

Tuesday – June 25, 2019 - 5:00 p.m.

Regular Meeting

Present: Mayor Esther E. Manheimer (participating via speaker phone); Vice-Mayor Gwen C. Wisler, Presiding; Councilman Brian D. Haynes; Councilman Vijay Kapoor; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; City Manager Debra Campbell; City Attorney Brad Branham; and City Clerk Magdalen Burleson

Absent: None

**PLEDGE OF ALLEGIANCE**

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

**I. PROCLAMATIONS:**

**II. CONSENT AGENDA:**

At the request of Councilman Haynes, Consent Agenda “O” was added to the Consent Agenda.

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JUNE 11, 2019**
  
- B. ORDINANCE NO. 4748 - BUDGET AMENDMENT TO MOVE THE REMAINING BALANCES FROM THE ANNUAL CAPITAL MAINTENANCE ALLOCATIONS FOR FACILITY MAINTENANCE AND TRAFFIC CALMING FROM THE GENERAL FUND TO THE GENERAL CAPITAL PROJECTS FUND**

**Action Requested:** Adoption of a technical budget amendment in the amount of \$1,489,327 to move the remaining balances from the annual capital maintenance allocations for facility maintenance and traffic calming from the General Fund to the General Capital Projects Fund.

**Background:**

- In fiscal year 2012-13, the City moved certain annual capital maintenance budgets from the Capital Improvement Program (CIP) to the annual General Fund operating budget. This included capital maintenance allocations for facility maintenance and traffic calming, among others.
- Since that time, any available budgets in those accounts at year end have been reported as Assigned Fund Balance on the General Fund Balance Sheet in the Comprehensive Annual Financial Report (CAFR). Once the CAFR is complete each year, staff rolls those available budgets to the new fiscal year for departments to utilize.
- Over time those balances, especially the facility maintenance allocation, have grown and now represent a significant assignment of fund balance on the General Fund Balance Sheet.
- For this reason, staff is recommending that current remaining balances from the facility maintenance and traffic calming allocations be moved from the General Fund to the General Capital Projects Fund.

**Council Goal(s):**

- A Financially Resilient City

**Pro(s):**

- Reduces the amount of assigned fund balance reported as “Various Projects” on the General Fund Balance Sheet portion of the CAFR.
- Provides a higher level of transparency about the purpose of the funds.
- Provides formal access to those remaining budgets prior to completion of the FY 2018-19 CAFR.

**Con(s):**

- None.

**Fiscal Impact:**

- Since these capital maintenance allocations were assigned in the FY 2017-18 CAFR, this budget amendment will have no impact on the City’s unassigned fund balance.
- The amount being moved for facility maintenance totals \$1.2 million and the amount for traffic calming is \$289,327. Staff anticipates utilizing the facility maintenance funding in FY 2019-20 to fund or partially fund City Hall projects including boiler replacement and elevator modernization. Traffic calming funds will be used in FY 2019-20 to install speed humps along street sections approved for traffic calming that are now going through the petition process.

**Motion:**

- Motion to adopt a budget amendment in the amount of \$1,489,327 to move the remaining balances from the annual capital maintenance allocations for facility maintenance and traffic calming from the General Fund to the General Capital Projects Fund.

**ORDINANCE BOOK NO. 32 - PAGE 388**

**C. RESOLUTION NO. 19-154 - 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 INDEPENDENCE DAY CELEBRATION**

**RESOLUTION NO. 19-155 - 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 NO. 19-156 - 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 NORTH CAROLINA CERAMIC ARTS FESTIVAL**

**RESOLUTION NO. 19-157 - RESOLUTION AUTHORIZING THE CITY MANAGER TO APPROVE A RESOLUTION MAKING PROVISIONS FOR THE POSSESSION AND CONSUMPTION OF MALT BEVERAGES AND/OR UNFORTIFIED WINE AT LEAF DOWNTOWN AVL**

**Action Requested:** Adoption of resolutions to permit the possession and consumption of malt beverages and/or unfortified wine at the Independence Day Celebration, the Big Crafty, LEAF Downtown AVL, and the NC Ceramic Arts Festival.

**Background:**

- The following organizations have requested that City Council permit them to serve beer and/or unfortified wine at their events and allow for consumption at the events:
  - Asheville Downtown Association for the Independence Day Celebration, to occur at Pack Square Park on July 4, 2019, from 2:00 p.m. - 10:00 p.m.
  - Asheville Area Arts Council for the Big Crafty to occur at Pack Square Park on July 14, 2019, from 12:00 p.m. - 7:00 p.m.
  - NC Ceramic Arts Festival to occur at Pack Square Park on September 21, 2019, from 11:00 a.m. - 5:00 p.m.
  - LEAF Community Arts for LEAF Downtown AVL, to occur at Pack Square Park on August 2, 2019, from 3:00 p.m. - 10:00 p.m. and August 3, 2019, from 9:00 a.m. - 10:00 p.m.
- Alcohol boundaries are defined for each request as per the accompanying event site maps.

**Council Goal(s):**

- These actions have no direct connection with the City Council 2036 Vision.

**Committee(s):**

- None

**Pro(s):**

- Allows fundraising opportunities for the sponsoring nonprofit organizations

**Con(s):**

- None

**Fiscal Impact:**

- None

**Motion:**

- Motion to permit the possession and consumption of malt beverages and/or unfortified wine at the Independence Day Celebration, the Big Crafty, LEAF Downtown AVL, and the NC Ceramic Arts Festival.

**RESOLUTION NO. 19-154 - RESOLUTION BOOK NO. 41 - PAGE 1  
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**D. RESOLUTION NO. 19-158 - RESOLUTION AMENDING THE 2019 CITY COUNCIL MEETING SCHEDULE TO ADD A WORKSESSION ON JULY 2, 2019, AT 5:00 P.M. IN THE BANQUET HALL AT THE U.S. CELLULAR CENTER, TO DISCUSS LEGAL OPTIONS REGARDING ELECTION DISTRICTS**

At the July 2 worksession, a motion is anticipated to suspend the rules and allow public comment.

**RESOLUTION BOOK NO. 41 - PAGE 13**

**E. ORDINANCE NO. 4749 - BUDGET AMENDMENT FROM THE N.C. DEPT. OF PUBLIC SAFETY FOR HURRICANE FLORENCE REIMBURSEMENT**

**Action Requested:** Adoption of a budget amendment in the General Fund in the amount of \$110,000 for reimbursements to the City of Asheville by the North Carolina Department of Public Safety that exceeded initial budget estimates.

**Background:**

- In September 2018, the Asheville Fire Department (AFD) was requested by the N.C. Dept. of Public Safety to support the response and coordination of rescue efforts for Hurricane Florence.
- In response to the request, AFD deployed staff, apparatus, and equipment to areas of North Carolina that were impacted by the hurricane.
- This response included:
  - Critical Incident Stress Management team to aid responders at the event
  - Communications trailer and appropriate staff to provide remote communications for the event
  - North Carolina Helo Aquatic Response Team to assist in rescues via helicopter
  - Staff to support the Overall Incident Management Team
  - Staff and Medical bus to evacuate hospitals
  - And the Department's Type I Swiftwater Rescue Response Team

**Council Goal(s):**

- Smart City

**Committee(s):**

- Finance & Human Resources Committee - June 25, 2019

**Pro(s):**

- Reduction of overtime impact on Asheville Fire Department's overtime budget

**Con(s):**

- None

**Fiscal Impact:**

- Upon City Council approval, a budget amendment will be made in the current fiscal year to accept reimbursement and reduce the overtime impact to the Asheville Fire Department.

**Motion:**

- Motion to adopt a budget amendment in the General Fund in the amount of \$110,000 for reimbursements to the City of Asheville by the North Carolina Department of Public Safety that exceeded initial budget estimates

**ORDINANCE BOOK NO. 32 - PAGE 389**

**F. RESOLUTION NO. 19-159 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A GENERAL SERVICES AGREEMENT WITH**

## HARPER CORPORATION FOR THE MILLS RIVER WATER TREATMENT PLANT MISCELLANEOUS IMPROVEMENTS PHASE I PROJECT

**Action Requested:** Adoption of a resolution authorizing the City Manager to execute a construction contract with the Harper Corporation for the Mills River Miscellaneous Improvements

### **Background:**

- The Mills River Water Treatment Plant (WTP) was completed in 1999. The life cycle of many assets important to the treatment of drinking water need to be rehabilitated and/or replaced.
- This project includes the following components:
  - Replacement of the bulk and day tanks for sodium hypochlorite (disinfectant);
  - Rehabilitation and upgrade to the Ozonia ozone diffusers, dielectrics and associated Programmable Logic Controllers;
  - Replacement of seven Variable Frequency Drives for pump operation; and,
  - Improvements to the ventilation system in one chemical feed room for air quality.
- The Water Resources Department (WRD) received two bids on May 30, 2019
  - Harper Corporation: Greenville, SC \$1,917,000.00
  - Gilbert Engineering: Statesville, NC \$3,138,921.82
- Following a review of the bids, the Harper Corporation, was selected as the lowest responsible, responsive bidder for the bid amount of \$1,917,000. A 15% contingency amount of \$287,550 has been added for a total project budget in the amount of \$2,204,550.

### **Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned business through solicitation processes which include posting on the State's Interactive Purchasing System and requiring prime contractors to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services. Harper is not a minority or woman owned business. They will be self-performing most of the project; however, they will be reaching out for local labor and subs for certain tasks and plan on reaching out to local minority businesses.

### **Council Goal(s):**

- A Financially Resilient City

### **Committee(s):**

- None

### **Pro(s):**

- These improvements will ensure the Mills River WTP can continue to create high quality drinking water for our customers.

### **Con(s):**

- None

### **Fiscal Impact:**

- Water Resources Department currently has funds budgeted in the CIP for this project.

### **Motion:**

- Move to adopt a resolution authorizing the City Manager to execute a contract with the Harper Corporation to perform the work per the specifications and drawings provided by CDM Smith and the City of Asheville in the amount of \$917,000 with a 15% contingency amount of \$287,550 for a total project budget in the amount of \$2,204,550.

**RESOLUTION BOOK NO. 41 - PAGE 14**

**G. RESOLUTION NO. 19-160 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH H&M CONSTRUCTORS INC. FOR THE CITY HALL BOILER REPLACEMENT PROJECT**

**Action Requested:** Adoption of a resolution authorizing the City Manager to enter into a contract with H&M Constructors, Inc. in the amount of \$772,500.00, for the City Hall Boiler Replacement project; and further authorizing the City Manager to execute any change orders that may arise during the project up to the contingency amount of \$77,250 (10%).

**Background:**

- City Hall is heated with two large steam boilers. They are 35 years old, and have had recent repairs (2015) to keep them in service.
- This project replaces the two (2) large steam boilers with four (4) "modular" more efficient boilers. The design allows for increased reliability and redundancy. One boiler can be taken down for service, while the other three continue running.
- The boiler replacement will occur during the summer, and will be reinstalled before the start of the heating season.
- Bids were initially advertised on May 3rd, 2019. Only two bids were received at the bid opening deadline on May 30, 2019. The City could not open due to city policy and general statutes.
- The project was readvertised on June 3, 2019, and the City received and opened bids on June 10, 2019. Three bids were submitted, their names and bid amounts are listed below:
  - H&M Constructors, Inc., Asheville, NC \$ 772,500.00
  - Johnson Controls, Inc., Asheville, NC Office. \$ 891,400.00
  - Nor-Well Company, Inc., Elizabethton, TN. \$ 566,090.00
- The Nor-Well bid was determined to be non-responsive, and could not be accepted per City policy and general statutes. Their bid was non-responsive because the bid documents required a NC General Contractor "Unlimited" License. Nor-Well only holds a NC "Limited"/Mechanical license.
- H&M Constructors, Inc. was the lowest responsive, responsible bidder.

**Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned business through solicitation processes which include posting on the State's Interactive Purchasing System and requiring prime contractors to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services. No MWBE firms submitted bids with this prime contractor and all work will be self performed by the prime contractor.

**Council Goal(s):**

- A Clean and Healthy Environment & A Financially Resilient City

**Committee(s):**

- None.

**Pro(s):**

- The resulting boilers will be more efficient and reliable.
- The work will occur during the off season for heating, and the majority of the work will occur in spaces that will not disrupt City Hall operations.

**Con(s):**

- None

**Fiscal Impact:**

- Funding for this contract is already included in the adopted Capital Improvement Program (CIP).

**Motion:**

- Motion to adopt a resolution authorizing the City Manager to enter into a contract with H&M Constructors, Inc. in the amount of \$772,500.00, for the City Hall Boiler Replacement project; further authorizing the City Manager to execute any change orders that may arise during the project up to the contingency amount of \$77,250 (10%).

**RESOLUTION BOOK NO. 41 - PAGE 15**

**H. RESOLUTION NO. 19-161 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT WITH THE PRESERVATION SOCIETY OF ASHEVILLE AND BUNCOMBE COUNTY FOR CITY-OWNED PROPERTY LOCATED AT 324 CHARLOTTE STREET**

**Action Requested:** The approval of a resolution authorizing the City Manager to execute a lease agreement between the City of Asheville (City) and the Preservation Society of Asheville and Buncombe County (PSABC) for the historic E.W. Grove Office located at 324 Charlotte Street.

**Background:**

- The PSABC is a non-profit organization whose mission is to “sustain the heritage and sense of place that is Asheville and Buncombe County through preservation and promotion of the unique historic resources of the region.” (<https://psabc.org/mission/>)
- The City and PSABC entered into a lease for the historic E.W. Grove Office located at 324 Charlotte Street in Asheville, for use of PSABC’s administrative offices, on November 1, 2007.
- This lease ended on September 30, 2017 and PSABC has continued to occupy the space on a month to month tenancy since that time.
- When PSABC initially leased the property, the building was in disrepair and needed significant improvements. In accordance with the former lease agreement, PSABC agreed to accept the building “as is” and to make all repairs necessary to obtain a Certificate of Occupancy. The lease allowed for “rent credit” in exchange for these repairs.
- Based on PSABC’s initial investment in repairs to the building, PSABC represents that \$114,309 is still outstanding as available rent credit.
- The City obtained an appraisal of the property, which took into consideration the existing conditional zoning restrictions on the building which limit occupancy to non-profit entities. The appraisal concluded an opinion of the fair rental value at \$600 per month.
- Based on this information, the following terms have been negotiated between the City of Asheville and PSABC:
  - Premises: 324 Charlotte Street, 720 square feet of office space
  - New Lease Term: 10/1/2017 to 12/31/2030
  - Rent: \$600.00 per month, escalation at 3% (based on City’s MAI appraisal)
  - Rent Credit Balance: \$114,309.00, will be exhausted at the end of the lease in 2030
  - Term: 13 years, 2 months

- No additional rental credit for any future tenant improvements
- PSABC is amenable to these terms.

**Council Goal(s):**

- A Well-Planned and Livable Community

**Committee(s):**

- None

**Pro(s):**

- Continued partnership with the Preservation Society of Asheville and Buncombe County through a lease of City-owned property.
- This lease contains specific insurance requirements to protect the City's liability.
- PSABC will be responsible for all maintenance to the building and adjacent landscaped beds.

**Con(s):**

- None noted.

**Fiscal Impact:**

- None noted.

**Motion:**

- Motion to adopt a resolution authorizing the City Manager to execute a lease agreement with the PSABC for City-owned property known as the historic E.W. Grove Office at 324 Charlotte Street for the PSABC business office.

**RESOLUTION BOOK NO. 41 - PAGE 16**

**I. RESOLUTION NO. 19-162 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH E. LUKE GREENE COMPANY INC. FOR THE CITY HALL 7TH FLOOR ASBESTOS ABATEMENT PROGRAM**

**Action Requested:** Adopt a resolution authorizing the City Manager to enter into a contract with E. Luke Greene Company, Inc. in the amount of \$175,345, for the City Hall 7th Floor Asbestos Abatement project and further authorizing the City Manager to execute any change orders that may arise during the project up to the contingency amount of \$35,069 (20%).

**Background:**

- Testing for asbestos containing materials (ACM) was performed in support of the various City Hall renovation projects.
- ACM was confirmed in floor tiles, mastic (glue) and other materials on the 7th and 8th floors, and in mechanical areas related to the boiler replacement project.
- Select demolition and ACM removal must be performed prior to the start of the 7th floor renovation project, and in support of the boiler replacement project.
- ACM will be removed with safe methods, and under the supervision of the City's environmental consulting engineer, S&ME.
- The work will be performed at night to minimize disruption to City Hall operations.
- Bids were advertised on May 7th, 2019 and the City received and opened on May 30th, 2019. Five (5) firms submitted bids, their names and bid amounts are listed below:
  - Contaminant Control, Inc., Salisbury, NC      \$ 365,285
  - Eastern Environmental, Inc., Charlotte, NC      \$ 327,720



- E. Luke Greene Co, Inc., Strawberry Plains, TN \$ 175,345
- NEO Corporation, Canton, NC \$ 175,495
- Target Contractors, LLC, Landson, SC \$ 215,950
- The E. Luke Greene Company was the lowest responsive, responsible bidder.

**Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned business through solicitation processes which include posting on the State’s Interactive Purchasing System and requiring prime contractors to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services. E. Luke Greene Company is registered with the North Carolina Historically Underutilized Business (HUB) office as a woman owned business.

**Council Goal(s):**

- A Clean and Healthy Environment & A Financially Resilient City

**Committee(s):**

- None

**Pro(s):**

- The project prepares the 7th floor for the future renovation project, and makes the future project less expensive.
- The work will be performed at night, to minimize disruption to City Hall operations.
- The project will be awarded to a registered HUB firm.

**Con(s):**

- None

**Fiscal Impact:**

- Funding for this contract is already included in the adopted Capital Improvement Program (CIP).

**Motion:**

- Motion to adopt a resolution authorizing the City Manager to enter into a contract with E. Luke Greene Company, in the amount of \$175,345, for the City Hall 7th Floor Asbestos Abatement project and further authorizing the City Manager to execute any change orders that may arise during the project up to the contingency amount of \$35,069 (20%).

**RESOLUTION BOOK NO. 41 - PAGE 17**

**J. ORDINANCE NO. 4750 - BUDGET AMENDMENT FROM A DONATION FROM THE FRIENDS OF THE NATURE CENTER TO SUPPORT THE NATURE CENTER NEW FRONT ENTRANCE CAPITAL IMPROVEMENT PROJECT**

**Action Requested:** Budget amendment, in the amount of \$177,000, from a donation from the Friends of the Nature Center to support the Nature Center new front entrance capital improvement project.

**Background:**

- Renovation of the Nature Center front entrance was complete in September 2018.
- The total cost for the renovation was \$1,197,000
- The funding sources for the project was TDA (\$313,000) and The Friends of the Nature Center (\$884,000)

- In 2015 the Friends of the Nature Center donated \$627,000 to support the construction of the Nature Center new front entrance.
- The Friends of the Nature Center increased its donation by \$80,000 for a new total of \$707,000 to support increased construction cost of the Nature Center new front entrance.
- In 2018 the Friends of the Nature Center increased its donation again by \$177,000 for a new total of \$884,000 to support increased construction cost of the Nature Center new front entrance.
- Budget amendment for the first two Friends of the Nature Center donations were completed prior to starting construction of the Nature Center front entrance.
- The budget amendment of \$177,000 is the final budget amendment to complete the Friends of the Nature Center donations for the Nature Center front entrance.

**Council Goal(s):**

- A Well-Planned and Livable Community

**Committee(s):**

- Recreation Board unanimously approved on May 13, 2019

**Pro(s):**

- Increases the amount of contribution from the Friends of the Nature Center to support construction cost of the Nature Center front entrance capital project, resulting in reducing the cost to the City's capital improvement budget.

**Con(s):**

- None

**Fiscal Impact:**

- The donation increases the City's capital improvement budget for the Nature Center front entrance.

**Motion:**

- Motion to approve a budget amendment to increase the capital budget of the Nature Center front entrance in the amount of \$177,000.

**ORDINANCE NO. 32 - PAGE 390**

**K. RESOLUTION NO. 19-163 - RESOLUTION AUTHORIZING THE CITY MANAGER TO RENEW THE EXISTING AGREEMENT WITH A&B CLEANING SERVICES FOR CUSTODIAL SERVICES**

**Action Requested:** Adoption of a resolution authorizing the City Manager to renew a custodial services agreement with A&B Cleaning Services for a period of one year, retroactively authorize the renewal and expenditures for the past year of service, and authorize changes to the contract that will set a limit for providing these services to no more than five consecutive years.

**Background:**

- The City Hall Operations (CHO) Division of the Capital Projects Department provides a variety of services including custodial work at multiple locations. CHO in-house custodians service City Hall, the Municipal Building, and the Public Works Building.
- CHO is a lean operation with limited resources, and contracting work to third-party firms is needed to maintain current key performance measures.
- Remote facilities cleaned under the City's existing contract with A&B include six police sub-stations, the City Gas Station, Fleet Management Building, and the Armory.

- This contract was originally signed in October 2016 for a term to extend through June of 2017.
- The contract was renewed on July 1, 2017 for a period of one year by the City Manager.
- The contract was not officially renewed in 2018.
- The aggregate value of this contract currently exceeds \$90,000, so approval by the City Council is required with retroactive approval of the expenses and services provided in the past year.
- The original contract also did not establish a limit for renewal and the suggested changes set a limit of no more than 5 years.
- While there is no way to confirm it, A&B's company profile states that they offer benefits and competitive wages to their employees.

**Vendor Outreach Efforts:**

- Staff performed outreach to minority and women owned businesses through solicitation processes which include posting on the State's Interactive Purchasing System and requiring prime contractors to reach out to Minority & Women-Owned Business Enterprise (MWBE) service providers for subcontracted services. A&B Cleaning is a certified Historically Underutilized Business (HUB) identified on the HUB website as a black owned business out of Greenville NC. Although this company is not located in Asheville, it is anticipated that the majority of the employees will be hired locally.

**Council Goal(s):**

- Smart City

**Committee(s):**

- None

**Pro(s):**

- Allows third-party service work to continue as a supplement to in-house staff.
- Provides flexibility in service delivery without significant capital investment (e.g., vehicle, equipment, etc.).
- Allows the Division to maintain key performance measures.

**Con(s):**

- None

**Fiscal Impact:**

- Costs for these services are included in the General Fund allocation to City Hall Operations in Capital Projects for the current fiscal year. The contract is contingent on budget appropriations in future fiscal years.

**Motion:**

- Motion to adopt a resolution authorizing the City Manager to renew the existing agreement and authorize expenditures of \$39,178.04 for the upcoming year of service, retroactively authorize the renewal and expenditures for the past year of service, and authorize changes to the contract that will set a limit for providing these services to no more than five consecutive years.

**RESOLUTION BOOK NO. 41 - PAGE 18**

- L. RESOLUTION NO. 19-164 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH STANTEC CONSULTING SERVICES TO COMPLY WITH THE**

## AMERICA'S WATER INFRASTRUCTURE ACT (AKA SENATE BILL 3021)

**Action Requested:** Adoption of a resolution authorizing the City Manager to execute a Professional Services Contract with Stantec Consulting Services to comply with America's Water Infrastructure Act (AWIA) Senate Bill 3021

### Background:

- The AWIA was signed into law on October 23, 2018. The Act requires that organizations like the City of Asheville conduct and certify a Risk and Resilience Assessment (RRA).
- The RRA will analyze the vulnerabilities and the effectiveness of existing countermeasures and develop the baseline, or draft risk analysis. The assessment will consider: malevolent acts, resilience of infrastructure, monitoring practices, financial infrastructure, use, storage, or handling of chemicals, and operation & maintenance of the system.
- Within six months an Emergency Response Plan must be submitted to address the RRA findings and establish plans, strategies, and procedures associated with potential hazards. The deadline for the RRA is March 31, 2020.
- In January of 2019, the Water Resources Department (WRD) issued a Request for Qualifications (RFQ) for the project.
- The scope of services include meetings, coordination, data collection, workshops, field investigations, development of the RRA, update water system management plan, training, and an operational sustainability plan.
- Stantec was the only firm responding to the RFQ. Their total estimate to complete the work is \$382,502.36.
- Staff recommends entering into a Professional Services Contract with Stantec Consulting Services to comply with the AWIA Senate Bill 3021.
- Staff requests authorization to contract with Stantec Consulting Services for the estimated amount of \$382,502.36 plus a 10% contingency in the amount of \$38,250.24 for a total project budget in the amount of \$420,752.59.

### Council Goal(s):

- A Financially Resilient City

### Committee(s):

- None

### Pro(s):

- This project allows WRD to comply with the AWIA - Senate Bill 3021 in a timely manner in order to meet the regulatory deadlines.

### Con(s):

- None

### Fiscal Impact:

- Water Resources Department has funds in the Fiscal Year 2019-2020 CIP budget for this project and contingency.

### Motion:

- Move to adopt a resolution authorizing the City Manager to execute a Professional Services Contract with Stantec Consulting Services for compliance with the America's Water Infrastructure Act - House Bill 3021 in the amount of \$382,502.36 plus a 10% contingency in the amount of \$38,250.24 for a total project budget in the amount of \$420,752.59.

**RESOLUTION BOOK NO. 41 - PAGE 19**

**M. RESOLUTION NO. 19-165 - RESOLUTION AUTHORIZING THE CITY MANAGER TO CONVEY AN EASEMENT TO DUKE ENERGY PROGRESS INC. FOR THE PURPOSE OF INSTALLING ELECTRIC SERVICE TO A WATER TANK ON CITY-OWNED PROPERTY ON CHARLOTTE HIGHWAY**

**Action Requested:** Adoption of a resolution authorizing the City Manager to grant an easement to Duke Energy Progress, Inc. for electrical utility improvements at the Water Tank site on Charlotte Highway (PIN #967721747100000).

**Background:**

- The Water Resources Department has recently built a new water tank on property located on Charlotte Highway in Fairview and has requested that electricity be extended to the new water infrastructure.
- Duke Energy is the provider of electrical service in this location and requests an easement to install additional electric infrastructure on City property.
- These electrical improvements include both underground lines and overhead power lines. The easement will be 30 feet wide for the overhead portion and 20 feet wide for the lines below ground. The amount of permanent easement is approximately 2,121 square feet.

**Council Goal(s):**

- A Well Planned and Liveable Community

**Committee(s):**

- None

**Pro(s):**

- The City will continue to provide safe and abundant water services.

**Con(s):**

- None.

**Fiscal Impact:**

- No compensation is offered for the easement and the Water Department Enterprise funds will be used to pay the ongoing electric costs after the improvements are constructed.

**Motion:**

- Motion to approve a resolution authorizing the City Manager to convey an electrical easement to Duke Progress Energy, Inc. (DEP) at the City water tank on Charlotte Highway.

**RESOLUTION BOOK NO. 41 - PAGE 20**

**N. RESOLUTION NO. 19-166 - RESOLUTION RATIFYING INTERLOCAL AGREEMENT WITH THE BUNCOMBE COUNTY SHERIFF'S OFFICE CONCERNING BUNCOMBE COUNTY ANTICRIME TASK FORCE EQUITABLE SHARING**

**Action Requested:** Ratification of an inter-local agreement and approval of an amendment to that agreement concerning distribution of forfeited funds seized by the Buncombe County Anti-Crime Task Force between the Buncombe County Sheriff's Office and the City.

**Background:**

- In August of 2015, the Asheville Police Department (APD) and Buncombe County Sheriff's Office (BCSO) entered into an agreement to operate a joint anti-crime task force (BCAT) charged with high-level drug interdiction.
- BCAT investigations sometimes lead to the seizure and forfeiture of money and property, which is then available to the agencies according to federal equitable sharing guidelines.
- In the past, seized funds have remained with BCAT as the fiduciary, however, due to recent federal guideline changes, those funds may not be maintained by an interagency task force, and must be redistributed to the overarching agencies.
- Recently, the BCSO and City have agreed to amend the agreement to share the forfeited funds, with the BCSO receiving 68.44 % and Asheville Police Department (APD) receiving 31.56%.
- Funds transferred to APD will be placed in a project fund within APD and used for furthering illegal drug investigations and related crime activities.
- Per N.C. Gen. Stat. § 160A-461, inter-local agreements must be ratified by the City Council.
- This action includes ratification of the original 2015 agreement, as well as the amendment concerning equitable sharing.

**Council Goal(s):**

- Connected and engaged Community

**Pro(s):**

- Will maintain compliance with federal equitable sharing guidelines.

**Con(s):**

- None

**Fiscal Impact:**

- None. Funds that previously were held by BCAT will be transferred to a BCAT project fund maintained by the Asheville Police Department.

**Motion:**

- Motion to adopt resolution ratifying the 2015 inter-local agreement concerning the Buncombe County Anti-Crime Task Force as well as an amendment concerning the distribution forfeiture funds between the Buncombe County Sheriff's Office and the City of Asheville

**RESOLUTION BOOK NO. 41 - PAGE 21**

**O. RESOLUTION NO. 19-169 - RESOLUTION ASKING GOVERNOR COOPER TO VETO HOUSE BILL 370 AND INDICATING OUR SUPPORT OF THIS ACTION AND OUR ELECTED SHERIFF QUINTIN MILLER**

Councilman Haynes read the following resolution: "WHEREAS, we are mandated to provide the service of public safety for all residents of the City of Asheville; and WHEREAS, we are grateful for our neighbors and all the gifts that they bring to the City of Asheville; and WHEREAS, we recognize the strength we have as a community when all of our residents in all of our neighborhoods can live without fear; and WHEREAS, the people of Asheville and Buncombe County duly elected Sheriff Quentin Miller under the mandate to fulfill his promise to keep the full community safe and to not cooperate with the Immigration and Customs Enforcement; and WHEREAS, N.C. HB370 would make it mandatory for NC Sheriffs to do something the Federal Government has said is voluntary (to cooperate with ICE detainers); and WHEREAS, because these detainers are not tied to criminal cases, they would require local sheriffs to hold individuals

without probable cause, in violation of their constitutional rights; and WHEREAS, forcing sheriffs to act as an extension of ICE diverts much needed taxpayer resources away from education, healthcare, childcare, housing, and other resources needed by every person in Asheville; and WHEREAS, making sheriffs comply erodes the community trust in local law enforcement, decreases the voluntary reporting of crime, and spreads fear throughout our immigrant communities; and WHEREAS, we believe that the best of our humanity and the best of local government happens when we support the full worth and dignity of all people and their families by helping to keep them safe in our community and together; and WHEREAS, we as a community are committed to protecting each other and to making Asheville a safe place in which to live; NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT: An official request be sent from this body to Governor Roy Cooper asking him to veto HB370 and indicating the support of this body for that action.”

A gentleman and Rev. Amy Cantrell spoke in support of the resolution and thanked City Council for its adoption.

### **RESOLUTION BOOK NO. 41 - PAGE 24**

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

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

#### **A. MANAGER’S REPORT**

##### **APD Update on Gun Violence**

City Manager Campbell updated Council on the press conference held on June 24, 2019, by Attorney General Josh Stein, in coordination with the Asheville Police Department (APD), Our Voice, Buncombe County Sheriff’s Department and the District Attorney’s Office. The conference was held to bring attention to the need for funding to address the backlog of sexual assault kits that need to be processed and tested. Of the total number of kits that are awaiting testing, the APD has submitted the most kits of all the communities in the state. That means that all kits currently in the possession of the APD have been reviewed and either already sent in for testing or are ready to be processed.

City Manager Campbell then asked Deputy Police Chief Jim Baumstark to provide a brief update on a disturbing trend that is occurring in Asheville related to gun violence that is affecting our city and communities. She noted that prior to coming to Asheville, she was in Charlotte, and according to the Charlotte Observer, as of June 20, 2019, there were 56 homicides committed in just 6 months, which is just short of the 58 homicides committed for the entire year of 2018. Unfortunately we cannot answer why these types of crimes are increasing in Asheville and in other communities. More importantly she wished we could say we have a solution. But, what we know for sure is that these acts of violence can’t be solved by APD alone. It will take a community-wide effort to both own and help address this complex issue in our community.

Deputy Chief Baumstark It is important to note that the data discussed tonight is only as it relates to gun violence and not all violent crimes. Using a table, he highlighted the number of violent gun crimes reported with the percentage change from 2018 to 2019 year-to-date January 1 through June 23 each year.

Using a chart, he showed the visual month-by-month breakdown for the same data on violent gun crimes. Violent Gun Crimes in 2018 total 72: Homicide 5, Robbery - 23, and Aggravated Assault - 44. For 2019 they total 82: Homicide 2, Robbery 29; and Aggravated Assault - 51. May was an especially violent month for our community.

As of June 23rd this year, the Asheville Police Department (APD) responded to a total of 360 gun calls - that is calls for gun discharges, gunshot wounds, and persons with a gun. That is a 15% increase over 2018. The first quarter started off in line with 2018 while we've seen double-digit percentage increases in April, May, and through the 23rd of June.

He showed a density map which shows the Top 10 locations to which APD responded for gun calls. I need to note that 5 of these locations are in and around public housing communities. Of the top 10 locations for calls, people who live in and around Pisgah View, Deaverview, and Hillcrest areas combined for more than half of all calls for gunshot wounds, gun discharges, and persons with gun.

To put things in a historical perspective, since at least 2014 - other than 2016, each year we have seen an increase in gun crimes year over year. 2019 year-to-date, we have had an increase of 15% over 2018. Since 2016, gun crimes have increased 55%.

He explained that crime prevention and reduction must be a community effort. He said that this is bigger than APD and cannot be addressed by APD alone. It will take a community wide effort to address the complex issues of violence in our community.

APD efforts include: (1) Formed a Special Task Force working with state & federal partners; (2) Using data to deploy resources to areas experiencing violence & gun crimes; (3) Increased presence and engagement of residents, business owners & property owners in impacted areas; and (4) Collaborating with community organizations to identify and respond to the root causes of violent crime.

Regarding community efforts, (1) Encourage input and open dialogue about increased violence, drug epidemic, and gang violence; (2) Be aware of what's happening in your neighborhood; and (3) Take an active stance against violence - if you see or hear something, say something.

In summary, (1) Violent gun crime is up 14% year-to-date with an overall 55% increase since 2016; (2) Homicides are down 60% from the previous year to date; (3) Robberies are up 26% and aggravated assaults are up 16% from the previous year to date; (4) 5 of the top 10 locations to which APD received gun calls are in and around public housing communities, including the top 3 locations; and (5) **We can and must work together to address this complex issue.**

The APD alone cannot prevent gun violence. We must work together to provide the most accurate information in a timely and efficient manner. We can and must work together to address this complex issue.

Deputy Chief Baumstark responded to various questions/comments from Council and those questions he could not readily answer, he would prepare a memorandum for Council.

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

##### **A. PUBLIC HEARING TO CONSIDER A STREET NAME CHANGE OF THE MOST SOUTHERN PORTION OF PARK AVENUE NORTH TO ARTFUL WAY**



**RESOLUTION NO. 19-167 - RESOLUTION TO CHANGE THE STREET NAME  
OF THE MOST SOUTHERN PORTION OF PARK AVENUE NORTH TO  
ARTFUL WAY**

Emergency Address Coordinator Stuart Rohrbaugh said that this is the consideration of a resolution to change the street name of the most southern portion of Park Avenue N to Artful Way. This public hearing was advertised on June 14, 2019.

**Action Requested:** Public hearing date to consider a street name change of the most southern portion of Park Avenue North to Artful Way.

**Background:**

- Park Avenue North is a duplicated street name in the same emergency response area. The Haywood Road bridge was constructed in the 1970's and Park Avenue North was split into two different street segments. The most northern segment is planned to remain the same Park Avenue North street name. The southern segment is being considered to be renamed to eliminate the duplicate street name confusion.
- Timing for eliminating the duplicate street name is right as there are no occupied structures on the street to endure a street address change.
- Changes to existing public street names shall be approved through a resolution of the City Council following a public hearing advertised with state open meeting laws.
- The Notice was posted prominently along the street, published at least once in a newspaper and mailed to all property owners adjoining the affected right-of-way.

**Council Goal(s):**

- A well-planned and livable community

**Committee(s):**

- Public Safety Committee - May 23, 2019 - supported the street renaming

**Pro(s):**

- Potential emergency response enhanced with a new unique street name.

**Con(s):**

- Cost and labor of replacing one street name sign.

**Fiscal Impact:**

- Material, fabrication and installation costs of the new street sign is included in the Transportation Department annual operating budget.

Vice-Mayor Wisler opened the public hearing at 5:37 p.m. and when no one spoke, she closed the public hearing at 5:37 p.m.

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

Councilman Haynes moved to adopt a resolution changing the name of the most southern portion of Park Avenue North to Artful Way. This motion was seconded by Councilman Kapoor and carried unanimously.

**B. PUBLIC HEARING TO CONSIDER A STREET NAME CHANGE OF WILBAR AVENUE TO LEE GARDEN LANE**

**RESOLUTION NO. 19-168 - RESOLUTION TO CHANGE THE STREET NAME OF WILBAR AVENUE TO LEE GARDEN LANE**

Emergency Address Coordinator Stuart Rohrbaugh said that this is the consideration of a resolution to change the street name of Wilbar Avenue to Lee Garden Lane. This public hearing was advertised on June 14, 2019.

**Action Requested:** Public hearing to consider a street name change of Wilbar Avenue to Lee Garden Lane

**Background:**

- The Lee Walker Heights property was rezoned to allow for a complete redevelopment of an existing housing development. The developer requested to name the proposed new access drive Lee Garden Ln. There is a short portion of what appears to be platted public right-of-way that connects Wilbar Ave to Short Coxe Ave. Since that portion of right-of-way appears to be public then only City Council can consider a street name change.
- Timing for changing the street name is right as there are no occupied structures on Wilbar Avenue to endure a street address change.
- Changes to existing public street names shall be approved through a resolution of the City Council following a public hearing advertised with state open meeting laws.
- The notice was posted prominently along the street, published at least once in a newspaper and mailed to all property owners adjoining the affected right-of-way.

**Council Goal(s):**

- A Well-Planned and Livable Community

**Committee(s):**

- Public Safety Committee - May 23, 2019 - subsequently supported the street renaming after hearing input from Asheville Housing Authority on how the proposed new name originated

**Pro(s):**

- Potential emergency response enhanced with a new unique street name before new construction. occurs.

**Con(s):**

- Cost and labor of replacing one street name sign.

**Fiscal Impact:**

- Material, fabrication and installation costs of the new street sign is included in the Transportation Department annual operating budget.

Vice-Mayor Wisler opened the public hearing at 5:39 p.m., and when no one spoke, she closed the public hearing at 5:39 p.m.

Councilman Young said that his family was one of the first families to move into Lee Walker Heights and he felt that changing this street name will erase the history of Lee Walker Heights.

Councilwoman Smith said that at the Public Safety Committee meeting, she asked the developer to make sure they reached out to the community on the proposed name change. She didn't want a street name change to be perceived as an indicator of displacement. Lee Garden Lane is a name that was chosen and endorsed by the community to commemorate the name "Lee Walker" and also a garden that was very beautiful at the base of Lee Walker Heights.

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

Councilwoman Smith moved to adopt a resolution to change the street name of Wilbar Avenue to Lee Garden Lane. This motion was seconded by Councilman Haynes and carried on a 6-1 vote, with Councilman Young voting "no".

## **RESOLUTION BOOK NO. 41 – PAGE 23**

### **C. PUBLIC HEARING TO CONSIDER REZONING 990 SWEETEN CREEK ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

#### **ORDINANCE NO. 4751 - ORDINANCE TO REZONE 990 SWEETEN CREEK ROAD FROM INDUSTRIAL DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT**

Urban Planner Sasha Vrtunski said that this is the consideration of an ordinance to rezone 990 Sweeten Creek Road from Industrial District to Commercial Industrial District. This public hearing was advertised on June 14 and 21, 2019.

**Action Requested:** Rezone the property located at 990 Sweeten Creek Rd. (PIN 9657-22-7697) from Industrial (IND) to Commercial Industrial (CI) for the purpose of supporting commercial development compatible with adjacent industrial and commercial industrial uses.

#### **Background:**

- The subject property includes a single 0.33 acre lot zoned Industrial (IND) located on the southeast corner of Sweeten Creek Rd. and Sweeten Creek Industrial Park.
- The property has high visibility and is easily accessed from both Sweeten Creek Rd. and Sweeten Creek Industrial Park with driveway entrances on each.
- The subject property is currently developed with a small commercial structure (approx. 2,000 s.f.) along with a small parking area, and is directly adjacent to existing warehousing and distribution uses.
- The existing structure is currently vacant but had most recently been used as an office.
- The subject property is bordered by Commercial Industrial (CI) zoned properties to the north, across Sweeten Creek Industrial Park; and to the west, across Sweeten Creek Rd. The property is also directly adjacent to IND zoned properties to the east and south.
- The purpose of the IND zoning district is to reserve land for existing and future industrial activities and for land uses that support industrial activities. The IND zoning designation does not allow for more common commercial uses (i.e. retail, entertainment, restaurants, etc.).
- The purpose of the CI zoning district is to provide areas for a wide range of commercial and industrial uses.
- The 0.33 acre parcel is very small and unlikely to be used for an industrial purpose.
- The area is identified as Industrial/Manufacturing on the Future Land Use map, which describes what are typically larger tracts of land located near existing transportation and utility infrastructure. These properties may require some separation of heavier industrial uses from more sensitive uses but can generally be appropriate neighbors to other commercial or mixed-use areas (p. 344-345).

**Council Goal(s):**

- A Thriving Local Economy.

**Committee(s):**

- Planning & Zoning Commission - June 5, 2019 - unanimously to support the request

**Pro(s):**

- Supports the adaptive re-use of an existing structure.
- Aligns with the Future Land Use Map, Industrial/Manufacturing, in the Living Asheville Comprehensive Plan, in that the proposal allows for a broader range of uses that can be compatible with the existing and future industry in the area.
- The proposed zoning, if adopted, would allow for commercial and service uses that may directly support and serve the surrounding businesses, employees and residents (i.e. coffee/sandwich shop).

**Con(s):**

- Results in the loss of IND zoned property that could be combined with adjacent properties for new or expanded industry.
- Not all permitted uses in the CI zoning district may be compatible with the existing industrial uses.

**Fiscal Impact:**

- None

Vice-Mayor Wisler opened the public hearing at 5:45 p.m., and when no one spoke, she closed the public hearing at 5:45 p.m.

When Councilman Haynes asked what the plans were for this building, Ms. Vrtunski said that she was not sure; however, she was aware that the building would not be demolished. She also noted that whatever uses are allowed in the Community Industrial District would be allowed on this property, if rezoned.

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

Councilman Kapoor moved to approve the rezoning request from Industrial District (IND) to Commercial Industrial District (CI) thereby assigning a zoning designation that is compatible with the surrounding properties and find that the request is reasonable, is in the public interest and is consistent with the Comprehensive Plan and other adopted plans in the following ways: the rezoning will, 1) support the adaptive reuse of the existing structure; and, 2) will allow for a broader range of uses that will support and serve the surrounding businesses, employees and residents. This motion was seconded by Councilman Haynes and carried unanimously.

**ORDINANCE BOOK NO. 32 - PAGE 391**

- D. PUBLIC HEARING TO CONSIDER CONDITIONAL ZONING OF PROPERTY LOCATED AT 20 BATTERY PARK AVENUE AND KNOWN AS THE FLAT IRON BUILDING FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT EXPANSION/CONDITIONAL ZONING FOR THE RENOVATION OF AN EXISTING BUILDING TO INCLUDE A RESTAURANT, RETAIL SPACES, COMMERCIAL OFFICE SPACE ON THE 2ND FLOOR AND 71 LODGING UNITS ON FLOORS 3-8**

**ORDINANCE NO. 4752 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 20 BATTERY PARK AVENUE AND KNOWN AS THE FLAT IRON BUILDING FROM CENTRAL BUSINESS DISTRICT TO CENTRAL BUSINESS DISTRICT EXPANSION/CONDITIONAL ZONING FOR THE RENOVATION OF AN EXISTING BUILDING TO INCLUDE A RESTAURANT, RETAIL SPACES, COMMERCIAL OFFICE SPACE ON THE 2ND FLOOR AND 71 LODGING UNITS ON FLOORS 3-8**

Planning & Urban Design Director Todd Okolichany said that this is the consideration of an ordinance to conditionally zone property located at 20 Battery Park Avenue and known as the Flat Iron Building from Central Business District to Central Business District Expansion /Conditional Zone for the renovation of an existing building. On May 14, 2019, the petitioner withdrew his application (which requested 80 lodging units and no office space) in order for the applicant to have further dialog with the community about the proposal. The petitioner has revised is application to include a restaurant, retail spaces, commercial office space on the 2nd Floor and 71 lodging units on Floors 3-8. This public hearing was advertised on June 14 and 21, 2019.

**Action Requested:** Consider a conditional zoning petition for property currently zoned Central Business District (CBD) to Central Business District Expansion Conditional Zone (CBD EXP CZ)

**Project Location and Contacts:**

- The project site consists of a 0.13 acre parcel located at 20 Battery Park Avenue (PIN 9649.30-3481) and owned by Midtown Development Association LLC.
- Petitioner: Russell Thomas and Philip Woollcott; Contact: Chris Day.

**Summary of Petition:**

- The proposal is for the renovation of the iconic Flatiron building, an existing eight floor structure built in 1926 and designated as a local historic landmark. There is a small rooftop addition proposed and activation of the street level along Wall Street.
- The uses proposed have been revised from the previous submittal and now include 71 lodging guestrooms (*reduced from 80*), a floor of office space (*previously not included*) and the retail and restaurant spaces on the ground level.
- The petition includes a rezoning via conditional zoning from Central Business District (CBD) to Central Business District Expansion Conditional Zone (CBD EXP CZ) due to the lodging use, which is prohibited in the CBD zoning district.
- The Future Land Use category is Downtown, where lodging uses are permitted as described in the Comprehensive Plan Consistency section of this report.
- The project includes widening the sidewalk along Battery Park Avenue from between 15.5 and 25.5 feet with a maintained clear pedestrian path of at least eight feet.
- Streetscape improvements proposed along Battery Park Avenue include the conversion of six existing angled on-street parking spaces to one (ADA) accessible parallel space and one enlarged loading zone (net loss of five metered parking spaces). The City will grant an easement/license agreement at fair market value to the Applicant for the loading zone area, so that it may be used exclusively by the Applicant for hotel valet parking. Plans also include relocating a crosswalk and creating a bulb-out in front of the flat iron sculpture for public gathering.
- Accessible pathways will be provided from activated entrances/exits along Wall Street (similar to other businesses along the block) but otherwise no streetscape or pedestrian improvements along this facade are included so as not to disrupt the cohesive aesthetic streetscape design in place along the entire length of Wall Street.
- Parking needs for lodging guests and visitors to the restaurant uses is proposed to be managed by a valet service.
- The applicant is requesting the following conditions to be approved for this project:

- Provision of a loading zone which would otherwise not be permitted on a Key Pedestrian Street or primary access corridor (Battery Park Avenue).
- While the UDO requires that guest drop off areas shall be located at the interior of the site and not along the primary access corridor, the placement of this existing building results in the Applicant not being able to comply. The Applicant proposes to obtain an easement or license agreement from the City for fair market value in order to create a loading zone on Battery Park Avenue. This proposal and condition changed since the project was reviewed by the Planning and Zoning Commission.
- A minimum of 36 parking spaces are required to be provided for the lodging use; however, the applicant cannot comply on-site due to their reuse of the existing structure. Off-site spaces will be secured at various locations that are likely to exceed the maximum distance allowed for remote parking (500 feet).
- The sidewalk does not meet the district's minimum width of 12 feet along Wall Street and existing materials do not comply with accessibility standards.

**Comprehensive Plan Consistency:**

- This proposal is largely consistent with the Living Asheville Comprehensive Plan in that the Future Land Use Section and Map encourages prioritizing pedestrian infrastructure and the adaptive reuse of historic buildings in Downtown. The plan also acknowledges that while lodging and hotels are part of what makes Downtown the primary commercial center of the city, they *“must be considered in context with other development so that the variety and mix of uses, which give downtown its distinctive character is not compromised”*. While the goal of maintaining the right mix of uses downtown was noted in the list of concerns forwarded by the Downtown Commission and by several City Council members during public hearings for other lodging proposals over the past year, staff does not have evidence that this specific proposal will detract from downtown's vitality.

**Compatibility Analysis:**

- The historic building would be preserved with high quality upgrades completed according to the Secretary of the Interior's Standards and include essential life safety upgrades and the retention of active uses along the street-level of Battery Park Avenue.
- The use is compatible in a downtown setting; however, there are at least 10 lodging facilities within less than a half mile radius from this site with two hotels directly across the street on the same block; future lodging proposals in this area may be incompatible.
- While the proposed on-street loading space and its use to support valet service for (off-site) parking management may add to congestion in the immediate area where double-parking and large amounts of loading/deliveries exist, parking impacts for lodging are projected to be less than the current office use.
- Proposed streetscape enhancements provide an enhanced pedestrian experience and enlarged public gathering spaces but come with a loss of 5 metered on street (public) parking spaces. This prioritizes the pedestrian as encouraged in the Comprehensive Plan.
- Trash collection is currently managed with roll-out bins on Wall Street; refuse impacts may or may not increase with the new uses and impacts will be largely dependent on management by owners.

**Council Goal(s):**

- A Well-Planned and Livable Community

**Committee(s):**

- Historic Resources Commission - November 14, 2018 - certificate of appropriateness issued
- Technical Review Committee - February 4, 2019 - approved with conditions
- Downtown Commission - February 8, 2019 - approved design review (7-3)
- Planning and Zoning Commission - April 8, 2019 - recommended approval (4-2)

**Staff Recommendation:**

- Staff finds that the public benefits of the project- including needed life safety upgrades and the overall rehabilitation and preservation of an iconic historic building in downtown, coupled with the conditions proposed by the Applicant that minimize impacts stemming from this change of use- outweigh identified concerns, and can recommend approval of this project. Staff notes that although this use may be well represented in the immediate area (with ten hotels within less than a half a mile of this site) that the City has not adopted specific criteria to determine when additional lodging will detract from the mix of uses that gives its “distinctive character” as described in the Comprehensive Plan. Additionally, while the parking and guest drop-off standards required by the UDO for this use are an effective tool for minimizing impacts in new construction projects, it is not feasible for adaptive re-use projects, especially those in our dense, urban core. That the project proposal will displace small businesses from existing office spaces is also a concern, as our Comprehensive Plan places emphasis on “Promoting Small and Independent Business, Entrepreneurship, and the Maker Economy”. Staff acknowledges that this displacement could occur with the advent of any rehabilitation proposal for this building, and is not tied to the proposed use. Also, office uses have been added to the revised development proposal so the impact on small businesses may not be as significant as anticipated in the earlier proposal.

Upon inquiry of Councilman Haynes about the May 14 meeting and whether it was a continuance or a withdrawal (as the applicant requested), Mr. Okolichany said that even though the applicant’s attorney did say he wanted a withdrawal, it was his intent to go back to the community for more dialog as Council requested. That was how staff interpreted the request. In the future, staff will make sure that the applicant understands and uses the correct wording so that Council is aware exactly what the applicant is requesting.

Councilman Kapoor noted that there was a similar project on Biltmore Avenue where this withdrawal/continuance occurred so we are not changing the process with this applicant.

Mr. Wyatt Stevens, attorney representing the Flatiron Preservation Group, apologized to Councilman Haynes for any confusion he created with the words that he used at the May 14 public hearing, but he did appreciate to be back before Council. At the May 14 meeting they heard from voices on all sides of this issue. One common theme was that the Flatiron Building is an icon and important building and we need to preserve it. Councilwoman Mayfield asked that they sit down with their opponents, experts in the field of historic renovation, experts in the field of real estate development, people who understand the financing of projects of this nature, and see if they could collectively come up with the best decision for the Flatiron Building. They did that. Over the last six weeks they had meetings, telephone calls, and e-mails. They met with people that understand the history of this building even before it was purchased by Midtown Development Group in 1985. They met with folks like Doug Ellington, whose name is associated with a lot of the famous architecture in Asheville. They met with bankers who understand financing. They asked if there were any philanthropists that would be willing to put the necessary money in to purchase, preserve and protect this building - no one came forward. They asked if there was a bank willing to lend the money necessary to protect and preserve this building - no one offered to lend money to keep this building as commercial office space. Along the way there were questions asked about the estimated amount of \$10.5 Million that it would take to protect and preserve the building. It is true that a sprinkler system is not required because the building is

grandfathered. However, if you are going to do the kind of renovations you need to do to protect and preserve the building long-term, you will need a sprinkler system. The renovation will also include an Americans with Disabilities Act elevator; a new HVAC system; substantial upgrades to the plumbing system; and an entirely new electrical system. The biggest concern from their outreach was the loss of commercial office space. He said there is ample commercial office space in downtown Asheville; however, they went back to the drawing board and now their proposal has an entire floor of office space and they can still make the project work financially. They feel that this project will be better for preserving a core part of what the building has always been and that is commercial office space. They have already agreed to preserve retail space on the main level, which will be earmarked for local businesses. They hope that local businesses will occupy the commercial office space. At the end of this project, the building will be restored, safe, accessible and will be there for future generations at no cost to the City of Asheville. The City will still collect \$2 per night per room, which present value of that over 20 years is over \$500,000. The property tax revenue for the City is anticipated at 2.1 Million over 20 years. The building will employ more than 30 people and be a living wage certified business. They have already reached out to Green Opportunities and hope to use this as a training ground for employees to work their way up through the system. This will be a local owner, local architect and local contractors. He saw an article in the paper that says new information has been uncovered about one of the owners and his criminal background - Marshall Kanner. Evidently Mr. Kanner is a convicted felon and served time and he is now out of prison. He is a minority/passive owner of Midtown Development Associates, LLC. He is not a manager of that LLC and he is not a manager of the Flatiron Project. That fact is totally irrelevant to the issue before Council as to whether to approve a conditional zoning request. It is legally and factually irrelevant. If the conditional zoning is approved, Mr. Kanner will have no involvement in the project. The decision to approve this project is the right thing to do.

Upon inquiry of Vice-Mayor Wisler, City Attorney Branham said that any land use issue is a legislative one and one made by the Council based upon certain factors which are prescribed by state law. N.C. Gen. Stat. sec. 160A-383 provides the authority for Council to make these decisions and specifically prescribes the factors to be considered of whether or not the proposed plan is consistent with the approved area plans, whether or not the proposed use is reasonable and in the public interest. That is the limited factors that can be considered pursuant to state statute. Some relevant case law that could be considered as a limiting factor suggests that your decisions should be based on a regulation of the use of the property not of specific activity or ownership of the property. That encompasses primarily what is listed on both the state statutes and relevant case law with regard to your decision-making process. The word "reasonable" is not further defined in the statutes and that is left up to a certain amount of discretion of the legislative body.

Councilman Young said that at the May 14 meeting the applicant was asked how long he owned the building. Mr. Russell Thomas replied that it was about 33 years. He was then asked a question about deferred maintenance and before Mr. Thomas could answer, Mr. Stevens said that the project has not cashed flowed enough to perform maintenance and Mr. Thomas said it takes too much money to do the maintenance. He was curious as to once the ownership began and the property in 1985, what was the immediate maintenance schedule on the building shortly thereafter. Mr. Stevens responded that he represents the Flatiron Preservation Group (the prospective buyer) of the property. He did not represent Mr. Thomas or Midtown Development Group LLC (the seller). From the public records, a general partnership called Midtown Development Associates purchased the property in 1985 and there was some question raised in a newspaper article referring a Citizen-Times article from that timeframe questioning whether there was bond money. It was his understanding after talking with Mr. Thomas, that the Flatiron Building and Midtown received no dollars from the City, and no dollars from any governmental source. According to the deed of trust, they borrowed \$600,000. He doesn't know if they borrowed anymore than that and he doesn't know what their specific maintenance schedule was.



In talking with various people over the last 6 weeks, one of the things they learned was that building, according to the broker Chuck Tessier who was involved in the sale, it had 10% occupancy rate in 1985. Mr. Thomas has told him it required a lot of work to get it into shape before he could even rent it again and open it back up to commercial tenants. He suspected that the money they borrowed went into acquisition and simply getting it back up to speed. When you look at the numbers since then, the building has enabled Mr. Thomas to make a living, but he works every day to keep that building together. Now in 2019 we can second-guess whether Mr. Thomas and his partners could have invested more into the building over the years, but that issue is behind us. Now you have a development group who is prepared to buy this building and put the necessary money in to fix it up in the way it needs to be fixed up.

Councilman Young said that what he has heard was part of the reason we should approve this is because of the deferred maintenance. On May 14 when the owner was asked about the deferred maintenance, no answer was given. The question of what was the maintenance schedule on the building in 1985 is not being answered. In light of the recent information that has come before Council, we have a newspaper article that says there possibly were some funds given. He read a quote from the City Attorney Bradham "While we have been unable to locate the original MOU between the City and Sunbelt, the Resolution authorizing that MOU as well as the third Amendment to the MOU (which we do have a copy of, and which is attached) suggest that the focus of the Wall Street redevelopment project was on the construction of the Wall Street parking deck, the repaving of Wall Street, and the performance of smaller-scale improvements to both the Anderson Building and the Flat-Iron building. Given that Sunbelt conveyed the Flat-Iron building to Midtown shortly before the start of the Wall Street redevelopment project, and given that there is no separate agreement between the City and Midtown, it seems likely that, if work was in fact performed on the Flat-Iron building, it was likely performed by Sunbelt pursuant to the MOU between the City and Sunbelt. Although we do not know what work on the Flat-Iron building was planned or if it was ever performed, we have confirmed through a title search that no deed or use restrictions were placed on the Flat-Iron building in relation to the Wall Street redevelopment project of the mid-80's." He said that tells him that there was some money somehow exchanged to do some sort of work on this building, whether the City was a pass through or not. Based on our conversations this afternoon, Mr. Stevens acknowledged that he hasn't yet reviewed the title to see if they borrowed any money on that building other than the \$600,000 in the deed of trust in 1985. If there was money given to do maintenance on this building, he wanted to know what maintenance was done in 1985 and what was the maintenance schedule. In light of not knowing that and the newspaper article said that the City possibly gave almost \$1 Million, he was not comfortable moving forward without getting definitive answers about if the City did put money into the project, if maintenance was done, and what their deferred maintenance schedule was.

Mr. Stevens said what he understands as a lawyer is that there is nothing in the chain of title, and nothing in the City archives to suggest that the City of Asheville or any governmental authority gave money to the entity that has owned this building for the last 33 years. No evidence. The Amendment, which he has not read, states that money went to a predecessor in title, which is legally different than going to the entity that Councilman Young is critical of for not maintaining the building in his view of the last 33 years. He thought that area needed a lot of help and there was money used to build the Wall Street Parking Deck, money used to improve Wall Street and he was not aware of any evidence to suggest that the Flatiron Building received any improvements during the period of time that Midtown Development Associates, a general partnership which included Russell Thomas, owned it. Mr. Thomas assured him that they received no such money. There is no evidence to suggest they did and he would say that even if there were, and there isn't, what relevance does that have to a rezoning decision in June of 2019? It is not legally or factually relevant.

Councilman Young moved, pursuant to Rule 19 (h) of the Asheville City Council Rules of Civil Procedure, to postpone consideration of a motion considering the conditional zoning request for the Flatiron Building from Central Business District to Central Business/Expansion District/Conditional Zoning to the next regular meeting of the City Council on July 23, 2019, at 5:00 p.m. so that Council may have adequate time to consider all relevant information prior to a final vote. This motion was seconded by Councilwoman Smith.

Councilman Kapoor asked if potential City dollars being used (which they have found no evidence of that occurring) and the issue of deferred maintenance are relevant considerations to the use decision that Council must make. City Attorney Branham said that at this point the City Attorney's Office focus was to determine whether or not any land use restrictions or security interests from any previous potential donation, grant or bond money existed on this property such that it would be relevant to any consideration by Council. We have determined definitively that that is not the case. We cannot say specifically what arrangement did occur - the detailed documents simply do not exist that we are able to discover. We can say that there were arrangements with a predecessor of interest to do some work in the area. We cannot speak to exactly what that scope was at this point. Previous monies were expended likely were spent on a construction project per the memo involving the construction in the parking deck that is adjacent to the property and some additional infrastructure and streetscape improvements that may or may not have included some limited tie-in work to the buildings, including the Flatiron Building. At this point, he did not believe that there are any land use restrictions or security interests that would weigh on any decision Council would make. Regarding deferred maintenance, he said that as a legislative determination, there is a certain amount of subjectivity the Council should be able to consider. He would say from a legal standpoint that he has not seen anything in the search that his office has performed that he believed would rise to the level of a legal factor to be considered under the statute as read.

The motion made by Councilman Young and seconded by Councilwoman Smith failed on a 3-4 vote, with Mayor Manheimer, Vice-Mayor Wisler, Councilman Kapoor and Councilwoman Mayfield voting "no".

Vice-Mayor Wisler opened the public hearing at 6:26 p.m.

Four individuals spoke in support of the conditional zoning to the Flatiron Building, for many reasons, but the common theme was that there is now one floor dedicated to commercial office space and the Flatiron Building has served the purpose of a business incubator and it's time to let them repurpose the building.

Twenty-three individuals spoke in opposition of the conditional zoning to the Flatiron Building, for many reasons, but the common theme was that the downtown does not need any more hotels, local businesses will be displaced and increase traffic with no additional parking.

Vice-Mayor Wisler closed the public hearing at 7:34 p.m.

Councilman Kapoor appreciated everyone reaching out the Council. About a year ago someone reached out to him to tell him they were considering turning the Flatiron Building into a hotel. He thought there would be no way he could support that. What changed his mind was repeated meetings with the developers and asking hard questions to really understand what the project was and what the other options were. The facts are (1) there currently is no sprinkler system in the building; (2) they have elevators similar to City Hall and when they break down they have to have special made parts; (3) they need a new HVAC unit; and (4) they have to redo their electrical system. That costs an incredible amount of money; and to turn that into office space is \$10.5 Million, on top of the purchase price. All of Council has had the ability to ask the developer to show them the numbers and ask questions for months. That is why he didn't see any reason

to postpone the vote. He is incredibly sympathetic to the concerns about the small businesses, but long-term he does not see this building being able to continue in the way it is now. He is now convinced that the proposal before Council is in the long-term best interest of preserving this building for the City of Asheville.

Vice-Mayor Wisler noted that she voted for less hotels than any other member of Council, other than Councilman Haynes. She strives to look at each zoning decision individually. She focuses on our plans, congestion, neighborhood compatibility, the project's potential enhancement to the City and preservation, along with other factors. This project, including the retention of one floor of office space and developing a solution for parking has improved since it was originally presented. She also has looked at the cost to renovate the building and the potential income from office tenants. She doesn't believe that office rents can support the cost of renovation, to have viable heating, cooling and health/safety infrastructure. People may say that the owner's should have been keeping the building up and we shouldn't be in this position of having significant costs facing them. But we are where we are. She wants to see the Flatiron Building remain. She doesn't want to look back 10 years from now watching the building get torn down because it wasn't kept up or that the results of it's poor health/safety infrastructure caused harm to tenants or our first responders. While she would love to see another use for this building, she didn't think the numbers work out. Losing the building doesn't seem the right answer.

Councilwoman Mayfield agrees that the goal that everyone shares about this project is the preservation of this historic and iconic building. She wishes that could happen with the building remaining in its current use as offices for local businesses. That would absolutely be the best outcome. At the last hearing, Council raised a number of concerns starting with the fundamental question of whether there were other options for the future of the building. The developer did meet our request and met with both opponents and mutual parties to determine if there were other viable options and none emerged. Nor have any emerged from any other source in the six weeks this has been part of the public dialogue. The developer also partially addressed our concern about displacement of local businesses by dedicating one floor for offices. Not as much as we might have wanted, but it is an improvement over the previous proposal. They have also met her concerns around parking and valet issues. With these requests having been met and concerns having been addressed and there being no clear path to a different future use for the Flatiron Building, she is now compelled to support this project. She is not happy about this decision but she cannot keep moving the goal-posts just to avoid a vote she doesn't like. She stands by her statement that we are sunk if the only way for property owners in downtown to be successful is to build a hotel. But this building is different for many reasons and she can understand how the only path forward for this building involves the high return that comes only with a hotel. She does not like it, but she understands it. Based on the information available to her, she is choosing a certain future of adaptive reuse and preservation of the Flatiron over an uncertain future that includes continued decline. She wanted to walk-back something she said at the May 14 meeting, that this building represents the sole of the City. Even though others have said the same, upon reflection, the sole of our City is not embodied in a building, even one as special as the Flatiron. Instead it is in the beautiful, messy, complex mix of our highly engaged people and businesses who disagree and fight but who also come together and work hard on a daily basis to make our City a better place. That is the sole of this City.

Councilman Young said that we have continued work to do as it pertains to the issues of tourism and hotels in Asheville and how we move forward on a case-by-case basis. He believed there is an aspect of public interest that has not been met. Someone made a statement about how many rooms is enough, what do we determine is a saturation in downtown, how do we make these specific stipulations on what we do and do not want in our downtown core, and how that shapes the way that Asheville fundamentally will look - not only in the next six months, but the next 60 years. The City Manager has challenged us to do so and we have not met that challenge. This is a good opportunity to go back to the drawing board and figure it out. The

public should be a big part of that. How that moves forward he doesn't know but he does know this is not working for developers or people who have an interest that Asheville grows in a way that they can remain here and their way of life is not greatly affected. As elected officials we are challenged to please everyone, but what we can do is keep the public's interest at heart and make sure that we shape our City moving forward with everyone having a seat at the table.

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

Councilman Kapoor moved to approve the conditional zoning request for the Flatiron Building from Central Business District (CBD) to Central Business Expansion District (CBD EXP CZ) for the renovation of the existing building for lodging and ancillary uses and find that the request is reasonable, is in the public interest and is consistent with the Asheville Living Comprehensive Plan because: (1) the Downtown Future Land Use category of the Living Asheville Comprehensive Plan allows for hotels; (2) rehabilitation and adaptive reuse of the iconic Flatiron Building will preserve this historic landmark and will be done under close and appropriate review; (3) the project provides much needed life safety upgrades; and (4) proposed streetscape enhancements will improve the public realm by activating the area and allowing for more flexibility of the use of Battery Park Avenue. This motion was seconded by Mayor Manheimer and carried on a 4-3 vote, with Councilman Haynes, Councilwoman Smith and Councilman Young voting "no".

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**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

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

Mr. Reid Thompson, Ms. Brandee Boggs and Mr. Joe Minicozzi showed videos while expressing their concerns of commercial trucks on the residential Maxwell Street.

Ms. Sandy Aldridge urged Council to put domestic violence on the forefront again.

Ms. Sarah Benoit spoke about the election districts and the worksession on July 2, 2019.

Mr. Jonathan Wainscott spoke in support of election districts.

Mr. John Brigham spoke about the need for an independent School Board for the Asheville City School system.

**VIII. ADJOURNMENT:**

Vice-Mayor Wisler adjourned the meeting at 8:11 p.m.

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CITY CLERK

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MAYOR