Tuesday – September 27, 2011 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Brownie W. Newman; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilwoman Esther E. Manheimer; Councilman William A. Russell Jr.; Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and Interim Deputy City Clerk Jeffrey B. Richardson

Absent: None

**PLEDGE OF ALLEGIANCE**

Mayor Bellamy led City Council in the Pledge of Allegiance.

**INVOCATION**

Councilman Russell gave the invocation.

**AGENDA CHANGES**

(1) **RESOLUTION NO. 11-208 – RESOLUTION APPOINTING JEFFREY B. RICHARDSON AS INTERIM DEPUTY CITY CLERK FOR SEPTEMBER 27, 2011**

Due to the absence of the City Clerk and the Deputy City Clerk, Mayor Bellamy said that it was necessary to adopt a resolution appointing Jeffrey B. Richardson as Interim Deputy City Clerk for September 27, 2011.

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

Councilman Smith moved for the adoption of Resolution No. 11-208. This motion was seconded by Councilman Russell and carried unanimously.

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(2) Mayor Bellamy said that there has been a request to pull off New Business Item "E".

**I. PROCLAMATIONS:**

**A. PROCLAMATION PROCLAIMING OCTOBER, 2011, AS "FIRE PREVENTION MONTH"**

Mayor Bellamy read the proclamation proclaiming October, 2011, as "Fire Prevention Month" in the City of Asheville. She presented the proclamation to Division Chief Barry Hendren, who briefed City Council on some activities taking place during the month.

**B. PROCLAMATION PROCLAIMING OCTOBER 7-9, 2011, AS "SALUTE TO FAMILIES CELEBRATION"**

Mayor Bellamy read the proclamation proclaiming October 7-9, 2011, as "Salute to Families Celebration" in the City of Asheville. She presented the proclamation to Dr. John Grant,

Pastor from Mt. Zion Missionary Baptist Church, who briefed Council on the events taking place for that event.

**C. PROCLAMATION PROCLAIMING OCTOBER 24, 2011, AS "FOOD DAY"**

Mayor Bellamy read the proclamation proclaiming October 24, 2011, as "Food Day" in the City of Asheville. She presented the proclamation to Councilman Gordon Smith, who briefed Council on the events taking place on that day.

**II. CONSENT AGENDA:**

**A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON SEPTEMBER 13, 2011**

**B. RESOLUTION NO. 11-198 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BROWN & CALDWELL FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE**

**ORDINANCE NO. 4018 - BUDGET AMENDMENT FOR THE WATER RESOURCES ASSET MANAGEMENT PLAN UPDATE**

Summary: The consideration of a resolution by City Council authorizing the City Manager to enter into an agreement with Brown and Caldwell in an amount not to exceed $99,880 for the Water Resources Asset Management Plan Update; and a budget amendment in the amount of $99,880.00 from savings in a N.C. Dept. of Transportation (NCDOT) capital project that was completed under budget.

In 2005, Brown and Caldwell developed an Asset Management Plan for Water Resources to create an asset inventory, improve the refurbishment and replacement (R&R) planning process, create a Replacement Planning Model (RPM), and establish a capital planning process. The Excel-based RPM was originally developed in 2005 and updated in 2007 to determine long term funding needs to R&R activities of the City's water-related infrastructure. Since completion of the $40 million revenue bond projects, changes in the City's enterprise software, and numerous other capital improvement projects, an update to the RPM and Asset Management Plan is needed to update the asset inventory, R&R schedule, and capital project plan.

Since Brown and Caldwell created the department's Asset Management Plan and Replacement Planning Model, they are the most qualified firm to complete the update. Based on that justification, Water Resources desires for City Council to waive competitive bidding requirements and award the contract for the Asset Management Plan Update to Brown and Caldwell in an amount not to exceed $99,880.00.

This project is part of City Council's strategic plan to maintain city infrastructure and to operate the City of Asheville to the highest levels of fiscal responsibility.

Pro:

- Approval of the project will allow Water Resources to create an up-to-date asset inventory, update the refurbishment and replacement schedule, update the Replacement Planning Model, and establish a multi-year capital plan.

Con:

- Additional funds will be needed from another capital project to cover the project cost.

The Water Resources Department does not have a budget in place for the Asset Management Plan Update. The budget amendment will create the project budget and transfer

the funds needed for this project in the amount of $99,880.00 from an NCDOT project that was completed under budget.

| | |
|---|---|
| Amount in Completed NCDOT Project | $486,999 |
| Amount Needed for Asset Mgt Plan Update | $ 99,880 |
| Amount Remaining in NCDOT Project | $387,119 |

The amount remaining in the completed NCDOT Project will be reallocated to other capital projects as the need arises. Staff will seek Council approval on any future reallocation of these funds.

City staff recommends City Council authorize the City Manager to enter into an agreement with Brown and Caldwell in an amount not to exceed $99,880.00 for the Water Resources Asset Management Plan Update; and to adopt a budget amendment in the amount of $99,880.

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**C. RESOLUTION NO. 11-199 - RESOLUTION ACCEPTING CHAPEL PARK PLACE AS A CITY-MAINTAINED STREET**

Summary: The consideration of a resolution to accept Chapel Park Place as a city-maintained street.

Code of Ordinances sec. 7-15-1(f)(4)a requires that streets dedicated for public use be accepted by resolution of the City Council. The developer submitted a written request on July 26, 2011, asking the City to accept the subject street as a city-maintained street.

Chapel Park Place from a point 0.07 mile north of West Chapel Road northward to Bostic Place is a developer-constructed street that has an average street width of 18 feet, grass shoulders, a length of 0.11 mile, and a right-of-way width of 25 feet.

Transportation Department staff and Public Works Department staff inspected the subject street and determined that it was constructed according to current standards as indicated in the City of Asheville's Standard Specifications and Details Manual. In addition, the Planning Department and the Asheville Fire Department have concurred with the acceptance of the subject street.

Following City Council's approval of this resolution, the subject street will be added to the official Powell Bill List.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Fiscal Responsibility Area by accepting street infra-structure to help support the healthy growth of the City.

Pros:

- The City of Asheville will receive Powell Bill Funds from the N.C. Dept. of Transportation to help maintain the street.
- The street provides access and connectivity in a residential community.

Con:

- Powell Bill Funds will not cover 100% of the total cost to maintain the street.

There will be no initial financial impact to the City, although the responsibility of maintenance belongs to the Public Works Department. The City will receive Powell Bill Funds in

the future to help maintain the streets. Based on current allocation rates, the City will receive about $169 per year in Powell Bill Funds from the subject street.

Staff recommends that City Council accept Chapel Park Place as a city-maintained street.

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**D. RESULTS OF THE SEPTEMBER 12, 2011, CIVIL SERVICE BOARD EMPLOYEE ELECTION**

Summary: One copy of the results of the Civil Service Board employee election held on September 12, 2011, is to be filed with the City Manager and one with the City Clerk, who shall present such certification to the City Council at its next regular meeting. Secretary to the Civil Service Board Jessica Dunlap and City Clerk Burleson provided the following certified certificate on September 12, 2011: We do hereby certify, having opened, canvassed, and determined the original returns of the Civil Service Board employee election, the results of the Civil Service Board Employee Election held on September 12, 2011, noting the name of each person voted for and the number of votes cast for each person as follows: Virginia Robinson – 83 and Anthony Alan Coxie – 80.

**E. RESOLUTION NO. 11-200 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SIDEWALK AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR A SAFE ROUTES TO SCHOOLS PROJECT FOR CHARLES C. BELL ELEMENTARY SCHOOL**

Summary: The consideration of a resolution authorizing the City Manager to execute a sidewalk agreement with the N.C. Dept. of Transportation (NCDOT) for the construction of a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) in East Asheville.

The NCDOT, the City of Asheville, and Charles C. Bell Elementary School have partnered together to construct a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) and to install pedestrian crosswalks at the intersection of US 70 (Tunnel Road) and Maple Spring's Road/Governor's View Road as a part of the Safe Routes to School Program.

The NCDOT will be responsible to prepare the planning documents, environmental permits, and the project plans and specifications. In addition, the NCDOT will construct or oversee the construction of the project. The City of Asheville will be responsible to provide any additional right-of-way and to relocate any utilities. After the project is completed, the City of Asheville will be responsible to maintain the sidewalk.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Safe Area in supporting the Safe Routes to School Program by applying for funding for one school during the current fiscal year.

Pros:

- Demonstrates a continued partnership between the NCDOT and the City of Asheville in accomplishing various projects.
- Demonstrates City support for the Safe Routes to School Program.
- The NCDOT is funding and constructing the project.

Con:

- The City is responsible to maintain the sidewalk after it is constructed.

Staff does not anticipate the need for additional right-of-way or the relocation of any utilities for the subject project. Therefore, the only anticipated fiscal impact would be routine maintenance after the sidewalk is completed which is normally included in the Public Works annual operating budget.

Staff recommends that City Council approve a resolution authorizing the City Manager to execute a sidewalk agreement with the NCDOT for the construction of a sidewalk along US 70 (Tunnel Road) from Maple Spring's Road to SR 2002 (Riceville Road) in East Asheville.

In response to Mayor Bellamy, Director of Transportation Ken Putnam said that this will be our second successful Safe Routes to School Program with the NCDOT, with the Emma community sidewalk being the other one.

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**F. RESOLUTION NO. 11-201 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION FOR THE REMOVAL OF VEGETATION WITHIN THE I-240 RIGHT-OF-WAY NEAR THE HILLCREST PEDESTRIAN BRIDGE**

Summary: The consideration of a resolution authorizing the City Manager to execute a construction agreement with the N.C. Dept. of Transportation (NCDOT) for the removal of vegetation within the I-240 right-of-way near the Hillcrest Pedestrian Bridge.

The NCDOT and the City of Asheville have been working closely together during the past 18 months to make improvements at and around the Hillcrest Pedestrian Bridge to enhance the pedestrian experience. The NCDOT reopened the bridge during December 2010.

The NCDOT is willing to remove vegetation including the mature trees within the I-240 right-of-way at the City's expense. Specifically, the NCDOT will remove or cause to be removed all vegetation within the I-240 right-of-way that is not marked to be saved by City of Asheville staff. Staff is relying heavily on recommendations regarding the vegetation removal from the Asheville Police Department and using best management practices from Crime Prevention Through Environmental Design (CPTED) strategies. Vegetation will not be removed from any privately-owned property in the immediate area. The estimated cost for the work is $10,000.

This action complies with the City Council 2011-12 Strategic Operating Plan within the Safe Area in helping to make Asheville one of the safest and most secure communities compared to similar cities.

Pros:

- Demonstrates a continued partnership between the NCDOT and the City of Asheville in accomplishing various projects.
- Uses NCDOT resources instead of limited City resources.

Con:

- The City is responsible to pay for the proposed work.

As noted above, the estimated cost for the work is $10,000. Staff recommends that the funds for the subject work come from the Traffic Safety Project which is intended to finance small to medium size traffic-engineering related safety projects and pedestrian enhancements. The current balance in the Traffic Safety Project is about $131,000. Other current projects to be funded from the Traffic Safety Project include an upgrade to the traffic signal at the intersection of Haywood Street and Montford Avenue, a grant match to provide pedestrian enhancements at four existing signalized intersections, and pedestrian improvements at the intersection of Montford Avenue and Cullowhee Street/Soco Street.

Staff recommends that City Council approve a resolution authorizing the City Manager to execute a construction agreement with the N.C. Dept. of Transportation and the City of Asheville for the removal of vegetation within the I-240 right-of-way near the Hillcrest Pedestrian Bridge.

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**G. RESOLUTION NO. 11-202 - RESOLUTION TO SET ASIDE THE CONTRACT AWARD TO ROGERS GROUP INC. FOR THE WATER RESOURCES ROAD RESURFACING AT THE NORTH FORK AND WILLIAM DEBRUHL WATER TREATMENT PLANTS PROJECT AND AWARD THE CONTRACT TO APAC-ATLANTIC, INC.**

Summary: The consideration of a resolution by City Council to retract the contract award to Rogers Group, Inc. for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants and authorize the City Manager to re-award the contract and enter into an agreement with APAC-Atlantic, Inc. in an amount not to exceed $399,812 for the project.

On September 13, 2011, Water Resources recommended and City Council awarded the contract to Rogers Group, Inc. for the Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants in an amount not to exceed $399,812. The scope of the project included all labor, materials, and equipment required for: (1) removing existing damaged pavement, (2) adding a stone base, (3) asphalt paving, (4) milling, (4) adding speed bumps, (5) repairing damaged curbing, (6) thermoplastic striping, and (7) additional scope as needed.

After City Council awarded the bid and Water Resources started project discussions with the contractor, Rogers Group admitted to leaving out a section of paving in the bid that, if included, would have made them the highest bidder. The section of paving that was left off the Rogers' bid was not noticed by City staff since it was included with other sections and is a small area. Upon learning of the bid error, Water Resources informed Rogers Group that they were no longer the lowest responsible bidder and the contract award needed to be retracted and re-awarded to APAC-Atlantic, Inc. upon City Council approval. The corrected bid amounts are:

1. APAC-Atlantic, Inc. – Asheville, NC; $416,512.46 total bid
2. Rogers Group, Inc. – Hendersonville, NC; $445,561.82 estimated total bid with the deleted section added to original bid of $415,879.82

The lowest responsible bidder is no longer Rogers Group, Inc. but is now APAC-Atlantic, Inc. The project budget will remain at a not to exceed amount of $399,812.00. Since the total bid cost is higher than the anticipated project budget, Water Resources will work with APAC to reduce the project scope in order to stay within the $399,812.00 project budget.

This project is part of City Council's strategic plan to maintain and improve city infrastructure and provide local companies with labor opportunities.

Pros:

- Approval of the project will allow Water Resources to complete necessary road repair at the North Fork and William DeBruhl Water Treatment Plants.
- The project will provide a local company with work through June 2012.

Con:

- Re-awarding the contract to APAC will delay the project by two weeks, which may push paving at the William DeBruhl WTP out to spring 2012.

Water Resources has a Road Resurfacing capital project in which $399,812 is currently budgeted for this project. The contract with APAC will be for a not to exceed amount of $399,812, even though their total bid is $416,512.46. Water Resources will reduce the project scope to stay within the not to exceed amount.

City staff recommends City Council retract the contract award to Rogers Group, Inc. for the Water Resources Road Resurfacing Project at the North Fork and William DeBruhl Water Treatment Plants and authorize the City Manager to re-award the contract and enter into an agreement with APAC-Atlantic, Inc. in an amount not to exceed $399,812 for the project.

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**H. RESOLUTION NO. 11-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH ACCELA FOR THE DEVELOPMENT SERVICES CENTER SOFTWARE REPLACEMENT PROJECT**

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract for the Development Services Center Software Replacement project with Accela and other suppliers in total amount not to exceed $560,000 for software, hardware, and services.

An extensive Request for Proposals (RFP) process for Development Services Center software was conducted earlier in 2011. A survey of the developer community was used to guide RFP requirements. The RFP was also guided by state law requirements regarding the development services process. In addition to system requirements, the RFP included minimum proposal criteria, described the criteria for initial proposal evaluation and established finalist vendor selection activities and criteria. Responses were received from 7 vendors, and evaluated by a team that included IT, Building Safety, and Purchasing, as well as other affected departments.

A second stage of evaluation and due diligence was done for the 4 vendors who substantially met the RFP requirements. The 3 vendors who were not advancing to the second stage received notification from staff.

After completing due diligence and reference checks, staff is seeking authority from City Council to enter into contract negotiations and sign a contract with Accela.

Pros:

- Prioritize a reasonable level of business technology as a means to make staff operations more efficient
- Meets multiple city council objectives (see below)
- Enhances ability to engage in process re-engineering
- Project is being funded with a dedicated revenue source not from General Fund revenue.

Con:

- Any software implementation causes some degree of organizational turbulence during implementation

This action ties into Council's "Green" goal by implementation of processes (i.e. driving to apply and receive permits, plans submittal) that will require significantly less paper and less fuel consumption. It also ties into Council's "Sustainable" goal in several meaningful ways: (1) This project will better enable staff to fulfill the specific action item of "Ensure financial accountability by matching resources with strategic initiatives," specifically enhancing systems so that "creating meaningful performance measures" can be better accomplished; (2) In the same manner, the specific action item of "Strengthen efforts to create measurable goals, accountabilities, and outcomes for all city policies and operations" will also be enhanced by this project; and (3)

Likewise, the item of "Reform and streamline the development review process to improve the ease and efficiency of the customer's experience without compromising the quality of standards or other strategic goals (affordability, environment, etc.)" through deployment of better, greener, more online technology.

In April 2008, City Council approved a 4% Technology Fee on permits with the proceeds dedicated to technology improvements related to Development Services. The Development Services Center Software Replacement project will be funded with proceeds collected from this fee. The Technology Fee project is already budgeted in the City's adopted Capital Improvement Program.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into contracts for the Development Services Center Software Replacement Project with Accela in total amounts not to exceed $560,000 for software, hardware, and services.

**ORDINANCE BOOK NO. 27 – PAGE**

**I. ORDINANCE NO. 4019 – BUDGET AMENDMENT TO ESTABLISH A FISCAL YEAR 2011-12 BUDGET FOR PURCHASING PHASE II LED STREETLIGHTS AND PHOTOCELLS**

Summary: The consideration of a budget amendment to establish a FY 2011-12 budget in the amount of $1,192,481 for purchasing Phase II LED streetlights and photocells.

In April 2011 City Council approved a resolution to increase the annual municipal carbon footprint reduction goal from 2% to 4%. A key element to achieving this goal is the 4 year plan to change most of the municipal streetlights to LED technology. During the FY 2011-12 annual budget process, staff discussed with Council the establishment of a Green Capital Improvement Program (Green CIP) to fund this initiative. The Green CIP will initially borrow money to fund carbon reduction efforts and then will use operational energy savings to pay the debt service. This budget amendment, in the amount of $1,192,481, will provide authorization for the first year of the Green CIP.

This project supports the following City Council strategic goals: (1) Identify strategies and costs for increasing the city's annual energy reduction goal to 4%; and (2) Identify resources for strategic initiatives and create meaningful performance measures for programs and services.

Pros:

- Installation of 2,913 LED streetlights will generate an estimated $110,000 in avoided spending in the municipal streetlight operations budget. These annual savings will be rededicated to fully cover annual debt service for the investment.
- This activity will result in 879 tons of avoided carbon dioxide resulting in a 2.6% total municipal carbon footprint reduction.

Con:

- None have been identified.

As noted above, this project was discussed with Council during the annual budget process. Staff will borrow money to fund the purchase of the LED streetlights and photocells and use savings generated by the purchase to fund the debt service on the loan.

City staff recommends City Council approve the budget amendment to establish a FY 2011-12 budget in the amount of $1,192,481 for purchasing Phase II LED streetlights and photocells.

In response to Councilman Smith, Director of Finance and Management Services said that this does not constitute all of the street lights in the City and would provide to Council the percentage of streets that will be done in Phase 2.

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**J. RESOLUTION NO. 11-204 - RESOLUTION IN SUPPORT OF FEDERAL HOUSE RESOLUTION 1351 TO RETAIN MAIL SERVICES WITHIN ASHEVILLE AND WESTERN NORTH CAROLINA**

Summary: The United States Postal Service is currently experiencing financial problems, and is considering reducing or eliminating current services and facilities. The Postal Service announced that the Brevard Road Production and Distribution Facility would be undergoing a study for possible reduction, consolidation, or closure; and mail processing operations moved to Greenville, South Carolina. This move would add additional time to customer delivery, and be a reduction in service standards currently realized by the citizens of Asheville and western North Carolina. Reduction or closure of the Brevard Road facility would also affect as many as 180 workers, and the economy for Asheville and surrounding communities. The City Council supports Federal House Resolution 1351, to preserve and secure the current level of mail service to the citizens of Asheville and western North Carolina. In addition, a copy of this resolution be transmitted to Senators Richard Burr and Kay Hagan, and to Representative Heath Shuler,

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**K. RESOLUTION NO. 11-205 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD THE SALE OF SURPLUS DINNERWARE TO THE ASHEVILLE INDEPENDENT RESTAURANT ASSOCIATION**

Summary: The consideration of a resolution authorizing the City Manager to award the sale (no compensation) of surplus dinnerware no longer in use at the Civic Center to the non-profit Asheville Independent Restaurant Association (AIR) and to enter into a negotiated purchase agreement.

The AIR has a forthcoming educational project which could utilize a portion of the excess dinnerware left from the old Banquet Hall at the Civic Center. The dinnerware has not been used by the Civic Center for at least 15-20 years, and has a nominal value of $1,500 or less. N.C. Gen. Stat. sec. 160A-279 authorizes a City to dispose of property to a non-profit agency that is carrying out a public purpose. The educational project would serve a public purpose. The very small value of the dinnerware, justifies the donation of the property, with the conveyance of the property conditioned on the use of the property for a public purpose.

At the September 5, 2011, Civic Center Commission meeting, the Commission voted to recommend to City Council that the dinnerware be donated to AIR for the educational project, with any excess to be offered to the Asheville Buncombe County Christian Ministry by AIR.

The consideration of this action relates to the City's Strategic Plan to form strategic partnerships to further education and economic development.

Pros:

- Allows the dinnerware to remain in the Asheville community for public use.
- Supports the City's goal to partner with outside groups and agencies to provide educational programming.
- Provides a method to have the property removed from the Civic Center which is required as part of the renovations.

Con:

- The value of the dinnerware is very nominal but the City would receive no cash for the donation, as opposed to a competitive bid process.

Nominal $1,500 potential loss of revenue could be offset by the benefit of the educational program by AIR for the Asheville community.

City staff recommends City Council authorize the City Manager to award the sale (with no compensation) of the surplus dinnerware from the Civic Center to AIR and to enter into a negotiated purchase agreement conditioning the disposition of the dinnerware on its use for a public purpose.

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**L. ORDINANCE NO. 4020 - BUDGET AMENDMENT IN THE STORMWATER FUND FROM PROCEEDS RECEIVED FROM THE CLEAN WATER MANAGEMENT TRUST FUND FOR REPAYMENT OF THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES DINGLE CREEK LOAN**

Summary: The consideration of a budget amendment in the Stormwater Fund in the amount of $116,550 from proceeds received from the Clean Water Management Trust Fund (CWMTF) for repayment of the North Carolina Department of Environment and Natural Resources (NCDENR) Dingle Creek loan.

In September 2009, the City was awarded funding through the American Recovery and Reinvestment Act (ARRA) for the Dingle Creek stormwater improvement project. The grant award was structured as a 50% grant with a 50% loan requirement, with the Clean Water Management Trust Fund (CWMTF) agreeing to cover a portion of the 50% loan amount. The City recently received a check from CWMTF for its portion of the 50% loan amount. Upon receipt of the CWMTF funds, the City is required to then repay the $116,550 to the North Carolina Department of Environment and Natural Resources (NCDENR). Since the timing of the receipt of the CWMTF proceeds was uncertain, staff did not include them in the FY 2011-12 adopted Stormwater Fund budget, therefore a budget amendment is needed to appropriate these funds and repay the NCDENR loan.

This action complies with the City Council Strategic Operating Plan goal of "Operate the City of Asheville to the highest levels of fiscal responsibility."

Pros:

- Provides the required budget authorization for the receipt of the $116,550 in proceeds from CWMTF and the repayment to NCDENR of that loan amount.

Con:

- None.

This technical budget amendment in the Stormwater Fund has no overall fiscal impact.

City staff recommends City Council adopt the budget amendment in the Stormwater Fund in the amount of $116,550 from proceeds received from the Clean Water Management Trust Fund (CWMTF) for repayment of the North Carolina Department of Environment and Natural Resources (NCDENR) Dingle Creek loan.

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

Mayor Bellamy 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 Newman moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Davis and carried unanimously.

**III. PRESENTATIONS & REPORTS:** None

**IV. PUBLIC HEARINGS:**

**A. PUBLIC HEARING TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE – BELLE VISTA RETIREMENT RESIDENCE**

**ORDINANCE NO. 4021 - ORDINANCE EXTENDING THE CORPORATE LIMITS OF THE CITY OF ASHEVILLE TO INCLUDE PROPERTY LOCATED AT 55 PINEY MOUNTAIN DRIVE – BELLE VISTA RETIREMENT RESIDENCE**

Urban Planner Julia Fields said that this is the consideration of an ordinance for the voluntary annexation of property located at Biltmore Town Center (55 Piney Mountain Drive). This public hearing was advertised on September 16, 2011.

Asheville Retirement Residence, LLC has petitioned the City of Asheville for the annexation of one lot located at 55 Piney Mountain Drive containing a total of 13.52 acres. A 120 suite retirement residence, Bella Vista, has recently been constructed at the site. The property is contiguous to the primary corporate limits of the City of Asheville and qualifies for annexation by petition as set forth in NCGS 160A-31.

Pursuant to NCGS 160A-31, a public hearing must be held prior to adopting any ordinance for voluntary annexation. If City Council decides to proceed with this request, it is proposed that the annexation become effective on November 30, 2011.

Pros:

- Provides for the orderly growth of the City and the tax base through the acceptance of appropriate areas into the corporate limits where owners desire annexation.
- Complies with the 2025 Plan in that it supports the strategy of promoting voluntary annexation of developing areas.
- Allows for service provisions for a new retirement community that would benefit from an urban level of service.

Cons:

- Marginal costs for patrol.

The property located at 55 Piney Mountain Drive is valued at $12,813,700. This property is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. As such, the City receives a share of the Haw Creek Fire District property tax revenue based on the property's value. If the property were to remain outside the City, the City would receive $11,532 in revenue annually from the Haw Creek Fire District property tax. Once the property is annexed, it will no longer be subject to the 9-cent Haw Creek Fire District tax; instead, the property will be subject to the City of Asheville's 42 cent property tax rate. Therefore, the City will receive $53,817 annually in property tax revenue once the property is annexed. The net tax revenue gain from the annexation is $42,285. As noted above, cost impacts from this voluntary annexation are minimal.

City staff recommends City Council adopt the ordinance annexing the property at 55 Piney Mountain Drive – Bella Vista Retirement Residence.

Mayor Bellamy opened the public hearing at 5:18 p.m.

Mr. Wes Smith, representing the owner, thanked Council for consideration of this voluntary annexation.

Mayor Bellamy closed the public hearing at 5:19 p.m.

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

Councilman Russell moved for the adoption of Ordinance No. 4021. This motion was seconded by Vice-Mayor Newman and carried unanimously.

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**B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 144 CARIBOU ROAD, KNOWN AS SWEETEN CREEK HOLDINGS LLC**

**ORDINANCE NO. 4022 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR PROPERTY LOCATED AT 144 CARIBOU ROAD, KNOWN AS SWEETEN CREEK HOLDINGS LLC**

Mayor Bellamy administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

City Attorney Oast asked if any Council member has any special knowledge associated with this project that they disclose it at this time. Councilman Davis said that he has visited the building in connection with a different matter and Councilwoman Manheimer said that she reviewed a sign variance while serving on the Board of Adjustment not related to this matter. Both noted they would consider this issue with an open mind on all the matters before them without pre-judgment and that they will make their decision based solely on what is before Council at the hearing.

City Attorney Oast said that as documentary evidence is submitted, he would be noting the entry of that evidence into the record.

City Attorney Oast said that the Authorized Practice Committee of the North Carolina State Bar has issued an advisory opinion that appearing in a representative capacity for a party before a local governmental body in a quasi-judicial proceeding is the practice of law, especially with respect to such aspects of the hearing as examining or cross-examining witnesses, or advocating for legal conclusions or results. This does not prevent persons, including land use professionals, from presenting information or expressing opinions within their knowledge or area of expertise.

After hearing no questions about the procedure, Mayor Bellamy opened the public hearing at 5:20 p.m.

Urban Planner Nathan Pennington submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners); and City Exhibit 3 (Staff Report).

Mr. Pennington said that this is the consideration of the issuance of a conditional use permit for property located at 144 Caribou Road, known as Sweeten Creek Holdings, LLC, for future tenant upfit for occupancy of the existing 158,000 square foot building.

He said that the applicant is requesting site plan approval for one parcel zoned CI (Commercial Industrial) for the redevelopment of an existing industrial building in accordance with Section 7-5-9(a) of the UDO which designates review for commercial buildings with a gross floor area of more than 100,000 square feet. Level III projects are reviewed as a conditional use in the Commercial Industrial district.

The subject property consists of one parcel comprising 11.57 acres according to the submitted survey. The approval of a conditional use permit will allow for further upgrades to the existing building in order to accommodate additional future tenants. The existing building was once home to the Lustar dyeing and finishing factory but was abandoned for almost a decade until last year when a local scrap metal recycler moved in and was subsequently followed by a PODS storage facility tenant. The arrival of the recycling tenant triggered a Level II site plan review for the site and the property was required to be brought into compliance with all applicable UDO requirements. The owner has elected to proceed with a Level III site plan review to accommodate additional tenants because of the fact that the gross square footage of the building exceeds 100,000 square feet.

In order to meet the needs of future tenants, the building may need to be reconfigured with additions to or deletions from the building in a way that is not specifically shown on the submitted site plan. One possible configuration is illustrated on the site plan. There is no maximum structure size requirement in the CI zoning district. The final design of the building footprint will be required to be reviewed and approved by the Technical Review Committee.

The combined square footage of the development meets the Level III review threshold (projects exceeding 100,000 square feet) and is subject to the Conditional Use Permit findings outlined in Section 7-16-2(c) of the UDO.

The existing building is partially occupied by the metal recycler and the PODS storage tenants. New phases of interior building upgrades will occur as tenants become available over time.

Future tenants shall be limited to uses such as recycling, warehousing, etc. as noted on page C2 of the site plan – see note #2, and the building area summary in order to remain in compliance with parking standards.

While the site is bounded by both Caribou Road and Sweeten Creek Road, the only access to the site is afforded via Caribou Road.

According to the site plan, 154 spaces are indicated inclusive of required ADA parking and this number is well within the required minimum and maximum thresholds as prescribed by the UDO for industrial types of uses. Additionally, eight bicycle parking slots are also to be provided.

The project was approved for a small area of outdoor storage along Sweeten Creek Road during the Level II site plan review process. Since that time, the parameters of the outdoor storage has shifted around the site and grown in size. The dedicated outdoor storage area must be clearly delineated on the site plan and appropriately screened pursuant to Section 7-11-3 of the UDO. Persistent issues with unpermitted signage on the outdoor storage must also be addressed prior to the issuance of any final permits.

The site was brought into compliance with UDO landscaping requirements in 2010 under the Level II site plan review. On March 15, 2010 the Tree Commission approved an alternative compliance request for a number of landscaping requirements including street tree placement along Sweeten Creek Road and the allowance of existing perimeter landscaping to suffice for some of the required parking lot landscaping.

The open space requirement for this type of development is 15% of the total site size; a total of 1.7 acres for this site. The site plan illustrates that adequate open space has been reserved to meet this requirement.

A fee in lieu of sidewalk construction along Sweeten Creek Road and Caribou Road was previously paid when the project was reviewed under the Level II site plan process. A fee-in-lieu-of construction in the amount of $3,715 (capped at 15% of the project cost) has been received by the City of Asheville. As the subject project moves forward with additional phases, the fee-in-lieu-of decision will not change: however, the developer will be expected to submit additional fee-in-lieu-of payments which will be capped at 15% of the new total project costs.

This proposal was recommended for approval with conditions by the Technical Review Committee on August 15, 2011.

At their regularly scheduled meeting on September 7, 2011, the Planning and Zoning Commission unanimously approved the project subject to the conditions noted in the staff report. No members from the public were present to speak about the project.

City Council must take formal action as set forth in Section 7-5-5(e)(3) of the Unified Development Ordinance (UDO), and must find that all seven standards for approval of conditional uses are met based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case pursuant to Section 7-16-2(c). Staff's review indicates that all seven standards are met as proposed in the site plan.

**1. That the proposed use or development of the land will not materially endanger the public health or safety.**
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.

**2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.**
The subject property is appropriately zoned for the existing industrial uses that are occurring in the existing building. The site is surrounded by existing established vegetation and similar industrial and commercial uses and is bounded along the southern perimeter by Interstate 40 and eastern perimeter by Sweeten Creek Road.

**3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
As noted in Finding #2, the proposed development is compatible with surrounding commercial uses and adjacent transportation corridors.

**4. That the proposed use or development or the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located.**
The site is adjacent to a trucking terminal to the north of similar commercial intensity to the north and a small warehousing building is located to the west. The subject property is separated from

Sweeten Creek Road by steep topography to the east and Interstate 40 to the south. No residential properties surround the subject site.

**5. That the proposed use or development of the land will generally conform to the comprehensive plan, smart growth policies, sustainable economic development strategic plan and other official plans adopted by the City.**
Elements of the proposal are aligned with the City's goals and objectives as noted in the Compliance with Comprehensive Plan and other Adopted Plans section (listed above). Specifically, the redevelopment and expansion of the building is consistent with the goals of infill development along an established commercial corridor.

**6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.**
The site is located off of Caribou Road and is approximately ¼ of a mile from the intersection of Sweeten Creek Road. The nearest bus stop is at the intersection of Caribou Road and Shiloh Road and is approximately ¾ of a mile from the subject site. Adequate water supply, fire and police protection, waste disposal and similar facilities are verified during the TRC review process.

**7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
Based on the existing and anticipated uses of the site, there will not be any undue traffic congestion on the existing street infra-structure. As additional phases are constructed and/or modified, the City Traffic Engineer will review the possible traffic impacts and recommend any appropriate mitigation improvements including a traffic impact study.

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

Pros:

- Provides an opportunity to adaptively reuse and upgrade an existing developed site.
- The project is consistent with a number of stated goals and objectives in the comprehensive and strategic operating plans.

Con:

- New tenants have not yet been identified and may be pulled from a list of approved land uses (this flexibility may also be viewed as a "pro").

Staff recommends approval of the project as submitted by the applicant with the standard conditions and the following additional conditions: (1) The outdoor storage area must be clearly delineated on the site plan and appropriately screened with vegetation or fencing as outlined in Section 7-11-3(d)(6) of the UDO; (2) All required landscaping that was installed and has since perished pursuant to the Level II site plan review process must be replanted; (3) All outstanding violations must be resolved and fines paid related to the unpermitted freestanding sign along Caribou Road before any permits are issued; and (4) Land uses are limited to those identified in the staff report and on the site plan.

After rebuttal, Mayor Bellamy closed the public hearing at 5:24 p.m.

Based on the above findings and the analysis provided in the report, Councilman Russell moved to recommend approval of the project identified as Sweeten Creek Holdings, LLC located at 144 Caribou Road for future tenant upfit for occupancy of the existing 158,000 square foot building, subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All site lighting must comply with the City's Lighting Ordinance

and be equipped with full cut-off fixtures (including wall packs) and directed away from adjoining properties and streets. A detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee if applicable; (3) All existing vegetation that is to be preserved must be clearly indicated and dimensioned on the site, landscape and grading plans; (4) The building design, construction materials and orientation on site must comply with the conceptual site plan and building elevations presented with this application. Any deviation from these plans may result in reconsideration of the project by the reviewing boards; (5) This project will undergo final review by the TRC prior to issuance of any required permits; (6) The outdoor storage area must be clearly delineated on the site plan and appropriately screened with vegetation or fencing as outlined in Section 7-11-3(d)(6) of the UDO; (7) All required landscaping that was installed and has since perished pursuant to the Level II site plan review process must be replanted; (8) All outstanding violations must be resolved and fines paid related to the unpermitted freestanding sign along Caribou Road before any permits are issued; and (9) Land uses are limited to those identified in the staff report and on the site plan. This motion was seconded by Councilman Bothwell and carried unanimously.

**ORDINANCE BOOK NO. 27 - PAGE**

**V. UNFINISHED BUSINESS:**

**VI. NEW BUSINESS:**

**A. ORDINANCE NO. 4023 - ORDINANCE CHANGING THE NAME OF THE PUBLIC ART BOARD TO THE PUBLIC ART AND CULTURAL COMMISSION AND EXPANDING THE ROLES AND RESPONSIBILITIES OF THE COMMISSION**

**RESOLUTION NO. 11-206 - RESOLUTION AMENDING THE PUBLIC ART POLICY TO INCLUDE SPECIAL CONSIDERATION FOR REGIONAL ARTISTS**

Superintendent of Cultural Arts Diane Ruggiero said that this is the consideration of (1) an ordinance expanding the Public Art Board's role and responsibilities and changing its name to the Public Art and Cultural Commission; and (2) a resolution supporting the Public Art Policy and Implementation Guidelines.

Ordinance No. 2609 was passed on September 14, 1999, establishing a public art board and a public art policy for the City of Asheville. The ordinance was codified in Article III of Chapter 2, Division 11 of the Asheville Code. The proposed revisions to the Code and policy reflect the need in the community and within the Parks, Recreation and Cultural Arts Department to have an advisory board with a broader focus on arts and culture in Asheville.

Ordinance

The goal for expanding the Public Art Board's roles and responsibilities as outlined in the ordinance is so that the City of Asheville, the Parks, Recreation and Cultural Arts Department, and the community can have an advisory board for both public art and cultural arts.

Staff and members of the Public Art Board worked together to update the ordinance. The Public Art Board and staff also met with members of the Downtown Master Plan Cultural Arts Implementation Committee to ensure that the updates would be in keeping with the needs outlined in the Downtown Master Plan.

The Code pertaining to the establishment of a public art board will be revised as follows. Sec 2-185.8. Purposes, Responsibilities, and Powers will be revised to read:

(a) Subject to such limitation as may be imposed by laws or regulations, the Board shall serve as an advisory board to the City Council for the following purposes in order to further the public welfare:

1. Facilitate public art in public buildings and public spaces.
    a. Inform the residents of and visitors to Asheville and about public art.
    b. Advance the City of Asheville as an "arts destination" and engage public art as a major attraction for artists, cultural tourism, and economic development.
    c. Advise staff and Council on the site and content of public art.
    d. Be responsible for developing a procedure for the selection of art and/or artists, which will include public input as well as appropriate staff review. The Board shall follow its Public Art Policy and Implementation Guidelines as modified and/or amended every five years.
    e. Recommend to staff and City Council the acceptance of works of art.
2. Engage the creative sector as a major attraction for artists, cultural tourism, and economic development.
3. Encourage public confidence for and appreciation of the arts in Asheville.
4. Work to build partnerships and collaborations throughout Asheville's creative community.
    a. Support relationships and shared resources and make use of existing strengths in public and cultural arts organizations
5. Aid in strengthening the organizational structure of public and cultural arts delivery.

(b) To carry out the purposes state in subsection (a) of this section, the Board shall have the powers as follows:

1. Appoint task forces to make recommendations to the entire Board relative to specialized studies or projects that further the implementation of the purposes of this division.
2. Perform those tasks necessary to implement agreed upon decisions of the Board.
3. Members appointed to task forces and ad hoc committees shall perform their duties in a manner that satisfies all conduct required of an appointed member of the Board including restrictions on conflicts of interest.

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The expanded roles and responsibilities were approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

Name Change

To better reflect their expanded roles and responsibilities, the Public Art Board has made the recommendation that the name of the Board be changed.

The recommended name is: The Public Art and Cultural Commission

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The name change was approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

Policy

At the suggestion of City Council, the Public Art Board and staff updated the Public Art Policy to ensure special consideration for regional artists when commissioning and selecting works of art for the City of Asheville.

Section 2.7 (Artist Selection) of the Public Art Policy will be amended to add the following language:

> Specific artist eligibility will be developed for each project and special consideration will be given for regional artists. All projects will use regional artists and fabricators wherever practicable. Determining factors for geographic eligibility may include project budget, project location, context, and project prominence.
>
> For the acquisition of new public art, the public art board and staff will work with arts councils and other public art groups to ensure that regional artists are encouraged to participate in public art projects with the City of Asheville.
>
> The public art program will consider regional artists to be artists who live or work in the 15 counties of Western North Carolina which includes Buncombe, Yancey, McDowell, Rutherford, Polk, Henderson, Madison, Haywood, Transylvania, Jackson, Swain, Macon, Graham, Clay, and Cherokee.

The Public Art Board had two public forums during their monthly board meetings to discuss the policy changes and the Public Art Board Chair and some Board members had one on one meetings with key community stakeholders. The amendment to the policy was approved by the Public Art Board at their monthly meeting in June, 2011. In addition, the Boards & Commissions Committee recommended approval at their August 9, 2011, meeting.

The updated public art ordinance and policy complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan Goal #12 % (Enhance public confidence for, and appreciation of, the arts), (Enable sustainable funding for permanent and temporary public art), Goal #14 (Enhance facilitation and resources among art interests), Goal #15 (Build public and organizational capacity for the arts), and Goal #16 (Strengthen the organizational structure of public and cultural arts delivery).

Pros:

- Supports the City of Asheville and the community in matters related to both cultural and public art;
- Achieves Parks, Recreation, Cultural Arts, and Greenways Master Plan Goals.

Con:

- None.

Approval of the updated ordinance and policy has no direct fiscal impact to the City.

City staff recommends City Council adopt (1) an ordinance expanding the Public Art Board's role and responsibilities and changing its name to the Public Art and Cultural Commission; and (2) a resolution supporting the Public Art Policy and Implementation Guidelines.

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

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

Councilman Smith moved for the adoption of Ordinance No. 4023. This motion was seconded by Councilman Davis and carried unanimously.

**ORDINANCE BOOK NO. 27 – PAGE**

Councilman Smith moved for the adoption of Resolution No. 11-206. This motion was seconded by Councilman Davis and carried unanimously.

**RESOLUTION BOOK NO. 34 – PAGE 178**

**B. PROCESS RECOMMENDATIONS TO POSSIBLE AMENDMENTS TO THE NOISE ORDINANCE**

City Manager Jackson said that this is the consideration of a citizen request for City Council to amend the noise ordinance.

During the town hall meeting held at UNC Asheville on August 30, 2011, Dan Marsh proposed revisions to the City noise ordinance. Mr. Marsh suggested modifying the ordinance to strengthen the ability to measure volume of sound generated in residential neighborhoods. Additionally, he suggested consideration of the City of Chapel Hill's ordinance as a model ordinance.

In response to the citizen concerns, City Council expressed a willingness to review existing noise regulation and to possibly consider ordinance modifications. The existing noise ordinance was adopted in 2000, after several months of practical and legal analysis, public input and Council deliberation. A policy review of noise issues occurred in the spring of 2009, but was limited in scope to consideration of motorcycle noise. The motorcycle noise issue involved preparation of a staff report, and then Public Safety Committee consideration on September 15, 2009.

Before initiating a noise ordinance review, it would be helpful to receive affirmation from City Council on the goals. The following questions may guide City Council consideration:

1. *Scope:* Is the goal to specifically examine the application of the noise ordinance in residential neighborhoods or conduct a comprehensive policy review of the full application of the noise ordinance? The review limited to residential noise issues would involve data collection to determine the extent and nature of the specific problems, followed by staff analysis of alternative actions. A comprehensive review would be far more competitive, involving a best practice study of municipal ordinances, comparing ways and means of dealing with the wide variety of potential noise issues that arise and drafting of a revised ordinance.
2. *Process:* Should the process be limited to internal policy review by staff and report at the Council committee level, or should it be expanded to provide for stakeholder and community input? If the scope is limited to research of the residential noise issue alone, the process could simply provide for a staff report to be developed and presented to the Public Safety Committee. Alternatively, a comprehensive review would begin with a staff report to the Public Safety Committee on major trends emerging from location application of the noise ordinance and trends evident when benchmarking with ordinances of other cities. In this case, staff might also schedule public input sessions and obtain input from the Noise Ordinance Appeals Board. Finally, another option is to have the City's Neighborhood Coordinator and the APD Community Policing Officer to work with the neighborhood association and Mr. Marsh on a localized solution.

Comprehensive review process may require several months, and depending on the scope of the process, significant work plan adjustments may be necessary.

Provide direction for next steps and process of noise ordinance review.

Mayor Bellamy felt it would be helpful to have more information on the dollar costs associated with each of the options and the staff's availability for a comprehensive overview.

After Vice-Mayor Newman received responses from City Manager Jackson regarding the current process for noise complaints and the use of the Noise Ordinance Appeals Board, he was open to more options; however, was not aware of any better solution than what we currently have in place. He did support staff following up with Mr. Marsh to see how we can mitigate his concern.

Councilman Davis also felt that as imperfect as the noise ordinance may be, it is working pretty well. He was not certain it would be worth the time and expense to add a decibel level in the ordinance.

Councilwoman Manheimer was interested in at least reviewing ordinances from other cities as they do have restricted noise periods. She also thought it would be worthwhile to hear about any police concerns, along with their suggestions to give them better tools in dealing with the situations as they arise. She also noted it may be a bigger problem in some neighborhoods than others.

Councilman Smith agreed with Vice-Mayor Newman. He felt it's important that neighbors talk to neighbors first to resolve any conflicts and to get to know each other.

Vice-Mayor Newman concurred with Councilwoman Manheimer in that we keep a degree of subjectivity in the ordinance, but give more definition to what is the reasonableness standard in residential neighborhoods.

City Manager Jackson said that he would provide Council with more information, including a matrix of the calls received, how many go to the Noise Ordinance Appeals Board, observations from the Police Department to improve the ordinance, etc. At Mayor Bellamy's suggestion, City Manager Jackson said that he would take that information to the November Public Safety Committee for review prior to coming back to the full Council.

At Mayor Bellamy's request and Council concurrence, City Manager Jackson said that he would have the City's Neighborhood Coordinator and the APD Community Policing Officer work with the neighborhood association and Mr. Marsh on a localized solution.

**C. RESOLUTION NO. 11-207 - RESOLUTION AUTHORIZING THE APPROVAL OF THE 2011-12 OUTSIDE AGENCY AGREEMENT WITH THE ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL FOR OUTSIDE FUNDING**

Community Development Director Jeff Staudinger said that the Housing and Community Development Committee has completed its Outside Agency review of the request by the Asheville Buncombe Community Relations Council (ABCRC).

ABCRC has requested Outside Agency funding from the City of Asheville. ABCRC representatives have met several times with the Housing and Community Development Committee this summer to discuss the proposed scope of work and organizational structure. ABCRC will not perform federal fair housing investigations this year. It has been working to structure its scope of work in light of this change. The organization has sought and received technical assistance from fair housing and community relations commissions across the state that also do not perform federal fair housing investigations.

ABCRC is proposing a scope of work that focuses on the following areas:

- Serving as a local fair housing service and referral agency. It would refer fair housing cases to the State for investigation, and help resolve complaints that were not related to fair housing discrimination.
- Serving as an information sharing and education resource for fair housing;

- Receiving and resolving complaints relate to other alleged discrimination, including those involving employment discrimination;
- Serving as a resource for persons and groups who experience discrimination in other matters;
- Serving as a resource to the general community in matters of community relations, especially regarding the promotion of diversity in Asheville;
- Exploring how its internal structure, including the Board of Directors and staff, can support its mission.

The organization has a commitment of support of $25,000 from the Asheville Housing Authority. Support has also sought from Buncombe County, and ABCRC is in discussion with the County to confirm funding. ABCRC has also indicated it will expand its fundraising.

The status of ABCRC's tax liability is unchanged. The organization is still awaiting disposition of its case by the IRS; has no current unpaid liabilities; and has reserved funds to pay a portion of prior liabilities.

Pros:

- ABCRC is the only local organization dedicated to addressing discrimination and assisting persons who feel they have been discriminated against;
- The majority of fair housing complaints in the community are not directly related to discrimination, and ABCRC can continue to play an important role in helping resolve those complaints;
- The Asheville Housing Authority has committed to providing financial support;
- The organization is currently not staffed and cannot address these issues without staff.

Cons:

- The organization has not yet put forward a plan for Board reorganization;
- Support from Buncombe County has not been received;
- The tax liability has not yet been resolved;

Outside Agency funding sufficient to meet this request is available in the City's 2011-12 budget.

Staff recommends approval of the resolution authorizing the approval of $45,000 in Outside Agency funding for the Asheville Buncombe Community Relations Council. Staff further recommends that $5,000 of this funding be conditional on ABCRC raising $5,000 in private funds through its fundraising efforts.

After Mr. Alan Ditmore noted that outside agency funding is very competitive, Mr. Staudinger explained the process and criteria used for funding requests.

In response to Rev. Lisa Landis confusion regarding the purpose of the ABCRC, Mr. Staudinger explained that they have been open to working on a wide variety of community relations and will decide during their strategic planning process where they can be useful.

In response to Councilwoman Manheimer, Mr. Staudinger said that federal fair housing investigations can only be conducted by an organization certified as a fair housing assistance program by the U.S. Dept. of Housing & Urban Development. This organization was, but is no longer, certified. Fair housing investigations regarding discrimination are now investigated by the N.C. Human Relations Commission in Asheville and Buncombe County.

In response to Councilwoman Manheimer, Mr. Staudinger said that in the past few years, the ABCRC has handled approximately 200 complaints, of which 40 were discrimination. He said

that they cover all residential rental housing in Buncombe County, noting federal funds do not have to be involved.

Councilwoman Manheimer expressed concern about funding an agency that has major outstanding issues, noting their tax liability status and they lack of board reorganization.

Vice-Mayor Newman said that the Housing & Community Development Committee spent a lot of time on a variety of questions. They talked about the value of the ABCRC and whether they could overcome those concerns. After looking at what has worked well around the state, they feel that the organization has played a positive role in advancing the mission of preventing housing and job discrimination in the community, as well as doing positive work in community relations, e.g., mediating disputes, etc. They feel there is a lot of benefit with a local community organization. Regarding the tax liability issue, the organization has gone a long way in addressing the issue. They are also still waiting on some information from the state about the final numbers on that. In terms of the board reorganization, they are eager to begin their planning process after a new director is hired.

When Councilwoman Manheimer asked if there was any remote possibility that our funding could be used to pay off the tax liability, Councilman Smith replied that our funding will be for the operations of the ABCRC and not towards the tax liability. Mr. Staudinger explained that our funding will be provided on a reimbursable basis on the current operations. They have to incur the expenses and then ask for reimbursement. We will require documentation of all those expenses.

Councilman Davis said that people will be reluctant to call the state agency when they have comfort with a local group to talk about their concerns. The local group has become an agency that the state has relied on in other cities.

Dr. Larry McCallum, ABCRC Board Chairman, said that the Board has been working on these issues since October of 2010. We will look at securing a grant where we can have a consultant look at our organization to see how the restructured organization can be the best asset to the community. The ABCRC has been a local entity to address discrimination and other community-related issues that may or may not be discrimination issues.

Vice-Mayor Newman said that in the long run, the ABCRC needs the funding from the three traditional partners (City, County & Housing Authority) to be successful. We are optimist that all three partners will remain supportive. He would be happy to make the approval conditioned upon Buncombe County's participation, which he thinks they are close to deciding their role.

Mayor Bellamy was opposed to the condition in that this is a relationship between the City and the ABCRC, based upon reimbursable expenses. She felt we shouldn't make our decision based upon the Buncombe County Commissioners funding.

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

Vice-Mayor Newman moved for the adoption of Resolution No. 11-207. This motion was seconded by Councilman Davis and carried on a 5-2 vote, with Councilwoman Manheimer and Councilman Russell voting "no".

**RESOLUTION BOOK NO. 34 – PAGE 179**

**D. MOTION APPROVING AN UPDATE TO THE CITY OF ASHEVILLE'S FINANCIAL POLICY**

Director of Finance & Management Services Lauren Bradley said that this is consideration of a motion to approve an update to the City of Asheville's Financial Policy.

The National Advisory Council on State and Local Budgeting (NACSLB) and the Government Finance Officers Association (GFOA) recommend that local governments adopt and annually review a financial policy to help frame resource allocation decisions as a part of a comprehensive set of recommended budget practices. Staff should annually review the policy to ensure its continued relevance and to identify any gaps that need to be addressed.

As part of this annual review process, staff is recommending that City Council consider approving an updated policy. The two most significant updates to the policy include an expansion of the section on "Reserves" and the addition of a section on "Interfund Transfers." Each of these areas is described further below.

**(1) Reserves**

Reserves, or fund balances, provide working capital to ensure adequate cash flow to pay vendors and others in a timely manner, to meet emergency or unforeseen needs, and to be able to take advantage of unexpected opportunities that require the expenditure of money. In the proposed Financial Policy, the section on Reserves (Paragraph B, Section 2) has been expanded to include fund balance targets for all operating funds. Previously, the policy on reserves only referenced the General Fund.

The proposed targets for reserves in most funds are based on the Local Government Commission's recommendation that cities and counties maintain a general fund balance of at least 8 percent of expenditures for the year. Staff is recommending that the City seek to maintain this standard in the Golf Fund, Parking Fund, and Stormwater Fund. In addition, staff is recommending this standard for the Transit Fund, although a portion of those reserves may be reflected in the General Fund's existing reserve target since transit operations rely heavily on financial support from General Fund. At the end of FY 2011, it is anticipated that the Parking Fund and the Stomrwater Fund will meet or exceed the proposed fund balance standard. The City is pursuing alternatives that will assist the Golf Fund in meeting the standard in future years.

The proposed target for Civic Center reserves is recommended at a higher rate, 16%, due to greater fluctuations in cash flow requirements as a result of events – settlements often occur on the day of the event with final ticket sale receipts credited after the event. At the end of FY 2011, it is anticipated that the Civic Center Fund will exceed this target.

By the nature of water operations, water utilities are highly capital intensive, meaning they require large expenditures of capital in order to provide the service. In addition, credit rating standards regarding the maintenance of working capital are extremely high for water utilities with superior credit such as the City's water utility. As a result, staff recommends that the Water Fund maintain a minimum of 365 days of working capital, which is a comparable standard for utilities in cities with populations of 50,000 or more. At the end of FY 2011, it is anticipated that the Water Fund will exceed this target.

**(2) Interfund Transfers**

A section on interfund transfers has been added to the policy to clarify how those transfers will be handled during the annual audit process. The section states that if financial performance in an enterprise operating fund that receives a General Fund transfer is better than budgeted, and the enterprise fund meets the reserve standards set in the policy, then any remaining portion of the interfund transfer shall be returned to the General Fund as part of the audit. Staff will provide City Council with a status report on interfund transfers during the audit process.

The City Council Finance Committee reviewed this item at its meeting on September 13, 2011, and recommended that it move forward for consideration by the full Council.

This action supports the City of Asheville's strategic goal to operate the City to the highest levels of fiscal responsibility.

Pros:

- Updates the City's financial policy to ensure it is accurate and current.
- Provides greater guidance on targets for reserves and interfund transfers.

Con:

- None noted.

Staff recommends that City Council approve the proposed changes to the City of Asheville's Financial Policy.

Mayor Bellamy did not support the portion in the Reserves section that reads "the City will maintain an undesignated fund balance equal to 15% of the General Fund operating budget, with any amount in excess of 15% being credited to a capital reserve account." She gave examples of why she would not want to automatically designate any excess into the capital reserve account. If it the money stays in Fund Balance we can do operations or capital without any problems. Ms. Bradley said the purpose of that statement is that for any amount that the general fund would have over 15%, the overage would automatically go into the capital reserve account and then in the budget process Council would make the allocation decision for that money. The justification being the capital expenses are one-time expenses that Council would generally use excess Fund Balance for.

Councilman Russell agreed with Ms. Bradley in that any amount over 15% should credited to a capital reserve account. It doesn't mean that the overage has to be spent on bricks and mortar – it can be used for other non-recurring expenses.

Mayor Bellamy asked that consideration be given to lower stormwater rates when we have exceeded the target Fund Balance and are meeting the capital needs.

At the suggestion of Mayor Bellamy, Ms. Bradley said that we can add a standard in for our water utility bond rating of AA+.

At the suggestion of Mayor Bellamy, Ms. Bradley said that we can find a section in our policy that the City will meet the Local Government Commission's published deadlines for the CAFR and the annual audits.

When Mayor Bellamy asked if we can include in the policy that we will automatically ask for reimbursement of expenses as it relates to bond packages, Ms. Bradley said that we cannot in that state law requires the City to pass a reimbursement resolution for specific issuances, which are project specific and time limited.

When Mayor Bellamy asked what the determination was for the general obligation debt of the City not exceeding 8% of the assessed valuation of the taxable property of the City, Ms. Bradley said that is published by the Local Government Commission and is a widely accepted standard.

In response to Mayor Bellamy, Ms. Bradley said that we are changing the way the water fund liability is reflected on our statements – it will become a balance sheet issue.

Mayor Bellamy could not support the portion in the Reserves section that reads "the City will maintain an undesignated fund balance equal to 15% of the General Fund operating budget, with any amount in excess of 15% being credited to a capital reserve account."

Councilman Russell moved to adopt the update to the City of Asheville's Financial Policy with two amendments regarding (1) a standard in for our water utility bond rating of AA+; and (2) a section in our policy that the City will meet the Local Government Commission's published deadlines for the CAFR and the annual audits. This motion was seconded by Councilman Bothwell.

Mr. Alan Ditmore commented on interfund transfers.

Mayor Bellamy felt the overall policy was great; however, could not support the excess of 15% being credited to a capital reserve account. She asked Council if they would be willing to divide the motion so she can support the entire financial policy (except for B (1)) and then vote separately on B (1).

In response to Councilman Russell, Ms. Bradley said that by putting the excess into a capital reserve account, the intent is to use the one-time money toward one-time expenses, which tends to be capital expenses. Having said that, through the budget process, when Council allocates that money, they can choose to do something different with it. The philosophy of taking it out of operating and putting it in capital is to reinforce Council's goal not to use it for non-recurring expenses.

When Mayor Bellamy asked for a motion to divide the motion, one was not made.

The motion made by Councilman Russell and seconded by Councilman Bothwell carried on a 6-1 vote, with Mayor Bellamy voting "no".

**E. CONSIDERATION OF "BLUE RIDGE PRIDE DAY" PROCLAMATION**

This item has been removed from the agenda.

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

Ms. Ashley Arrington, representing Blue Ridge Pride, thanked Mayor Bellamy for signing their proclamation designating October 1, 2011, as "Blue Ridge Pride Day."

Rev. Lisa Landis commented on the forced closure of URTV by the corruption in local government. Mayor Bellamy provided Rev. Landis with a copy of the information that URTV provided the City, noting that the City did not walk away from their obligations.

Rev. Christopher Chiaronmonte spoke about the homeless issues in Asheville.

Mr. Alan Ditmore spoke about the need for family tourism dollars.

Ms. Charlotte Anderson was pleased to see the Blue Ridge Pride proclamation was signed by the Mayor.

Mr. Robert Todd, Chair of the Public Art & Cultural Commission, thanked the Council for their support on their expanded roles.

Councilman Bothwell regretted that Councilman Davis interpreted what was said about the ABC Board as being a suggestion of corruption on his part. He did not mean to imply or say that. He regretted the appearance that was conveyed to some people. He did not accuse him and did not think he is corrupt. Councilman Davis said that regrettably when one casts

dispersions on his livelihood, he has no choice to respond to it. He didn't think Councilman Bothwell provided him with an apology, but if that is what it was, he will accept it and they will continue to work together.

Councilman Smith appreciated how the Blue Ridge Pride proclamation came through and how everyone worked to overcome any misunderstandings.

**Closed Session**

At 7:08 p.m., Councilman Smith moved that the Asheville City Council go into closed session for the following reasons (1) To consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including potential litigation. The statutory authorization is contained in G.S. 143-318.11(a)(3); (2) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations, provided that any action authorizing the payment of economic development incentives will occur in open session. The statutory authority is contained in G.S. 143-318.11(a)(4); (3) To consider the qualifications, competence, performance, character, fitness, conditions of appointment of an individual public officer or employee. The statutory authorization is contained in G.S. 143-318.11(a)(3); and to prevent the disclosure of information that is confidential pursuant to G.S. 160A-168, the Personnel Privacy Act. The statutory authorization is contained in G.S. 143-318.11(a)(2); and (4)To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11(a)(1). This motion was seconded by Councilman Davis and carried unanimously.

At 7:45 p.m. Councilman Russell moved to come out of closed session. This motion was seconded by Councilman Smith and carried unanimously.

**VIII. ADJOURNMENT:**

Mayor Bellamy adjourned the meeting at 7:45 p.m.

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CITY CLERK MAYOR