOR THE SWANNANOA RIVER FLOOD RISK MANAGEMENT PROJECT**

Summary: The consideration of resolution authorizing the City Manager to enter into a Project Partnership Agreement with the US Army Corps of Engineers for the design and construction of the recommended Swannanoa River Watershed Flood Risk Management Project.

The Hurricane Recovery Act of 2005 (Senate Bill 7) allocated funds for planning and implementation of projects to aid in flood damage reduction for North Carolina communities hardest hit by the 2004 hurricane season. The Biltmore Village area of the City of Asheville (within the Swannanoa River Watershed) was named as a recipient of this funding. On May 12, 2009 City Council authorized the City Manager to enter into a Federal Cost Share Agreement,

between the City of Asheville and the US Army Corps of Engineers (Corps) for the evaluation of flood mitigation projects within the Swannanoa Basin.

The goal was to identify potential projects throughout the Swannanoa Basin that would reduce flooding. This process identified 48 potential flood reduction projects. Through the detailed evaluation, which included a thorough analysis of cost of the projects versus the benefit provided through flood reduction, the 48 measures were narrowed down to 7 structural measures which included:

1. Biltmore Bank Cut
2. Sweeten Creek Detention Structure
3. Dry Dam at Warren Wilson
4. Lake Craig Dam Rehabilitation or Replacement
5. Black Mountain Levee/Floodwall
6. Bee Tree Dam Modification
7. I-40 Disposal Area Removal

Through additional analysis of the 7 measures, 6 of the measures did not have a positive benefit/cost ratio which is necessary to continue in the Corps process. The Corps has finalized the Section 205, Flood Risk Management Detailed Project Report and Environmental Assessment in which the Corps recommended one project for implementation. The project selected by the Corps is the removal of the floodplain fill both upstream and downstream of the Biltmore Avenue Bridge.

City Staff, along with the Army Corps of Engineers, met with the Flood Damage Reduction Task Force to provide the recommendations from the Corps. The Flood Damage Reduction Task Force was excited to see a project moving forward.

The total project cost is estimated to be \$6.4 million dollars with the cost split being a maximum of 65% coming from the Corps of Engineers and a minimum of 35% from the local partner, which is the City ("Non-Federal Sponsor"). The estimated cost to the City (35% of the project cost) is \$2,238,950 which would include the costs to purchase and/or acquire necessary property, any utility relocations and staff time (i.e. "in-kind contribution"). If the cost of acquiring properties, utility relocations, etc are above the Corps appraised value, the City could be responsible for a maximum cost of up to 50%. If the cost to the city increases, City Staff will acquire necessary authority from City Council with details of any increase. The Corps of Engineers has included a contingency per their estimating standards in the cost estimate.

There are two property owners within the project area, who as part of the feasibility stage of the project, City Staff acquired temporary easements; for geotechnical exploration. The property owners are aware of the project. It will be the City's responsibility to acquire the necessary property in order for the project to move forward. The specific property needed will be determined from the detailed design by the Corps of Engineers.

City Staff presented the Project Partnership Agreement to the Finance Committee on May 22, 2018, and received approval to move the project forward to City Council.

City staff is requesting Council to allow the City Manager to enter into a Project Partnership Agreement (PPA) with the Corps of Engineers for this project's continuation. Once the PPA is executed, the Corps will begin design later this summer. Design is anticipated to take approximately 18 months. The Corps will ask the City to acquire the necessary real estate for the project. Construction is anticipated to begin in 2021.

Pros:

- Flood reduction of approximately 0.5 feet during the 100 year flood event will be achieved through the implementation of this project.
- The City will be able to maximize funds available through the partnership with the Corps of Engineers.
- Flood reduction benefits from this project will be ongoing for the area.
- Citizens in the area are asking for flood mitigation projects to be constructed.
- The City will be credited for work in kind from staff time associated with the project.
- The Design of the project will begin later this year.

Cons:

- The City would be responsible for a minimum of 35% of the cost combined for design, rights of way and construction.
- The construction process will begin in 2021.

The City will be responsible for \$2,238,950 which will be allocated from the Stormwater Utility Fund's Capital Improvement Program (CIP). The funding allocations will be spread out over multiple fiscal years. The City will be able to utilize approximately \$965,000 from funds available from the Hurricane Recovery Act of 2005 through the North Carolina Division of Water Resources.

Staff recommends City Council approve a resolution authorizing the City Manager to enter into the Project Partnership Agreement and execute any modifications to the agreement necessary with the Army Corps of Engineers which will allow the partnership to continue the implementation of the flood mitigation project which will reduce damages from flooding in Biltmore Village.

**RESOLUTION BOOK NO. 39 - PAGE 457**

**P. RESOLUTION NO. 18-135 - RESOLUTION AUTHORIZING THE SOLE SOURCE PURCHASE OF CLARKE POWER SERVICES INC. HYBRID BATTERY PACKS FOR TRANSIT BUSES**

Summary: The consideration of a resolution supporting the sole source purchase of hybrid battery packs from Clarke Power Services Inc. to replace needed batteries for midlife service of hybrid vehicles and to comply with the Federal Transit Administration's Bus & Bus Facilities Infrastructure Investment Program and the Urbanized Area Formula Program provisions.

In June 2017, the City's Transportation Department was able to repurpose \$200,972 under the Fiscal Year (FY) 2009 Section 5307 Urbanized Area Formula Program to purchase hybrid battery packs. This grant, combined with Federal Transit Administration's (FTA) FY 2018 Section 5339 Bus & Bus Facilities Infrastructure Investment Program that is now intended for transit capital purchases, will allow the City to purchase seven hybrid battery packs. According to ART maintenance staff, Clarke Power Services Inc. is the only provider of batteries that can serve Gillig hybrid buses.

Pros:

- Clarke Power Services Inc. is a leading manufacturers of hybrid battery packs
- This action ensures compliance with FTA's Bus & Bus Facilities Infrastructure Investment Program and the Urbanized Area Formula Program provisions.

Con:

- None

On February 13, 2018, City Council approved a budget amendment for the purchase of hybrid battery packs. The current action is administrative and does not affect the budget.

Staff recommends that City Council adopt a resolution supporting the sole source purchase of hybrid battery packs from Clarke Power Services Inc. to replace needed batteries and to comply with FTA's Bus & Bus Facilities Infrastructure Investment Program and the Urbanized Area Formula Program provisions.

**RESOLUTION BOOK NO. 39 - PAGE 458**

**Q. RESOLUTION NO. 18-136 - RESOLUTION AUTHORIZING THE CITY MANAGER TO PARTICIPATE IN DUKE ENERGY PROGRESS' SMALL BUSINESS ENERGY SAVERS PROGRAM AND TO ENTER INTO A SOLE SOURCE CONTRACT FOR THE PURPOSE AND INSTALLATION OF ENERGY EFFICIENCY LIGHTING IN THE FLEET MAINTENANCE GARAGE AT 173 S. CHARLOTTE STREET**

Summary: The consideration of a resolution authorizing the City Manager to participate in Duke Energy Progress' Small Business Energy Saver Program and to enter into sole source provider contract for the purchase and installation of energy efficient lighting in the Fleet Maintenance Garage at 173 S Charlotte Street.

The electric utility Duke Energy Progress' Small Business Energy Saver (SBES) Program pays for energy efficiency upgrades up front, and covers up to 80% of the total project costs.

The Fleet Maintenance garage facility provides an opportunity to utilize the SBES program while yielding an estimated \$5,448.83 in annual energy savings. In terms of carbon reductions, the project will yield 46.5 MTCO<sub>2e</sub> towards our annual 4% carbon reduction goal.

The Office of Sustainability has analyzed the potential costs for the project and determined that the SBES Program is a unique opportunity to leverage significant up front capital funding from Duke Energy Progress. The total cost to the City would be \$25,762.56, however, utilizing Duke Energy Progress' utility incentive program, the project offsets the cost by 54%. This cost includes parts, labor and project management. The total cost of the project is \$10,694.95 and will be funded from the green revolving funds that are part of the Sustainability FY 2018-19 Budget. While this property has been identified to be redeveloped for affordable housing, it is unlikely that this facility would be demolished prior to the 22 month payback period as a new location for the City's fleet has not yet been identified.

The SBES Program is run through a single authorized contractor, Lime Energy. In order to participate in the SBES Program, the City needs to pursue a single source provider contract with Duke Energy Progress / Lime Energy. See Exhibit A and Exhibit B. This is allowable as per N.C.G.S. 143-129(e)(6) which states that "the governing body of a political subdivision of the state shall approve the purchase of apparatus, supplies, material or equipment without formal bidding when (i) performance or price competition for a product are not available; (ii) a needed product is available from only one source of supply; or (iii) standardization or compatibility is the overriding consideration."

These energy efficiency upgrade supports City Council's 2036 Vision through a Clean and Healthy Environment and Smart City; additionally, the scope of work supports Resolution 07-90, establishing energy conservation goals and benchmarks as well as Resolution 11-77, increasing the municipal carbon footprint reduction goal to 4% every year.

Pros:

- Supports Resolution 11-77, reducing the City's municipal carbon footprint
- Leverages a DEP incentive which contributes \$13,799.28 to the project cost
- Estimated to reduce operating costs by \$5,448.83 annually and energy consumption in one of the City's top 20 most energy intensive buildings
- Payback period is less than 2 years (22 months)
- Will improve work environment for mechanics and technicians in the Fleet Management facility
- LED light installation may be salvaged, or reused, if Fleet is located at a future date

Cons:

- The facility is at the end of its useful life
- This property has been identified for redevelopment of affordable housing.

As noted above the total cost of the project is \$10,694.95 with funding utilized from the green savings that are part of the Sustainability budget. Once complete, the upgrade will produce an estimate of \$5,448.83 savings of energy costs per year.

Staff recommends City Council adopt a resolution authorizing the City Manager to enter into a sole source contract to purchase and install energy efficiency lighting as part of Duke Energy Progress' Small Business Energy Savers Program.

**RESOLUTION BOOK NO. 39 - PAGE 459**

**R. RESOLUTION NO. 18-137 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A GRANT MODIFICATION AGREEMENT WITH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY FOR RIVERFRONT DESTINATION DEVELOPMENT GRANT**

**RESOLUTION NO. 18-138 - RESOLUTION AUTHORIZING THE CITY MANAGER TO TERMINATE THE GRANT AGREEMENT WITH THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY FOR THE RIVERFRONT DESTINATION DEVELOPMENT 2.0 GRANT**

Summary: The consideration of two resolutions authorizing the City Manager to sign grant amendments with Buncombe County Tourism Development Authority (BCTDA) for the purposes of consolidating grants and adjusting the scope of the grants to align with the current construction funding.

In February 2015, Council approved Resolution No. 15-30 authorizing the City Manager to sign a BCTDA grant agreement for \$1.8 million in grant funds to help construct a portion of the Riverfront Destination Development Projects.

In December, 2016 Council approved Resolution No. 16-266 authorizing the City Manager to sign a separate BCTDA grant agreement for \$700,000 for the French Broad River Greenway West as part of the Riverfront Destination Development Project 2.0.

In June, 2017 Council approved Resolution No. 17-137 which stated in part that the scope of the TIGER VI project needs to be modified due to the increase in costs, and as such the scope of the French Broad River Greenway West would be removed from TIGER VI and phased for a later date.



In January, 2018 Council approved Resolution No. 18-22 authorizing the City Manager to accept an additional \$4.6 million in grant funds from the BCTDA to complete the Lyman street work for the RADTIP project, which is part of the Riverfront Destination Development.

Modifications of the above referenced BCTDA Grants are necessary in order to bring the scope of the grants into compliance with the Council approved Riverfront Destination Development funded construction projects. In addition, staff is also recommending that the grants be consolidated into a single BCTDA grant for clarity in reporting and future BCTDA invoicing.

Council approval is required to authorize the City Manager to sign these grant modifications. These grant modifications are outlined in two separate resolutions: (1) amendments to the BCTDA Riverfront Destination Development grant which aligns the scope of the grant to the scope of the funded construction projects. It also adds increases the funding of this grant by \$4.6 million dollars per Resolution No. 18-22 as well as transfers \$700,000 from the BCTDA Riverfront Destination Development 2.0; and (2) termination of the BCTDA Riverfront Destination Development 2.0 grant since the full \$700,000 in grant funding was transferred to the BCTDA Riverfront Destination Development grant.

Pros:

- City Council has identified implementation of riverfront redevelopment capital investments as a key strategic goal for the city through the creation of Innovation District designation for the greater River Arts District;
- Modification of these BCTDA grant scopes is required to bring the City into compliance and align the grants with the funded construction projects.
- Consolidation of the multiple grants into a single \$7.1 million grant will simplify the tracking, reporting and future invoicing.

Con:

- No cons are identified.

Funding from these identified BCTDA grants total \$7.1 million dollars and have already been budgeted and approved by City Council. There is no loss of funding with these grant modifications, and therefore no fiscal impact to the already approved budgets.

City staff recommends City Council authorize the City Manager to sign the grant modifications with BCTDA.

**RESOLUTION NO. 18-137 - RESOLUTION BOOK NO. 39 - PAGE 460**  
**RESOLUTION NO. 18-138 - RESOLUTION BOOK NO. 39 - PAGE 461**

**S. RESOLUTION NO. 18-139 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT WITH WEST ASHEVILLE BAPTIST CHURCH FOR A PARKING LOT LOCATED AT REDFERN STREET AND LYNNDALE AVENUE**

Summary: The consideration of a resolution authorizing the City Manager to sign a lease agreement with West Asheville Baptist Church that will allow the Adam District of the Asheville Police Department (APD) to use the parking lot owned by the church at the intersection of Redfern Street and Lynndale Avenue as needed to park police vehicles and vehicles owned by police officers working in the district.

West Asheville Baptist Church has been allowing police vehicles to be parked in their overflow parking lot for roughly ten years (Property ID 9628-95-7436). APD has been allowed to use the parking lot free of charge and they have had almost exclusive use of the approximately

20,900 square foot parking lot during that time. Two or three times a year, the church uses the lot for festivals and special events, and it is not needed for regular Sunday services. The condition of the parking lot has deteriorated over time. It was paved many years ago, but has not been maintained by either APD or West Asheville Baptist Church.

The City would like to continue to utilize this property for APD parking and wishes to enter into a formal lease agreement for this use. The initial lease term will be for five years with one four-year renewal. The Church has asked that the City reimburse them for the repaving of the parking lot as compensation for the lease of the property. This one-time lump sum payment would be in lieu of regularly scheduled rent payments. The Church would be responsible for procuring and contracting the work to be performed by a qualified paving contractor on Church-owned property. The City's reimbursement would be capped at \$50,000 and this represents the compensation for the lease. Over the term of the lease, this fee appears to be fair, considering the demand for exclusive, reliable parking in West Asheville. The funds are budgeted by APD for the fiscal year that begins July 1, 2018.

Pros:

- The lump sum payment appears to be cost effective for APD to secure parking services for its personnel.
- APD will continue to be able to use a parking lot that is easily accessible to the district station.

Cons:

- None noted.

The Asheville Police Department will expend up to \$50,000 in lease compensation out of its General Fund budget allocation for Fiscal Year 2018-19.

Staff recommends City Council adopt a resolution authorizing the City Manager to sign this Lease Agreement to formalize the relationship between APD and the West Asheville Baptist Church to ensure that the parking lot will be available for police usage.

#### **RESOLUTION BOOK NO. 39 -PAGE 462**

#### **T. RESOLUTION NO. 18-140 - RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT THE BIG CRAFTY EVENT**

Summary: The consideration of a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Big Crafty.

- Asheville Area Arts Council has requested through the City of Asheville Community & Economic Development Department that City Council permit them to serve beer and/or unfortified wine at The Big Crafty and allow for consumption at this event.

The Big Crafty will be held on Sunday, July 15, 2018 from 12:00 p.m. to 7:30 p.m. within the boundaries of Pack Square Park as per the area limits referenced on the accompanying site map.

Pro:

- Allows fundraising opportunities for Asheville Area Arts Council

Con:

- Potential for public safety issues

Staff recommends City Council adopt a resolution authorizing the City Manager to approve a resolution making provisions for the possession and consumption of malt beverages and/or unfortified wine at The Big Crafty.

### **RESOLUTION BOOK NO. 39 - PAGE 463**

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 Kapoor moved for the adoption of the Consent Agenda. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

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

#### **A. UPDATE ON ASHEVILLE POLICE DEPARTMENT OPEN DATA**

Assistant to the City Manager Jaime Matthews said that the goals for the Asheville Police Department (APD) Open data is (1) consistent with City Council's Open Data Policy; (2) provide ample safeguards for the privacy of victims, officers, residents and the integrity of criminal investigations; and (3) increase trust between the city and the community that it serves. She then reviewed the APD open data request. Other dataset updates include (1) use of force data and citizen complaint data - APD is working with the vendor that manages the data for release; (2) emergency calls and citation and arrest data - Information Technology Department and APD are working with Buncombe County to release data; and (3) demographics information on all City employees - review with the Human Resources Department and Equity Office.

#### **B. I-26 CONNECTOR UPDATE**

Transportation Director Ken Putnam outlined the various interactions since the last update to Council. A public hearing is scheduled for the late fall of 2018. The Record of Decision is planned for the spring of 2019; and the design build process is scheduled for 2020. The consultant is preparing the draft 6-20-18 summary of recommendations. That will be sent to the N.C. Dept. of Transportation (NCDOT) in early July 2018. There have been document commitments between the NCDOT and the City to move forward to design build process. There also has been review of the tunneling option. They are finalizing greenway recommendations and Council will be appointing an Aesthetics Committee, to which only 6 people applied for the Committee. The consultant and the NCDOT will work with the Aesthetics Committee.

Councilwoman Mayfield said that they thought they had an understanding with the NCDOT that the City would complete their negotiations/discussions and all comments would be reflected in the final EIS. However, the NCDOT is planning to issue the final EIS before our negotiations/discussions are complete. We are not finished talking with the NCDOT about their timeline.

### **IV. PUBLIC HEARINGS:**

#### **A. PUBLIC HEARING REGARDING THE PROPOSED CONSOLIDATED ACTION PLAN FOR FISCAL YEAR 2018-19, WHICH SETS OUT THE PROPOSED USE OF FEDERAL COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME INVESTMENT PARTNERSHIP ACT FUNDS FOR THE COMING FISCAL YEAR**

**RESOLUTION NO. 18-141 - RESOLUTION AUTHORIZING SUBMISSION OF THE CITY'S CONSOLIDATED ANNUAL ACTION PLAN FOR 2018-19 TO THE U.S. DEPT. OF HOUSING & URBAN DEVELOPMENT**

Community Development Director Heather Dillashaw said that this is the consideration of a public hearing and resolution authorizing the City Manager to submit the 2018-19 Consolidated Action Plan for CDBG & HOME programs to the US Department of Housing and Urban Development and to sign all documents necessary to implement the plan. This public hearing was advertised on June 8 and 15, 2018.

The City will have \$1,328,798 in CDBG funds and \$1,879,467 in HOME funds available for the fiscal year beginning July 1, 2018. The City's Housing and Community Development Committee has made recommendations for the use of CDBG funds, which must be used in housing or community development programs in Asheville, and the Asheville Regional Housing Consortium has recommended uses for the HOME funds, which must be used for housing programs within the four-county Consortium area (Buncombe, Henderson, Madison, and Transylvania counties).

Allocations are consistent with the Consolidated Strategic Housing & Community Plan for 2015-2019, adopted by City Council April 28, 2015.

Pros:

- Approval of the Action Plan paves the way for the receipts of over \$3,200,000 of HUD funding to the City and region, which will be used to create affordable housing and create jobs.
- HUD funding will leverage approximately \$45,000,000 of additional funding for these projects.
- Reflects the carefully considered recommendations of the City's Housing & Community Development Committee and the Asheville Regional Housing Consortium.

Con:

- It is not possible to fund all the applications received, and most of those funded will receive less than the amount requested.

The Action Plan is fully funded from federal CDBG & HOME entitlement grants, unused funds from previous completed projects, and estimated program income. Staff costs to administer the program are also fully paid from federal sources. The funded programs will provide new construction and other economic activity in the City and region, creating and sustaining employment. The FY 2018-19 budget associated with the Action Plan is included for adoption in the Annual Budget Ordinance that City Council will also be voting on at its June 19, 2018, meeting.

Staff recommends approval of the resolution authorizing submission of the City's Consolidated Annual Action Plan for 2018-19 to the U. S. Dept. of Housing and Urban Development and authorizing the City Manager to sign all contracts or agreements required for the implementation of the Consolidated Annual Action Plan.

Mayor Manheimer opened the public hearing at 5:30 p.m., and when no one spoke, she closed the public hearing at 5:30 p.m.

Councilwoman Mayfield spoke about the great work these organizations are performing.

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

Councilwoman Mayfield moved for the adoption of Resolution No. 18-141. This motion was seconded by Councilman Young and carried unanimously.

**RESOLUTION BOOK NO. 39 – PAGE 466**

**B. PUBLIC HEARING TO CONSIDER A LAND USE INCENTIVE GRANT WITH SWEETGRASS APARTMENTS, MADISON CAPITAL GROUP**

**RESOLUTION NO. 18-142 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH SWEETGRASS APARTMENTS, MADISON CAPITAL GROUP, FOR A LAND USE INCENTIVE GRANT**

Community Development Director Heather Dillashaw said that this is the consideration of a resolution approving a Land Use Incentive Grant Application for Sweetgrass Apartments, by Madison Capital Group (Developer).

The Housing and Community Development Committee reviewed and recommended a Land Use Incentive Grant for Sweetgrass Apartments, in its April 17, 2018, meeting and a revised report on May 8, 2018. Madison Capital Group, represented by Hobie Orton, is developing a 11.9 acre site in South Asheville, located at 39 Bradley Branch Road, Asheville NC. The project will consist of 255 residential rental apartments, of which 10% (26) will be made affordable for 15 years per LUIG agreement. The site is within 0.25 miles of transit, 0.25 miles to amenities, and with access to businesses along the Airport Road corridor. The developer estimates a total development cost of \$38,000,000 and an estimated tax value of \$50,300,000 post completion.

The project, as presented to staff, appears to meet the following Eligibility Requirements,

- The proposed development consists of three or more dwelling units for rent;
- At least 10% of the units will meet the affordability standards set by the City of Asheville for households earning 80% or less of the Area Median Income.
- The affordable units will be affordable to and leased to income-eligible households for at least 15 years.
- The proposed development must be located inside the city limits.
- The proposed development must be located to provide residents convenient access to jobs, schools and services

Scoring

Affordable Rental Housing - The proposed project will provide twenty-six (26) units affordable to households at 80% or less of median income; 10% of total units. Under this category, the project qualifies and received a recommendation of 20 points.

Long term affordability - The proposed project will be committed to serving households at the designated rental rates for the minimum period of fifteen (15) years. This qualifies and received 0 points.

Superior locational efficiency - The proposed project is within .5 miles of public amenity in Aldi's grocery (5 points). The applicant has also made a case for multiple job centers within 1

mile to the site (i.e. Asheville Regional Airport, Progress Energy, Park Ridge Hospital, Sierra Nevada Brewery, Linamar and other manufacturing facilities - 5 points), and proximity to existing bus-stop (within 0.25 miles) served by a 90 minute bus line (10 points). The existing policy defines "Employment Centers" as Downtown, Mission Hospital, and Biltmore Town Square and projects must be located within 1 mile of these centers. The applicant has made a case for proximity to job centers/resources within 1 mile and ½ mile from the project site. No specifics on number of jobs have been provided. The policy requirements for transit points are bus stops within 0.25 mile to the project (which this project qualifies) and with a 30 minute bus service (which the project does not have). Currently the City has 1 bus line with a 30 minute service (N3). The currently policy does permit the applicant to make a case for these points that fall outside of the policy definitions. The project qualifies for 5 points in this category (per policy), the applicant requests 20 points, and HCD Committee recommends 15 points.

Brownfield Development - The proposed project will receive the North Carolina Brownfield Redevelopment grant, and the applicant has asked to extend the Land Use Incentive Grant by 1 year in order to take advantage of both grants. This does not qualify the project for points, but the applicant requests 10 points and HCD Committee recommends 5 points.

Per current policy, staff has scored the project with 25 points, which qualifies the project for two-and-a-half years (2.5) of the Land Use Incentive Grant. The applicant requests 50 points for the transit stop (10 pts.), proximity to jobs (5 pts.), and brownfield development (10 pts.), which is a 5 year Land Use Incentive Grant. The HCD Committee recommends 40 points for this project, which is a 4 year Land Use Incentive Grant.

Estimated value of Land Use Incentive: The current estimated assessment value for this property is \$1,200,000. The developer's estimate of improvement value is \$38,000,000 with a completed estimated project taxable value of \$50,300,000. The annual estimated city tax post completion, based on the developer's estimate of value, is \$215,737, which gives the project and estimated annual and eligible tax value of \$210,590. Over a 4 year period, if approved at that level, the total estimated Land Use Incentive Grant would be \$842,360, the exact amount to be determined by the length in years, of the grant award, and the actual assessed value of the development upon completion. Based on these estimates, the subsidy per affordable unit would be \$32,398. The subsidy amount per affordable unit/year of affordability would be \$2,160.

The estimated amount of fees payable for Zoning Permit, Building Permit, Driveway Permit, Grading Permit, Stormwater Plan Review Fee, and Water Service Connection Fee is \$40,062. The value of each 10% of eligible fee rebates would be \$4,006. The exact amount would be determined by the percentage of fee rebate awarded as part of the Land Use Incentive Grant. If approved at the 40 point level, the fee rebate would be approximately \$16,024.

The total estimated Land Use Incentive Grant benefit over 4 years is \$858,384, which equals \$33,015 subsidy per affordable unit, and \$2,200 per unit per year of affordability.

HCD Committee requests that City Council consider the Land Use Incentive Grant request as detailed above with a 4 year benefit.

Mayor Manheimer opened the public hearing at 5:35 p.m., and when no one spoke, she closed the public hearing at 5:35 p.m.

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

Vice-Mayor Wisler moved for the adoption of Resolution No. 18-142. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 – PAGE 467**

**C. PUBLIC HEARING RELATIVE TO REZONING 339 WEST HAYWOOD STREET AND ADJACENT PARCELS FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

**ORDINANCE NO. 4675 - ORDINANCE TO REZONE 339 WEST HAYWOOD STREET AND ADJACENT PARCELS FROM NEIGHBORHOOD BUSINESS DISTRICT TO COMMUNITY BUSINESS I DISTRICT**

Urban Planner Sasha Vrtunski said that this is the consideration of an ordinance to rezone 339 West Haywood Street and adjacent parcels from Neighborhood Business District to Community Business I District. This public hearing was advertised on June 8 and 15, 2018.

The subject property is 1.23 acres and is currently undeveloped. The property has frontage on West Haywood Street and the rear of the property to the north is adjacent to the ROW for I-240 (NCDOT property). The western edge also borders along NCDOT ROW.

On the easternmost parcel, addressed as 339 W. Haywood Street, there is an existing billboard sign which has a viewshed and vegetation easement to the west of the sign. To the east of the billboard, there is also a utility easement. The applicant has estimated that the billboard and easements reduce the developable land to approximately one acre.

The applicant has requested that the zoning be changed from Neighborhood Business (NB) to Community Business I (CBI) for the purpose of developing single family lots and potentially some commercial development. While there has been no specific proposal submitted for the site, this zoning change would give the owners more flexibility for future development, and would increase the allowed density from 12 to 20 units/acre. The applicant has stated that he not looking for an increase in density, but rather the ability to develop single family lots which are not allowed under Neighborhood Business. Neighborhood Business development standards only permit residential uses on the second floor of a commercial building.

The River Arts District Form Code was enacted in November 2017; the form code district is a quarter mile from the subject parcels.

The parcels to the north of the subject parcels are zoned CBI. To the south of these three parcels, one property is zoned NB, two are zoned RM-8 and the Asheville Transit Center property is zoned Institutional. This section of West Haywood Street was separated from the Central Business District with the construction of I-240 and the Patton Avenue ramps.

The purpose of the *Community Business I* (CBI) district is to allow for businesses and services that serve more than one neighborhood. The maximum footprint allowed is 6,000 sf with overall structure size limited to 12,000 sf. *Neighborhood Business* district is in place to allow smaller commercial development that serves a neighborhood and which do not create conflicts for the surrounding residential areas. The maximum footprint allowed is 3,000 sf and the overall structure is limited to 6,000 sf. The current zoning of Neighborhood Business allows for the development of multifamily housing, to be located on upper floors only, but does not allow for the development of single family detached housing. Both districts have height limits of 40 feet, which is the same as the height limit in the nearby residential district.

For reference in the surrounding area, the Boy Scouts building to the north has a footprint of 8,800 sf, which is larger than would be allowed under either zoning district. The building at 306

W. Haywood Street has a footprint of 3,530 square feet, but it has multiple levels and has a total gross floor area of 11,000 square feet. The area with these particular structures is zoned CBI. In general, these surrounding parcels act as a buffer between the residential neighborhood and the highway. The subject site is also in close proximity to an area of Patton Avenue that has the potential to be redeveloped as part of the I-26 Connector project. Community Business I allows for more flexibility for residential and commercial development. If a multifamily structure was to be built in the future it would be limited in scale due to the building size restrictions in place and the need to provide parking. Staff finds that the potential rezoning would generally be compatible with the area.

Rezoning applications are reviewed by the Planning and Zoning Commission with final consideration by City Council.

At the May 2, 2018, Planning and Zoning Commission meeting several residents spoke against the proposed rezoning. They had concerns about larger commercial development, and would rather see single family residences built on the property. The Commission voted 6-0 in favor of the rezoning.

The 2025 Comprehensive Plan recommends “compatible adaptive reuse and infill development” within the city. Future infill development on this parcel will meet this goal. The draft Living Asheville Plan shows this area as an area for potential expansion of the Central Business District (CBD).

The WECAN Neighborhood Plan developed in the early 2000s suggests that this area is suited best for medium density residential development, similar to the “missing middle” that recent ordinance changes seek to enable. Drawings show small/medium apartment buildings along Haywood Road.

This action aligns most closely with the 2036 Council Vision in the area of *A Well-Planned and Livable Community* - The proposed rezoning will enable infill development to occur where no activity has happened under the current Neighborhood Business zoning.

Considerations:

- Development on the site could potentially help buffer the neighborhood further from I-240 and the noise of the highway.
- Rezoning to Community Business I would allow a variety of housing options for the site as well as small scale commercial business.
- Building size and site constraints will likely limit the ultimate density of any housing built on the site.
- The main access serving this site from Downtown, Hilliard Avenue, has ample width and capacity for additional traffic from this location.

The Planning and Zoning Commission reviewed this project on May 2, 2018. The Commission voted 6-0 in favor of the rezoning and recommended Council approval of this rezoning request.

Mr. Scott Carter, applicant, requested the rezoning due to the challenges Neighborhood Business District zoning presents. Community Business I District will offer more flexibility in potential development, including, but not limited to single family homes. He then explained his meetings with the surrounding neighbors. He asked for Council’s support.

In response to Councilman Haynes, Mr. Carter said that his vision is single-family homes with a local community business.



City Attorney Currin reminded Council that this is a straight rezoning and any use allowed in the Community Business I District will be allowed.

Mayor Manheimer opened the public hearing at 5:49 p.m.

Ms. Rachel Larsa, Chair of the West End/Clingman Avenue Neighborhood Association, said that there was not a consensus amongst the Association about what they would like at that location, but overall was the potential for 40 units. There are other units slated for their neighborhood and they were concerned with the additional traffic.

Mr. Alan Ditmore felt that the people in that area can walk to work and shop downtown and hopefully that will reduce the amount of traffic in that area.

Mr. Timothy Sadler suggested live/work units.

Mayor Manheimer closed the public hearing at 5:55 p.m.

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

Councilwoman Mayfield moved to approve the rezoning request for the parcels located at 399 W. Haywood Street (PINs 9648-09-1093 -2131, and -4109) from Neighborhood Business District to Community Business I District (CBI) and find that the request is reasonable is within the public interest and is consistent with the Comprehensive Plan and other adopted plans in the following ways: (1) the rezoning would allow for a greater variety of housing options; (2) development on the site could potentially help buffer the neighborhood further from I-240 and the noise of the highway; and (3) additional housing or commercial activity in this location, near downtown, is an appropriate use. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

**ORDINANCE BOOK NO. 32 - PAGE 92**

**D. PUBLIC HEARING RELATIVE TO REZONING 99999 KENT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

**ORDINANCE NO. 4676 - ORDINANCE TO REZONE 99999 KENT STREET FROM NEIGHBORHOOD BUSINESS DISTRICT TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT**

Urban Planner Sasha Vrtunski said that this is the consideration of an ordinance to rezone 99999 Kent Street from Neighborhood Business District to RS-8 Residential Single-Family High Density District. This public hearing was advertised on June 8 and 15, 2018.

The subject property is 0.41 acre and is currently undeveloped. The property has frontage on both Kent Street and Shiloh Road. A significant part of the parcel is in the 100- year floodplain and the creek has a 30 foot buffer. The site is currently vacant and has some vegetation on it.

The applicant has requested that the zoning be changed from Neighborhood Business (NB) to Residential Single Family High Density district (RS8) for the purpose of subdividing the parcel and to build houses.

The majority of the zoning surrounding this parcel is RS-8, with the exception of two parcels that are Neighborhood Business. Generally, the character of the neighborhood is single family houses, so additional single family houses or duplexes would fit in with the neighborhood.

Rezoning applications are reviewed by the Planning and Zoning Commission with final consideration by City Council.

At the May 2, 2018, Planning and Zoning Commission meeting, Norma Baynes, representing the Shiloh Community Association spoke in favor of the rezoning. Another resident came to ask questions to fully understand the impact of the rezoning, but did not oppose it. The Commission voted 6-0 in favor of the rezoning.

The 2025 Comprehensive Plan recommends “compatible adaptive reuse and infill development” within the city. Development of single family homes on this parcel will meet this goal.

In the draft Living Asheville plan, this area is identified as a Traditional Neighborhood on the Future Land Use Map.

This action aligns most closely with the 2036 Council Vision in the area of *A Well-Planned and Livable Community* - The proposed rezoning will enable infill development to occur where no activity has happened under the current Neighborhood Business zoning. Existing floodplain and buffer restrictions make a small business development less likely to happen; lower density residential is a more compatible use.

Considerations:

- This rezoning to RS8 would allow residential infill development.
- Future commercial development under the current zoning is unlikely to occur.
- The subject parcel is on an existing transit line, close to the Lynwood Crump Shiloh Recreation Complex and a major grocery store is within one mile.
- Leaders of the Shiloh Neighborhood Association have voiced support to staff for the rezoning.

The Planning and Zoning Commission reviewed this project on May 2, 2018. The Commission voted 6-0 in favor of the rezoning and recommended Council approval of this rezoning request.

Mr. Harry Coleman, property owner, asked for Council's support of the rezoning request.

Manheimer opened the public hearing at 5:58 p.m.

Ms. Norma Baynes, Assistant Liaison for the Shiloh Community Association, said that the association is supportive of this rezoning.

Mayor Manheimer closed the public hearing at 6:00 p.m.

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

Vice-Mayor Wisler moved to approve the rezoning request for 99999 Kent Street from Neighborhood Business to RS-8 Residential Single Family High Density District and find that the request is reasonable is within the public interest and is consistent with the Comprehensive Plan

and other adopted plans in the following ways: (1) Assigns compatible zoning designations consistent with the surrounding neighborhood; (2) the site is a suitable location for housing development which is needed in the community; and (3) the site is on a transit route and close to community amenities. This motion was seconded by Councilman Kapoor and carried unanimously.

**ORDINANCE BOOK NO. 32 – PAGE 95**

**E. PUBLIC HEARING TO CONSIDER ADOPTION OF LIVING ASHEVILLE: A COMPREHENSIVE PLAN FOR OUR FUTURE AS THE NEW COMPREHENSIVE PLAN DOCUMENT FOR THE CITY OF ASHEVILLE**

**RESOLUTION NO. 18-143 - RESOLUTION ADOPTING THE LIVING ASHEVILLE: A COMPREHENSIVE PLAN FOR OUR FUTURE AS THE NEW COMPREHENSIVE PLAN DOCUMENT FOR THE CITY OF ASHEVILLE**

Ms. Laura Hudson, Chair of the Planning & Zoning Commission, said that this this staff Report will serve as the report from the Planning and Zoning Commission as required by Sec. 7-4-2. (b) (3) of the city's Unified Development Ordinance (UDO) regarding adoption of a new comprehensive plan. The updated and amended comprehensive plan, *Living Asheville: A Comprehensive Plan for our Future (Living Asheville)*, will replace the city's current comprehensive plan *Asheville City Development 2025* as the basic policy guide for development in the City of Asheville. This public hearing was advertised on June 8 and 15, 2018.

The purpose of the comprehensive plan is to set forth goals and policies for sustainable growth and development over the next 10-20 year period. The plan includes goals and strategies reflecting the community's vision for the location and form of future development, future land use patterns and other policy guidance, while ensuring sufficient infrastructure, parks and community services.

The interest to update and amend the comprehensive plan is the result of the successful growth and popularity the Asheville community has experienced over the past 16 or so years. There are major issues and needs facing the community that are not adequately addressed within the current Asheville City Development Plan 2025. The city's population has grown by over 20,000 people and visits to the city and county have also increased to over 10 million people per year impacting the need for new facilities, accommodations, housing, jobs and infrastructure. The additional growth has put pressure on downtown and existing neighborhoods and has increased the need for affordable housing and strategies to address low wages and limited employment opportunities experienced by many workers in Asheville.

The Planning and Zoning Commission reviewed this request at their meeting on April 11, 2018, and held a public hearing on June 6, 2018, in which they voted 5-0 to recommend approval of the plan. Therefore, the Planning and Zoning Commission recommends that the Asheville City Council adopts the updated and amended comprehensive plan, *Living Asheville: a Comprehensive Plan for our Future*. During the public hearing portion of the review, three members of the community spoke in favor of the plan and recommended its adoption.

Director of Planning & Urban Development Todd Okolichany said that transportation systems and the natural environment have been strained and may be improved by cooperative regional solutions to make positive changes. More paths to economic opportunity are needed through investments in people and well designed public places, private development and infrastructure to improve affordable housing, diversify the local economy, and enhance transportation connectivity. Climate change adaptation and equity have emerged as important

trends that have been incorporated into the plan's strategies. The amended document is needed to ensure the health, safety and welfare of the city.

Developed over a two year period beginning in the spring of 2015, the comprehensive plan update was led by the city's Planning and Urban Design Department working with the consultant team from Skidmore Owings and Merrill with support from an advisory committee established by the Asheville City Council and a technical team comprised of city staff. *Living Asheville* was drafted, expanded and ultimately finalized through an iterative process of continuous feedback between the consultant team, the city and the public with guidance and input from the advisory and technical committees. Through this process the plan evolved to reflect the voice and vision of the community in both an aspirational and practical way.

The planning process was organized into four phases. The initial phase involved an analysis and assessment of Asheville's existing environment, its role within the region, social and economic conditions and projected growth. This phase also explored Asheville's recent planning efforts and compared Asheville to similar cities across the nation. Later phases shaped the strategy and vision for the plan around a process of extensive community outreach and engagement. A public survey, community workshops, focus groups, outreach at neighborhood and special events and input from relevant boards and commissions helped establish the project's key concepts, goals and priorities. These phases yielded the plan's Assessment and Market, Housing and Economic Strategies reports, which helped to inform the plan's strategies. Highlights of these documents are included in the text of *Living Asheville* and the complete reports are included as appendices to the plan.

The plan is organized into four sections, which include Book 1: Introduction, Book 2: Themes, Book 3: Physical Strategies and Land Use, and Book 4: Implementation. The first section, Book 1: Introduction, provides an overview of existing conditions, including data from the the assessment and economic reports and summarizes the plan process. The second section of the plan, Book 2: Themes, contains 39 goals and numerous strategies as well as synergistic strategies, which are organized around six basic principles. These principles provide substantive direction for establishing best practices in comprehensive planning as outlined by the American Planning Association. They are: 1) Livable Built Environment; 2) Resilient Economy; 3) Harmony with the Natural Environment; 4) Healthy Community; 5) Interwoven Equity; and, 6) Responsible Regionalism. Suggested performance measures are also included in this section. While Interwoven Equity is a stand alone theme of *Living Asheville*, the planning team worked to weave equity into the entire planning process as well throughout the document and consulted with the city's Equity and Inclusion Manager on this effort.

The third section of the plan, Book 3: Physical Strategies and Land Use, recommends three physical growth strategies and provides a growth scenario analysis. This chapter also contains a Future Land Use Map and physical strategies for the five geographic regions of Asheville. The last section, Book 4: Implementation, begins to outline implementation strategies.

Three concurrent efforts rounded out the planning process and contribute to the distinctiveness of *Living Asheville*. The first was the Neighborhood Plan on a Page Initiative. Asheville neighborhoods were encouraged to submit a short plan which described their neighborhood's character, vision, strengths and challenges. This information helped to inform strategies overall, but also helped to flesh out the physical strategies for the five geographic areas. The city received 33 plans through this effort and will continue to encourage neighborhoods to submit a Plan on a Page. These plans are summarized and included as an appendix to *Living Asheville*.

The city also worked with UNC Asheville's National Environmental Modeling and Analysis Center on the Climate Resilience Assessment Report. This assessment along with NEMAC's

multi-hazard risk tool, assesses Asheville's vulnerability to floods, landslides, droughts, wildfires and other hazards and provides the groundwork for Asheville to address these climate related threats through the identification of options the city can implement to build resiliency; thus, allowing the city to assume a leadership role in the face of climate change. The full report is included as an appendix to the plan and some of the the Assessment Report's results are summarized by geographic area in Book 3. The prologue and essays written by local Ashevilleians complete the document, lending an authentic voice to the comprehensive plan.

Considerations:

- Adoption of *Living Asheville* fulfills Council's goal to revise the comprehensive plan.
- Based on the changes and growth that the community has experienced over the past 15-20 years, the effort the planning team has made to listen and incorporate the many voices of the citizens of Asheville in creating the document, and the acknowledgement that the plan will serve to inform future decision making regarding land use regulations and other city policies, staff recommends adoption of *Living Asheville*.

He then outlined the approach to Plan implementation: (1) enhance webpage for the plan; (2) create an action plan (3) integrate the plan into the City's strategic priority planning cycle; (4) review plan progress; and (5) evaluate and selectively update the plan every 3-5 years.

Mayor Manheimer opened the public hearing at 6:11 p.m.

Mr. Alan Ditmore objected to the Plan because he felt it interferes with his objective of the affordable housing market; and that there should be no density cap anywhere in the City.

In response to Mr. Ken Michalove, Mr. Okolichany said that the City's existing plan is on the website.

Rev. Amy Cantrell said that the Comprehensive Plan has a vision; however, it needs to have resources to be implemented.

Mayor Manheimer closed the public hearing at 6:17 p.m.

Councilman Kapoor thanked staff for their efforts on the new Comprehensive Plan, especially their efforts to reach out to neighborhoods. He also appreciated staff looking into the concerns of the neighborhoods and incorporating strategies to alleviate those concerns in the Plan.

Councilwoman Mayfield also thanked staff for their efforts in creating a plan that will honor and move us forward towards Council's 2036 Vision.

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

Councilwoman Mayfield moved to adopt the updated and amended comprehensive plan, *Living Asheville: a Comprehensive Plan for our Future*, based upon the oral and written comments presented before and at the hearing and the factors set forth in UDO Section 7-4-2(b)(4) including that: (1) Changes in the community have been identified, which are not adequately addressed in the current comprehensive plan, *Asheville City Development Plan 2025*; (2) The updated and amended plan was developed with community input and reflects the community's vision for the future; (3)The plan will help inform future decision making regarding land use regulations and other city policies; and, (4)The plan amendment will promote the health, safety, and welfare of the City of Asheville. This motion was seconded by Councilman Kapoor and carried unanimously.

RESOLUTION BOOK NO. 39 – PAGE 468

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4677 - ORDINANCE ADOPTING THE FISCAL YEAR 2018-19 OPERATING BUDGET**

Mayor Manheimer announced that there will be no public comment taken on this matter. The public hearing was held on May 22, 2018.

Director of Finance and Management Services Barbara Whitehorn said that this is the consideration of an ordinance to adopt the Fiscal Year 2018-19 Annual Budget.

The Fiscal 2018-19 Proposed Annual Operating Budget was presented to City Council on May 15, 2018. In accordance with the North Carolina Local Government Budget and Fiscal Control Act, a summary of the Proposed Budget along with a notice of the Public Hearing was published on May 11, 2018. City Council conducted a public hearing on the Proposed Budget on May 22, 2018. The Proposed Budget is balanced with an ad valorem tax rate of \$0.4289 per \$100 of assessed value, which is unchanged from the current rate. All essential City services are continued in the Proposed Budget.

***Changes to the Proposed Operating Budget*** - Since the Proposed Budget was presented to City Council, there have been some minor adjustments per Council direction that have altered the annual operating budget that is presented tonight for Council adoption.

- **Firefighter 457 Retirement Program.** An increase to the City matching contribution to the fire personnel 457 retirement program from 4% to 6%, effective January 1, 2019 at a cost of \$155,480.
- **Upgrade Public Records Position to Full-Time.** In order to continue providing timely responses to public records requests, the Proposed Budget included approximately \$25,000 in funding to convert a temporary part-time position to a benefited part-time position in the City Clerk's office. The Budget presented tonight for adoption further expands this position to a full-time benefited position at an additional cost of \$13,485.
- **Additional Fund Balance Appropriation.** In order to fund the increase in the firefighter 457 contribution and the upgrade of the public records position, staff has adjusted the appropriation from unassigned fund balance in the General Fund from \$471,000 to \$639,965. The table below, which was included in the City Manager's Budget Message, is updated to show the impact of this additional fund balance usage.

FY 2017-18 General Fund Revenue Estimate	\$119,964,653
FY 2017-18 General Fund Expenditure Estimate	\$119,881,687
Revenue Over Expenditure	\$82,966
Beginning FY 2017-18 General Fund Unassigned Fund Balance (FB)	\$21,271,224
Ending FY 2017-18 General Fund Unassigned FB	\$21,354,190

FY 2018-19 FB Usage	(\$639,965)
Beginning FY 2018-18 General Fund Unassigned FB	\$20,714,225
FY 2018-19 Proposed General Fund Budget	\$124,394,311
Unassigned Fund Balance As % of Proposed Budget	16.65%

**Changes to the Proposed Capital Budget** - Since publication of the Proposed Budget Document in May, the City has received official notice that it has been awarded \$17,817,040 in transportation grant funding from the French Broad River Metropolitan Planning Organization (MPO) for the projects in the table below.

Project Name	Federal	Local	Total Cost
Johnston Blvd. Sidewalk	\$1,880,000	\$470,000	\$2,350,000
New Haw Creek Sidewalk	\$1,900,000	\$475,000	\$2,375,000
Onteora Rd Sidewalk	\$912,000	\$228,000	\$1,140,000
Town Branch Greenway	\$3,420,000	\$855,000	\$4,275,000
FBR West Greenway	\$4,000,000	\$1,000,000	\$5,000,000
Bus Replacement	\$4,069,180	\$1,017,295	\$5,086,475
Bus Expansion	\$1,635,860	\$408,965	\$2,044,825
<b>TOTAL</b>	<b>\$17,817,040</b>	<b>\$4,454,260</b>	<b>\$22,271,300</b>

The local matches and budgets for all of the projects except Town Branch Greenway and French Broad River (FBR) West Greenway were already included in the five-year Capital Improvement Program (CIP) presented in the Proposed Budget Document. The FY 2018-19 Budget Ordinance includes these two new project budgets in the General Capital Projects Fund, and the Adopted Budget Document will also be updated to reflect funding for these two additional projects.

The FY 2018-19 Budget Ordinance also includes budget authorization of \$5.5 million in the General Capital Projects Fund for the purchase and installation of park lighting for sports fields and courts. As discussed with the Finance Committee at its May 25, 2018 meeting, the City will be entering into an installment financing agreement for this purchase and installation with debt service payments funded through the Parks and Recreation Department annual operating budget. Council is taking a separate action at its June 19, 2018 meeting to approve a resolution authorizing the installment financing agreement.

This action complies with the Thriving Local Economy and Smart City focus areas of City Council's Strategic Themes. The budget reflects City Council's ongoing commitment to providing a living wage as an example for other organizations in the area and managing the City to the highest levels of fiscal responsibility and prudence.

Pros:

- Ensures City's compliance with North Carolina General Statutes that require local governments to adopt a balanced budget ordinance by July 1 of each year.

- General Fund budget is balanced with minimal fund balance appropriation for ongoing operating expenses and all essential City services are continued.

Con:

- None.

As noted above, the Proposed FY 2018-19 General Fund budget is balanced with a fund balance appropriation of \$639,965, which will result in an estimated unassigned fund balance percentage of 16.65% (above the City policy goal of 15.00%).

Staff requests that Council adopt the FY 2018-19 Annual Budget Ordinance with the changes noted above.

Acting City Manager Ball said that while we have worked hard to put together a budget we have identified several opportunities. As we move into the next budget cycle we have made commitments to be able to move forward with improvements. One of our core values is continuous improvement. We have committed to doing participatory budgeting and we are committed to starting that process earlier and allowing the public to give input on that. We do want more public transparency in the budget process and that includes providing more details early on about the Police budget. We want to identify specific programs within the budget and make sure the public understands what those programs cost so they can make choices about what they want to see in the community. We also want more employee engagement in the budget process. There are several ways the budget process has been improved over the years and there are opportunities and way to put together a budget that allows the public, as well as our employee base, to be able to give input. We are committed to moving forward on that in July. We also want to say that we are interested in starting a strategic process around the potential funding that could come from the sale of the Mission Hospital system to HCA. We would love to work with the community and Buncombe County to be able to decide how we can make a difference in our community in the next 20-30 years with those monies we would receive.

Vice-Mayor Wisler said she has heard that our budget process was not transparent, but looking at the 4 budget worksessions and other Council meetings which the budget was discussed, she felt there was compromise making sure that all Council members and citizen voices were heard.

Councilman Kapoor read the following statement: "I will vote in favor of the budget, although it doesn't include everything that I wanted and includes some things that I think we can do without, it takes steps to address the serious issues that Asheville as a whole is facing. I would have liked to see our City employees receive a 3% increase rather than a 2.5% increase. Additionally, I'm sorry that we're not able to support the Asheville Museum of Science in this year's budget, but hope that we can work with them for the next budget cycle just as we've done with the Art Museum. But I don't expect nor am I going to insist that everything needs to be the way I want it to be for me to vote for it. That brings me to the request for funding additional police officers which I support for several reasons. First, and I mean this with all respect to the Chief and the police officers, while I would prefer we spend this money elsewhere or not spend it at all, the fact is we need more police officers in Asheville to deal with the level of service calls APD receives. Right now, our officers are being pulled from other locations in the City to respond to calls Downtown. The purpose of hiring additional officers is so that APD can create a Downtown district that will not only serve Downtown better, but will also allow police officers to better serve other parts of the City. Second, we are also seeing a continued, significant increase in violent crime - especially gun violence - in certain parts of the City. From January to March of 2018, the number of violent Part I crimes (this is homicide, rape, robbery and aggravated assault) are up 33% over the same time period in 2017 on top of a 28% increase from 2015 to 2017. You may also remember a statistic cited that between 2016 and 2017, the number of traffic stops of African



Americans increased by 595 or 53% while for whites it only went up by 15 or 0.3%. On its face, that's a pretty alarming statistic so I asked the question why. It turns out that four areas of the city which were experiencing significant gun violence during that time represented 72.4% of that increase. For example, in Shiloh, residents were complaining about gun violence and drug activity on Brooklyn Road in 2017 so APD directed resources there and saw an increase in traffic stops. The racial demographics of that district was 34% black and 66% white. The traffic stop demographics over that period in that district were 35% black and 65% white. We see similar racial and traffic stop demographic percentages in the other areas where the traffic stops occurred. In response to complaints and data, APD directed significant resources to these locations and has been able to reduce the gun activity there. This analysis was provided to all of Council and I hope we read it and I hope that the public sees it as well. Finally, increasing the number of officers will allow APD the ability to implement community policing which was one of the six pillars of President Obama's Task Force on 21st Century Policing report. The 21st Century Policing report was written in 2015 by a task force of academics, community leaders, police leaders, and police employee representatives. That report has been referenced by Mr. Mance in his presentation and APD has already implemented many of its recommendations. The community policing philosophy cites the need to use partnerships with the community to address the conditions that cause public safety issues. The report talks about police officers actively building positive relationships with members of the community and notes that it required participation to community organizations, local meetings and public service activities. Anyone who has tried to build community knows that it takes time. Well, how do we expect our officers to be able to do that when they're spending all their time on service calls? Additionally, Pillar 6 of the report talks about Officer Wellness & Safety. If our officers are consistently responding to calls, that is going to lead to burnout and turnover. My goal during my time on Council is to ensure that all Asheville residents go to sleep each night feeling safe, fed, healthy and valued. Approving this budget will not only make our city safer, but it will also go a long way to implementing the recommendations of the 21st Century Policing report and I'm proud to support it."

Councilman Haynes said that he did not support the budget because of the increase funding for additional police officers. He felt our community has greater needs than this. We are trying to build community trust between the police department and the community. Adding police officers is counter-productive. He could support this money going towards fare free transit and increased wages for low level city employees, including police officers. There are many good ideas for using this money. He said that when we talk about how our officers are overworked, part of this problem seems to be that a lot of officers' time is spent dealing with low level offenses. By removing this as a requirement for them will free up resources in order for them to deal with bigger issues of crime. He also said that the Asheville Fire Department/Community EMT Pilot Program will also free up officers from being the first responders.

Councilwoman Mayfield said that there is a recommendation in the Transit Master Plan to try some fare free weekends. The concern is going fare free all at once would overburden the system because we don't have enough buses to deal with that. The last time we did a significant fare free effort sent our buses into maintenance much more frequently than before.

Councilwoman Smith felt that the items the Acting City Manager outlined are items that should be been considered during this budget cycle. She believed that informed budget decisions are made with accurate information about how departments are functioning always remains a question with this Council, as it pertains to procedurally how our police force is doing and how we are approaching situations in the community. With that being the question, she didn't believe any other department would receive any type of expansion in those gray areas. Therefore, she didn't believe that in any city in any situation police expansion has actually reduced crime. But what it has caused is a lot of interactions around low level crimes. The root of it all is policing in general. It's not speaking against the officers as we have the mindset to

provide safety in our community, but the office of policing in America has never really benefited the community at large. So, we are policing poverty and the homeless. We have seen a pie chart that showed how much we are putting into policing and she questioned the Council what their day to day procedures look like, what programs are in place to build trust, etc. She didn't think that is in place and she felt we are actually working backwards.

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

Vice-Mayor Wisler moved for the adoption of Ordinance No. 4677, with the changes to the proposed budget outlined above. This motion was seconded by Councilman Kapoor and carried on a 4-3 vote, with Councilman Haynes, Councilwoman Smith and Councilman Young voting "no".

## **ORDINANCE BOOK NO. 32 – PAGE 98**

### **Closed Session**

At 6:39 p.m., Councilwoman Smith 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); and (3) To establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease. The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11 (a) (5). This motion was seconded by Vice-Mayor Wisler and carried unanimously.

At 7:25 p.m., Vice-Mayor Wisler to come out of closed session. This motion was seconded by Councilwoman Smith and carried unanimously.

### **B. ASHEVILLE POLICE DEPARTMENT EQUITY & TRANSPARENCY**

During City Council's May 22, 2018, meeting, following a presentation by Ian Mance (an attorney for the Southern Coalition for Social Justice), and a response by Chief Hooper, Councilman Young made the following three motions, which were seconded, and ultimately passed by a vote of 5 to 2:

- A motion to direct the City Manager to implement a written consent policy for the Asheville Police Department ("APD") for vehicular searches and searches of the person or personal property associated with the person.
- A motion to direct the City Manager to implement a policy that APD not base a consent search on vehicular stops on a person having a criminal record or suspicious movement or behavior.
- A motion to direct the City Manager to implement a policy that APD de-prioritize low level regulatory stops.

The manner in which these motions were presented, debated and ultimately passed appeared to potentially violate several of the City Council's Rules of Procedure, including the

requirement that the public be afforded an opportunity to comment prior to any final vote. For that reason, members of the City Council have requested that the City Manager's Office work with the City Attorney's Office to prepare three separate resolutions rescinding those prior actions so that the specific measures may be presented again in the form of written resolutions open to public comment prior to the final vote.

Pros:

- Resolves potential procedural deficiencies with prior Council actions
- Affords an additional opportunity for public input.
- Clearly and precisely memorializes the City Council's position on these policy matters.

Con:

- None

There is no fiscal impact to this recommendation.

City staff recommends City Council consider adoption of three separate resolutions rescinding City Council actions passed during its May 22, 2018 meeting, and memorializing the City Council's support of certain policing policies.

Councilman Kapoor moved to combine the public hearings on the following three topics, with individual votes taken on each resolution. This motion was seconded by Councilwoman Mayfield and carried unanimously.

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

**RESOLUTION NO. 18-144 - RESOLUTION RESCINDING PRIOR COUNCIL ACTION AND AFFIRMING SUPPORT FOR POLICIES REQUIRING THAT POLICE PROVIDE INFORMATION AND OBTAIN CONSENT IN WRITING PRIOR TO CONDUCTING CONSENT SEARCHES AS A MEASURE TO BUILD TRUST BETWEEN THE COMMUNITY AND THE POLICE**

Resolution is as follows: "WHEREAS, Recommendation 2.10 of the Final Report on 21st Century Policing states that when there is no warrant or probable cause to conduct a search, law enforcement officers should be required to seek consent before a search and explain that a person has the right to refuse consent, and further states that officers should ideally obtain written acknowledgment that they have sought consent to a search in these circumstances; and WHEREAS, Pillar Two: Policy and Oversight of the Final Report on 21st Century Policing emphasizes that if police are to carry out their responsibilities according to established policies, those policies must reflect community values; and WHEREAS, policies implementing those recommendations further the City's goal of building and maintaining trust between the community and police; and WHEREAS, the City Council of the City of Asheville supports a written consent policy for the Asheville Police Department to apply to searches of vehicles or premises so that all individuals are informed of their rights; and WHEREAS, the Asheville Police Department utilizes written consent or warrants when searching homes; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The City Council's action, taken during its May 22, 2018, meeting, directing the City Manager to implement a written consent policy for the Asheville Police Department to apply to vehicle searches and searches of persons and their personal property, is hereby rescinded. The City Council now authorizes the City Manager to work with the Asheville Police Department to implement a policy whereby police officers who request consent to search explain that a person has the right to refuse and obtain a

person's written consent prior to a consent search occurring.”

**RESOLUTION NO. 18-145 - RESOLUTION RESCINDING PRIOR COUNCIL ACTION AND AFFIRMING SUPPORT FOR POLICIES REGARDING REASONS FOR POLICE TO SEEK CONSENT TO CONDUCT SEARCHES AS A MEASURE TO BUILD TRUST BETWEEN THE COMMUNITY AND POLICE**

Resolution reads as follows: “WHEREAS, policies directing police officers to not seek consent to search a vehicle, person or personal property associated with a person, where the sole articulable reason for seeking such consent is the person's criminal record or apparent nervousness, furthers the City's goal of building trust between the community and police; and WHEREAS, Pillar Two: Policy and Oversight of the Final Report on 21st Century Policing emphasizes that if police are to carry out their responsibilities according to established policies, those policies must reflect community values; and WHEREAS, communities in North Carolina and across the country have adopted similar policies; and WHEREAS, City Council recognizes the difference between “apparent nervousness” and behaviors indicative of criminal activity; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The City Council's action, taken during its May 22, 2018, meeting, directing the City Manager to implement a policy whereby the Asheville Police Department would not base consent searches of a vehicle on the basis that the person involved has a criminal record or because the person displayed suspicious movements or behaviors, is hereby rescinded. The City Council now authorizes the City Manager to work with the Asheville Police Department to ensure that police officers do not seek consent to search a vehicle, person or property associated with a person, where the sole articulable reason for seeking such consent is the person's criminal record or apparent nervousness.”

**RESOLUTION NO. 18-146 - RESOLUTION RESCINDING PRIOR COUNCIL ACTION AND AFFIRMING SUPPORT FOR POLICIES DE-EMPHASIZING ENFORCEMENT OF MINOR VIOLATIONS OF NORTH CAROLINA MOTOR VEHICLE STATUTES AS A MEASURE TO BUILD TRUST BETWEEN THE COMMUNITY AND POLICE**

Resolution is as follows: “WHEREAS, policies de-emphasizing police enforcement of minor violations of North Carolina's motor vehicle statutes, such as expired registrations and improper equipment (hereinafter “regulatory violations”), furthers the City's goal of building trust between the community and police; and WHEREAS, research shows that de-prioritizing regulatory stops reduces the potential for the escalation of force between police and the public; and WHEREAS, Pillar Two: Policy and Oversight of the Final Report on 21st Century Policing emphasizes that if police are to carry out their responsibilities according to established policies, those policies must reflect community values; and WHEREAS, communities in North Carolina and across the country have adopted similar practices; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: The City Council's action, taken during its May 22, 2018, meeting, directing the City Manager to implement a policy whereby the APD will de-prioritize low-level regulatory vehicle stops, is hereby rescinded. The City Council now authorizes the City Manager to work with the Asheville Police Department to include in a policy the practice of de-emphasizing police enforcement of regulatory and equipment-based violations that do not directly implicate public safety, such as expired registrations and equipment.”

Thirty individuals spoke, mostly regarding the written consent resolution, whose comments ranged from wanting Council to reaffirm their motion on May 22, 2018, to opposing

any policy changes, to wordsmithing the resolutions, to supporting the resolutions before Council, with most acknowledging the need for the community and the City to work together to build trust.

Vice-Mayor Wisler acknowledged a lot of passion around these issues and a lot of shared values. She thanked the community for bringing this forward. She felt everyone is interested in creating a more equitable Asheville. She thanked the police department for listening to the community, sharing in those community values, continuing to improve relationships, and recognizing that we need to build trust. She will support the three resolutions because they do reflect Asheville's values. She expects the policies prepared by the police department will reflect our values, 21st Century Policing guidelines and we will be prepared with the safety of officers, civilians and emergency workers as a top priority. And finally she appreciated the fact that City Council recognizes that the actions taken at the May 22 meeting were flawed and appreciated the Council taking actions to remedy that.

Councilman Kapoor read the following statement: "Since our last meeting on May 22nd, in an attempt to better understand these issues and to try to reach a consensus on these resolutions, I've independently reviewed some of the data presented. I've met with the local NAACP and Mr. Mance, and I've met with the leaders of the Police Benevolent Association and the Fraternal Order of Police. Having been able to talk to them around the table, I learned that there's a lot of shared values among the four organizations that I spoke with. The Asheville leaders of the PBA and the FOP expressed to me that they recognize the lack of trust in law enforcement by some, locally and nationally. I learned that neither the PBA nor the FOP have blanket opposition to a written consent policy. In fact, they see the value in some form of written consent policy and also in the other two policies that we're considering. They agreed with recommendations 2.10 in the 21st Century Policing report cited by Mr. Mance that states and I quote 'Law enforcement officers **should** be required to seek consent before a search and **explain that a person has the right to refuse consent** when there is no warrant or probable cause. Furthermore, officers should **ideally** obtain written acknowledgement that they have sought consent in these circumstances.' (emphasis mine). To be clear, I've just outlined ways in which the four groups who have most vocally put themselves forward in this matter are, in fact, aligned and in agreement. The one possible area of disagreement comes from the perspective of law enforcement officers who are doing the daily work of public safety. That point is that not allowing verbal consent to suffice in some situations, such as for the public's and the officer's safety, could seriously jeopardize the safety of people who are counting on the police for assistance. No city with written consent policies that we've been provided, not even Durham, prohibits verbal consent to suffice in some situations. I'll share with you the following example of a possible domestic violence situation: A person calls the police saying they hear their neighbors, a husband and a wife, loudly arguing. An officer is dispatched and arrives at the scene. The officer hears the arguing and knocks on the door. The husband opens the door and the officer sees the husband and the wife who does not appear to have any bruises on her. At that point, the officer doesn't have probable cause and there are no exigent circumstances, so the officer would need consent to enter the home and search the parties. Why would the officer want to enter the home? Because the officer wants to make sure everyone is ok, and the officer may feel it is necessary to search the individuals to see if they have any weapons that could be used to harm others or themselves. Under current policy, the officer can verbally ask 'can I come in to see if everyone is ok' or 'can I just pat you down to make sure there isn't anything on you that might hurt me or you?' If they say yes, that's consent. This allows the officer to get in quickly and make sure that everyone is ok, to deescalate the situation, and to prevent potentially serious bodily harm. Now imagine that same scenario under a mandated written consent policy without any exceptions. The officer shows up, knocks on the door, the husband answers, the wife says please come in, but in order to follow the mandate the officer must have both the husband and wife sign a piece of paper allowing the officer to enter or to pat down the parties to see if there were weapons. If the husband had hit his wife, do you think he'd sign a piece of paper letting an officer come in? I doubt it. In those cases, wouldn't verbal consent recorded by a body camera

be enough? What if there were children in the house? In a situation like this, do we really want the officer's hands to be occupied with paper rather than being free in case they need them? This isn't some far fetched example - it's what police officers deal with on a day to day basis. This is just one example. Under a written consent policy with no exceptions for accepting verbal consent, we unnecessarily put the safety of the public, police officers and other first responders in danger. And furthermore, we can track the data with body cameras so that we know exactly which officers used verbal consent under exactly what situations. The department already has supervisors reviewing body camera footage for every vehicle consent search. As a policy matter, I prefer that our officers obtain written consent, but I know that in real life there will be situations where it is impractical or unnecessarily risky to do so. With respect to the written consent resolution before us tonight, I am voting in favor of it as it leaves the discretion of developing a written consent policy to the chief of police, which is what our charter and ordinances require. Furthermore, this resolution allows the chief to consider circumstances where she, as a nationally recognized law enforcement expert, believes not allowing verbal consent to suffice would put the public or officers at unnecessary risk. A written consent policy allowing for reasonable exceptions that will be tracked and reviewed, will implement the 21st Century Policing report's recommendations, builds trust with the community, and will protect our first responders and the public"

Councilman Haynes said that on May 22, by a vote of 5-2, Council endorsed the motions made by Councilman Young. While some procedural errors may have occurred, the intent was perfectly clear. He asked the City Manager that the wording may have changed from those, that the expectations have not. The policies should reflect the original intent of the motions passed by 5-2 majority.

Councilman Young said that Councilman Kapoor gave an eloquent scenario about domestic violence and police being able to do what they need to do. He called "BS" on that. Georgia vs. Randolph addresses the exact same domestic violence scenario that Councilman Kapoor described, and officers actually can do their job and their functions that they need to in that scenario under the "community caretaker" function. He actually prepared several different statements, depending on how this meeting went. He has a few different ones that go from kumbaya to let's work it out to hell-fire. He won't read any of those. He will address some things that he heard from people in the meeting earlier today and he has actually enlisted some other people to help him with his comments. And, as he gives them, you may know where they come from. Someone mentioned earlier that this was a social experiment for something. We are basically upholding people's right. So if you understand what probable cause is, and what written consent is, that is someone's actual right to tell you no. So he didn't think upholding someone's right to tell you you can do something without my permission is a social experiment. Someone also said we are being taken down the wrong direction. If upholding people's rights is the wrong direction, that's the way he wants to do. We were told that written consent gives police no wiggle room for them to play fishy with your rights. No wiggle room to not tell you have the right to say no. We were told this is a black thing. We were told that Council doesn't understand the manager form of government. We might have problems with Robert's Rules, but not the form of government. To that end, he doesn't think what was done at the last meeting was wrong and he stands by that. We were also told that we want written consent to be used only when it's practical. When someone has the actual right to tell you no, it's always practical. My rights are always practical, it's not when you feel they are practical. But when he feels he wants to exercise his rights, not when you feel he should exercise my rights. There comes a time when we must take a position that is neither safe nor politic nor popular. But we must take it because our conscience tells us it's right. Change doesn't roll in on the wheels of inevitability. But it comes through contentious struggle which is what we see here tonight. And in that contentious struggle we must all be fearless. We must uphold people's rights, not when it is ideal. No. Not when you feel it's okay for me to exercise my right. We must be fearless. Now we know that the overwhelming majority of police officers do an incredibly hard and dangerous job, fairly and

professionally. They are deserving of our respect and not our scorn. And when anyone, no matter how good their intentions may be, paints all police as biased or bigoted, we undermine those officers we depend on for our safety. Yes. As for those that use rhetoric that may suggest adverse action or harm to our police, even if they don't act on it themselves, they not only make the jobs of our police officers even more dangerous, but they do a disservice to the very cause of justice they claim to promote. We also know that centuries of racial discrimination, of slavery and subjugation and Jim Crow - they didn't simply vanish with the end of lawful segregation. They didn't just stop when Dr. King made a speech or the Voting Rights Act or the Civil Rights Act were signed. Race relations have improved dramatically in his lifetime. Those that deny it are dishonoring the struggles that helped achieve that progress. But America, we know that bias remains, whether it be implicit racial bias, explicit racial bias, bias remains. We know it. Whether you are black or white or hispanic or asian american or native american or of middle eastern descent, we have all seen this bigotry in our own lives at some point. We've heard it at times in our own homes. If we are honest. Perhaps we've heard prejudice in our own heads. And felt it in our own hearts. We know that. And while some suffer far more under racism's burden, some feel a far greater extent of discrimination sting. Although most of us we do our best to guard against it and try to teach our children to do better. None of us is entirely innocent. No institution is entirely immune and that includes our police departments. The ultimate measure of a man is not when he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy and that is where we are at here. And those are not his words. There is a former President Barack Obama and Dr. Martin Luther King. That didn't come from Keith Young. So, there is no time in this world while he is alive that his rights as an American citizen can be told to me that, when you decide it's ideal for me to exercise them, that's when you can exercise them. That is not what we are talking about here. If you have probable cause to do whatever you need to do, do it. But if he has his right to say no, he should know that and he should be able to exercise that when he says so - not when you decide. He is going to reaffirm his vote tonight. But more importantly than reaffirming this vote, we must make sure that the intention of this resolution, these resolutions, are what Council wants. And that is not that someone's rights are ideal to when the police want them to exercise it, but when people in the public of our community know when they can exercise their rights and they get the choice. "Ideally" should never appear in any policy when people have the absolute right to exercise their privilege under the constitution. Never. So he will always, from this point forward, if he sees "ideally" in a policy for this, we will be back here again and again and again and again, because ideally exercising my rights is not an option for you to decide. Never.

Councilman Kapoor said that with respect to the "community caretaker" doctrine which Councilman Young noted tonight, in just a short Internet research he found that it is not the case in all states. In fact, the "community caretaker" doctrine in New Jersey, and he doesn't know what it is in North Carolina, and he was not sure if Councilman Young does either, it is not a justification for the warrantless entry and search of a home in the absence of some form of an objectionable reasonable emergency. The situation he described was not one of those cases. Respectfully, he believed there may be cases when Councilman Young is right and may apply, but the point he is simply making is there are situations where it may not, and it is very concerning to him that there may be Council Members who would require such a policy without any exceptions, even in the event that the public or the officer's safety may be in danger, which is not probable cause.

Mayor Manheimer said she did support a do-over of the earlier action that we took in May because there were a lot of questions from people around process, whether the action we took could have been legally challenged or voided in some way. She felt the questions around process undermined the actual intent of these actions and took away from the important underlying action of what we are trying to accomplish here. She felt this is a complicated topic. You can hear a criminal procedure debate happening right here and that is one of the reasons why we are not actually drafting the policy. She wanted to remind the public that Council gets to

adopt a resolution regarding where we stand. We do not get the draft the policies of the police department. The police department will have to do that at this point, working with the City Manager. She has taken the opportunity to read Durham's policy. She has also read Chapel Hill's policies. Those are two other communities that have a written consent policy (as well as Asheville) that gets closer to what we are talking about here. She has taken the opportunity to talk to the Durham Mayor about how this has been working in Durham. Her take-away was that it is complicated. It's not the kind of thing you can draft a policy on the back of a napkin in an afternoon. There needs to be some time and thought put into it. She looks forward to the City Manager working with the chief to do that. She applauded the audience because she felt they managed to handle this topic in a civil manner. Clearly there is great disagreement. She felt saddened by great divides occurring over a topic that she knows if we could sit around a table and talk about we could get closer together on. But she worried that in a public forum like this if words that are spoken are so damaging that injuries cannot be recovered from. There were a couple of comments she felt got a little close to that bar but overall everyone did a good job of eloquently talking about you feel about this issue and explaining that to us. She did not live through the Civil Rights movement or the repeal of Jim Crow laws, but now we are into the nuanced part of this movement and it's very challenging to understand and it's something we are all learning about. None of us came into this job being an expert in this field by any means. She thanked the audience for working with Council because we are trying to do the best job we can and trying to make sure that Asheville is a safe community, but a fair and equitable community at the same time. She hoped that goal is coming through in the actions of Council.

Regarding the resolution regarding written consent, Vice-Mayor Wisler moved for the adoption of Resolution No. 18-144. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 – PAGE 470**

Regarding the resolution regarding consent search criteria, Vice-Mayor Wisler moved for the adoption of Resolution No. 18-145. This motion was seconded by Councilwoman Mayfield and carried unanimously

**RESOLUTION BOOK NO. 39 – PAGE 471**

Regarding the resolution regarding regulatory vehicle stops, Vice-Mayor Wisler moved for the adoption of Resolution No. 18-146. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 – PAGE 472**

**VI. NEW BUSINESS:**

- A. RESOLUTION NO. 18-147 - RESOLUTION APPROVING GROVE ARCADE ASHEVILLE LLC AS THE NEW SUBLESSEE FOR THE GROVE ARCADE; APPROVING THE NEW SUBLEASE, THE AMENDMENT TO THE LEASE BETWEEN THE CITY AND GROVE ARCADE PUBLIC MARKET FOUNDATION, AND OTHER ASSOCIATED DOCUMENTS; AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO GIVE EFFECT TO THIS TRANSACTION**

Assistant City Attorney Jannice Ashley said that this is the consideration of a resolution approving Grove Arcade Asheville, LLC as the new Sublessee for the Grove Arcade; approving the new Sublease, Amendment to Lease between the City and Grove Arcade Public Market



Foundation, and other associated documents as described herein; and authorizing the City Manager to execute all documents necessary to give effect to this transaction.

This is a request to approve the sale of the sublease rights in the Grove Arcade from the existing Sublessees, Historic Grove Arcade, LLC (an entity affiliate of Duke Energy Progress) and Grove Arcade Restoration, LLC, to a new entity, Grove Arcade Asheville, LLC, a North Carolina Limited Liability Company (whose members consist of Northpond Partners and Dewey Property Advisors).

The City acquired the Grove Arcade from the Federal Government (National Park Service) at no cost in April 1997, subject to the requirement that the property be used for "historic monument purposes", and operated and maintained as a historic property in perpetuity in compliance with National Historic Preservation Guidelines and subject to the terms of the Preservation, Operation, and Rehabilitation Agreement. The City then leased the Grove Arcade to the Grove Arcade Public Market Foundation ("GAPMF" or the "Foundation"), a non-profit with the purpose of restoring and preserving the Grove Arcade, in August 1997. The Lease to GAPMF is for 99 years with an option to renew for an additional 99 years, for the nominal rate of \$1/year. The Lease is subject to the terms of a separate Preservation, Operation, and Rehabilitation Agreement ("Preservation Agreement") between the City and GAPMF which was also approved by the federal government. The Lease granted GAPMF the ability to sublease the premises, with such subleases also being subject to the requirements of the Preservation Agreement, and GAPMF granted a sublease to Grove Arcade Restoration, LLC ("GAR") (which manages the 1st floor retail-35 tenants-, and portions of mezzanine and basement) and to Historic Grove Arcade, LLC ("HGA") (which manages the 2nd, 3rd, 4<sup>th</sup>, and 5<sup>th</sup> floors-that include 7 offices and 42 residential rental units) in 1999.

Since its initial lease up, the Grove Arcade, which was a dilapidated, bricked-up building when acquired by the City in 1997, has undergone more than \$20M in historic preservation renovations and now is a thriving commercial building, with 35 retail tenants on the first floor, and offices and 42 residential rental units on the upper floors. A managing member of both GAR and HGA was Caro Home/Progress Energy (now Duke Energy Progress) that utilized the historic tax credit program to fund a majority of the renovation. The City also contributed to the cost of the renovation (approximately \$2.6M) via a COPS (1997C Bonds-Certificate of Participation) Loan. While some of the outstanding balance of the COPS loan was repaid by GAPMF, in 2010, GAPMF experienced cash flow difficulty that prevented them from making the required debt service payments. The City negotiated with GAPMF to write off a portion of the debt, lower payment amounts, and agreed to not require repayment of the remaining loan balance from GAPMF until the Sublease rights to upper floors were sold. The City continued to pay the required debt service on the COPS, and created a receivable to be paid by GAPMF when the sublease rights are sold to the new Sublessee, after closing. The balance due is now approximately \$1.2M.

In October of 2016, the Foundation informed the City Manager and the City Attorney's Office of their desire to move forward with a process to transfer the sublease interests in the Grove Arcade, and requested approval by the City Manager of the process to solicit proposals from interested parties. The proposed new Sublease structure was as follows: GAPMF and Duke Energy proposed to consolidate the subleases of HGA and GAR and transfer (i.e. sell the sublease rights) to a single entity that would operate the entire building. The City would continue to own the building, the Foundation would continue to be the primary tenant under the 1997 Lease and Preservation Agreement, and all of the conditions of these governing documents would continue to apply. The Foundation, HGA and GAR-through a contract with Tessier Associates which currently manages the upper floors of the Grove Arcade-would seek a new Sublessee through a public RFP process.

In May of 2017, a Request for Proposals from interested parties to purchase a long term sublease interest in the Grove Arcade was released by Tessier Associates. The RFP/Invitation Letter was sent to over 500 local, regional and national investors and brokers; if interested, they were asked to submit information on their company and a confidentiality agreement. From inquiries received Tessier and the Selection Committee, made up of members from GAPMF, GAR and HGA ended up with a list of 12 qualified prospects that were then sent a complete information packet and asked to submit a formal proposal. Three (3) complete proposals were received by the cutoff date in July 2017 and each was invited to tour the property and meet with the Selection Committee. In the Fall of 2017, the City was informed, that the Selection Committee had chosen Grove Arcade Asheville, LLC, as the most qualified proposer to become the new Sublessee of the Grove Arcade.

Requests Before City Council:

**1. Review and Approval of new Sublessee-Grove Arcade Asheville, LLC (“GAA”)**

As per the terms of the 1997 Preservation Agreement between the City and the Foundation (Section IV, p. 10), the City Council has the right to review the qualifications of the successful bidder/RFP respondent, Grove Arcade Asheville, LLC, in order to determine whether they should be approved as a new Sublessee. Northpond Partners, a managing member of GAA, has significant experience in the ownership and operation of historic properties in urban settings both in North Carolina and throughout the United States. A summary of Northpond’s projects and experience was provided to Council.

**2. Approval of the new Sublease; Approval of an Amendment to the Lease with the Foundation, including approval of updated Leasing Guidelines; Approval of Amendment to Encroachment (Sidewalk) Agreement; and approval of other documents necessary to give effect to this transaction.**

This proposed sale of sublease rights actually will result in very little change to the existing management structure of the Grove Arcade. The Foundation will remain the primary Lessee of the Grove Arcade and all major terms of the Lease (i.e. lease term, rental rate, Foundation responsibility for all costs of maintenance and repair in accordance with historic preservation standards) will remain in place. As under the current arrangement, the responsibility for performance of these terms is passed through to the Sublessee. The new Sublease is substantially similar to the existing subleases with GAR and HGA. The major terms of the documents necessary for this transaction are as follows:

**New Sublease between the Foundation and Grove Arcade Asheville, LLC**

- Lease Term- Until 8-14-2096 (remaining 78 years of the initial 99 year term of the original subleases entered in 1997); option to renew for an additional 99 years if the Foundation renews its primary lease for an additional 99 years.
- Rent-\$10/year
- Sublessee to assume responsibility for operation and maintenance of the Leased Premise and payment of all utilities, taxes, maintenance and repair. City and Foundation retain the right to inspect any work to ensure it is in accordance with the Preservation Agreement.
- Sublease is expressly subject to and subordinate to the Prime Lease with the Foundation and its use subject to all preservation requirements outlined in governing documents including, the Preservation Agreement, Quit Claim Deed from the Federal Government to the City, Preservation Façade Easement with Preservation North Carolina, Certificate of Appropriateness

issued by the Historic Resources Commission, and any applicable requirements of the National Monument Act, National Historic Preservation Act, and State Historic Preservation Act.

- Sublease is subject to insurance and liability terms approved by the City's Risk Manager.

#### **Amendment to Lease between the City and the Foundation and Modification to the Preservation Agreement**

- Approval of Sublease of Grove Arcade Asheville, LLC (Northpond)
- City agrees to be bound by terms of Sublease if Lease with Foundation is involuntarily terminated and to treat GAA as direct lease if, 1) GAA forms a non-profit entity whose purposes include the preservation of real or personal properties of historical significance and with the specific purpose of the preservation of the Grove Arcade in accordance with the terms of the Preservation Agreement; 2) the new entity assumes all the same liabilities, responsibilities and rights contained in the Prime Lease with the Foundation; and 3) the City shall have the right to review all documents related to the formation of this new non-profit and the new entity's board shall include a City appointee as a member (as is the case for the current Foundation board).
- City approval of a New Operations and Lease Plan. Original Leasing Policies related to the first floor use as retail/office were adopted on 3-26-97. The Sublessee proposes a new Operations and Leasing Plan which is not as detailed as the original plan, but is similar in many ways. Summary of New Leasing Policy Guidelines is as follows:
  - Criteria for (Sub) Tenant Selection in the new Leasing Plan is substantially the same as those outlined in the original leasing policy-criteria include: Tenant overall contribution to success of the public market; ownership (independent, franchise, national); nature and uniqueness of product mix; how product offered represents and/or reflects on our region; mix with other tenant offerings; competition with existing businesses.
  - The Foundation will still have a limited role in overseeing the leasing guidelines/implementation. The Foundation and GAA will enter into a separate Historic Preservation Management Agreement (reviewed by the city's legal department) which makes clear that the Foundation shall remain the primary lessee with the ultimate responsibility for complying with the preservation requirements. Additionally, the Agreement requires that GAA provide the Foundation with space for its administrative office within the Grove Arcade. Also, the new Leasing Policy will specifically require at least quarterly meetings between the Foundation and GAA to discuss: the leasing plan, merchandising strategy, long term target prospects. The Foundation will also assist in preparing the biennial report that the City sends to the National Park Service ("NPS"), regarding building activities.
  - New Leasing Policy provides that Sublessee shall never sign a lease which will exceed a balance of 50% local and regional and 50% National tenant mix without the majority approval of the Foundation Board.
  - While the new Leasing Policy does specifically contemplate leasing to National Tenants, something which was not specifically mentioned in the original leasing guidelines, it appears to do so in a

way that meets the requirements of the Preservation Agreement to rent principally to locally owned and operated small retail and service businesses. The Merchandising Plan states that they will, *“seek first to find unique local operators to curate the mix and focus primarily on local and/or regional restaurant operators.”*

- Modification of the Preservation Agreement to remove obsolete provisions related to rehabilitation/construction requirements and parking provisions that are no longer necessary since the major rehabilitation project has been completed and the parties agree that such requirements (i.e. provision of additional parking by the City) are no longer being pursued.

#### **Amendment to Sidewalk Encroachment Agreement**

- The City and the Foundation entered into an encroachment agreement in August 2002, which allows the placement of tables, chairs, merchandise carts and other furnishings upon the sidewalk rights of way adjoining the Grove Arcade Building. The Agreement makes the Foundation (as Lessee) responsible for the maintenance, repair and renovation of the sidewalks where the encroachment is located. The existing Agreement also allows the City to terminate the encroachment agreement for any reason with 60 days notice. The new Sublessee is requesting to amend the Agreement to delete the City’s 60 day termination right.
- The amendment would retain the City’s ability to terminate with cause (i.e. if Lessee fails to use the space for the permitted purposes) after providing 60 days notice and an opportunity to cure. Otherwise, the Agreement will remain in place throughout the lease term.

#### **Non-Disturbance and Attornment Agreement**

This is an agreement between the City, the Foundation, Grove Arcade Asheville, LLC and UNUM Life Insurance Company (lender for GAA), in which the City confirms the existing Primary Lease terms with the Foundation, represents that neither the City nor the Foundation are in default under the Lease, confirms that the City has not assigned, sold or otherwise encumbered its interest in the Leased premises, and essentially agrees, that in the event of a termination of the Primary Lease, the Sublease rights shall be preserved (as long as the Sublessee is not in default). This type of agreement is a usual requirement of this type of transaction.

At their meeting on May 21, 2018, the Planning and Economic Development Committee recommended approval of the new sublessee, Grove Arcade Asheville, LLC (“GAA”) and approval of the new sublease, subject to the conditions that GAA submit a more detailed Business Plan for operation of the Grove Arcade, and that the Foundation be required to meet more frequently (quarterly rather than annually) with the sublessee in regard to the leasing plan and policy. GAA has complied with these requests; and a more detailed Business Plan was provided to City Council on June 5<sup>th</sup> and the Leasing Plan will be updated to require quarterly meetings.

Pros:

- Grove Arcade Asheville, LLC, the new Sublessee, has demonstrated the necessary qualifications and experience in the operation and preservation of historic buildings to ensure the continued successful operation of the Grove Arcade in accordance with the existing Preservation Plan requirements.

- Upon Sale of the Sublease rights to Grove Arcade Asheville, the City will be repaid the receivable due to it in the amount of approximately \$1.2M related to the initial debt issued as part of the COPS 1997C.

Con:

- None Known.

Repayment of receivable due to the City in the amount of \$1.2M related to the initial debt issued as part of the COPS 1997C.

Staff recommends that the City Council adopt a resolution approving Grove Arcade Asheville, LLC as the new Sublessee for the Grove Arcade; approving the new Sublease, Amendment to Lease between the City and Grove Arcade Public Market Foundation, and other associated documents as described herein; and authorizing the City Manager to execute all documents necessary to give effect to this transaction.

Mr. Robby Russell, Board Chair of the Grove Arcade Public Market Foundation, said that the Foundation and Duke Progress both agree that the renovation efforts were successful and it's now time to divest this asset to the new caretaker who will also be subject to the existing lease with the City.

Ms. Ruth Summers, Executive Director of the Grove Arcade Public Market Foundation, gave a brief history of the Grove Arcade, which was originally developed in the 1920's. Community benefits for the Grove Arcade include: The Grove Arcade was the prime engine for continuing the economic revitalization and renaissance on the western edge of the downtown; Celebrate the best that Asheville has to offer, from our local entrepreneurial community of businesses; Provide needed community services and public amenities to the citizens of Asheville; Revenue generator of the City and County governments, through sales, business and real estate taxes; Encourage people to come to downtown Asheville in the evening; Saved a historic building from remaining as a desolate and vacant building, once all Federal uses were discontinued; Leases remain in place; The apartments will remain as rental units and not be converted to condominiums thus retaining an active local downtown community; 39 local artists will continue to make a living by participation in the Outdoor Artists Market located on Battery Park Avenue; The conference room will remain available to small businesses and non-profits as a reasonable priced meeting space; and Community events will continue to be offered to the public; free of charge or by ticket as a fundraiser. She explained the current and the proposed structure.

Mr. Sam Aiken, with Northpond Partners, said that on behalf of their company they are excited as this is their 13th investment in North Carolina and their third historic property. They have been working with Eddy Dewey, from Dewey Property Advisors, for the last three years to find the right fit in Asheville. As partners they are excited to continue the great tradition of the Grove Arcade.

Mr. Dewey spoke about his local market knowledge in Asheville.

Mr. Alan Ditmore explained his opposition to this action.

Councilwoman Mayfield thanked those who are retaining and restoring this beautiful building. She hoped the new partners understand the legacy of the Grove Arcade in 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 Young moved for the adoption of Resolution No. 18-147. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 473**

**B. RESOLUTION NO. 18-148 - RESOLUTION ADOPTING THE EQUITY ACTION PLAN**

Ms. Kimberlee Archie, Equity and Inclusion Manager, said that this is the consideration of a resolution adopting the Equity Action Plan by City Council.

**DEFINITIONS:**

- **Equity** is just and fair inclusion into a society in which all can participate, prosper, and reach their full potential (excerpt from Equity Manifesto)
- **Racial equity** is the condition when racial identity no longer predicts individual or group life outcomes, and outcomes for all groups are improved.
- **Advancing racial equity** employs analysis and strategies at the root cause of inequities and disparities; working to address disparities through changes in policy, practice and procedure. (working draft)
- **Inclusion** is authentic and empowered participation with a true sense of belonging. (working draft)
- **Inclusive engagement** of Asheville's residents is demonstrated through meeting community where they are and working collaboratively to ensure their voices are valued. (working draft)

To advance equity and inclusion within municipal government, the GARE racial equity framework is being employed. The City of Asheville is a member of the Government Alliance for Race and Equity, a national network of government jurisdictions working to achieve racial equity and advance opportunities for all, which has developed a framework based on best practice from government entities who have been working to advance racial equity for a decade or longer. Creating equity tools, such as an equity action plan, is part of one component of the racial equity framework.

Why do we lead with race?

The Equity and Inclusion work in Asheville leads with race because although the founding values of the United States are evident in statements such as "all men are created equal", "with liberty and justice for all", and "government of the people, by the people, for the people shall not perish from the earth", those included and allowed to benefit from these values has changed over time. Who encompasses "all", "all men" or "the people" was exclusionary at the founding of this nation and the legacy remains today.

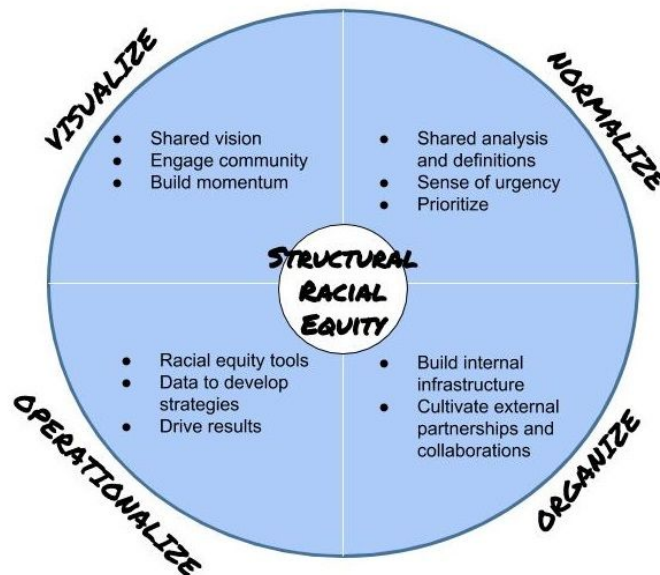
Over the history of this nation, government policy, practice and procedures have evolved from explicitly creating and maintaining racism and race-based oppression through Indian removal, colonization, slavery, Jim Crow laws, Japanese internment, housing discrimination and segregation, employment discrimination and more, to implicit racism and disenfranchisement through "race neutral" policies. Once explicit discrimination became illegal, examples of race-neutral policies, meaning the removal of race-specific language restricting access and opportunity, include redlining practices by the Federal Housing Administration and ongoing collusion with insurance companies, the real estate industry, financial institutions and companies supported government subsidized wealth building for whites that is still evident today as observed in the State of Black Asheville. The Social Security Act of 1935 excluded agricultural and domestic workers from access to benefits. 65% of workers in these industries at that time were African Americans; therefore, by excluding workers in agriculture and domestics, the unintended or intended consequences of who benefitted and was included were racialized.

Although the Civil Rights Act of 1964 and Voting Rights Act of 1965 provided protections and opportunities for those facing discrimination, mainly African Americans, the legacy of discrimination, oppression, and explicit racism was deeply embedded in the fabric of the United States and impacts all facets of life:

- Education
- Jobs
- Wealth
- Health
- Criminal Justice
- Housing
- Income
- Safe Neighborhoods

In Asheville and all over the United States, people of color, especially African Americans are disproportionately and negatively portrayed and show up in data related to these facets of life. We lead with race because we haven't eliminated racism yet. We lead with race because racism has been the most pervasive and hasn't been solved. Successfully dismantling institutional and structural racism will mean other forms of oppression can be dealt with using a similarly focused framework.

Racial Equity Framework - The racial equity framework adopted for use in Asheville has four major components:



The racial equity framework is represented in a circle to communicate the non-linear process of building, developing and acting that occurs simultaneously.

**Normalize:** Establish racial equity as a key value by developing a shared understanding of key concepts across the entire jurisdiction and create a sense of urgency to make changes. This work includes getting on the same page in our understanding of systemic racism, how it is pervasive and has been maintained for generations by government along with supporting a culture of dialogue, analysis and learning about institutional and systemic racism in a safe environment.

**Organize:** Build staff and organizational capacity, skills and competencies through training while also building an infrastructure to support the work, like internal organizational change teams and external partnerships with other institutions. Asheville has an Equity Core Team with representatives from all city departments who are adding to their capacity as leaders, organizers and ambassadors while learning to “normalize” racial equity. Additionally, conversations are occurring with other public and private institutions interested in partnering or collaborating to dismantle structural racism in Asheville and Buncombe County.

**Operationalize:** Put theory into action by implementing new tools for decision-making, measurement, and accountability like a Racial Equity Analysis Tools (equity lens) and developing a Racial Equity Action Plan.

**Visualize:** Develop a clear and bold vision for racial equity with inclusion by those most impacted by inequities. Inclusive community engagement is a requirement to ensure alignment between the needs and desires of impacted community members and the actions of city government to operate in a racially equitable manner.

The Equity Action Plan was recommended to City Council for adoption by the Finance & Human Resources Committee on April 23, 2018, after presentation by staff.

An equity action plan communicates a theory of change into action to achieve a collective vision of racial equity. This initial equity action plan has been developed with the Equity Core Team and informed by community as well as data about our community. The Equity Action Plan has been vetted with Management Team to ensure agreement; and support of the work described therein has been provided. It supports Vision 2036 and this strategic plan describes the initial direction, goals, capacity and implementation for advancing equity citywide as stated in City Council’s strategies, updated February 2018 [*Goal 1: Adopt and implement an equity program driven by a comprehensive strategic plan that will ensure direction, goals, and capacity*]

This Equity Action Plan focuses internally for community level impact. Five areas of action are described in the Plan: advancing workforce equity as an employer, advancing equity and inclusion in community engagement, advancing economic equity in contracting, advancing equity in development without gentrification (economic inclusion), and finally, advancing equity through building our internal capacity. The details of developing measurable outcomes in each area of work are in process; however, the questions we are answering to measure accountability include:

- How much did we do?
- How well did we do it?
- Is anyone better off?

These questions, which are the foundation of the Results Based Accountability framework, a disciplined method for thinking and taking action to achieve meaningful change.

City Council’s support, approval and adoption of the Equity Action Plan is necessary for institutional and structural change to occur. Advancing racial equity takes time, funding, skills, effort, will and community expertise to change our policies, the way we do business, our habits and cultures. Through the collaborative efforts of Interdepartmental Action Teams, the Office of Equity & Inclusion, all City Departments, and through community connections (e.g. Human Relations Commission of Asheville) and external partners, this work will be implemented and we will demonstrate accountability to our stakeholders.

Pros:



- Will create a strategic roadmap for coordinated, citywide actions toward advancing racial equity.
- Will engage City employees, from frontline workers to leadership in building capacity to change policies, practices, and procedures for advancing equity and being inclusive.
- Provides a path to including those most impacted by oppression, racism, and discrimination in connecting to city government.
- Transform Asheville into a more equitable and inclusive city government

Con:

- Ongoing costs for staffing and program development

Implementation costs for the Equity Action Plan includes the addition of 3 positions and related operating expenses for a budgeted total increase of approximately \$250,000 as outlined in the FY 2018-19 Proposed Budget. Ongoing costs will be higher than this initial amount due to the phased hiring approach planned for FY 2018-19.

Staff recommends City Council adopt a resolution authorizing the City Manager to implement the comprehensive and strategic goals of the Equity Action Plan.

In response to Councilwoman Wisler, Ms. Archie said that she will provide a quarterly update to Council.

Mr. Michael Hayes suggested funds be earmarked to the Equity Action Plan, with perhaps funding from the sale of Mission Hospital system.

Mr. Alan Ditmore felt that City Council is gentrifying on purpose.

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

Councilman Young moved for the adoption of Resolution No. 18-148. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

#### **RESOLUTION BOOK NO. 39 – PAGE 475**

#### **C. RESOLUTION NO. 18-149 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WATER PRODUCTION AND DISTRIBUTION AGREEMENT WITH HENDERSON COUNTY**

Deputy City Attorney Kelly Langteau-Ball said that this is the consideration of a resolution authorizing the Mayor to execute a Water Production and Distribution Agreement with Henderson County.

In April of 2017, City staff met with Representative Chuck McGrady and representatives of Henderson County and the City of Hendersonville to discuss issues relating to Asheville and Hendersonville's water systems. The City and Henderson County agreed that previous agreements both parties entered into in 1994 and 1995 regarding water production and distribution were no longer legally effective or binding. Therefore, City staff and Henderson County staff agreed to enter into a new agreement for water production and distribution.

The primary purpose of the new agreement is to: i) memorialize the applicability of the Sullivan Acts and the City's Water Policy to the portion of the Asheville's water system located in Henderson County, including the Cane Creek Area and ii) provide an opportunity for large industrial water users who plan to locate in the Asheville Service Area, which includes the Cane

Creek Service Area, to request funds from the Asheville City Council to assist with the payment of water infrastructure to connect to the City's water system.

The decision as to whether to grant economic incentive funds, and the amount of such funds to be granted, will be within City Council's sole discretion, based upon factors to be determined by the City Council, which could, but would not be required to include the following: the amount of water required; the number of jobs created; and the cost of the infrastructure improvements. In order to request economic incentives, the following minimum requirements must be met: i) the industry must be located in Asheville's Service Area; ii) the industry must have a minimum daily usage of at least 80,000 gallons; and iii) if the industrial user's location is outside of Asheville's corporate limits, the governing jurisdiction must agree to be a party to any economic incentive agreement, and to partner with Asheville in the event such incentives are allowed.

The City agrees that it will amend the Asheville Water Policy with the above-stated economic incentive provision within 90 days of the date of execution of the agreement with Henderson County.

In addition, based on requests by Henderson County, the City agrees to the following: i) a right of first refusal to Henderson County should the City receive an offer to buy the Mills River Plant and/or the portions of the water system located within Henderson County; ii) the approval of Henderson County if the City extends any water lines into the unincorporated areas of the county; and iii) if the City's water system becomes governed by a board other than Asheville by voluntary agreement to which Asheville is a party, then Henderson County shall be a voting member of such board, with voting representation proportional to the number of Henderson County water customers. These provisions are not authorized under the Sullivan Acts and as such, the agreement contains language that these provisions are effective only if the Sullivan Acts are repealed or are not otherwise prohibited by law.

Pros:

- Provides economic development incentives for potential large industrial users.
- Assists with system expansion efforts by leveraging private investments in the water system.

Con:

- Difficult to identify a budget to support an economic incentive program due to uncertainty associated with the frequency and scale of these projects.

Fiscal impact is largely unknown at this time. Due to the uncertainty associated with the frequency and scale of these projects, it is difficult for the Water Enterprise fund to develop a budget that will support this economic incentive program. In the event that this program is used, Water Resources may be required to draw on its cash reserves in order to support the incentive program.

Staff recommends adoption of a resolution authorizing the Mayor to execute a Water Production and Distribution Agreement with Henderson County.

When Mayor Manheimer asked for public comments, none were received.

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

Vice-Mayor Wisler moved for the adoption of Resolution No. 18-149. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 481**

**D. BOARDS & COMMISSIONS**

Regarding the I-26 Connector Aesthetics Committee, the following individuals applied for a vacancy: Woodard Farmer, Joe Minicozzi, Michael Adams, Billy Cooper, David Nutter and Michael Zukoski. Because there were not enough applications received, it was the consensus of Council to re-advertise for this Committee.

Councilman Young briefly reported on the Human Relations Commission and that they will be holding a retreat. He suggested they may need a facilitator for that meeting.

**RESOLUTION NO. 18-150 - RESOLUTION APPOINTING A MEMBER TO THE AFRICAN AMERICAN HERITAGE COMMISSION**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the African American Heritage Commission.

The term of Marvin Chambers will expire on July 1, 2018.

The following individuals applied for the vacancy: Samantha Singer, Brandon Oliver and Michael Hayes.

It was the consensus of the Boards & Commissions Committee to reappoint Marvin Chambers.

Vice-Mayor Wisler moved to reappoint Marvin Chambers to serve an additional three-year term, term to expire July 1, 2021, or until his successor has been appointed. This motion was seconded by Councilman Haynes and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 483**

**RESOLUTION NO. 18-151 - RESOLUTION APPOINTING A MEMBER TO THE GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY**

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

The term of Bob Roberts will expire on June 20, 2018.

The following individuals applied for the vacancy: Frank Wolf, Robert Herlin, Brad Galbraith and Chris Sevcik.

It was the consensus of the Boards & Commissions Committee to appoint Brad Galbraith.

Vice-Mayor Wisler moved to appoint Brad Galbraith to serve a three-year term, term to expire June 30, 2022, or until his successor has been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 484**

**RESOLUTION NO. 18-152 - RESOLUTION APPOINTING MEMBERS TO THE**

## **CITIZEN-POLICE ADVISORY COMMITTEE**

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

The terms of Carol Rogoff Hallstrom (North) and Larry Holt (Central) expired on June 30, 2017 (terms extended until their successors were appointed). In addition, (1) Allen Brailsford (West) resigned from his June 30, 2017, termination date; and (2) Debbie Applewhite (East) resigned from her June 30, 2017, termination date. Also, there is an unexpired term left by Sir Charles Gardner (resident of property owned by the Housing Authority) until June 30, 2019; and an unexpired term of Jayden Gurney (Housing Authority representative) until June 30, 2021.

The following individuals applied for the vacancy: Frank Wolf, Gretchen Gudites, Celeste Fletcher, Frederic Arnold, Jason Martin, Michael Hayes and Karl Katterjohn.

It was the consensus of the Boards & Commissions Committee to (1) reappoint Clifford Joslin (South); (2) appoint Michael Hayes (West); and (3) appoint Karl Katterjohn (East).

Vice-Mayor Wisler moved to (1) reappoint Cliff Johnson (South) to serve a three-year term, term to expire June 30, 2020; (2) appoint Michael Hayes (West) to serve an unexpired term, term to expire June 30, 2021; and (3) appoint Karl Katterjohn (East) to serve an unexpired term, term to expire June 30, 2021. All appointments are until their successors have been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

It was the consensus of Council to re-advertise for the north, central and resident of the Housing Authority seats, along with contacting the Housing Authority for their representative.

### **RESOLUTION BOOK NO. 39 - PAGE 485**

#### **RESOLUTION NO. 18-153 - RESOLUTION APPOINTING A MEMBER TO THE CIVIC CENTER COMMISSION**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Civic Center Commission.

The terms of Joel Storrow, Chris Bubenik and Greg Duff will expire on June 30, 2018. In addition Joe Green has resigned, thus leaving an unexpired term until June 30, 2019.

The following individuals applied for the vacancy: Larry Layton.

It was the consensus of the Boards & Commissions Committee to reappoint Greg Duff.

Vice-Mayor Wisler moved to reappoint Greg Duff to serve an additional three-year term, term to expire June 30, 2021, or until his successor has been appointed. This motion was seconded by Councilman Kapoor and carried unanimously.

It was the consensus of Council to re-advertise for the other vacant seats.

### **RESOLUTION BOOK NO. 39 - PAGE 486**

#### **RESOLUTION NO. 18-154 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ELECTRICAL EXAMINERS**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Board of Electrical Examiners.

The terms of George Grigg (electrical contractor), Charlie Wheeler (journeyman electrician), David Martin (utility representative), Russell Thacher (licensed engineer) and Kenneth Frisbee (layman) expire on July 1, 2018.

The following individuals applied for the vacancy: None.

It was the consensus of the Boards & Commissions Committee to reappoint Greg Grigg, Charlie Wheeler, David Martin and Russell Thacher.

Vice-Mayor Wisler moved to reappoint George Grigg (electrical contractor), Charlie Wheeler (journeyman electrician), David Martin (utility representative) and Russell Thacher (licensed engineer) to each serve an additional three-year term respectively, terms to expire July 1, 2021, or until their successors have been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

It was the consensus of Council to re-advertise for the layman seat.

**RESOLUTION BOOK NO. 39 - PAGE 487**

**RESOLUTION NO. 18-155 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE-BUNCOMBE HISTORIC RESOURCES COMMISSION**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Asheville-Buncombe Historic Resources Commission.

The terms of William Eakins and Ed Flowers will expire on July 1, 2018.

The following individuals applied for the vacancy: Rick Freeman and Will Hornaday.

It was the consensus of the Boards & Commissions Committee to reappoint William Eakins and Ed Flowers.

Vice-Mayor Wisler moved to reappoint William Eakins and Ed Flowers to each serve a three-year term respectively, terms to expire July 1, 2021, or until their successors have been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 488**

**RESOLUTION NO. 18-156 - RESOLUTION APPOINTING A MEMBER TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Homeless Initiative Advisory Committee (HIAC).

The term of Jay Lively expired on November 1, 2017.

The following individuals applied for the vacancy: Val Ball, Timothy Moser, Bill Robinson, Michael Carlebach, Roberto L. Hess, Thomas Cash, Tamarie Macon, Donna Ball and Elvia Diaz.

On May 22, 2018, the HIAC recommended City Council appoint Donna Ball. However, it was the consensus of Council to interview Donna Ball and Elvia Diaz.

After speaking highly of both interviewees, Donna Ball received 3 votes, and Elvia Diaz received 4 votes, therefore, Elvia Diaz was appointed to serve a three-year term, term to expire November 1, 2020, or until her successor has been appointed.

**RESOLUTION BOOK NO. 39 - PAGE 489**

**RESOLUTION NO. 18-157 - RESOLUTION APPOINTING MEMBERS TO THE MULTI-MODAL TRANSPORTATION COMMISSION**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Multi-Modal Transportation Commission.

The terms of Kim Roney (representing transit interests), Mary Weber (representing greenway interests) will expire on July 1, 2018. In addition, Billie Lofland (representing bike/ped interests) resigned leaving an unexpired term until July 1, 2018.

The following individuals applied for the vacancy: Helen Hyatt, Han Winogron, Keaton Edwards, Carson Dellinger, Tina Wexler, Andrew S. Kirby, Ritchie Rozzelle, Dennis Wencel, Pat Katz, Rachele Sorensen-Cox and Kenneth Armstrong.

It was the consensus of the Boards & Commissions Committee to reappoint Kim Roney and Mary Weber.

Vice-Mayor Wisler moved to (1) reappoint Kim Roney and Mary Weber to each serve a three-year term respectively, terms to expire July 1, 2021; or until their successors have been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

It was the consensus of Council to wait for the Multimodal Transportation Commission's recommendation on the vacancy left by Ms. Lofland.

**RESOLUTION BOOK NO. 39 - PAGE 490**

**RESOLUTION NO. 18-158 - RESOLUTION APPOINTING MEMBERS TO THE NEIGHBORHOOD ADVISORY COMMITTEE**

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

The terms of Spencer E. Hardaway (representing 28803 or 28704 zip code), Mike Wasmer (at-large), and Joe Fioccola (representing 28801 zip code) expire on July 1, 2018.

The following individuals applied for the vacancy: Kristin Baldwin, Carter B. Webb and Karl Katterjohn.

It was the consensus of the Boards & Commissions Committee to reappoint Spencer Hardaway, Mike Wasmer and Joe Fioccola.

Vice-Mayor Wisler moved to reappoint Spencer Hardaway (representing 28803 or 28704), Mike Wasmer (at-large) and Joe Fioccola (representing 28801) to each serve a three-year term respectively, terms to expire July 1, 2021, or until their successors have been appointed. This motion was seconded by Councilman Kapoor and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 491**

**RESOLUTION NO. 18-159 - RESOLUTION APPOINTING A MEMBER TO THE NOISE ORDINANCE APPEALS BOARD**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Noise Ordinance Appeals Board.

The terms of Tod Leaven (Regular member) and Robert Glenn (Alternate member) will expire on July 1, 2018.

No one applied for the vacancy.

It was the consensus of the Boards & Commissions Committee to reappoint Tod Leaven (Regular member)

Vice-Mayor Wisler moved to reappoint Tod Leaven (Regular Member) to serve an additional three-year term, term to expire July 1, 2021, or until his successor has been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

It was the consensus of Council to re-advertise for the Alternate member seat.

**RESOLUTION BOOK NO. 39 - PAGE 492**

**RESOLUTION NO. 18-160 - RESOLUTION APPOINTING MEMBERS TO THE PUBLIC ART & CULTURAL COMMISSION**

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

The terms of Ali McGhee, Micah Mackenzie and Constance Richards will expire on June 30, 2018.

The following individuals applied for the vacancy: Allen Roda, Johanna Hagarty, Cate Ryba, Mariana Avila Llorente, Karen Depew, Valeria Watson and Karin Peterson.

It was the consensus of the Boards & Commissions Committee to reappoint Ali McGhee and Constance Richards, and appoint Johanna Hagarty.

Vice-Mayor Wisler moved to (1) reappoint Ali McGhee and Constance Richard to each serve a three-year term respectively, terms to expire July 1, 2021, and (2) appoint Johanna Hagarty to serve a three-year term, term to expire July 1, 2021. All appointments are until their successors have been appointed. This motion was seconded by Councilwoman Mayfield and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 493**

**RESOLUTION NO. 18-161 - RESOLUTION APPOINTING MEMBERS TO THE RECREATION BOARD**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Recreation Board.

The terms of Jeff Luttrell, Robert Pierce, Dean Pistor and Helen Hyatt will expire on June 30, 2018.

The following individuals applied for the vacancy: Ron Nelson, Ken Miller, John Irving and April Suttles.

It was the consensus of the Boards & Commissions Committee to reappoint Jeff Luttrell, Robert Pierce and Helen Hyatt and appoint John Irving and Ron Nelson.

Vice-Mayor Wisler moved to (1) reappoint Jeff Luttrell, Robert Pierce and Helen Hyatt to each serve a three-year term respectively, terms to expire June 30, 2021, (2) appoint John Irving to serve a three-year term, term to expire June 30, 2021; and (3) appoint Ron Nelson to serve an unexpired term until June 30, 2020. All appointment are until their successors have been appointed. This motion was seconded by Councilman Kapoor and carried unanimously.

**RESOLUTION BOOK NO. 39 - PAGE 494**

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

Mayor Manheimer announced that the redistricting bill will be heard in Committee at 10:00 a.m. this Thursday in the Senate.

Ms. Sandy Kellam wanted to raise Council's awareness of the lack of security on Asheville City buses.

Mr. Drew Pollack and Mr. Jackson Tierney spoke to Council regarding homestays. Councilwoman Mayfield said that this will be coming before the City Council Planning & Development (PED) Committee to give staff direction and then any Unified Development Ordinance amendment will need to go to the Planning & Zoning Commission and then to City Council for public hearings. When the issue goes to the PED Committee, they will want information on what was the rationale of the change, what are some other options to address the concerns, how many homestay permits are issued, what effect has this had on any of the existing permits, and clarification on the changes made by City Council in January and how it impacts existing permit holders, etc. It was noted that the homestay permitting update will be brought forward to Council in July.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 10:28 p.m.

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CITY CLERK

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MAYOR