

Tuesday – January 22, 2019 - 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Vijay Kapoor; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; City Manager Debra Campbell; Interim City Attorney Sabrina Rockoff; and City Clerk Magdalen Burleson

Absent: Councilman Brian D. Haynes (out of town)

PLEDGE OF ALLEGIANCE

Mayor Manheimer led City Council in the Pledge of Allegiance.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING JANUARY 22, 2019, AS “NATIONAL DAY OF RACIAL HEALING”

Mayor Manheimer read the proclamation proclaiming January 22, 2019, as "National Day of Racial Healing " in the City of Asheville. She presented the proclamation to Equity & Inclusion Director Kimberlee Archie, who introduced her team, and who introduced Ms. Phyllis Utley and Mr. DeWayne Barton to accept the proclamation. Mr. Barton briefed City Council on some activities taking place during the day.

B. PROCLAMATION PROCLAIMING FEBRUARY 4-10, 2019, AS “CELEBRATE TENNIS WEEK”

Councilwoman Mayfield read the proclamation proclaiming February 4-10, 2019, as "Celebrate Tennis Week" in the City of Asheville. She presented the proclamation to Mr. Demp Bradford, Executive Director of the Asheville-Buncombe Regional Sports Commission, and others, who briefed City Council on some activities taking place during the week.

C. INNOVATION IN SUSTAINABILITY AWARD

Mr. Jason Walls, District Manager of Duke Energy in Asheville, presented the City of Asheville with Duke Energy’s 25th Annual Power Partner Award 2018 for Innovation in Sustainability. He explained this is the 25th consecutive year, Duke Energy has selected six outstanding organizations to receive the company’s prestigious Power Partner award. Duke Energy established the Power Partner award in 1992 to honor businesses and other organizations that achieve exemplary results in categories that include solutions innovation, community excellence, economic development, sustainability innovation and storm restoration. In citing the City and County for the award, he said in 2016, the City of Asheville and Buncombe County worked with Duke Energy to convene the [Energy Innovation Task Force](#) aimed at achieving three goals: (1) Avoid or delay the need for a new peaking power plant in western North Carolina; (2) Promote energy efficiency and demand-side management; and (3) Create programs through close community engagement. The Energy Innovation Task Force’s [Blue Horizons Project](#), for example, is a coordinated effort to engage all customers (residential, commercial and industrial) in helping build a cleaner and smarter energy future for the region.

II. CONSENT AGENDA:

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 8, 2019**

- B. RESOLUTION NO. 19-19 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT WITH THE HARPER CORPORATION FOR THE NORTH FORK WATER TREATMENT PLANT SODIUM BICARBONATE SILO REPLACEMENT PROJECT**

Action Requested: Adoption of a resolution authorizing the City Manager to execute a construction agreement with The Harper Corporation for the North Fork Water Treatment Plan (NFWTP) Sodium Bicarbonate Silo Replacement Project.

Background:

- On December 13, 2018, the Water Resources Department (WRD) received bids for the subject project.
- The scope of the project includes replacement of the sodium bicarbonate storage silo, mixing and feed equipment at the NFWTP.
- The Lead & Copper Rule requires that the City treat the drinking water with sodium bicarbonate as part of corrosion control programs for the water distribution system. The project will replace equipment installed in 1996.
- In response to the Advertisement for Bids, the department received three bids from:
 1. The Harper Corporation, Greenville SC - \$968,000 (\$909,000 base bid, \$59,000 Alternate #1);
 2. J.S. Haren, Etowah TN - \$1,007,000 (\$957,000 base bid, \$50,000 Alternate #1); and
 3. Brushy Mountain Builders, Lenoir NC - \$1,042,000 (\$997,000 base bid, \$45,000 Alternate #1).
- Following a review of the bids by City staff and the project engineer, Brown and Caldwell, The Harper Corporation was selected as the lowest responsible, responsive bidder.
- The WRD requests authorization to contract with The Harper Corporation for the bid amount of \$968,000 (\$909,000 base bid + \$59,000 potential Alternate #1) plus a 15% contingency in the amount of \$145,200 for a total project budget in the amount of \$1,113,000.

Council Goal(s):

- A Financially Resilient City

Committee(s):

- N/A

Pro(s):

- This project will replace the existing equipment that reached the end of its functional life cycle.
- Ensure the City meets EPA Lead & Copper requirements.
- Supports capital investment in the City of Asheville.

Con(s):

- None.

Fiscal Impact:

- The Water Resources Department currently has the funds needed for this construction agreement budgeted in the "Water Treatment Plant Project" in the Capital Improvement Program Fund.

Motion:

- Move to adopt a resolution authorizing the City Manager to execute a construction agreement with The Harper Corporation for the North Fork Water Treatment Plan (NFWTP) Sodium Bicarbonate Silo Replacement Project.

RESOLUTION BOOK NO. 40 - PAGE 234

C. RESOLUTION NO. 19-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND A CONTRACT WITH MCGUIRE, WOOD & BISSETTE FOR LEGAL SERVICES

ORDINANCE NO. 4724 - BUDGET AMENDMENT TO FUND CONTRACT AMENDMENT WITH MCGUIRE, WOOD & BISSETTE AND ADDITIONAL OUTSIDE LEGAL SERVICE EXPENSES

Action Requested: Adoption of a resolution authorizing the City Manager to amend a contract with McGuire, Wood & Bisette for legal services; and the associated budget amendment, from General Fund unassigned fund balance, in the amount of \$300,000 to fund the contract amendment and additional outside legal service expenses.

Background:

- On September 11, 2018, the City entered into an agreement with McGuire, Wood & Bisette for legal services.
- Sabrina Rockoff has been maintaining office hours in City Hall and serving as Interim City Attorney until a new City Attorney is hired.
- Peter Kanipe, in addition to other staff with McGuire, Wood & Bisette have been assisting as needed.
- The original contract had a not to exceed amount of \$200,000, and due to the delay in hiring a new City Attorney a contract amendment is necessary to the not to exceed \$200,000 section of the contract.
- In addition, due to the delay in hiring a new City Attorney along with other outside legal service expenses that have exceeded initial estimates, a budget amendment is necessary, in the amount of \$300,000, from General Fund unassigned fund balance. (\$100,000 outside legal services and \$200,000 for interim City Attorney services.)

Council Goal(s):

- N/A

Committee(s):

- N/A

Pro(s):

- Provides much needed resources to the City during this interim period.

Con(s):

- None identified

Fiscal Impact:

- As noted above, the funding for this budget amendment will come from unassigned General Fund fund balance. Based on year-end revenue and expense estimates from the first quarter of Fiscal Year 2018-19, coupled with this additional fund balance appropriation, staff is projecting that unassigned fund balance will end the year at 14.6%.

A complete update to revenues and expenses and fund balance projections will be provided to City Council as part of the Q2 Financial Report in February.

Motion:

- Move to adopt a resolution authorizing the City Manager to amend a contract with McGuire, Wood & Bissette for legal services; and the associated budget amendment, in the amount of \$300,000 to fund the contract amendment and additional outside legal service expenses.

**RESOLUTION BOOK NO. 40 - PAGE 235
ORDINANCE BOOK NO. 32 - PAGE 283**

**D. RESOLUTION NO. 19-21 - RESOLUTION AUTHORIZING THE CITY
MANAGER TO AMEND THE PROFESSIONAL SERVICES
AGREEMENT WITH FIELDS CONSULTING GROUP RELATED TO
THE PROMOTIONAL PROCESSES IN THE ASHEVILLE POLICE
DEPARTMENT**

Action Requested: Adoption of a resolution authorizing an amendment to the Fields Consulting Group contract.

Background:

- In 2016, the Asheville Police Department (APD) contracted with the Fields Consulting Group to provide professional services related to the promotional processes for the ranks of Sergeant, Lieutenant and Captain. The contract has been renewed 3 times and is currently at a funding level of \$89,000.
- The 2018 promotional process has been concluded. Fields Consulting Group has submitted their final invoice. The total charge exceeds the contract encumbered balance by \$3,000. APD agrees that the total charge is correct. The contract cannot be renewed beyond the current balance without City Council approval.
- The Fields Consulting Group contract needs to be amended by \$3,000 to a total of \$92,000 to allow for payment of the vendor's final invoice.

Council Goal(s):

- Connected and Engaged Community

Committee(s):

- Finance & Human Resources Committee – January 22, 2019 meeting.
- Did not go through Public Safety Committee since their January meeting was cancelled.

Pro(s):

- Funding allows for a professional promotion process at APD.

Con(s):

- None.

Fiscal Impact:

- An additional \$3,000 will be charged to APD's fiscal year 2019 operating costs. Funding will come from the existing Fiscal Year 2018-19 Police Department operating budget.

Motion:

- Motion to adopt a resolution authorizing an amendment to the Fields Consulting Group contract.

RESOLUTION BOOK NO. 40 - PAGE 236

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.

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

III. PRESENTATIONS & REPORTS:

A. REVIEW OF BUDGET PRIORITIES & COMMUNITY FEEDBACK

Chief Financial Officer Barbara Whitehorn said that the goals of the project is (1) to improve community access to budget process; (2) improve staff understanding of community profiles; and (3) provide community input for Council consideration in budget process.

During the process and engagement portion, staff (1) held four community meetings (budget overview, check-in on neighborhood survey results, and on-site staff); (2) held Council education sessions (monthly discussions of departmental budgets); and (3) had an on-line Open City Hall Survey.

She used a chart showing the citizen survey results in which we received 343 responses. Results were public safety - 90%; environmental protection & sustainability - 88%; affordable housing development - 85%; sidewalks, bikeways & greenways - 84%; improving roads - 83%; public transportation - 77%; food security - 71%; youth recreational programs - 70%; City parks - 68%; maintenance of public buildings - 68%; adult recreational programs - 51%; and recreation centers - 50%.

For the budget Open City Hall we had 441 visits and received 79 responses. She used a chart showing the budget Open City Hall which ranged from environment to City Parks and Recreation. Other priorities included homelessness; mitigating impact of tourism and development, especially in low-income communities; rideshare and alternative transit options; City employee pay and retaining talented workforce; better paying jobs in the community; improving downtown parking options; and traffic congestion. Benefits and lessons learned include (1) community input is valuable to staff in developing recommendations and is also valuable to Council for decision-making; (2) inclusive community outreach to people less likely to use an online survey; (3) feedback opportunities at public meetings need more structure; (4) include community education on the City's role and limitations; and (5) meet people where they are.

Potential strategies for Fiscal Year 2021 include (1) continued education on City role, responsibilities and resources (informational videos and other resources; and (2) more impactful engagement (develop a more effective way of collecting input; outreach to community leaders; additional meeting locations and times; and piggyback on existing community meetings).

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE MAKING ALL SUBDIVISIONS IN HISTORIC OVERLAY DISTRICTS AND ON LOCAL HISTORIC LANDMARK PROPERTIES A MAJOR WORK

Councilman Young moved to table this public hearing. This motion was seconded by Vice-Mayor Wisler and carried unanimously.

B. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING A PORTION OF PROPERTY LOCATED AT 252 PATTON AVENUE AND A PORTION OF PROPERTY LOCATED AT 28 KNOXVILLE PLACE FROM CENTRAL BUSINESS DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT EXPANSION/CONDITIONAL ZONE TO CONSTRUCT AN ELECTRIC UTILITY SUBSTATION

ORDINANCE NO. 4725 - ORDINANCE TO CONDITIONALLY ZONE A PORTION OF PROPERTY LOCATED AT 252 PATTON AVENUE AND A PORTION OF PROPERTY LOCATED AT 28 KNOXVILLE PLACE FROM CENTRAL BUSINESS DISTRICT AND RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT EXPANSION/CONDITIONAL ZONE TO CONSTRUCT AN ELECTRIC UTILITY SUBSTATION

At this time, Interim City Attorney Rockoff left the Council dais due to a conflict of interest, and in her place Senior Assistant City Attorney John Maddux sat in for her during this item.

Principal Planner Shannon Tuch said that this is the consideration of an ordinance to conditionally zone a portion of property located at 252 Patton Avenue and a portion of property located at 28 Knoxville Place from Central Business District and RM-8 Residential Multi-Family Medium Density District to Central Business District Expansion/Conditional Zone to construct an electric utility substation. This public hearing was advertised on January 11 and 18, 2019.

Background:

- The project area includes portions of two separate lots - one zoned CBD and one zoned RM-8. The balance of the two properties, along with three additional residential lots to the south, are proposed to be graded in conjunction with the utility substation project to prepare the surrounding property for future development.
- A typical air-insulated substation is a permitted use in all zoning districts and is not subject to special design requirements.
- Duke Energy is proposing to construct a gas-insulated switchgear (GIS) substation on the property.
- The GIS is proposed to be enclosed within a single two-story building that will be 25-feet tall and 5,200 square feet.
- The unique operational needs of the building prevents normal compliance with the downtown design standards and several conditions modifying design standards are included in the proposal.

Council Goal(s):

- A Well-planned and Livable Community.
- A Connected and Engaged Community.

Committee(s):

- Technical Review Committee - September 17, 2018 - approved with conditions.
- Downtown Commission - October 12, 2018 - approved unanimously.
- Planning & Zoning Commission - December 5, 2018 - approved unanimously.

Pro(s):

- Proposes the use of a GIS substation resulting in a much smaller impact leaving room for future development that will help screen the substation from view.
- Includes the dedication of additional land as right-of-way along Patton Ave. and Clingman Ave. to allow for future transportation improvements (to be done by others);
- The owner/developer utilized a thorough public input and community engagement process that resulted in a community supported design;
- Provides a critical service need in an area targeted for significant growth.
- The development is aligned with the designated Future Land Use category of the Living Asheville Comprehensive Plan for this area (utility service to support growth)

Con(s):

- Adjacent property may not be suitable for some uses that are sensitive to the external effects of a substation;
- Results in a visual impact on a key gateway property into the downtown.

Fiscal Impact:

- There is no direct fiscal impact, however, the substation will directly support, and is necessary for, current and future development in and around the downtown area. This future development will have a positive fiscal impact.

In response to Councilwoman Mayfield, Mr. Walls said the difference between an gas-insulated facility is it's about the insulation needed to keep the electrical components insulated from one another. He thanked the community for their commitment and willingness shown throughout this process to come up with a solution that fits Asheville.

In response to Mayor Manheimer, Mr. Walls said the site is large enough to levering those two out parcels will allow us to sell it back into the market to help offset the increased cost of technology. There is a gas-insulated substation in Chapel Hill but this is the first one in the state that Duke Energy Progress has built.

Mayor Manheimer opened the public hearing at 5:47 p.m., and when no one spoke, she closed the public hearing at 5:47 p.m.

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

Vice-Mayor Wisler moved to approve the conditional zoning request from Central Business District and Residential Multi-family Medium Density to Central Business District - Conditional Zone (CBD- CZ) to allow for the construction of a 5,200 square foot, one-story, gas-insulated substation and find that the request is reasonable, is in the public interest and is consistent with the comprehensive plan in that the project: 1) minimizes land use impacts through innovative design; 2) utilized a thorough public input and community engagement process; and, 3) provides a critical service need in an area targeted for significant growth. This motion was seconded by Councilwoman Smith and carried unanimously.

ORDINANCE BOOK NO. 32 – PAGE 285

V. UNFINISHED BUSINESS:

A. CONSIDERATION TO SUPPORT OPTION 1 AS THE NEXT STEPS FOR THE HAYWOOD/PAGE REDEVELOPMENT PLANNING

RESOLUTION NO. 19-22 - RESOLUTION AUTHORIZING THE CITY MANAGER TO IDENTIFY A MULTI-YEAR FUNDING STRATEGY TO COMPLETE THE SITE DESIGN AND IMPLEMENTATION PLAN FOR HAYWOOD STREET AND PAGE AVENUE REDEVELOPMENT PROJECT

Director of Planning & Urban Design Todd Okolichany said that this is consideration to authorize City Manager to Identify a Multi-Year Funding Strategy to Complete the Site Design and Implementation Plan for City-Owned Property on Haywood Street and Page Avenue

Background:

- In 2016, the Asheville City Council approved a community visioning process for the future use of city-owned properties located at 68-76 Haywood Street and 33-39 Page Avenue.
- The Haywood Street Visioning Project Advisory Team Final Report (“Vision Report”) was created by the Asheville Design Center and an Advisory Team comprising of community members. The report was presented to and accepted by City Council on March 28, 2017.
- On September 12, 2017, City Council approved the release of a Request for Qualifications (RFQ) and an associated timeline to create a final preferred plan for city-owned properties located at 68-76 Haywood Street and 33-39 Page Avenue.
- A team led by Nelson Byrd Woltz Landscape Architects was identified (through the RFQ process) as the top-ranked firm.
- The Finance and Human Resources Committee reviewed the negotiated project budget of approximately \$324,000 on April 23, 2018, and asked staff to come back later in 2018 with recommendations on alternative funding strategies that would keep the project a priority. An additional \$16,000 was identified by staff as a budget impact for an updated survey of these properties.
- Staff presented an update on the project to the Planning and Economic Development (PED) Committee of Council on December 10, 2018.

Council Goal(s):

- Council Strategic Priority Goal #8: Develop a plan for Haywood Street land use and implement as appropriate.
- Living Asheville, Asheville’s Comprehensive Plan #18: Facilitate Real Estate Development That Maximizes Public Benefit.

Committee(s):

- The Planning and Economic Development Committee of City Council recommended the following to Council at their December 10, 2018, meeting: *“...request that the City Manager, in support of option 1 , identify possible funding to move forward with the Haywood St / Page Ave Site Planning project”*.
- The Asheville Downtown Commission voted unanimously at their January 11, 2019, meeting to recommend *“that Council fund the work of the consultant team led by Nelson Byrd Woltz to develop a final design plan, building on the Vision Plan completed in 2017 by the Haywood Street Advisory Team”*.

Pro(s):

- This direction would help staff continue exploring options to implement Council Strategic Priority #8 and further the vision outlined in the Vision Report.
- This project aligns with the Living Asheville Plan by investing in the downtown.

Con(s):

- None

Fiscal Impact:

- As noted above, the estimated cost for this project is \$340,000, which is not included in the current adopted budget. Once staff identifies a funding strategy for the project, Council would need to amend the current budget to fund the project or include funding in future year adopted budgets. A multi-year funding strategy was discussed at the December 10, 2018 PED meeting.

Mr. Okolichany said that Option 1 is to hire the Nelson Byrd Woltz Landscape Architects with that money to be allocate over two fiscal years. The option would include identifying funding for up to \$340,000 but splitting the work over the current fiscal year and Fiscal Year 2019-20. At this time, no funding has been allocated for this project unless this initiative is re-prioritized against other current City Council priorities. Based on the results of the Fiscal Year 2018 Comprehensive Annual Financial Report, the Finance Department does not recommend using Fund Balance as a revenue source at this time. Staff is also looking for opportunities to fund the new survey for the properties as part of existing planned capital improvements for Haywood Street. Alternately, the entire funding request could be made as part of the Fiscal Year 2019-20 budget process.

Option 1's pro is this option would provide City Council with the most data in order to make an informed decision about the long-term, sustained use and programming of 68-76 Haywood Street and 33-39 Page Avenue and the surrounding area, while continuing a previous process that was supported by the community and City Council.

Option 1's con is this is the most costly option and budget budget has been identified to date. Splitting the scope of work over two fiscal years gives uncertainty to the final outcome and deliverables.

Councilwoman Mayfield said that at the Finance & HR Committee, she learned that the City have a little over \$114,000 available from the sale of a piece of property that was going to be for a study related to affordable housing. She said if that money doesn't have to go into that pot where we already have designated monies for affordable housing, that City staff consider using those proceeds to at least fund a portion of this.

The following individuals spoke in support of Option 1 with most supporting Elder & Sage Community Gardens being an integral part of whatever design is created for this area:

Mr. David Nutter
Mr. Wanda Lovejoy
Ms. Clare Hanrahan
Mr. David Johnson
Ms. Amber Banks
Mr. Chris Joyell
Ms. Mary Everest
Mr. Craig Cline
Mr. Scott Owen
Ms. Rachel Bliss
Mr. Andrew Fletcher

Mr. David Madden spoke in support of allowing some space to a small museum

Mr. Roy Harris hoped that somewhere on the site there will be an African American element.

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 to adopt a resolution authorizing the City Manager to identify a multi-year funding strategy to complete the Site Design and Implementation Plan for city-owned properties on Haywood Street and Page Avenue. This motion was seconded by Councilwoman Smith and carried unanimously.

RESOLUTION BOOK NO. 40 - PAGE 237

VI. NEW BUSINESS:

A. ORDINANCE AMENDING PROVISIONS OF CHAPTER 10, ARTICLE IV OF THE CODE OF ORDINANCES CONCERNING NOISE REGULATION

Senior Assistant City Attorney John Maddux said that this is the consideration of amending provisions of Chapter 10, Article IV of the Code of Ordinances concerning noise regulation.

Background:

- City staff have identified certain inefficiencies and structural problems in the City's noise ordinances. For that reason, staff are proposing revisions to those ordinances with the intention of promoting better and more efficient enforcement, eliminating administrative challenges related to collecting civil penalties and making ordinance language clearer.
- These changes include
 - Removing the Noise Ordinance Appeals Board (NOAB) as an enforcement mechanism;
 - Punishing violations as an infraction rather than a misdemeanor;
 - Providing Development Services with authority to regulate construction noise through a permitting process;
 - Regulating animal noise solely through the animal ordinance; and
 - Eliminating redundant and confusing provisions. Complaints currently pending before the Noise Ordinance Appeals Board will be provided a window in which they will be heard and concluded.
- The City Manager has expressed an interest in undertaking a more comprehensive review of the City's noise regulations with the intention of making more substantive changes if necessary. These revisions, therefore, should be considered a first-step in a longer-term effort aimed at identifying how noise will be regulated in Asheville.

Council Goal(s): A well-planned and livable community.

Committee(s): On December 17, 2018, the Public Safety Committee voted unanimously to recommend the City Council adopt the proposed revisions.

Pro(s):

- Reduces inefficiencies; allocates enforcement authority to city personnel best positioned to achieve compliance;

Con(s):

- Does not address commercial noise, which is a frequent source of complaints

Fiscal Impact: The City has collected approximately \$13,050 for violations of the City's Noise Ordinance since 2009. This amount has fallen off significantly in the past three years, however, so the fiscal impact would be quite minimal under current trends.

Mr. Maddux further explained the current ordinance inefficiencies and deficiencies in the way the ordinance regulates noise. He then reviewed the current ordinance's exceptions, police enforcement, and Noise Ordinance Appeals Board (NOAB).

He then reviewed the proposed changes:

(1) The collection of unpaid civil penalties is impractical, and as a result, violating the noise ordinance carries no practical, enforceable consequences.

Proposed Solution - Punish violations as infractions instead of civil penalties. The person committing the infraction may be punished by a fine of not more than \$100.00 per violation, plus court fees, unless they are waived by the court.

Under North Carolina law, cities may punish ordinance violations as misdemeanors, non-criminal infractions or civil penalties. Misdemeanors and infractions are administered by the courts, and courts may impose very real sanctions if they are not paid. Revisiting the ordinance so that a violation is punished as an infraction would, therefore, help ensure that violating the ordinance carries real consequences.

(2) The NOAB is inefficient and largely unsuccessful method for resolving noise disputes between residents. In addition, the NOAB would be unable to issue citations for infractions.

Proposed Solution - Disband NOAB.

Citations for infractions may only be issued by sworn law enforcement officers, and as a result, this revision would require disbanding the NOAB. Even if that were not the case, however, staff would recommend eliminating the NOAB as it is rarely used for hearing appeals from police officer issued citations. In addition, the NOAB's adversarial citizen complaint process has proven an efficient and largely unsuccessful method for resolving noise disputes. As such, eliminating the NOAB process would not negatively impact enforcement, and could actually incentivize residents to mediate their disputes, which staff has found to be a far better process for resolving noise issues. In addition, in situations where police do not hear the noise or simply disagree that the noise rises to the level of a violation, citizens would be able to seek enforcement through the magistrate's office.

(3) The ordinances do not effectively address noise concerns caused by building construction.

Proposed Solution - Amend code to provide Development Services with authority to regulate construction noise.

Construction noise has been a major source of citizen complaints over the past several years, however, the noise ordinances have proven ineffective at regulating this particular concern. Police officers called to respond to citizen complaints about construction noise are often not in the best position to balance one party's right to the quiet enjoyment of their property against another's right to engage in construction. In addition, the ordinance contains a confusing provision pertaining to "after-hours" permit for construction enforcement authority. For these reasons, staff proposes amending the City Code to provide the City's Development Services Department with authority to regulate construction noise as a component of the building permit process, and further amending

the code to exempt construction performed pursuant to a permit from regulation under the noise ordinances. These revisions would provide the City with far more authority than it currently possesses to regulate construction noise while also placing that authority with the City department best positioned to effectively use that authority.

(4) Noise caused by barking dogs is currently regulated by both the City's animal ordinance and the City's noise ordinance, which can lead to confusion.

Proposed Solution - Amend the City Code so that animal noise is solely regulated under the animal ordinances contained in Chapter 3.

Staff proposes exempting animal noise, which is otherwise regulated by the City's animal ordinances contained in Chapter 3 of the City Code, from regulation under the noise ordinances. This revision would help clear up confusion regarding the proper source of authority for issuing citations for barking dogs, but more importantly, it would allow animal control officers, who are not sworn law enforcement officers, to continue issuing civil penalties for barking dogs despite the revision to make violations of the noise ordinance infractions.

(5) The noise ordinance contains a number of redundant and confusing sections.

Proposed Solution - Amend ordinances to eliminate redundant language.

The noise ordinances contain a list of "frequent sources of complaint," which does not aid enforcement, and that often leads to confusion. For example, the list of 19 activities includes "yelling, shouting," as well as "parties" as activities "tending to produce unreasonably loud and raucous sounds," but whether those activities constitute a violation still depends on whether they are being conducted in a manner that "disturbs a person of reasonable sensitivity." This list, therefore, does not aid enforcement, but often leads to a misperception that certain activities are absolutely prohibited. For that reason, staff recommends that the list be removed.

Councilman Kapoor moved to adopt an ordinance amending provisions of Chapter 10, Article IV of the Code of Ordinances of the City of Asheville concerning noise regulation. This motion was seconded by Vice-Mayor Wisler.

In response to Mayor Manheimer, Councilman Young said that when you get an infraction, it's up to the District Attorney's Office or Assistant District Attorney if they want to dismiss the charge. Court costs for infractions is \$188, and this fine would be \$100. If you miss the court date, there is an additional \$200 penalty for failure to appear. And, if they don't take care of the court case by a certain amount of time, their license could be suspended. Once their license is suspended, he felt this noise ordinance could be used in some various adverse ways. You can pay the infraction online. There is no automatic referral to the Mediation Center.

City Manager Campbell said that staff will be undertaking a more comprehensive review of the noise regulations. The recommended changes are more structural changes. They do not address the substantive issues related to noise, particularly those that impact residential areas, in particular noise from commercial establishments, light nightclubs, bars, restaurants, etc. We would like to have another phase of community engagement and public dialogue with involvement by our Planning & Urban Design staff, as well as Development Services to address some of these more broader issues. There has to be balance. We are a community that has a large sector of our economy related to tourism, but we also have an incredibly livable community where we want our residential areas to be protected as much as possible. We are trying to find

that balance of maintaining the vibrancy that we have in our community, but also to protect the ability to sleep and enjoy life in your home. With this particular issue, we want a sense of reasonableness and clear lines of “if you do these infractions, there will be consequences in terms of penalties.” We are trying to clarify as much as possible the steps. This next phase will be related to clarity of the ordinance language.

Mr. Maddux said that there are some existing complaints. The NOAB will be in place for 90 days and those existing complaints will be heard within that timeframe. No new complaints will be heard.

In response to Councilwoman Smith, Mr. Maddux said that it is the Asheville Police Department’s practice to give a warning first.

The following individuals spoke in opposition of the noise ordinance revisions until the comprehensive review is undertaken with public engagement:

Mr. Andrew Fletcher
Mr. Peter Landis
Ms. Martha Salyers
Mr. Casey Campfield
Ms. Diana Davidson
Mr. Philip Lenowitz
Mr. Jonathan Wainscott

Mayor Manheimer said that Council mostly receives complaints around commercial activity and would support continuing the process until we look at a more comprehensive approach.

Vice-Mayor Wisler, liaison to the NOAB, agrees that we need to look at the noise regulations in a comprehensive manner, but supported adopting these revisions, with the idea that the comprehensive piece will proceed quickly.

Councilman Young could not support these revisions as he felt they were not looked at through an equity lens. He felt this ordinance can affect other people’s lives in an adverse way and did not support opening up pathways to the criminal justice system.

Councilman Kapoor withdrew his motion to adopt the noise ordinance revisions.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Jonathan Wainscott spoke in favor of City elections being in the even year cycle.

Matilda Bliss, Casey Campfield and Kim Roney spoke about redistricting and the overwhelming numbers of Asheville citizens who voted against district. Mayor Manheimer explained that the City is soliciting some legal advice on their options regarding redistricting.

Rupa Russe spoke about zoning code enforcement.

VIII. ADJOURNMENT:

Mayor Manheimer adjourned the meeting at 7:58 p.m.

CITY CLERK

MAYOR