RESOLUTION NO. 13-88

RESOLUTION AUTHORIZING LEGAL ACTION TO CHALLENGE HOUSE BILL 488, RATIFIED MAY 2, 2013, SHOULD IT BECOME LAW

WHEREAS, the City of Asheville is a North Carolina municipal corporation, operating pursuant to the laws of North Carolina, including Chapters 159 and 160A of the General Statutes, and its Charter, N.C. Private Laws 1931-121, as amended; and

WHEREAS, the City has the authority pursuant to N.C.G.S. 160A-11 and Section 1 of its Charter to sue and be sued; and

WHEREAS, the City has the authority pursuant to Article 16 of Chapter 160A of the General Statutes to own and operate public enterprises, including water systems; and

WHEREAS, the City has for over 100 years, owned and operated a water system serving its citizens and providing service on the same basis to users beyond its corporate limits, and said water system, including real and personal property, has substantial value; and

WHEREAS, the City has issued and currently has outstanding revenue bonds to support expansions and upgrades to the water system in the name of the City; and

WHEREAS, House Bill 488, ratified by the North Carolina General Assembly on May 2, 2013 (herein "HB 488"), will, if it becomes law, be effective May 15, 2013, and will, by operation of said law, transfer all assets, real and personal, of the City's water system to the Metropolitan Sewerage District of Buncombe County, for eventual operation by a new entity, styled as a metropolitan water and sewerage district, to be operated pursuant to other provisions of HB 488; and

WHEREAS, the citizens of the City of Asheville voted overwhelmingly to oppose the sale or lease of the water system in a referendum conducted on November 6, 2012, pursuant to N.C.G.S. 160A-321(b); and

WHEREAS, HB 488 does not specify a proper purpose for the forced transfer of the City's water system to MSD, and provides for no compensation to the City of Asheville; and

WHEREAS, the transfer of operational responsibility for the water system as provided for in HB 488 creates immediate and critical operations and maintenance issues for the water system, with the potential to affect the health, sanitation and safety of the City and the users of the water system; and

WHEREAS, the forced transfer of the water system as provided for in HB 488 may affect the City's contractual obligations, including bonded indebtedness, such that contracts may be breached and defaults may occur, with potential impacts upon the City's credit ratings; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE AS FOLLOWS:

1. That the imminent effectiveness of HB 488 has the potential to affect the health,

sanitation and safety of the City of Asheville, and the users of the water system, and has the potential to affect the City's financial soundness;

2. That the City Attorney is hereby directed to take appropriate legal action to: (a) challenge the validity of HB 488, should it become law, (b) have said law declared invalid, (c) obtain appropriate injunctive or other relief to prevent said law from becoming effective, (d) seek compensation for the forced transfer of the water system, and (e) such other or further relief as necessary or appropriate; and to employ such attorneys or other persons as may be needed to assist in said legal action.

Read, approved and adopted the 7th day of May, 2013.

Magdalen Bruleson
City Clerk

Mayor

Approved as to form:

City Attorney

Magdalen Bruleson
City Clerk