

Tuesday - September 8, 2020 - 2:30 p.m.

#### City Council Vacancy Interviews

Mayor Manheimer announced the two options for the public to watch the interviews.

City Council interviewed S. Antanette Mosley, ZaKiya Bell-Rogers, Robert E. Thomas Jr., Pratik Bhakta, Richard G. Lee III and Sandra Kilgore for the open seat on City Council left by former Councilman Vijay Kapoor.

Tuesday – September 8, 2020- 5:00 p.m.

#### Regular Meeting

This formal meeting was conducted by use of simultaneous communication in which the following participated by simultaneous communication: Mayor Esther E. Manheimer, Presiding; Vice-Mayor Gwen C. Wisler; Councilman Brian D. Haynes; Councilwoman Julie V. Mayfield; Councilwoman Sheneika Smith; Councilman W. Keith Young; City Manager Debra Campbell; City Attorney Brad Branham; and City Clerk Magdalen Burleson.

Mayor Manheimer said that the City Council wants the public to still have the opportunity to participate in the decisions of your government. She then explained the 3 options for providing public comment - voicemail; email; and advanced live sign-ins.

#### **PLEDGE OF ALLEGIANCE**

Mayor Manheimer led City Council in the Pledge of Allegiance.

#### **I. PROCLAMATIONS/ANNOUNCEMENT:**

##### **A. DELIBERATION AND VOTE OF NEW CITY COUNCIL MEMBER**

City Attorney Branham explained the process for appointing a new Council member per City Council Rules. The Mayor will open the floor for nominations. Each Council member may nominate a candidate from the six candidates. No second is required. Once no more nominations are made, then the Mayor will close nominations. The Mayor will then open the discussion. After discussion, a roll call vote will be taken - every Council member must vote. If no candidate receives 4 votes, the vote will need to be taken again until a candidate receives 4 votes. If no candidate receives 4 votes, and it seems unlikely to be resolved at the current meeting, the Mayor may recess this agenda item to be taken up at a later date. The Council does have a legal duty to appoint a new member, but no timeframe is required to complete the appointment.

Councilwoman Smith nominated S. Antanette Mosley. Vice-Mayor Wisler seconded the nomination. Councilwoman Smith explained why she felt Ms. Mosley would be the appropriate person to fill the vacant seat.

Councilman Haynes nominated Robert E. Thomas Jr. No second of the nomination is required. Councilman Haynes explained why he felt Mr. Thomas would be the appropriate person to fill the vacant seat.

Vice-Mayor Wisler and Councilman Young were very impressed by all the candidates and acknowledged this is a very difficult decision to put yourself in front of public scrutiny. They appreciated their dedication and interest in this position.

Mayor Manheimer closed nominations.

Mayor Manheimer called for a roll call vote:

Vice-Mayor Wisler - Mosley  
Councilman Haynes - Thomas  
Councilwoman Mayfield - Mosley  
Councilwoman Smith - Mosley  
Councilman Young - Thomas  
Mayor Manheimer - Mosley

Mayor Manheimer was pleased to announce S. Antanette Mosley as the new City Council member filling the unexpired term of former Councilman Vijay Kapoor, whose term will expire in December, 2022. Ms. Mosley will be sworn in on September 22.

## **II. CONSENT AGENDA:**

- A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON AUGUST 25, 2020**
- B. RESOLUTION NO. 20-156 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH CDM SMITH INC. TO PERFORM AN ARC FLASH HAZARD ANALYSIS STUDY**

**Action Requested:** Adoption of a resolution authorizing the City Manager to execute a Professional Services contract with CDM Smith, Inc. for the proposed amount of \$289,780 to perform an Arc Flash Hazard Analysis study.

### **Background:**

- On February 14, 2020, the City of Asheville Water Resources Department (WRD) issued a Request for Qualifications (RFQ) from qualified firms with proven experience and expertise to provide professional and engineering services for an Arc Flash Study encompassing the City of Asheville Water Treatment Plants, Pumping Stations, and associated assets.
- An arc flash is a type of electrical explosion or discharge that results from a connection through air to ground or another voltage phase in an electrical system.
- The study identifies the level of risk to staff, proper labeling of equipment and personal protective equipment required, and any retrofitting of equipment to provide a safe working environment for operation and maintenance.
- Brown and Caldwell of Charlotte, NC, GHD of Charlotte, NC, and CDM Smith of Raleigh, NC were the companies who responded to the Arc Flash RFQ.
- CDM was chosen due to their experience performing Arc Flash studies for municipal systems.
- Because upgrades and modifications have occurred at both the treatment facilities and pump stations throughout their operational life cycle, there is a need to analyze these facilities for electrical safety and provide training to staff.
- The scope of services to be performed by CDM Smith include: project meetings, data collection, model development, Arc Flash Study, equipment labeling and safety training.

### **Vendor Outreach Efforts:**

- Through a qualifications based selection process CDM was chosen due to their experience performing Arc Flash studies for municipal systems.
- No other vendor outreach was performed.

**Council Goal(s):**

- Financially Resilient City. A Clean and Healthy Environment

**Committee(s):**

- None

**Pro(s):**

- CDM Smith, Inc. has provided Engineering Services on water system improvement projects.
- Their experience and knowledge of water systems will minimize staff support and input.
- This project is aligned with the City's and the Water Resources Department's goal of continued investment and improvement of the City's water system through Capital Improvement Projects to provide safe and reliable service.

**Con(s):**

- A delay in the project could impact the safety of staff and facilities.

**Fiscal Impact:**

- The funding needed for this agreement is currently allocated within the Storage Tanks and Pumps Capital Improvement Projects (CIP).

**Motion:**

- Move to adopt a resolution authorizing the City Manager to execute a Professional Services Agreement with CDM Smith, Inc. for the proposed amount of \$289,780 to perform an Arc Flash Hazard Analysis study for three water treatment facilities and pump station facilities.

**RESOLUTION BOOK NO. 41 - PAGE 431**

**B. ORDINANCE NO. 4822 - BUDGET AMENDMENT FOR CARES ACT ROUND 2 PROVIDED THROUGH THE NC PANDEMIC RECOVERY OFFICE'S AND BUNCOMBE COUNTY**

**Action Requested:** Adoption of a budget amendment in the amount of \$1,063,224 to establish a budget in the City's Special Revenue Fund for the second round of funding that the City has received from Buncombe County as part of the State's Coronavirus Relief Fund (CRF).

**Background:**

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) is a \$2 trillion economic stimulus bill passed by Congress and signed into law in March 2020 in response to the economic downturn caused by the COVID-19 pandemic. The State of North Carolina received \$7.6 billion from the CARES Act.
- On May 4, 2020 North Carolina Governor Roy Cooper signed session law 2020-4 which appropriated \$150 million from this funding to NC counties via the Coronavirus Relief Fund (CRF).
- Buncombe County received approximately \$4.5 million from this first round of CRF funding and shared \$943,771 with the City of Asheville. City Council approved a budget amendment for this first round of CRF funding on July 28, 2020.
- On July 1, 2020 Governor Cooper signed session law 2020-80 which appropriated an additional \$150 million in CRF funding to NC counties, with Buncombe County receiving approximately \$5.1 million from this second round of CRF funding.

- As with the first round of funding, Buncombe County shared a portion of the second round of funding with other governments in the county based on the local sales tax distribution formula. Under this formula, the City of Asheville received \$1,063,224.
- City staff has identified COVID-19 related expenses that are anticipated prior to December 30, 2020 and are eligible for reimbursement under federal and state guidelines, and have submitted a plan for these expenses to Buncombe County.
- The NC Pandemic Recovery Office (NCPRO) has provided guidance regarding reporting requirements related to CRF funds which indicate that CRF funding should be budgeted and accounted for in a special revenue fund.
- To be in compliance with this guidance, staff is recommending City Council approve a budget amendment in the amount of \$1,063,224 to establish a budget for the City's second round of CRF funding.

**Council Goal(s):**

- A Financially Resilient City

**Pro(s):**

- Ensures the City is in compliance with accounting and reporting requirements recommended by the State of North Carolina.

**Con(s):**

- None.

**Fiscal Impact:**

- Funding from the second round of CRF will be utilized for COVID-19 related expenses that the City incurs prior to December 30, 2020. This amendment will allow staff to consolidate all expenses in a single project in the City's Special Revenue Fund.

**Motion:**

- Motion to adopt a budget amendment in the amount of \$1,063,224 to establish a budget in the City's Special Revenue Fund for the second round of funding that the City has received from Buncombe County as part of the State's Coronavirus Relief Fund (CRF).

**ORDINANCE BOOK NO. 33 - PAGE 122**

**C. RESOLUTION NO. 20-157 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED CONTRACT WITH GRIFFIN WASTE SERVICES FOR RENTAL AND MAINTENANCE OF PORTABLE TOILETS AND HANDWASHING STATIONS FOR PUBLIC USE**

**Action Requested:** Adoption of a resolution authorizing the City Manager to execute an amended services contract with FusionSite Asheville, LLC, (hereinafter referred to as "Griffin Waste Services") in the amount of \$154,000 for rental and maintenance of portable toilets and handwashing stations for public use.

**Background:**

- Due to the COVID-19 pandemic and resulting closure of public and private buildings in March 2020, portable restrooms and handwashing stations were deployed for public use as an emergency response as recommended by the City-County Emergency Operations Center and City Manager's Office.
- Griffin Waste Services in Asheville was an existing provider of services to City facilities prior to the pandemic and the only contractor identified in the region with the capacity to fulfill the services required.
- Portable restrooms and handwashing stations were installed at the following locations:

- ART Station, Coxe Ave.
- Pritchard Park, College St.
- Pack Square Park, S. Market St.
- City Hall (*no handwashing station - hand sanitizer only*)
- Wall Street
- Haywood Street Congregation, 298 Haywood St.
- A-Hope / Homeward Bound, 19 N. Ann St.
- ABCCM Medical Ministry, 155 Livingston St.
- ABCCM, Cumberland Ave.
- 12 Baskets, 610 Haywood Rd.
- As authorized by the City Manager, a contract was established with Griffin Waste Services in June 2020 for an amount not to exceed \$89,000 for rental, routine cleaning, and daily maintenance of the units.
- The contract is projected to reach \$89,000 by the end of September. However, the need for portable restrooms and handwashing stations is expected to continue until the COVID-19 emergency declaration is canceled.
- An amended contract with Griffin Waste Services to increase the total by \$65,000, from \$89,000 to \$154,000, will allow the vendor to perform the work through December 2020.

**Vendor Outreach Efforts:**

- At the start of the pandemic, staff searched for all providers throughout Western North Carolina, Greensboro, NC, Charlotte, NC, and Greenville-Spartanburg, SC, and engaged in a search for national providers including options to lease or purchase equipment. Griffin Waste Services, recently merged with Able Rent-a-Jon, was the only local vendor with available capacity. Griffin Waste Services is not a minority or women-owned vendor and staff has not found any MWBE providers in the area through the North Carolina HUB directory or City database.

**Council Goal(s):**

- A well-planned and livable community
- A clean and healthy environment
- Emergency Response

**Committee(s):**

- None

**Pro(s):**

- Supports basic public health needs during a Pandemic
- Costs are eligible for reimbursement from FEMA or COVID Relief Funding

**Con(s):**

- Some business owners have been unhappy with the location of the facilities.

**Fiscal Impact:**

- Funding for the portable toilets and handwashing stations contract is coming from grant dollars that the City has received from Buncombe County as part of the State's Coronavirus Relief Fund (CRF).

**Motion:**

- Move to adopt a resolution authorizing the City Manager to execute an amended services contract with Griffin Waste Services in the amount of \$154,000 for rental and maintenance of portable toilets and handwashing stations for public use.

Mayor Manheimer announced that there were no advanced live call-ins for items on the Consent Agenda.

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 Councilwoman Mayfield and carried unanimously by roll call vote.

**III. PRESENTATIONS & REPORTS:**

**A. ONE BUNCOMBE FUND**

Assistant City Manager Richard White introduced Ms. Kit Cramer, President and CEO of the Asheville Area Chamber of Commerce, who gave a brief presentation on the One Buncombe Fund. She said the purpose of One Buncombe is to provide a donation portal to support relief efforts and to provide relief to individuals and businesses impacted by COVID-19. At the March 24th regular meeting, the Board of Commissioners voted to create the “One Buncombe” fund, a COVID-19 relief fund. The Board set an April 7th public hearing meeting to authorize \$200,000.00 in economic development appropriations in accordance with GS 158-7.1 and Ch. 166A. At the March 24th City Council meeting, Council voted to participate in the Buncombe County Service Foundation (BCSF) One Buncombe Fund; to consider an appropriation of \$100,000 from City Fund Balance; and to set the public hearing for April 14, 2020, for consideration of the economic development appropriation in accordance with G.S. 158-7.1 and Ch. 166A.

The structure is (1) Utilizes the nonprofit Buncombe County Service Foundation as fiscal entity; (2) Board of Directors recruited with specific focus on administering One Buncombe funds; (3) 2/3 of funds support small business assistance; 1/3 of funds support individual assistance; (4) Individual assistance provider = Buncombe County Health and Human Services; and (5) Small business loan provider = Mountain BizWorks.

The results are that we raised \$1.375M from Mar-Aug 2020 - \$200K from Buncombe County; \$100K from the City of Asheville; and \$1.075M from the community ... including individual gifts, corporate sponsorships & grants ranging in size from \$5 to \$100,000

The goal was to support 1,000 individuals and 100 businesses:

| Individual Support Program       | Business Loan Program                             |
|----------------------------------|---|
| 1,048 – # of households served   | 92 – # of loans made (218 applications submitted) |
| \$453,057 – funds provided       | \$852,800 – funds provided                        |
| \$432-avg provided per household | 674 – jobs retained                               |

Using charts, she explained the results for individual assistance and the business loan program. Loans were made in all 15 Buncombe County zip codes. She spoke about leveraging additional relief sources for Buncombe small businesses.

The One Buncombe Board has disbanded. BCSF will return to its previous activities, which include approving donations for county services, such as foster children, clinical health, farm heritage trail, etc. BCSF board will not take on any One Buncombe - related business. Loan funds anticipated to begin being repaid to One Buncombe beginning fall 2020.

On behalf of City Council, Mayor Manheimer thanked Ms. Cramer and the entire Board for their hard work on this very important effort.

## **B. MANAGER'S REPORT - 30/60/90 DAY WORK PLAN**

City Manager Campbell provided the following presentation overview: (1) On June 9, staff presented a 30/60/90 Day Work Plan and over the past several meetings have updated Council and the community on our work; (2) The 30/60/90 Day Work Plan was developed in response to numerous requests from the Black Asheville Demands coalition to address specific racial justice and economic inclusion issues; (3) The Work Plan reflects when we would **start** working on these requests; and (4) Making progress on all the items listed, highlight a few but will focus most on the request to Defund the Police by 50% or to *"Divest resources from the APDs' budget and Invest in long-term safety strategies."* Community Engagement efforts.

Regarding 30 days (1) Resolution to remove monuments and creation of task force (a) Vance monument scaffolded; Lee monument removed; and (b) Task Force held first official meeting on Sept. 3. Cortina Caldwell was selected as the facilitator for the task force. They will meet on Thursdays from 4:30 - 6:30 pm; and (2) Work with the community on the renaming of streets (a) Continuing Community Engagement to develop next steps; and (b) Project page will be posted this week.

Regarding 60 days, (1) Continue partnering with Asheville City Schools (ACS) and Buncombe County Schools to address Opportunity Gaps (a) Parks and Recreation partnering with ACS to create community learning centers or learning pods in city facilities; (b) Two sites are currently up and running, serving about 40 students. Additional sites will be open next week; (c) Anticipate serving up to 300 students as we develop the program and open other locations; and (d) Operate 7 days a week 8:00am to 8:00p.m. The program is designed to provide safe in-person learning opportunities for small groups of school-age children while social distancing. Although the major emphasis will be on schoolwork and academics, Parks and Recreation staff will also provide supervised and socially distanced recreational opportunities for participating students; (2) Initiate conversations with the district attorney's office regarding the probation decision for Mr. Hickman (a) City Attorney's office working with DA's office and Restorative Justice process related to probation process; and (b) Meeting is scheduled later this week to follow-up with community members; and (3) Initiate conversations to Defund the Police budget by 50% Defund/Divest/Invest Strategy.

Regarding 90 days (work underway), (1) Provide protocol, practices and resource allocation data from the Equity and Inclusion Department on our City Website (a) The City owns several properties that were taken through Urban Renewal. We have identified these properties and will not dispose of or sale any of these properties until the City adopts a policy that outlines a process for disposing of this property; (b) The Reparations Commission (or committee) may be involved in this discussion; and (c) Council's Planning and Economic Development Committee will be discussion this tomorrow at their meeting; (2) Utilize best practices to recruit people of color (a) Human Resources and individual departments working on recruitment strategies; (3) Develop Race and Gender Conscious Policy in response to the disparity study as part of City contracting and procurement; (b) Draft Policy completed and renamed to Business Inclusion Policy (a) Previously indicated that Council would review Sept. 8; and (c) Policy being sent to

Council's Planning and Economic Development Committee to start the review process at their meeting on Sept. 9.

The goal for reimagining public safety in Asheville is *“Determine how the City of Asheville structures department responsibilities and community partnerships in a way that promotes racial equity and economic inclusion.”*

Regarding the public engagement process, (1) Step 1 (complete): Get feedback on an approach from key focus groups; (2) Step 2 (in process): Host Community Meetings; and (3) Step 3: Report, Recommendations and Implementation.

The selected facilitators are Shemekka Ebony Coleman, Glenn Thomas and Christine Edwards.

Regarding the public engagement process, (1) Hosted Kick Off Session with Key Community Leaders on Thursday, September 3; (2) 99 community leaders invited, 30 attended; and (3) Focused on getting community leaders to share information about the process and to encourage involvement and participation. She then provided the details for the 6 listening sessions. The reimagining public projects page includes (1) [www.ashevilleenc.gov](http://www.ashevilleenc.gov); (2) includes most up to date information; (3) information and links to register for Listening Sessions and drop in sessions; (4) link to the survey; (5) timeline; (6) background; and (7) 2,214 views as of this morning. Some results from the reimagining public safety online survey include (1) 1,293 people have participated in the survey; and (2) We have representation from all groups identified as most impacted, AND we will stay committed to getting those numbers up.

Targeted Outreach Emails, Texts, and Calls: Beloved Asheville; Burton Street; Do the Write Thing / Asheville City Schools DropOut Prevention; Downtown Businesses; East End / Valley Street Neighborhood; My Daddy Taught Me That; My Sister Taught Me That; Shiloh Community Association; and Word on the Street. Social Media: Daily Posts included (1) Facebook - Posted on group sites totaling 25,356 members; and (2) Nextdoor - Entire Service Area is 26,674. Other Media includes (1) WRES Radio Interview with Debra - tomorrow at 9:30; and (2) Press Releases.

The next step for the public engagement process includes report, Recommendations and Implementation (1) Develop Preliminary Recommendations for Divesting/Investing ( Sept. 3- 22); (2) Implementation of first round of Divesting/Investing Strategies (Sept. 22 and on-going); and (3) Begin next round of discussions Nov./Dec.

### **C. CITY ATTORNEY'S INTERNAL REVIEW OF POLICE RESPONSE TO PROTESTS**

City Attorney Branham provided City Council with his internal review of the Asheville Police Department (APD) response to protests. In late May and early June of 2020, the City of Asheville experienced several public protests relating to the enduring national problem of police brutality, institutional racism, and the unlawful and unjustified killing of George Floyd on May 25, 2020. The Asheville Police Department responded to these protests which included the use of force against some protestors. APD officers were assisted by other local police agencies as well as the National Guard. A City-wide curfew was established by Mayoral declaration from June 2nd - June 5th which restricted public protesting nightly after 8:00 pm. The City has received numerous complaints regarding the operational response by APD during the protests. The City Council determined that a thorough and transparent assessment of that response was necessary.

The Evaluation Performed in Two Phases - Phase 1 - City Attorney's Internal Review of Operational Decision Making; and Phase 2 - APD Investigative Assessment. \* NOTE: This Dual



*Phased Internal Approach was recommended by The Public Safety Committee during its July 28th Meeting, and affirmed by the full Council on Aug. 25.*

He outlined the City Attorney's internal review process: Interviews conducted by the City Attorney's Office - All members of City Council; City Manager; Chief of Police; Deputy Chief of Police; and APD Command Staff. Media reports, communications, and body cam footage were also reviewed. The interview focus areas were: Utilization of riot gear; Calling in the National Guard, and other police agencies; Use of tear gas; Use of less than lethal projectiles; Use of force on the Jeff Bowen Bridge; and Elimination of supplies at the "medic tent".

The scope of review of the report (1) Limited to events occurring from Friday, May 29 - Saturday, June 6th; (2) Facts established from Internal Sources only; (3) Focused on Decision Making Process; and (4) No Opinions/Conclusions regarding actions taken. \* NOTE - *Decisions on appropriateness of officer actions will be addressed in APD after action review, including any disciplinary measures.*

General response to protestors included (1) Increased response began on Sunday, May 31 and diminished by June 6; (2) APD requested assistance from outside agencies; and (3) Deployment of Crowd Control Unit ("CCU"). All tactical response decisions were made by APD. Chief Zack provided information and updates to the City Manager; and City Council updated by City Manager.

Regarding utilization of crowd control gear and munitions (1) "Riot Gear" and Tear Gas only carried by the CCU (Less than 40 Members) (a) Sting Balls (hand thrown devices with rubber projectiles); (b) Pepperball Launchers (Similar to Paintball Guns); (c) Some non CCU officers also carry Pepper Ball projectiles; and (d) APD does not possess or utilize Rubber Bullets; (2) All Officers had authority to utilize the less than lethal equipment carried (a) Upon direction of field commander; and (3) CCU Field Commander requested confirmation of authority to use Tear Gas Chief Zack affirmed the authorization. \* NOTE - *Manager was informed of Tear Gas use after the decision was made.*

Regarding request for outside agency assistance, (1) APD anticipated protests to grow; (2) Shared Resource Agreements allowed APD to request outside agency assistance; and (3) As APD officers became fatigued, National Guard assistance also requested. The APD made a unilateral decision to request outside police personnel. National Guard was a joint decision (Mayor, City Manager, Chief of Police). More than 100 officers, and 100 guardsmen assisted the APD. \* NOTE: *No Council Members, other than Mayor, played a role.*

Regarding Police interactions with protestors on Jeff Bowen Bridge, (1) First use of the CCU, and their specialized equipment (23 officers); (2) After second entry onto I-240, APD utilized pepperballs and tear gas to disperse crowd from the interstate; and (3) Warnings to "Disperse" and about use of "Chemical Munitions" were issued prior to tear gas use. Tear gas authority was affirmed by Chief Zack, but decision made in the field. Manager was informed of the use of "hard gear". City Council was updated via email (as well as social media accounts). Neither Council nor Manager provided any tactical input.

Regarding Police interactions with protestors at the "Medic Tent", (1) On June 2nd, APD field commanders made Chief Zack aware of this area; (2) Chief was advised that it was being used to resupply and redeploy protestors; (3) Chief Zack authorized the removal of this facility; and (4) Use of force methods were determined by field commander. City Manager and City Council were not consulted prior to this event. They became aware of this only after the fact through social media. \* NOTE: *"Medic Tent" was not permitted by the City.*

He concluded by saying (1) All "Tactical" Decisions made during protests by the APD; (2) City Manager only provided direction to Chief to "Keep people safe."; (3) No Member of City Council provided direction to the Manager or APD - Exception: Mayor and Manager's discussion re: National Guard; (4) Chief Zack made decision to deploy Crowd Control Unit; (5) And affirmed pre-existing authority the use of tear gas if necessary; and (6) All other decisions to use less than lethal equipment made in the field.

Regarding the APD Use of Force, May 29 - June 6: 57 arrests made; 12 APD officer injuries reported; and 1 outside formal complaint against officer actions.

The entire written report was previously provided to all Council Members. The report contains a more detailed analysis of each category of decision making. The report includes (1) Timeline of Events; (2) List of Less Than Lethal Equipment; and (3) Arrest Data.

Councilman Haynes felt that the facts are less than accurate as we have yet to hear from any protestors who have first hand knowledge of what they experienced. Even though no rubber bullets were used, sting balls contain rubber projectiles. The report seems to rationalize the events around the medic tent and actions of the police. He was curious to see the next phase which is how these responses should look like in the future. In the Public Safety Committee earlier in the day, they were told the APD Investigative Assessment will take 90 days. He feels that we need to start discussions now to determine what is appropriate.

Vice-Mayor Wisler said that at the Public Safety Committee earlier that day, they made it clear, after hearing this report and from Police Chief Zack, that we are hearing things from the Police Chief that are contradictory to what we are hearing from the public and seeing on the videos. The Committee asked him to see what he could do to reconcile those differences.

City Attorney Branham explained that his report was very narrowly focused on how decisions were made by internal staff. He felt that we were able to paint a clear picture on how those decisions were made, but did not endeavor to make any determinations about the appropriateness of the actions. For this review, he felt it sufficient to interview only those people involved in the decisions made. It's important to note that this report draws no conclusions regarding city personnel. Those particular instances have been reserved for the second Phase 2.

Councilwoman Mayfield said that people have been asking how City Council could let this happen. She hoped that everyone understands that City Council did not have any role in the decisions about how everything unfolded on those evenings. By state law, we are not allowed to have that responsibility. It is frustrating, but that is our structure. She agreed with Councilman Haynes that we should not have to wait 90 days before having conversations about how other communities are managing large public demonstrations.

Councilman Young agreed that we need to take an intentional effort in working through these issues on an accelerated timeframe as community members want to see something happen sooner.

In response to Councilwoman Smith regarding shared resource agreements, City Attorney Branham said that the agreements allow you to request additional support. They do not go into detail regarding the type of equipment carried. The additional support carry their own equipment.

Councilwoman Smith believes the third phase of the will be the most powerful. We will need help in determining how that looks. She did not want people to lose faith in the process of divesting and reinvesting in the community. She agreed we must not wait the 90 days until we move forward with determining how the actions will be handled in the future.

City Manager Campbell said that we will be bringing in experts on crowd management, experts about 21st Century policing and using information for reimagining public safety. These things are on a parallel track and we need to synthesize all information to one end - guide us into the future with trust, accountability and truth.

Councilwoman Mayfield was disappointed to see that only one official complaint was received. She understood that some people are afraid to report complaints. She asked if the City can create a safe way for the people to register complaints about their experiences related to public conduct.

#### **D. UPDATE ON HOTEL DEVELOPMENT STUDY, PROPOSED ZONING FRAMEWORK AND PUBLIC FEEDBACK ON THE STUDY**

Director of Planning & Urban Development Todd Okolichany provided an update on the hotel development study. A brief history includes: (1) Since 2015, 1,344 hotel rooms have opened in the COA out of approximately 2,761 total rooms that have been approved, representing an annual growth of approximately 4%; (2) Community members, staff and Asheville City Council have expressed concerns about the impact of hotels; (3) City currently lacks concrete policies, strategies and tools to effectively manage the impacts of these uses; (4) Lack of direction resulting in uncertainty for developers, staff and community members; (5) Asheville City Council adopted a temporary one-year moratorium on new hotel applications in September 2019; (6) 39% of hotels approved in CBD since 2015; and (7) Moratorium is allowing us to perform research and make recommendations.

The need is (1) To effectively respond and provide some level of certainty and to determine acceptable hotel development proposals, City needs to enhance its land use policies, tools and strategies to better regulate this land use; and (2) Consideration of additional hotel development suspended to provide the time needed to determine impacts and remedies.

He reviewed the hotels development study timeline beginning on September 24, 2020. The focus of this study is to look at hotel development impacts and develop recommendations. City contracted with Urban Land Institute (ULI) in Fall 2019. ULI provides unbiased, pragmatic advice through the Technical Assistance Panel (TAP) process. ULI in Asheville twice in January. Held two public workshops and multiple focus group sessions and interviews. City staff prepared a briefing report on hotel development impacts. ULI report in March on recommendations, which we will review later in this presentation. Additional public engagement in Spring 2020. Our goal is for Council review of recommendations in Summer 2020.

Questions answered through the Urban Land Institute (ULI) Technical Assistance Panel (TAP) Process included (1) What is the appropriate balance of hotels; (2) How can Asheville leverage hotel development to meet city goals; (3) Should the city consider special requirements for hotel development in certain areas; and (4) How can the city work with hoteliers and other stakeholders to reduce negative impacts and better integrate hotels into the community. These questions served as the framework for the TAP process.

Issues identified through the ULI TAP process include (1) Need to balance the economic benefits of tourism and hotel development with other community needs; (2) The hotel development approval process needs more predictability and transparency; (3) The community is concerned about the impacts of hotel development on the character of the city and quality of life; (4) Policy and regulatory tools can help manage hotel development approvals. In February 2020, City Council directed staff to: (1) Re-establish hotels as a permitted use in select zoning districts and areas, including criteria and standards; (2) Incentivize public benefits; and (3) Identify design

improvements.

At the February 2020 City Council work session on hotels, Council directed staff to pursue the following recommendations during the hotel moratorium: (1) Revenue generating: Require license agreement for city right-of-way during hotel construction; and (2) Regulatory: Re-establish hotels as a permitted use in select zoning districts and areas, including criteria and standards (a) Incentivize public benefits; (b) Identify design improvements; (c) Evaluate traffic impact analysis threshold; and (d) Develop valet parking standards.

ULI TAP recommendations - incentive based approach (1) public benefits; (2) overlay & standards; and (3) design review.

Public engagement included (1) Website, blog posts, FAQs; (2) Public input survey with educational video; (3) Focus groups - Neighborhoods, Hoteliers, Architects & designers, Tourism industry, Downtown, and River Arts District; (4) Boards and commissions - Downtown and Riverfront; and (5) Sustainability community partners. One thousand, two hundred and fifty-six people participated in the online survey. There were 13,525 responses and 3,286 comments.

Revisions based on public engagement include (1) Reduced the extent of areas suitable for hotel development (a) Direct development away from residential areas; (b) Greater focus on protecting historic districts; and (c) Protect viewshed corridors; (2) Changed the definition of small hotels; and (3) Made adjustments to Public Benefits Table.

The project schedule is as follows: (1) September 2: Planning & Zoning Commission meeting for initial review of draft regulations and map amendments; (2) September 8: City Council public hearing to extend hotel moratorium to November 24; (3) September 22: City Council vote to extend hotel moratorium; (4) September 23: Planning & Zoning Commission review and recommendation on draft zoning regulations and map amendments; (5) October 27: City Council initial review of draft hotel development zoning regulations and map amendments; and (6) November 10: City Council vote on zoning regulations and map amendments.

Staff recommends Council extend hotel development moratorium due to public engagement delays and staff redeployment.

Mr. Okolichany responded to various questions/comments from Council, some being, but are not limited to: what is the difference between regulations and guidelines; is there an opportunity for Council review of the standards prior to the ordinance coming to City Council for consideration; what does the design review process look like; are there new design review guidelines for hotels; will the guidelines be mandatory compliance or voluntary compliance; what happens if a developer gets a negative recommendation from the design review body; what are some items in the public benefit component; will staff provide Council with some examples of how the point system would have worked with some existing hotel developments; can hotels be prohibited throughout the City as a right; and what areas of the City now allow hotel development as a right.

Councilman Haynes did not support taking away Council's ability to review any hotel projects.

Because there was considerable discussion on this issue, it was the consensus of Council to hold a worksession.

In response to Vice-Mayor Wisler about extending the temporary moratorium for just two months, Mr. Okolichany explained that staff's goal is to have this map overlay and standards adopted by City Council before the moratorium ends on November 24 because if the moratorium

expires, it will go back to status quo. City Attorney Branham explained that if staff thinks that it will take longer than 2 months to address the problem identified, he felt that was within the possible legal rights to extend the moratorium longer. We cannot take longer than the need to complete the task. He advised Council that we should keep in mind that the limitation has already gone one year and the longer it goes on, the more suspect the legal moratorium will be. The next item on the agenda is the public hearing on the temporary extension. He felt that Council will hear public comment and then make a determination at the September 22 meeting, when the ordinance is voted on, the appropriate extension time.

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

##### **A. PUBLIC HEARING TO CONSIDER EXTENDING THE TEMPORARY MORATORIUM ON HOTEL DEVELOPMENT DUE TO DELAYS ASSOCIATED WITH THE COVID-19 PANDEMIC**

Director of Planning & Urban Development Todd Okolichany said that this is a public hearing to consider extending the temporary moratorium on hotel development approvals within the City of Asheville for two months due to delays associated with the COVID-19 Pandemic. This public hearing was advertised on August 28 and September 4, 2020.

#### **Background:**

- In response to concerns raised by community members and City Council regarding the significant influx of new hotel rooms into the City of Asheville over the past few years with 2,761 total rooms approved and 1,344 rooms opened since 2015 (39% within the central business district), the City of Asheville adopted Ordinance No. 4766 on September 24, 2019 establishing a temporary moratorium on new hotel development until September 24, 2020 in order to take actions to address this issue.
- While the City was able to accomplish many of the actions proposed in the moratorium ordinance to address the problems and conditions related to new hotel development, the City's ability to complete those proposed actions within the original time period set for the moratorium has been significantly impaired by the COVID-19 pandemic, the Emergency Declarations made at the State and Local levels and related restrictions imposed to ensure public health and safety.
- Consequently, more time is needed to complete the originally proposed actions.
- N.C.G.S. 160A-381 authorizes cities to extend a temporary moratorium on development approvals if new facts or conditions warrant an extension.
- It is proposed that the moratorium be extended by two months to November 24, 2020, in order to allow the time necessary to complete the actions proposed to address the issues and concerns regarding new hotel development.
- During the duration of the moratorium, city staff have taken reasonable steps to study the issues and develop recommendations.
- The following actions were proposed as part of the original moratorium imposition and the majority of the work has been completed:

#### **Phase 1 (three months)**

- Contract with the Urban Land Institute Charlotte District Council to conduct a planning process that includes two community engagement sessions, analysis of the hotel industry, assessment of impacts, research of best practices, and a report on best land use practices and policy recommendations for hotel development.

#### **Phase 2 (up to nine months)**

- Supplemental research and analysis by city staff, creation of a community engagement plan, and draft regulatory changes, strategies and tools for Council consideration.

- The draft regulatory changes were presented to the Planning and Zoning Commission at their meeting on September 2, 2020, but additional time is needed for Council consideration.
- Staff recommends that the temporary moratorium on new hotel development be extended in order to address the issues and concerns regarding new hotel development.
  - The COVID-19 pandemic delayed opportunities for community engagement early in the planning process
  - During the pandemic, city staff and resources were redirected to address other priority community needs
  - Additional time is needed to complete the hotel development study, conduct additional community engagement, draft the proposed zoning amendments and present the new zoning amendments to the Asheville City Council for consideration of adoption.

**Council Goal(s):**

- A Well Planned and Livable Community

**Committee(s):**

- City Council - August 25, 2020 - motion setting a public hearing on September 8, 2020, to consider extending a temporary hotel moratorium on hotel development, approved 7-0.

**Pro(s):**

- Gives the city time to better understand the impacts of new hotel development and mitigation requirements.
- Allows for research of best practices and to enhance the city's land use policies, tools and strategies.
- Will provide clearer direction to applicants of new hotel developments, City Council and the community.

**Con(s):**

- No new hotels will be approved during the moratorium extension period.

**Fiscal Impact:**

- None

After hearing the discussion on the hotel development study earlier in this meeting, and because a City Council worksession will be scheduled with the possibility of having to go back to the Planning & Zoning Commission, staff now recommends that the temporary moratorium on new hotel development be extended for five months until February 23, 2020, in order to address the issues and concerns regarding new hotel development. Mr. Okolichany said that City staff will work hard to complete the study earlier if possible.

Mayor Manheimer opened the public hearing at 7:51 p.m.

From advanced live call-ins, two individuals spoke in support of extending the hotel moratorium.

In accordance with recent legislation amending North Carolina G.S. §166A-19.24(e), regarding public hearings conducted during remote meetings, written comments for this public hearing will be accepted for an additional 24 hours. Therefore, Councilwoman Wisler moved to recess this item until September 22, 2020, at which time this public hearing will be voted. This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**V. UNFINISHED BUSINESS:**

**A. ORDINANCE NO. 4823 - ORDINANCE TO ALLOW THE INITIAL ZONING TO APPLY THE NEW RESOURCE MANAGEMENT OVERLAY DISTRICT TO ALL PROPERTIES LOCATED WITHIN THE CITY OF ASHEVILLE CORPORATE LIMITS**

Mayor Manheimer said that this public hearing was held on August 25, 2020, and in accordance with recent legislation amending North Carolina G.S. § 166A-19.24(e), regarding public hearings conducted during remote meetings, written comments for this public hearing were accepted for an additional 24 hours.

After receiving additional written public comment, Mayor Manheimer closed the public hearing and said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Wisler moved to apply a new Resource Management Overlay District 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 zoning action will, 1) support a plan to preserve and enhance the urban canopy, and 2) protect land and water assets by applying protection standards more broadly, and 3) build climate resilience by reducing risk and vulnerability to flooding, erosion and landslides. This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**ORDINANCE BOOK NO. 33 – PAGE 123**

**B.1. ORDINANCE NO. 4824 - ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE AMENDING SECTION 7-2-5 DEFINITIONS, 7-11-3(d), 7-11-2(f)2, 7-12-2(e)2(d) AND ESTABLISHING A NEW SECTION 7-9-1 RESOURCE MANAGEMENT OVERLAY DISTRICT, AND A NEW ARTICLE XIX TREE CANOPY PRESERVATION**

**ORDINANCE NO. 4825 - ORDINANCE TO AMEND THE FEES & CHARGES MANUAL FOR FISCAL YEAR 2020-21 TO ESTABLISH A FEE-IN-LIEU OF OPTION FOR TREE REMOVAL (LAND, ADMINISTRATION, INSTALLATION)**

Mayor Manheimer said that these public hearings were held on August 25, 2020, and in accordance with recent legislation amending North Carolina G.S. § 166A-19.24(e), regarding public hearings conducted during remote meetings, written comments for this public hearing were accepted for an additional 24 hours.

After receiving additional public comment, Mayor Manheimer closed the public hearing and 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 proposed wording amendments to Articles II and VII of the UDO and to add a new Article XIX to the UDO and find that the proposed amendments are consistent with the city's comprehensive plan in that the amendment will 1) preserve and enhance the urban tree canopy creating a more comfortable environment; 2) better protect land and water assets improving the health of the community; and 3) build climate resilience by reducing risk and vulnerability to flooding, erosion and landslides. This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**ORDINANCE BOOK NO. 33 - PAGE 126**

After receiving additional public comment, Mayor Manheimer closed the public hearing and 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 an ordinance amending the fees and charges manual for Fiscal Year (FY) 2020-21 to establish a fee-in-lieu of option for tree removal (land, administration, installation). This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**ORDINANCE BOOK NO. 33 – PAGE 137**

**VI. NEW BUSINESS:**

**A. BOARDS & COMMISSIONS**

**RESOLUTION NO. 20-158 - RESOLUTION APPOINTING MEMBERS TO THE PLANNING & ZONING COMMISSION**

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

The terms Sandra Kilgore, Laura Berner Hudson and Joe Archibald, as members of the Planning & Zoning Commission expired on August 14, 2020.

The following individuals applied for a vacancy: Sherrye Coggiola, Kimberly Levi and Roosevelt Harvin.

Vice-Mayor Wisler said that the Boards & Commissions Committee did not meet to review these applications.

Vice-Mayor Wisler moved to (1) reappoint Sandra Kilgore and Joe Archibald, as members to the Planning & Zoning Commission respectively, terms to expire August 14, 2023, or until their successors have been appointed; and (2) appoint Kimberly Levi as a member of the Planning & Zoning Commission to serve a three-year term, term to expire August 14, 2023, or until her has been appointed. This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**RESOLUTION BOOK NO. 41 – PAGE 433**

**RESOLUTION NO. 20-159 - RESOLUTION APPOINTING A MEMBER TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY**

Vice-Mayor Wisler, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing a member to the Buncombe County Tourism Development Authority (an individual actively involved in the tourist business who has participated in tourism promotion and does not own or operate hotels, motels, or other taxable tourist accommodations).

The term of Andrew Celwyn (an individual actively involved in the tourist business who has participated in tourism promotion and does not own or operate hotels, motels, or other taxable tourist accommodations) as a member of the Buncombe County Tourism Development Authority expired on August 31, 2020.



The following individuals meet the requirements and have applied for the vacancy: Clair Greear, Bethany Vance, and Ruth Summers.

Vice-Mayor Wisler again noted that the Boards & Commissions Committee did not meet to review these applications.

Vice-Mayor Wisler moved to reappoint Andrew Celwyn as a member of the Buncombe County Tourism Development Authority (an individual actively involved in the tourist business who has participated in tourism promotion and does not own or operate hotels, motels, or other taxable tourist accommodations) to serve an additional three-year term, term to expire August 31, 2023, or until he has been appointed. This motion was seconded by Councilman Haynes and carried unanimously by roll call vote.

**RESOLUTION BOOK NO. 41 – PAGE 434**

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

From advanced live call-ins, four individuals spoke to Council, including, but not limited to the following comments: support continued moratorium on the building of new hotels in Asheville; continue work on reparations; police brutality during the protests.

**VIII. ADJOURNMENT:**

Mayor Manheimer adjourned the meeting at 8:20 p.m.

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CITY CLERK

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MAYOR