Tuesday – November 13, 2012 – 3:30 p.m.
Room 623 – City Hall

Joint Worksession with City Council and the Asheville Area Riverfront Redevelopment Commission

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Present: Chairman Ricky Silver, Councilman Jan Davis, Pattiy Torno, Joseph Ferikes, Cindy Weeks, Pam Turner, Daniel Hitchcock, Karl Koon, George Morosani, and Terry Meek

Mayor Bellamy and Chairman Silver both called the meeting to order of their respective bodies.

Mayor Bellamy remarked on the public-private partnerships specifically mentioning how the Depot Street is a prime example in the Riverfront Area.

Director of Finance & Management Services Lauren Bradley used a PowerPoint to describe Asheville's sustainable economic & community development initiative, outlining (1) the challenge of lagging growth, inadequate resources and inadequate investment; (2) opportunities for farsighted investments in land use and real estate assets, multi-modal and utility infrastructure, and downtown vitality and neighborhood revitalization; (3) goal of financial sustainability, community prosperity and environmental stewardship; (4) the approach of aligning partners around three goals (a) vibrant mixed-use neighborhoods; (b) downtown vitality; and (c) robust job growth; and (5) strategy for neighborhood vibrancy – river redevelopment - RADTIP. Revenues from possible sources include City/County sales tax, sale and lease proceeds; retired economic development incentives; General Fund and Enterprise Fund contributions; Synthetic Tax Increment Financing partnerships, and grants and entitlements, e.g., N.C. Dept. of Transportation, Housing & Urban Development, Environmental Protection Agency, Community Development Block Grant Funds, Housing Trust Fund, etc.

Transportation Planner Dan Baechtold provided those present with the River Arts District Transportation Improvement Project (RADTIP) update. He said an overview is that it is (1) a 2.2 mile section of the Wilma Dykeman Riverway; (2) improvements to two City of Asheville streets – Lyman Street and a portion of Riverside Drive; (3) road improvements, bike lanes, sidewalks, street trees, curb and gutter, on-street parking, and greenways; and (4) preliminary cost estimate of $25 Million. The current status is that (1) they are wrapping up a two-year process; (2) extensive public involvement and stakeholder input; (3) draft environmental document is complete; (4) preferred alternative has been selected; (5) preliminary designs are complete; and (6) final public workshop of this phase is scheduled for December 6. We are now at the end of a phase with the next phase to begin with acquiring the right-of-way for the project and develop partnerships.

Discussion was held between City Council and the Riverfront Redevelopment Commission. Chairman Silver asked for City Council to adopt a resolution in support of the RADTIP. Mayor Bellamy felt it is important to move forward and meet with local, state and federal agencies outlining RADTIP, its benefits and solicitation of funds to help support this vital project. Commission members felt there should be some certainty that RADTIP will occur so they can go out and solicit funds from various sources, including possibly a synthetic Tax Increment Financing District. Mr. Baechtold said that the federal environment document is good for three years; however, as long as they show forward progress it can be extended.

Next steps include (1) City Council adoption of a resolution in support of the RADTIP; (2) staff contact the Buncombe County Board of Commissioners to ask for their support of the RADTIP; (3) staff prepare a financial plan; (4) identification of funding sources; and (5) City staff to appear at the Riverfront Redevelopment Commission meeting to discuss improvements to operations at the Development Services Center.

At 4:45 p.m., Mayor Bellamy and Chairman Silver adjourned their respective bodies.

Tuesday – November 13, 2012 - 5:00 p.m.

Regular Meeting

Present: Mayor Terry M. Bellamy, Presiding; Vice-Mayor Esther E. Manheimer; Councilman Cecil Bothwell; Councilman Jan B. Davis; Councilman Marc W. Hunt; Councilman Christopher A. Pelly; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: Councilman Gordon D. Smith

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Councilman Bothwell gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF WARREN WILSON PRESIDENT DR. STEVEN L. SOLNICK

Mayor Bellamy was pleased to recognize and welcome Warren Wilson President Dr. Steven L. Solnick to the City of Asheville.

B. PROCLAMATION PROCLAIMING NOVEMBER 2012 AS "ADOPTION AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming November, 2012, as "Adoption Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Tara Foster, Social Work Supervisor in Children's Services, who briefed City Council on some activities taking place during the month

II. CONSENT AGENDA:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 23, 2012; AND THE COMMUNITY MEETING HELD ON OCTOBER 30, 2012

B. RESOLUTION NO. 12-236 - RESOLUTION SETTING A PUBLIC HEARING ON NOVEMBER 27, 2012, TO CONSIDER THE VOLUNTARY ANNEXATION OF PROPERTY LOCATED IN THE FALCON RIDGE AT HAW CREEK SUBDIVISION

Summary: The consideration of a resolution fixing the date of a public hearing on November 27, 2012, for the voluntary annexation of property located in the Falcon Ridge at Haw Creek Subdivision.

The following property owners (with property identification number shown) have petitioned the City of Asheville for the annexation of twenty-one lots or portions of lots located in the Falcon Ridge at Haw Creek Subdivision.

PIN Number	Address	Property Owner
Portion of 9659.62-2222	Common Area – No Address	Falcon Ridge at Haw Creek, LLC
9659.53-8826	91 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-0863	85 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-1689	79 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-3527	71 Boulder Creek Way	Ridge View Homes, LLC
9659.63-4456	63 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-5380	57 Boulder Creek Way	George Ryan Trust & Martha E. Ryan Trust
Portion of 9659.63-6014	51 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
Portion of 9659.62-3969	44 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
Portion of 9659.63-1047	125 Boulder Creek Way	Rebecca G. Mulzer
Portion of 9659.53-9062	123 Boulder Creek Way	Angela M. Erwin
Portion of 9659.53-8036	119 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.53-9275	120 Boulder Creek Way	George Ryan & Jean M. Ryan
9659.53-9366	Infrastructure – No Address	Falcon Ridge at Haw Creek, LLC
9659.53-9607	92 Boulder Creek Way	John Allen & Patricia J. Allen
9659.63-0548	82 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.53-9543	135 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-0486	133 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-1388	131 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-1292	127 Boulder Creek Way	Falcon Ridge at Haw Creek, LLC
9659.63-3168	56 Boulder Creek Way	Emily S. Joyce Revocable Trust & Emily S. Joyce Trust

The property to be annexed contains a total of 22.93 acres. The property is contiguous to the primary corporate limits of the City of Asheville. The area is subject to the standards for annexation of contiguous areas contained in NCGS 160A-31.

Pursuant to NCGS 160A-31, such petitions must be investigated by the City Clerk for sufficiency in accordance with state law. This investigation has been completed and the Certificate of Sufficiency accompanies this petition request.

The next step in this process is for the Asheville City Council to fix the date for the public hearing on this matter. Should the City Council decide to proceed with this request, the effective date for the annexation would be November 27, 2012.

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 subdivision of which a part is already in the City enhancing the area with an urban level of service.

Con:

- Marginal costs for patrol.

At the City's current tax rate, the property, valued at $1,527,700.00, would generate approximately $ 6,416 annually. There are no financial impact or debt service payments required to a rural fire department as the area is currently serviced by the City of Asheville Fire Department under the Haw Creek Fire District agreement. The Fire Department has been receiving the .09/100 tax for servicing this area. This will no longer be paid by the property owners, thus the City will see a reduction in this revenue of $1,375. Therefore, the net financial gain for the City is $5,041.

City staff recommends that City Council adopt the resolution setting the date of November 27, 2012, for a public hearing on the annexation petition.

RESOLUTION BOOK NO. 35 – PAGE 120

C. SECOND READING OF ORDINANCE NO. 4131 - ORDINANCE GRANTING A FRANCHISE AGREEMENT FOR THE OPERATION OF A PEDAL BICYCLE TAXI SERVICE WITHIN THE CITY OF ASHEVILLE

ORDINANCE BOOK NO. 28 – PAGE 13

D. RESOLUTION NO. 12-237 - RESOLUTION AUTHORIZING THE CITY MANAGER SIGN A MUNICIPAL AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION APPROVING A PROJECT FOR MAKING IMPROVEMENTS ON I-40 FROM MILEMARKER 50 TO MILEMARKER 55

Summary: The consideration of a resolution authorizing the City Manager to sign a municipal agreement with the N.C. Dept. of Transportation (NCDOT) approving a project for making improvements on I-40 from milemarker 50 to milemarker 55 in Asheville.

The NCDOT plans to make improvements on I-40 from milemarker 50 to milemarker 55 in Asheville. The project, which is identified as I-5607, has a letting date of September 17, 2013. As a part of the agreement, the City agrees to effect the necessary adjustment of any utilities under franchise without cost to the NCDOT and to provide for the adjustment of any municipally-owned utilities without cost to the NCDOT, except that the NCDOT will reimburse the City in accordance with the NCDOT's Municipally-Owned Utility Policy. These requirements are standard requirements in all of NCDOT's Municipal Agreements and may or may not be applicable for a specific project. Since the City of Asheville does not have any utilities under franchise or any municipally-owned facilities within the specified section of I-40, this specific requirement is not applicable.

The NCDOT has confirmed that the subject municipal agreement does not require a financial commitment.

This action complies with the City Council 2012-13 Strategic Operating Plan by partnering with the North Carolina Department of Transportation (NCDOT) to make improvements to the existing street infra-structure.

Pros:

- A section of interstate highway will be improved.
- The NCDOT is funding and constructing the project.

Con:

- There are no identifiable cons.

There is no cost to the City.

Staff recommends that City Council approve a resolution authorizing the City Manager to sign a municipal agreement with the NCDOT formally approving Project I-5607.

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E. RESOLUTION NO. 12-238 - RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN A CHANGE ORDER WITH HERSEY METERS CO. LLC (d/b/a MULLER SYSTEMS) FOR THE AUTOMATED METER READING PROJECT

ORDINANCE NO. 4133 - BUDGET AMENDMENT FOR THE AUTOMATED METER READING PROJECT

Summary: The consideration of a resolution authorizing the City Manager to execute a change order with Hersey Meters Company, LLC (DBA Mueller Systems) in the amount of $600,000.00 to increase the general services contract for the Water Resources Automated Meter Reading (AMR) Project from $4,234,859.86 to $4,834,859.86; and a budget amendment in the amount of $600,000.00 from savings in other capital projects that were completed under budget.

On February 9, 2010, City Council authorized the City Manager to execute a general services contract with Hersey Meters to install approximately 52,000 AMR devices throughout the entire water system for a total project cost of $4,234,859.86.

Since beginning the project in 2010, two things have occurred to primarily account for this change order: (1) the water system has expanded to include approximately 53,000 water meters, which has increased the amount of meters to be replaced, the amount of AMR devices to be installed, and labor costs for installation; and (2) in August 2012, the Purchasing Department rebid the purchase of water meters, which increased the cost of every size meter by an average of 13%.

With this change order, Hersey Meters remains the lowest responsible bidder. The project is still expected to be completed by June 2013.

This project is part of City Council's strategic plans to improve city infrastructure.

Pro:

- Approval will allow the City to complete the AMR project.

Con:

- An additional $600,000.00 is needed to complete the project.

The $600,000.00 needed for this change order will be transferred from the General Projects capital project that accumulates remaining funds from Water Resources' completed, inactive capital projects. In order to use these funds, a budget amendment is necessary.

Current Amount of Hersey Meters Contract	$ 4,234,859.86
Amount Needed for Change Order	$ 600,000.00
Total Amount for Hersey Meters Contract	$ 4,834,859.86

The amount remaining in General Projects 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 approval of the resolution authorizing the City Manager to execute a change order with Hersey Meters Company, LLC (DBA Mueller Systems); and a budget amendment in the amount of $600,000.00 from savings in other capital projects that were completed under budget.

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F. ORDINANCE NO. 4134 - ORDINANCE AMENDING ORDINANCE NO. 4057 (REGULATING CAMPING ON CITY PROPERTY) TO CLARIFY "EMERGENCY"

Summary: The consideration of an amendment clarifying ordinance regulating camping on City property.

On February 14, 2012, City Council adopted Ordinance No. 4057, which prohibits camping on City property without a permit. Sec. 12-51(b) of that ordinance provides that it "shall not be enforced when facilities are unavailable to provide emergency shelter to the public."

In some emergency situations, such as floods or fires, or major snow events involving power outages, it becomes necessary for governmental facilities, such as recreation centers, to be open to provide temporary housing to persons who are displaced by the event. The intent of this exception was to ensure that such uses would not conflict with the ordinance. However, the situations to which this exception applies are not further defined or described, and clarification has been requested.

With this in mind, the proposed amendment clarifies that the exception applies in situations where an emergency has been declared by an appropriate agency or official, and only to such facilities as that agency or official designates.

The proposed amendment supports the strategic operating plan goal of promoting public safety.

Pro:

- Clarifies application of recently adopted ordinance.

Con:

- None noted.

Adoption of the ordinance is recommended.

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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.

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

III. PRESENTATIONS & REPORTS:

A. PRESENTATION OF THE EXTERNAL AUDIT OF THE FISCAL YEAR 2012 COMPREHENSIVE ANNUAL FINANCIAL REPORT

ORDINANCE NO. 4135 - BUDGET AMENDMENT FOR ONE-TIME EMPLOYEE BONUS IN GENERAL FUND

Mr. Brian Broom, Director of Dixon Hughes, PLLC, summarily reviewed with Council the annual audit. He said that the following is the audit and financial statement summary: "Our report for the 2012 audit expresses an unqualified opinion on the fair presentation of the basic financial statements in all material respects, in conformity with accounting principles generally accepted in the United States of America. Our report can be found on Page 1 of the Comprehensive Annual Financial Report (CAFR). Our reports on compliance and internal control, in accordance with Government Auditing Standards, OMB Circular A-133, and the State Single Audit Implementation Act, disclosed no material weaknesses in internal controls and no instances of non-compliance in the administration of federal and state awards programs. Our compliance reports and a summary of the results can be found in the Compliance Section of the CAFR. Also, we noted some areas for improvement in the City's accounting function that they have communicated to management in a separate letter dated October 31, 2012." The audit was completed and submitted by the October 31 deadline.

Mayor Bellamy noted that the City ended their year with the fund balance back to 15.9%.

Ms. Judy Strong felt that the $650,000 should not be used for employee bonuses and should be used for appropriate expenditures in the next budget cycle.

Council members explained that City employees have gone without a raise for 3 years; that the one-time allocation is not added to the employees base pay; that this strategy was talked about months ago when the budget was adopted; that the allocation is made for all City employees; and that the City is taking a broader look at employee pay and the pay scale in order to make an educated decision about pay going forward.

The following is a staff report from Director of Finance & Management Services Lauren Bradley to Council: "The consideration of a motion to accept the FY 2012 Comprehensive Annual Financial Report (CAFR) and consideration of a budget amendment for a $650 one-time employee bonus requiring a total appropriation from General Fund unassigned fund balance in the amount of $650,000.

Brian Broom, CPA, director with Dixon Hughes Goodman LLP, will be present at City Council's November 13, 2012 meeting to deliver the City's Comprehensive Annual Financial Report (CAFR). Mr. Broom and I will provide City Council with a review of the audit and will be available to answer any questions from Council. Following the presentation, staff is requesting that City Council accept the FY 2012 CAFR and consider a General Fund budget amendment for a one-time employee bonus.

Staff will defer to Mr. Broom regarding his firm's findings. In addition, this staff report is intended to provide key highlights regarding the audit from staff's perspective. The City's financial statements, internal control, stewardship, accountability and program compliance with federal and state awards receive high marks.

The independent audit firm is required to conduct an analysis of the City's compliance with various federal and state laws, regulations, contracts and grant agreements. Dixon Hughes reviewed the City's accounting and administrative controls over a wide range of financial transactions such as cash, investments, revenues, receivables, expenditures, payroll, property, debt and grant programs.

Dixon Hughes found no deficiencies in internal control over financial reporting that they would consider material weaknesses and no instances of material noncompliance in connection with applicable statutes and regulations regarding expenditures of major federal and state financial assistance programs. This is the first time since 2009 that the City has received a "no deficiencies" report. This favorable report is due to the significant efforts of City staff and finance department employees in developing and maintaining strong internal financial controls.

The independent external auditor gives the City a "clean" opinion on financial statements.

Dixon Hughes has provided the City with an unqualified, or "clean," opinion that the financial statements are fairly presented in conformity with generally accepted accounting principles. This opinion is the highest form of opinion that the external auditors can express on the presentation of the City's financial statements.

Audit submitted to Local Government Commission on schedule.

As of October 30, 2012, the City had fully completed the audit process and was ready to submit its Comprehensive Annual Financial Report (CAFR) to the Local Government Commission (LGC) in compliance with its published October 31 deadline for submission, as well as City Council's direction to meet the deadline. As illustrated by the table below, completion and delivery of the CAFR by October 31 with presentation to be made at the November 13 City Council meeting is a significant improvement in timeline since 2006. Thanks go to the Finance Committee for its leadership throughout the audit process and to staff and Dixon Hughes for working diligently during the last several months to meet the schedule.

Fiscal Year	Opinion Letter	Council Presentation
FY2012	10/30/2012	11/13/2012
FY2011	10/28/2011	11/22/2011
FY2010	12/28/2010	1/25/2011
FY2009	11/12/2009	1/12/2010
FY2008 (2)	12/30/2008	2/10/2009
FY2007 (1)	10/31/2007	1/8/2008
FY2006	10/27/2006	12/12/2006

(1) SAS No. 103
(2) SAS No. 104 - No. 111
SAS - Statement on Auditing Standards issued by the AICPA
Relates to risk assessment standards; effect of delaying the opinion letter date

General Fund revenues exceed expenditures.

Due to a continued soft economy and uncertainty surrounding revenue projections, City staff implemented various savings strategies throughout FY 2012 to ensure the best possible General Fund operating results at year end. While revenues came in slightly above budget, expenditures came in under budget by $3,454,000.

During the year, $1,635,000 was appropriated from different categories of General Fund balance for FY 2011 encumbrances, demolition of an unsafe private property, and a Housing Trust Fund loan. For the year, including transfers out of $4,654,000, revenues exceeded expenditures by $2,152,000, resulting in a positive net increase in fund balance. Items that contributed to the net increase in fund balance include an improvement in sales tax collections ($818,000 positive variance which contributed to a net favorable impact of $363,000 in overall revenue performance), Housing Trust Fund appropriations that were made but not loaned during the fiscal year ($718,000 positive variance) and savings in contracted services ($771,000 positive variance).

The table below shows General Fund revenues, expenditures and changes in fund balance for FY 2012.

General Fund Revenues, Expenditures and Changes in Fund Balance (,000)

	Original Budget	Final Budget	Actual Amounts	Variance with Final Budget- Postive (Negative)
Revenues	$ 87,696	$ 86,865	$ 87,228	$ 363
Expenditures	82,408	84,809	81,355	3,454
Revenues over (under) expenditures	$ 5,288	$ 2,056	$ 5,873	$ 3,817
Net other financing sources (uses)	(5,288)	(3,691)	(3,721)	(30)
Appropriated fund balance	-	1,635	-	(1,635)
Net change in fund balance	$ -	$ -	$ 2,152	$ 2,152
Summary of items contributing to net fund balance increase:				
Other Taxes		$ 15,669	$ 16,487	818
Housing Trust		798	80	718
Contracted Services		4,439	3,668	771

General Fund unassigned fund balance has improved and exceeds the 15% policy threshold.

Unassigned fund balance improved by $906,000 year over year, up from $12,720,000 in FY 2011 to $13,626,000 at the end of FY 2012. For FY 2012, this amount represents 15.9% of expenditures and transfers to other funds. The improvement in unassigned fund balance can be attributed to several factors. One of those factors was an improvement in sales tax collections with a net positive impact of $363,000 in overall revenues. A variety of operating expenditures also came in under budget, including contracted services, utilities, and compensation.

Housing Trust Fund appropriations that were made but not loaned during the fiscal year ($718,000 positive variance) had a positive impact on the “assigned” portion of General Fund fund balance.

City Council has established a threshold of 15% of expenditures and routine transfers as the minimum amount necessary to support the General Fund’s working capital levels (“unassigned” fund balance). The FY 2012 fund balance exceeds this threshold by $764,000. The table below reflects the components of fund balance that appear in the CAFR.

City Council previously directed staff to consider opportunities for one-time employee compensation if General Fund performance in FY 11-12 resulted in unassigned fund balance in excess of the 15% target. As a result, staff is recommending a $650 one-time bonus for permanent full- and part-time city employees. This payment does not add to the salary base for employees. The budget amendment for this appropriation is included with this staff report. Total cost for the bonus in the General Fund is $650,000, which leaves $114,000 available in unassigned fund balance for unplanned expenses or future reserve goals. The cost of the bonus in the City’s enterprise funds will be funded out of the current year operating budget and does not require a budget amendment.

General Fund Balance

	,000	
	2012	2011
Total fund balance	$ 21,788	$ 19,636
Less:		
Unspendable fund balance	(448)	(466)
Restricted fund balance	(6,663)	(5,995)
Assigned fund balance	(1,051)	(455)
Fund balance available for appropriation	$ 13,626	$ 12,720
Total expenditures and routine transfers	$ 85,747	$ 86,580
Available fund balance as a percentage of expenditures and transfers to other funds	15.9%	14.7%
Available fund balance in excess (deficit) of 15% policy target	$ 764	$ (267)

Financial performance as predicted or better than budget in nearly all proprietary funds.

Despite a soft economy, financial results in most of the City’s business-type activities experienced positive net income before one-time transfers out for FY 2012. The one exception to note is the Civic Center Fund, where revenues came in under budget due to the cancellation of a few major events and less event bookings due to renovations occurring in the arena. Staff is adjusting the current year Civic Center budget based on FY 2012 actuals to improve financial results. Within the Internal Service Fund, it is worth noting that the revenues exceeded expenditures by $1,067,394, indicating favorable risk management and health care claims performance during the year. She provided council with a table which summarized operating activity in these funds.

Fund balance levels in some proprietary funds may allow for enhanced capital investment in FY 2013-2014.

City Council has adopted fund balance targets for all funds as part of its Financial Policy. At the end of FY 2012, three enterprise funds exceeded the established fund balance targets. It is staff's recommendation that City Council consider appropriating a portion of these funds for identified capital needs in the FY 2013-2014 budget cycle. In addition, staff is developing revised financial models, including five-year capital improvements programs, for the Water and Stormwater Funds. These models will reflect actual revenue and expenditure trends from previous years and be used to make recommendations on future utility rates and capital improvements. The Golf Fund's fund balance deficit is currently offset by the General Fund's restricted portion of its fund balance. With the approval of a long-term lease agreement for the Municipal Golf Course in the current year, staff expects to merge the activities of the Golf Fund with the General Fund in FY 12-13, and the Golf Fund will no longer be reported as a separate fund in the FY 13-14 audit. She provided council with a table that illustrated year over year changes in fund balance for the enterprise funds as well as a comparison to the adopted fund balance targets.

We are pleased to present the audit and look forward to continuing to improve the City's financial reporting and planning efforts. We would also like to express our appreciation to the numerous city employees who contributed to successful financial management in FY 2012, and to those employees, especially in the Finance Department, who worked on the audit process.

The City Council Finance Committee received monthly reports on the audit process since summer 2012.

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

Pros:

- City received a "clean" opinion on financial statements and no findings on *internal control, stewardship, accountability and program compliance with federal and state awards.*
- Timeliness of audit completion achieved.
- General Fund financial performance was better than budget.
- General Fund undesignated fund balance exceeds City Council's 15% policy.
- Financial performance in nearly all funds as predicted or better than budget.
- Fund balance levels in some enterprise funds may allow for additional capital investment.

Con:

- None noted.

Staff recommends that City Council accept the Comprehensive Annual Financial Report and approve a budget amendment for a $650 one-time employee bonus requiring a total appropriation from General Fund unassigned fund balance in the amount of $650,000. The cost of the one-time bonus in the City's enterprise funds will be funded out of the current year operating budget."

It was the consensus of Council to accept the Comprehensive Annual Financial Report.

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

Councilman Pelly moved for the adoption of Ordinance No. 4135. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

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B. COMMUNITY ACTION COMMITTEE UPDATE

Mayor Bellamy said that due to an illness of the presenter, this update will be rescheduled.

C. ASHEVILLE-BUNCOMBE COMMUNITY RELATIONS COUNCIL UPDATE

Dr. Larry McCallum, Chairman of the Asheville-Buncombe Community Relations Council, and Ms. Sarah Nunez, Executive Director, briefed Council on their activities of the past year and goals for the upcoming year.

On behalf of City Council, Mayor Bellamy thanked Dr. McCallum and Ms. Nunez for their leadership and the entire Committee for their dedication.

D. WATER RESOURCES UPDATE

Project Manager Phil Kleisler updated City Council on the Water Resources general process update from October 9 - 23, 2012. He said the MSD Planning Committee will be hearing a presentation on November 14 of their draft merger study. The final report will be presented to the MSD Board on December 12. The Phase 2 study, which will look at the potential merger impact to the Town of Biltmore Forest, Town of Montreat and the Town of Weaverville, will be presented to their board in 2013. He said staff is reviewing the report and will provide Council with an analysis and background information relating to that report in the near future. He said that a manufacturing rate class is being developed along with alternative rate structures for consumption and capital fees that will be coming to Council in the near future. He then provided Council with the information sharing between the City and MSD.

It was the consensus of Council to hold a worksession to hear the staff analysis of the MSD/Arcadis merger study, the Raftelis report on governance models, and the City's financial analysis on December 11, 2012, prior to the formal meeting.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER A SIGNAGE PLAN FOR UNC-ASHEVILLE

At the applicant's request, Councilman Hunt moved to continue this matter until January 22, 2013. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

V. UNFINISHED BUSINESS:

A. CONSIDERATION OF AN ORDINANCE AMENDING THE BILTMORE PARK TOWN CENTER SIGNAGE PLAN FOR RETAIL TENANT IDENTIFICATION SIGNAGE

At the applicant's request, Councilman Bothwell moved to continue this matter until December 11, 2012. This motion was seconded by Councilman Davis and carried unanimously.

B. ORDINANCE NO. 4136 - ORDINANCE AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES PERTAINING TO NOISE REGULATION

Assistant City Attorney Kelly Whitlock said that that this is the consideration of amendments to Chapter 10 of the City's Code of Ordinance relating to the noise ordinance.

On August 20, 2011, during a town hall meeting held at UNC-Asheville, a citizen proposed revisions to the City's noise ordinance to strengthen the ability to measure volume of sound generated in residential neighborhoods. City Council expressed a willingness to examine the current noise ordinance and the issue was referred to the Public Safety Committee for review.

On March 26, 2012, after reviewing the current noise ordinance and resident feedback provided to City staff, the Public Safety Committee gave the following direction with respect to proposed ordinance revisions: 1) keep the reasonable person standard 2) explore the use of zones with respect to reasonable noise levels 3) define day and night 4) remove the notary requirement on complaints 5) dismiss citations/appeals if complainants/appellants don't attend the noise ordinance appeal hearing and 6) move forward with short-term actions such as education and outreach.

Based on the Public Safety Committee's recommendations above, City staff kept the reasonable person standard in the ordinance and made the following proposed changes:

1) Addition of yelling, shouting, parties and the sounding of a security alarm for more than 20 minutes after the owner/responsible party has been notified by law enforcement personnel to the list of enumerated activities that shall not be engaged in so as to cause a noise disturbance on neighboring premises.

2) Addition of the following factors to consider in determining whether a noise constitutes a noise disturbance: whether the noise occurred during daytime or nighttime hours; proximity to residential areas; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; and the nature and zoning of the area.

3) Definition of residential areas to include any area in the City zoned the following: RS-2, RS-4, RS-8, RM-6, RM-8, and RM-16.

4) Definition of daytime hours as 7 a.m. to 11 p.m. and nighttime hours as 11:00 p.m. to 7:00 a.m.

5) Addition in the Procedures/Appeals section that the failure of the appellant or at least two complainants who filed the complaint to attend the noise ordinance appeal hearing results in dismissal of the appeal or complaint.

6) Revision of refuse collection hours exemption to clarify hours of operation. (Commercial refuse collection haulers are currently exempted from the noise ordinance if they are operating during <u>daylight</u> hours. Commercial refuse collection haulers are not prohibited *per se* from collecting during nighttime hours; however, if they produce a noise disturbance on occupied neighboring premises or public area, they are in violation of the ordinance (using the reasonable person standard). Current it is daylight hours, but staff proposes from 6 a.m. – 9 p.m.

On June 25, 2012, the Public Safety Committee reviewed the proposed revisions and directed staff to initiate a public campaign in order to gather input on the proposed revisions.

On August 6, 2012, City staff launched a 5–week campaign regarding the proposed revisions which consisted of the following: 1) creation of a Project Page on the City's website outlining the process and providing access to applicable documents; 2) creation of an online survey; 3) gathering of public input at a community meeting which was held on August 27, 2012; and 4) gathering of public comments by phone, email, mail and social media.

A total of 1045 individuals participated in the survey. Responses suggest most people are:

- Moderately familiar with the City of Asheville noise ordinance.
- Believe it is at least moderately important to revise the ordinance.
- At least moderately in favor of defining day as 7 a.m. to 11 p.m. with 309 respondents offering alternative hours for the definition.
- Strongly favor including “yelling and shouting” in the list of activities that could cause a noise disturbance.
- At least moderately favor including “parties” in the list of activities that could cause a noise disturbance.
- Strongly favor including “the sounding of any security alarm for more than 20 minutes following notification by law enforcement personnel” in the list of activities that could cause a noise disturbance.
- At least moderately willing to work toward a solution with a trained mediator before filing a complaint.
- Comfortable with the current fines for violations.

Additional comments were also gathered on the survey, at the community meeting, through phone calls, email, mail, and social media which consisted of the following:

Subject	Mentions	Staff Comments
Muffler-related noise	96	Currently addressed in Sec. 10-84(6) Education Opportunity
Dogs	50	Currently addressed in Sec. 10-84(3) Education Opportunity
Bullhorns/Megaphones	30	Currently addressed in Sec. 10-84 (15) Over half of the mentions related to Bele Chere. There is currently an exemption surrounding noise emanating from city-sponsored events. Sec. 10-85(3) Education opportunity
Loud music in cars	17	Currently addressed in Sec. 10-84(1) Education opportunity
Decibels	16	6 people felt they should be used for specific disturbances such as mufflers. 4 specifically mentioned they do not support the use of decibels.
Outside speakers	7	Currently covered in UDO. Planning Department anticipate presenting revisions to the Planning & Zoning Commission in December and City Council in January.

These findings were presented to the Public Safety Committee on September 24, 2012. The Public Safety Committee voted to send the proposed revisions to City Council.

Based on a recommendation from the Public Safety Committee, the Asheville Police Department contacted seven NC law enforcement agencies in reference to the standard method of enforcement of the noise ordinance in their jurisdictions. Those cities consisted of the following: Charlotte, Greenville, Fayetteville, Hickory, High Point, Raleigh, and Winston-Salem.

Each of the seven municipalities has a noise ordinance that contains the “reasonable person” standard as a standard of enforcement. Several factors (time of day; proximity to residential structures; whether the noise is recurrent, intermittent, or constant; volume and

intensity; or amplified by electronic or mechanical means, etc) are taken into consideration as to whether the noise violates the "reasonable person" standard. Five of the seven ordinances also include the use of a decibel meter as a means to measure the sound level and enforce the noise ordinances.

The enforcement standard for 80% of the agencies surveyed that had decibel meters available for use was to utilize the "reasonable person" standard first when responding to a noise complaint. The sound level meters are used in situations where the person or business would not voluntarily comply with the ordinance or there is a complaint involving a permitted outdoor event. Only one of the five agencies (Charlotte/Mecklenburg) that use decibel sound level meters issued a directive that a sound level meter shall be utilized when a citation is issued for a noise violation (approx. 38 citations issued in 2011).

In the City of Asheville, a search of APD's CAD calls yielded the following information regarding noise complaints:

Year	2011	2012 (as of Nov. 1)
Calls for Service	2,489	2,359
Verbal warnings	526	517
Citations	40	34
Arrests (on other charges)	22	11
Compliance/referral	455	422
Appeals to Noise Ordinance Appeal Board – police issued citations	6- Violation upheld: 6	7 – Violation upheld: 5 Violation overturned: 2
Appeals to Noise Ordinance Appeals Board - complaints	5- Violation found: 2 Violation found but penalty delayed for parties to resolve issue: 3	1- Hearing continued for parties to resolve issue

Pros:

- Takes into consideration the type of zone and time of day in determining whether a noise constitutes a "noise disturbance"
- Increases the number of factors officers can utilize when determining whether a noise constitutes a "noise disturbance"
- Provides community clearer understanding of what constitutes a noise disturbance
- Instrument (i.e. decibel meter) is not required to enforce ordinance
- Defined hours of approved operation for commercial refuse collection vehicles removes ambiguity of when daytime and nighttime begins.

Con:

- Determination of whether a noise constitutes a "noise disturbance " relies on officer discretion

This action complies with City Council's Strategic Operating Plan in the Job Growth and Community Development goal - Goal I: Collaborative and effective working partnerships between the City of Asheville, the business community, and other key organizations to effectively manage the City's regulatory environment while accomplishing economic development goals.

If Council keeps the "reasonable person standard", negligible fiscal impact is expected.

If Council adopts the "decibel level standard", an A-weighted sound level meter certified to meet ANSI standards for each district would be required. The price per meter ranges from $2,000 to $5,000. Cost of training officers would also be required (approx 1-8 hours). The current

average salary for an APD officer is $20.6367 per hour and the average salary for an APD sergeant is $25.6461 per hour. Total capital outlay cost would not exceed $15,000. This cost would be absorbed within the Asheville Police Department budget.

If Council approves the proposed changes, adoption of the ordinance is recommended.

Mr. John Ander Green, Asheville resident, felt that the reasonable person standard is too subjective for the police officers and rather than talk about creating exceptions you should create sub-statuses (what kind of noise is it and who is the dispute between). By putting things in that type of classification on the scene, then on appeal the question is easier to sort through.

Mr. Larry Holt, representing DARN, asked Council to (1) include the Central Business District in the definition of residential areas, and (2) refuse collection hours be from 7:00 a.m. – 11:00 p.m.

Ms. Patricia Dockery, west Asheville resident, urged council to send this noise ordinance back to the Public Safety Committee. She supported a decibel level standard and argued that a sound level meter would cost from $29-150 for a hand-held type for police cars. She said that she was taught how to use one in a very short period of time. She said the survey did not include a question about decibel levels.

Mr. David Rogers, north Asheville resident, supported adoption of the noise ordinance but suggested the daylight hours be from 7:00 a.m. to 10:00 p.m.

Ms. Grace Curry, resident on Edgemont Road, asked Council to include lawn equipment to the definitions in the noise ordinance.

Councilman Bothwell, Chair of the Public Safety Committee, said that using the decibel level standard is also subjective because they are usually taken at the property line and it is difficult for the officer to make that determination. He did support lawn equipment being included in the ordinance. Regarding including the Central Business District, it is a commercial district. He thought that including the Central Business District in the ordinance may be a separate discussion.

In response to Vice-Mayor Manheimer, Ms. Whitlock said that cities do not base their daylight/nighttime house by season, but some deviate them on weekdays vs. weekends. There was no consideration give to that.

Councilman Davis noted that even though these are significant changes, the ordinance can be revisited.

Councilman Hunt felt it was important to let the public know that the noise ordinance does not have to come directly from inside the residential district but it can come from a non-residential area as well.

In response to Councilman Pelly regarding the refuse collection pick-up time, Councilman Bothwell said that many trucks leave as early at 4 a.m. and we are restricting them now to 6 a.m. In addition, they need to access the dumpsters prior to morning traffic and parking.

At Mayor Bellamy's suggestion, it was the consensus of Council to report back to Council in one year on the impact of the ordinance changes.

Vice-Mayor Manheimer liked the idea of revisiting the ordinance in one year, especially focusing on the definition of daytime/nighttime hours, due to our topography.

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

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

Councilman Bothwell moved for the adoption of Ordinance No. 4136. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 28 – PAGE 26

VI. NEW BUSINESS:

A. MOTION DIRECTING THE CITY MANAGER OR HIS DESIGNEE TO EXTEND EXISTING AGREEMENTS FOR SPONSORSHIP OF FIVE ANCHOR EVENTS IN FY 13-14 INCLUDING ASHEVILLE DRUM CIRCLE, ASHEVILLE HOLIDAY PARADE, DOWNTOWN AFTER 5, GOOMBAY, AND SHINDIG ON THE GREEN

City Manager Jackson said that this is the consideration of a motion to direct the City Manager or his designee to extend agreements for the sponsorship of five anchor events in FY 13-14.

The City of Asheville charges everyone a fee to permit and have priority use of parks, permitted amenities, or public facilities. These fees cover extra operational expenses associated with events and guarantee space for the permittee. At the same time, some events produced by non-profit agencies or other sister organizations - such as concerts, art shows, cultural celebrations, theater performances, health fairs, sports events, and others – can also directly further the City's core programs. Consequently, reducing or waiving permit fees and considering in-kind support from city operational departments (i.e., Public Works, Asheville Police Department, Asheville Fire Department) can be an opportunity to leverage the City's ability to provide these programs while reaching a wider and more diverse audience, thus serving a public purpose. As a result, in recognition of the value these events bring the city of Asheville and the broader community, the city has historically offered support to events that meet certain criteria.

In March 2010, City Council authorized staff to enter into three-year agreements with various organizations to sponsor five anchor events (Asheville Drum Circle, Asheville Holiday Parade, Downtown After 5, Goombay, and Shindig on the Green) in the form of full permit fee waivers and in-kind labor support (police, sanitation, etc.) valued at $102,211. A summary of that support is provided below.

	Permit Fee Waivers	Labor Support	Total Support
Asheville Drum Circle	$3,875	$0	$3,875
Asheville Holiday Parade	$1,562	$39,462	$41,024
Downtown After 5	$2,143	$14,780	$16,923
Goombay Festival	$2,942	$26,869	$29,811
Shindig on the Green	$7,414	$3,164	$10,578

The organizations may use less of the allocated amount but City Council directed staff to cap city support at that dollar amount for the life of the agreements.

In addition, City Council approved a non-profit level for permit fees, which amounted to a 75% reduction in event permit fees, for events that were produced by a registered 501c non-profit verified through documentation; open to the general public; and remained responsible for general liability insurance and other related event costs including police coverage, barricades, parking meter closures, etc.

Staff executed those agreements with FY 2012 as the concluding year. Non-profit fee reductions have been implemented with the Fees and Charges ordinance each year during the budget process. In the last year alone, 163 special events have taken advantage of the non-profit fee discount.

Pros:

- Strategic partnerships allow the city to leverage programming and events to reach a wider and more diverse audience.
- Continuation for one year allows staff the opportunity to evaluate the City's overall event programming strategy in the context of other strategic goals.

Cons:

- Anchor events incur costs to the City for personnel, typically in the form of overtime.
- A 75% reduction in permit fees for non-profit organizations results in lost revenue for the city; however, the city does not budget for this revenue since it tends to fluctuate from year to year.

Partnership agreements and fee discounts result in lost revenue, and labor support results in increased personnel expenses (summarized in table above). In-kind labor costs for anchor events have been included in the City's budget during the agreement period. If these agreements are extended for FY13-14, associated expense and revenue impacts will be included in the City's budget.

City staff is in the process of evaluating its overall event programming strategy in the context of economic and community development, fiscal responsibility and cultural arts goals. This review will include events produced internally by the City (Bele Chere, Fourth of July Celebration) as well as sponsored events and programming needs in key areas like Pack Square Park. This process is expected to take 9-12 months. Until that review and associated recommendations are complete, staff recommends extending the existing agreements with the current anchor event organizations using the same terms for an additional year, FY13-14. City staff will bring forward the non-profit fee discount with the FY13-14 fees and charges recommendations.

Therefore, staff recommends that City Council pass a motion to direct the City Manager or his designee to extend existing agreements for the sponsorship of five anchor events in FY 13-14 to include Asheville Drum Circle, Asheville Holiday Parade, Downtown After 5, Goombay, and Shindig on the Green.

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

Vice-Mayor Manheimer moved to direct the City Manager or his designee to extend agreements for the sponsorship of five anchor events in FY 13-14. This motion was seconded by Councilman Bothwell and carried unanimously.

B. RESOLUTION NO. 12-239 - RESOLUTION REQUESTING HUD WAIVER OF CONFLICT REGARDING EAGLE-MARKET PLACE PROPERTY ACQUISITION

City Attorney Bob Oast said that this is the consideration of a resolution requesting the U.S. Department of Housing and Urban Development Department to grant an exception to the Conflict of Interest regulations (24 CFR 570.611 and 24 CFR Part 92.356) governing the Federal Community Development Block Grant (CDBG) and HOME Investment Partnerships Programs (HOME), in regard to the "Eagle Market Place" Development project.

Upon written request, exceptions to the HOME and CDBG Conflict of Interest provisions applying to employees, officials, consultants, agents, etc. of local governments receiving CDBG and HOME funds may be granted on a case-by-case basis.

HUD may grant exceptions only after the local government has:

- Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
- Provided a legal opinion stating that there would be no violation of state or local law if it granted the exception.

The area at the southwest corner of Eagle and Market Streets in the South Pack Square area has been proposed for redevelopment in connection with a project known as Eagle Market Place. Eagle Market Place is a mixed use development that is planned as 62 apartments, approximately 7,000 SF of commercial space, and approximately 6,000 SF of community space, that will retain and incorporate historic structures and long-established pedestrian streetscape with contemporary design and new residential and commercial uses. It will consist of new construction and renovation/restoration in the historic Eagle Market Street area, which will include the Del Cardo, the Collette and the Ritz buildings. This area was the hub of African American residences and businesses up through the 1940s-50s.

The property at 42-44 South Market Street, which includes the Ritz building (herein "Ritz property"), was acquired in a foreclosure proceeding in 2000 by Gene Ellison and Howard McGlohon as joint tenants. Martha McGlohon, an Assistant Attorney with the City of Asheville, was married to Howard McGlohon. She was not one of the grantees in the deed, but acquired her interest when Howard McGlohon passed away unexpectedly in 2010. She will receive a portion of the proceeds from the sale of the property.

The exception request will be based on the following factors:

- Ms. McGlohon received her interest in the Ritz property by operation of law, and did not actively participate in the acquisition or previous uses of the property;
- Ms. McGlohon has not participated in the marketing of the Ritz property;
- Ms. McGlohon has withdrawn from her functions, responsibilities and decision making participation as a public official with respect to the proposed project; and
- Undue hardship will result to the community when weighted against the public interest served by avoiding the prohibited conflict

The City has committed $300,000 of HOME Investment partnership funds and anticipates investing Community Development Block Grant Section 108 funds to the project. These funds cannot be invested in this project without HUD granting an exception to the Conflict of Interest regulations.

City staff recommends City Council adopt the resolution authorizing the City Manager and City Attorney to submit a request to the U.S. Department of Housing and Urban Development to grant an exception based on the identified factors.

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 it would not be read.

Councilman Bothwell moved for the adoption of Resolution No. 12-239. This motion was seconded by Vice-Mayor Manheimer and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 123

C. RESOLUTION NO. 12-240 - RESOLUTION APPOINTING MEMBERS TO THE ALCOHOLIC BEVERAGE CONTROL BOARD

Vice-Mayor Manheimer, Chair of the Boards & Commissions Committee, said that this is the consideration of appointing members to the Alcoholic Beverage Control Board.

The terms of DeRothea Williams and Ken Kaplan expire on November 13, 2012.

The following individuals have applied for the vacancies: Mark W. Cates, Guadalupe Chavarria II, Randall C. Hall, Jody Kuhne, Fred Cooke, Charles Larrick, Melissa L. English, Sarita Mangum, Edward Hay, David Hall, Robin Cape and Max Haner.

Boards & Commissions Committee recommended the appointment of Edward Hay and Robin Cape.

Councilman Bothwell moved to appoint Edward Hay and Robin Cape as members of the Alcoholic Beverage Control Board to each serve a three-year term respectively, terms to expire November 13, 2015, or until their successors have been appointed. This motion was seconded by Councilman Davis and carried unanimously.

Mayor Bellamy asked that for the next vacancy we try look for racial diversity on the ABC Board.

RESOLUTION BOOK NO. 35 – PAGE 124

D. RESOLUTION NO. 12-241 - RESOLUTION APPOINTING A MEMBER TO THE HOMELESS INITIATIVE ADVISORY COMMITTEE

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

Chris Sullivan has resigned, thus leaving an unexpired term until November 1, 2014.

The following individuals have applied for a vacancy: Charles Rosenblum, John Spears, Charles Barber, Shana Roberts, Cynthia J. Sellers and David Hall.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Homeless Initiative Advisory Committee, to appoint Mr. Charles Rosenblum.

Councilman Bothwell moved to appoint Charles Rosenblum to serve the unexpired term of Mr. Sullivan, term to expire November 1, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 125

E. RESOLUTION NO. 12-242 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART & CULTURAL COMMISSION

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

Mark Koven has resigned, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for a vacancy: Davyne Dial, John Spears, Grant Millin, Itiyopia Ewart, Laura Corte, Andrew Montrie, Angela Rutledge, Bruce Waller, Melinda

Tennison, Guillermo Carballo Rodriguez, Charley Akers, Amy Huntsman Wayne C. Wheeler, Jared Gold, Bryan Andrews, Victor Palomino and Kara Warren.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Public Art & Cultural Commission, to appoint Guillermo Carballo Rodriguez

Councilman Bothwell moved to appoint Guillermo Carballo Rodriguez to serve the unexpired term of Mr. Koven, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 126

F. RESOLUTION NO. 12-243 - RESOLUTION APPOINTING A MEMBER TO THE RECREATION BOARD

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

Lonnie Gilliam has resigned, thus leaving an unexpired term until June 30, 2014.

The following individuals have applied for a vacancy: Robert Pierce, Mike Lovoy, Guillermo Carballo Rodriguez and Jordan Veale.

It was the consensus of the Boards & Commissions Committee, at the suggestion of the Recreation Board, to appoint Jordan Veale.

Councilman Davis moved to appoint Jordan Veale to serve the unexpired term of Mr. Gilliam, term to expire June 30, 2014, or until his successor has been appointed. This motion was seconded by Councilman Hunt and carried unanimously.

RESOLUTION BOOK NO. 35 – PAGE 127

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. John Spitzberg, President of the Asheville Homeless Network, explained that Code Purple is the Asheville-Buncombe Homeless Coalition's procedure for providing emergency overflow shelter to people experiencing homelessness in the event of severe weather conditions. He asked that Council investigate why our Homeless Initiative Coordinator said that Code Purple is left to the individual shelters to decide how and when to implement the procedure. After a brief discussion, at the request of Council, City Manager Jackson said that he would be happy to report to the Public Safety Committee on November 26 on the Code Purple policy and the role/responsibilities of the City, individual shelters, and others in the setting of and application of the standards for activation.

Ms. Shirley Dozier, Montford Avenue resident, (1) raised questions regarding William Randolph School (which would have to be answered by the School Board); and (2) requested a response from City Attorney Oast regarding the sale of Tract 3 of the Head of Montford. City Attorney Oast apologized for not responding quicker to Ms. Dozier, but he said would have a response to her soon.

Mayor Bellamy thanked all the veterans who have served our country.

Lawsuit

The City was served with a Complaint on October 29, 2012, which is generally described as follows: Pack Place Performing Arts, d/b/a Diana Wortham Theatre; Pack Place Education,

Arts & Science Center; and the City of Asheville. The nature of the complaint is for compensatory damages as a result of defendants' negligence. This matter will be handled by an attorney outside of the City Attorney's Office.

Closed Session

At 6:53 p.m., Councilman Pelly moved to 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 a lawsuit involving the following parties: Robert D. Gaddy, Jr., v. W.M. Yelton, Doug Sheehan, Nicholas Ryan Mitchell, Ervin Hunter, and Jimmy Stover. 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); and (3) To prevent the disclosure of information that is privileged or 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 laws that make the information privileged or confidential are N.C. Gen. Stat. sec. 143-318.10 (e). The statutory authorization is contained in N.C. Gen. Stat. sec. 143-318.11 (a) (1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:36 p.m., Councilman Davis moved to come out of closed session. This motion was seconded by Councilman Hunt and carried unanimously.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 7:36 p.m.

_____ _____

CITY CLERK MAYOR