Tuesday – October 25, 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. (arrived in meeting at 5:59 p.m.); Councilman Gordon D. Smith; City Manager Gary W. Jackson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Boy Scout Troop 91 sponsored by St. Paul's United Methodist Church led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Newman gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING NOVEMBER 2011 AS "ADOPTION AWARENESS MONTH"

Mayor Bellamy read the proclamation proclaiming November, 2011, as "Adoption Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Becky Kessel who briefed City Council on some activities taking place during the month

B. PROCLAMATION PROCLAIMING NOVEMBER 5, 2011 AS "AIDS AWARENESS WALK 2011 DAY"

Mayor Bellamy read the proclamation proclaiming November 5, 2011, as "AIDS Awareness Walk 2011 Day" in the City of Asheville. She presented the proclamation to Ms. Sarah Tennyson, Youth Outreach Specialist at the WNC AIDS Project, and Mr. Jeff Bachar, Executive Director of the WNC AIDS Project. Mr. Bachar briefed City Council on some activities taking place during the day. Mayor Bellamy also congratulated Mr. Bachar to Asheville.

C. PROCLAMATION PROCLAIMING NOVEMBER 13, 2011, AS "CITY SCHOOLS CHAMPIONS DAY"

Mayor Bellamy read the proclamation proclaiming November 13, 2011, as "City Schools Champions Day" in the City of Asheville. She presented the proclamation to the Lake Eden Arts Festival in Schools and Streets; Loraine Martin; the Community Foundation of Western North Carolina, The I Have A Dream Foundation Asheville; the Asheville Police/Fire Department's Back to the Basics Program; the late Captain Jeffrey Bowen; Asbury Memorial United Methodist Church; Pastor Lisa Hartzog Hannah; Ruth Paar; Mark Ackerman; and Ruth Belcher. She recognized Asheville City Schools Foundation Board President Betsy Russell who thanked City Council for their support.

D. PROCLAMATION PROCLAIMING NOVEMBER 13, 2011 AS "UNC-ASHEVILLE BULLDOG DAY"

Councilman Davis read the proclamation proclaiming November 13, 2011, as "UNC-Asheville Bulldog Day" in the City of Asheville. He presented the proclamation to Mr. Mike Gore,

Associate Athletics Director for External Affairs, who briefed City Council on some activities taking place during the day.

II. CONSENT AGENDA:

At the request of Councilwoman Manheimer Consent Agenda Item "C" was removed from the Consent Agenda for an individual vote due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 11, 2011

B. RESOLUTION NO. 11-214 - RESOLUTION AUTHORIZING THE PURCHASE OF AN EXTRACTOR AND REMITTANCE PROCESSOR FOR CUSTOMER SERVICES FROM SINGLE SOURCE VENDOR CREDITRON

Summary: The consideration of a resolution authorizing the purchase of an Extractor and Remittance Processor for the City's Water Resources Department Customer Services Division, from Creditron Inc., for approximately $160,000.00, without requesting formal bids pursuant to NCGS §143-129.

NCGS §143-129(e)(6) (ii)(iii), allow purchases without formal bidding when a needed product is available from only one source of supply and when standardization or compatibility is the overriding consideration.

The Customer Services Division currently uses two separate machines, a remittance processor and an extractor, to process approximately 1,250 utility bills daily. The current machines break down on a regular basis and have exceeded their useful life. Purchasing new equipment, in lieu of leasing it, makes more financial sense. Creditron is the single source of supply for the City's needed Extractor and Remittance Processor. Additionally, standardization and compatibility of the City's existing software with Creditron's equipment is an overriding consideration for purchasing from Creditron.

Water Resources staff consulted with the Information Technology and Purchasing Departments to recommend the purchase from Creditron due to single source supply and compatibility issues with the existing software and conversion to the new equipment. All parties agreed that Creditron should be the recommended source. The funds for this purchase exist in the Water Operating Budget, following City Council approval on 9/13/11.

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

Pro:

- Awarding the purchase contract to Creditron for the mail processing equipment and authorizing the purchase without requesting formal bids for standardization and/or compatibility eliminates software compatibility issues.

Con:

- None.

The funding needed for this purchase is currently allocated in the Water Resources' Operating budget.

City staff recommends City Council adopt a resolution authorizing the City's Water Resources Department Customer Services Division to purchase the Creditron extractor and remittance processor for approximately $160,000.00 based on their standardization needs.

RESOLUTION BOOK NO. 34 – PAGE 186

C. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH W.K. DICKSON & CO., INC., FOR THE CHALLEDON SUBDIVISION WATER LINE EXTENSION PROJECT

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH MCGILL ASSOCIATES FOR THE OLD HAW CREEK AND RIDDLE ROAD WATER LINE EXTENSION PROJECTS

RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL AGREEMENT WITH MICHAEL BAKER ENGINEERING, INC., FOR THE GROVEMONT SUBDIVISION WATER LINE EXTENSION PROJECT

BUDGET AMENDMENT TO COMBINE TWO SEPARATE CAPITAL PROJECTS WITH THE SAME NAME OF OLD HAW CREEK INTO ONE CAPITAL PROJECT FOR OLD HAW CREEK

These items were removed from the Consent Agenda for an individual vote due to a conflict of interest by Councilwoman Manheimer.

D. RESOLUTION NO. 11-218 - RESOLUTION EXEMPTING THE NORTH FORK WATER TREATMENT PLAN DAM / TUNNEL EVALUATION PROJECT FROM THE ANNOUNCEMENT REQUIREMENT OF N.C. GEN. STAT. SEC. 143-64.31 AND AWARDING THE PROJECT TO SCHNABEL ENGINEERING

Summary: The consideration of a resolution exempting the North Fork Water Treatment Plant Dam/Tunnel Evaluation Project from the architectural, engineering and surveying announcement requirement of NCGS §143-64.31.

NCGS §143-64.32 allows a local government to exempt particular projects from the requirements of NCGS §143-64.31, that has requirements for architectural, engineering, and surveying services be announced. For several years, Water Production has used Schnabel Engineering to inspect the dams at the North Fork and William DeBruhl water plants and make recommendations for repairs or improvements. Schnabel Engineering has also developed an Emergency Action Plan (EAP) for Asheville to address several scenarios involving dam failures. Schnabel is recognized as an expert engineering firm specializing in dam design, construction, and maintenance.

Schnabel provided an Engineering proposal for spillway, conduit, and gate evaluations and EAP training for the North Fork Dam. The proposal consists of: (1) evaluating alternatives to address the spillway capacity at a cost of $51,800.00, (2) a structural evaluation of the outlet works conduit at a cost of $88,300.00, (3) evaluating the North Fork Dam spillway gates by performing gate inspections and a structural analysis of the gates at a cost of $34,300.00, and (4) conducting EAP training for plant staff at a cost of $14,900.00. This proposal from Schnabel Engineering is the most qualified proposal from a firm that has a proven successful track record to complete the dam/tunnel evaluation project.

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

Pro:

- Recognize Schnabel Engineering as the most qualified engineering firm to perform the North Fork WTP Dam / Tunnel Evaluation by exempting the project from the announcement requirement of NCGS §143-64.31.

Con:

- None.

The funding needed for the evaluation is currently allocated in the Water Resources Capital Improvement Projects fund.

City staff recommends City Council adopt a resolution to exempt from the statutory announcement requirement of NCGS §143-64.31, the North Fork Water Treatment Plant Dam / Tunnel Evaluation Project and authorize the awarding of a contract to Schnabel Engineering in an amount not-to-exceed $189,300.00.

RESOLUTION BOOK NO. 34 – PAGE 190

E. ORDINANCE NO. 4028 - ORDINANCE AMENDING THE EFFECTIVE DATE OF THE VOLUNTARY ANNEXATION OF 55 PINEY MOUNTAIN DRIVE TO OCTOBER 25, 2011

Summary: The adoption of an ordinance amending the effective date of the annexation of property located at 55 Piney Mountain Drive.

On September 27, 2011, the City Council of the City of Asheville adopted an ordinance annexing property located at 55 Piney Mountain Drive. Asheville Retirement Residence, LLC had petitioned the City for the annexation of this property which contains a total of 13.52 acres on which a 120 suite retirement residence, Bella Vista, has been constructed. November 30, 2011, was set as the effective date for this annexation.

It was subsequently called to the attention of staff that the North Carolina General Assembly amended the statutes dealing with voluntary annexation this past summer. In this amendment they provided that the effective date for a voluntary annexation must be either on the date of the passage of the ordinance or on June 30th of the following year after the date of passage of the ordinance.

The ordinance revises the effective date to be on the date of adoption of this ordinance, October 25, 2011. The petitioner is aware of this change.

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.

Con:

- 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 amending the effective date of the annexation of 55 Piney Mountain Drive to October 25, 2011.

ORDINANCE BOOK NO. 27 – PAGE

F. RESOLUTION NO. 11-219 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH MOORE AND SON SITE CONTRACTORS INC. FOR THE PROJECT KNOWN AS TUNNEL ROAD US 70, 74A & KENILWORTH ROAD SIDEWALK IMPROVEMENTS

Summary: The consideration of a resolution authorizing the City Manager to execute a contract (and all change orders in the amount of 15% of the contract or $15,300) with Moore and Son Site Contractors, Inc. in the amount of $101,972.50 for the project known as Tunnel Road US 70, 74A & Kenilworth Road Sidewalk Improvements, Project # ENG -10-11-003.

A formal request for bids was issued on August 12, 2011, and bids were opened on September 6, 2011. Due to the receipt of only 2 bids, the project was rebid informally. These bids were opened on September 15, 2011. A local contractor, Moore & Son Site Contractors, located in Mills River, N.C., was the low bidder with an amount of $101,972.50. With the addition of a 15% contingency, the total budgeted amount for this project is $117,268.38. This will be a unit price contract and not a lump sum contract and is part of the City of Asheville's CIP program.

This action complies with the City Council Strategic Operating Plan of Multimodal Transportation in that it will meet the need of increasing the output of sidewalk construction and provide sidewalk in an area that is in need of sidewalk linkage.

Pros:

- Provides a pedestrian linkage by connecting existing sidewalks.
- Will be a step forward in meeting the City's Strategic Plan and current fiscal year CIP goals.
- Is listed as an identified need on the City of Asheville pedestrian plan.

Cons:

- Project management and contract administration will consume staff time and city funds.
- Temporary lane and driveway closures.

This project is part of the $1.3 million sidewalk construction program that City Council approved as part of the FY 2011-12 Capital Improvement Budget. Funding will come from debt proceeds.

Staff recommends City Council authorize the City Manager to execute on behalf of the City of Asheville a contract with Moore and Son Site Contractors, Inc. in the amount of $101,972.50 for the project known as Tunnel Road US 70, 74A & Kenilworth Road Sidewalk Improvements, and all change orders in the amount of 15% of the contract or $15,300.

Assistant Director of Public Works David Foster responded to Councilman Smith's inquiry about the description and linear feet of the project.

RESOLUTION BOOK NO. 34 – PAGE 191

G. RESOLUTION NO. 11-220 - RESOLUTION TO PROCEED WITH PLANNING AND IMPLEMENTATION OF BOND FINANCING AND APPROVING THE FINANCING TEAM

Summary: The consideration of a resolution directing the City Manager and Finance Director to pursue debt financing for capital projects and refinancing existing debt in Fiscal Year 2012, and to appoint bond counsel and the managing underwriter for the transaction.

On July 26, 2011, City Council adopted a reimbursement resolution for several debt issuances planned as one transaction in Fiscal Year 2012: (1) the issuance of "new money" for Council approved capital projects authorized as part of the Fiscal Year 2012 and Fiscal Year 2011 Budgets, (2) the takeout of the interim note on the 51 Biltmore Parking Deck project and (3) the refinancing of some existing debt to achieve financial savings.

As a next step in the process, staff is seeking City Council's approval of a resolution appointing Parker, Poe, Adams & Bernstein as bond counsel and Merrill Lynch, Pierce, Fenner & Smith as the managing underwriter for the transaction. These recommended appointments are being made on the basis of qualifications, familiarity with the City's finances and capital planning and in the case of the managing underwriter, having provided the lowest cost financing for the 51 Biltmore Parking deck project interim financing. The resolution also authorizes the City Manager and Finance Director to retain other members of the financing team as necessary.

Pro:

- Allows the City to move forward with the FY 12 debt financing.

Con:

- None noted.

This action supports the City of Asheville's goal to operate the City to the highest level of fiscal responsibility by enhancing its commitment to infrastructure maintenance and capital improvements.

Staff recommends that City Council approve the resolution as it is proposed.

RESOLUTION BOOK NO. 34 – PAGE 192

H. RESOLUTION NO. 11-221 - RESOLUTION AUTHORIZING THE CITY MANAGER TO DESIGNATE OBSERVERS FOR THE DETERMINATION OF RESULTS OF THE PETITIONS REGARDING THE BILTMORE LAKE ANNEXATION

Summary: The consideration of a resolution authorizing the City/ Manager to designate three observers for the determination of results of the petitions regarding the Biltmore Lake annexation.

As Council knows N.C. Sess. L. 2011-173, adopted this past summer, makes the Biltmore Lake annexation subject to the "petitioned denial" process that is a new feature of the annexation law. In essence, the law provides that if the owners of 60% of the parcels in the annexation area submit a petition opposing the annexation, the annexation is terminated. This process was made applicable to several annexations already in process, including Asheville.

The law provides that the determination of the results of the petition, to be performed by the local Board of Elections, should be observed by three property owners from the annexation area, and three persons designated by the municipality. The resolution will authorize the City Manager to make that designation. The persons selected will likely be City employees who have some expertise in such matters.

Pro:

- Complies with statute.

Con:

- None noted.

Adoption of the resolution is recommended.

RESOLUTION BOOK NO. 34 – PAGE 193

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.

Councilwoman Manheimer moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Smith and carried unanimously (with Councilman Russell absent).

ITEMS REMOVED FROM THE CONSENT AGENDA FOR INDIVIDUAL VOTES

C. RESOLUTION NO. 11-215 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH W.K. DICKSON & CO., INC., FOR THE CHALLEDON SUBDIVISION WATER LINE EXTENSION PROJECT

RESOLUTION NO. 11-216 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH MCGILL ASSOCIATES FOR THE OLD HAW CREEK AND RIDDLE ROAD WATER LINE EXTENSION PROJECTS

RESOLUTION NO. 11-217 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL AGREEMENT WITH MICHAEL BAKER ENGINEERING, INC., FOR THE GROVEMONT SUBDIVISION WATER LINE EXTENSION PROJECT

ORDINANCE NO. 4027 - BUDGET AMENDMENT TO COMBINE TWO SEPARATE CAPITAL PROJECTS WITH THE SAME NAME OF OLD HAW CREEK INTO ONE CAPITAL PROJECT FOR OLD HAW CREEK

At Councilwoman Manheimer's request, Councilman Smith moved to recuse Councilwoman Manheimer from participating in this matter due to a conflict of interest. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent).

Summary: The consideration of a resolution authorizing the City Manager to enter into three professional service agreements for the Water Line Extension Project: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision; and a technical budget amendment in the amount of $500,000 to combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

The City of Asheville Water Resources Department identified four Neighborhood Waterline Replacement Projects for the current fiscal year and is seeking engineering design and project management assistance with these projects. The four projects are known as: Challedon Subdivision, located west off Dogwood Road; Riddle Road, located east off Bee Tree Road; Old Haw Creek area; and Grovemont Subdivision, located east off Old US Hwy 70. These projects will replace existing substandard and failing waterlines in favor of new waterlines, designed and constructed in accordance with the City of Asheville standards.

On August 3, 2011, Water Resources issued a Request for Qualifications (RFQ) for engineering services related to the design and contract administration for these projects. In response to the RFQ, Water Resources received 13 proposals. Companies responding were:

1. Alliance Consulting Engineers, Inc. – Columbia, SC
2. Brooks Engineering Associates – Asheville, NC
3. Cavanaugh & Associates, P.A. – Asheville, NC
4. David D. Smith & Company, PLLC – Asheville, NC
5. Mattern & Craig, Inc. – Asheville, NC
6. McGill Associates – Asheville, NC
7. Mercer Design Group – Weaverville, NC
8. Michael Baker Engineering, Inc. – Asheville, NC
9. Robinson & Sawyer, Inc. – Gastonia, NC
10. The Wooten Company – Raleigh, NC
11. Vaughn & Melton Consulting Engineers – Asheville, NC
12. Willis Engineers – Charlotte, NC
13. W. K. Dickson & Co., Inc. – Charlotte, NC

Water Resources initially planned for one engineering firm to design and manage all four waterline projects. However, due to their size and scope staff decided to divide the engineering portion into three separate contracts.

A review team, comprised of Water Resources staff, reviewed each proposal, selected three firms for the engineering services contracts, and negotiated contract amounts for the following firms: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision.

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

Pros:

- The selected engineering firms have provided Engineering Services on numerous water system improvement projects for the City of Asheville. Their experience and knowledge of our water system will minimize staff support and input during the design process.
- These projects will provide water customers with a more reliable drinking water source and much improved fire protection.

Con:

- Failure to award an engineering services contract would prevent Water Resources from completing the adopted Capital Improvement Projects Plan in a timely manner and delay the replacement of aging infrastructure.

The funding needed for each of these projects is currently allocated in the Water Resources' Capital Improvement Projects budget. The technical budget amendment included with this staff report will combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

City staff recommends City Council approval of the City Manager to enter into three professional service agreements for the Water Line Extension Project: (1) W.K. Dickson & Co., Inc. in the not-to-exceed amount of $111,000.00 for Challedon Subdivision; (2) McGill Associates, PA in the not-to-exceed amount of $125,800.00 for Old Haw Creek and Riddle Road; and (3) Michael Baker Engineering, Inc. in the not-to-exceed amount of $222,055.00 for Grovemont Subdivision; and a technical budget amendment in the amount of $500,000 to combine two separate capital projects with the same name of Old Haw Creek into one capital project for Old Haw Creek.

Councilman Bothwell moved to adopt Resolution Nos. 11-215, 11-216 and 11-217. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent and Councilwoman Manheimer recused).

Councilman Bothwell moved to adopt Ordinance No. 4027. This motion was seconded by Councilman Davis and carried unanimously (with Councilman Russell absent and Councilwoman Manheimer recused).

RESOLUTION NO. 11-215 - RESOLUTION BOOK NO. 34 – PAGE 187
RESOLUTION NO. 11-216 - RESOLUTION BOOK NO. 34 – PAGE 188
RESOLUTION NO. 11-217 - RESOLUTION BOOK NO. 34 – PAGE 189
ORDINANCE BOOK NO. 27 - PAGE

III. PRESENTATIONS & REPORTS:

A. BLUE RIDGE PARKWAY OVERLOOK FOR ASHEVILLE

Mr. Phil Francis, Superintendent of the Blue Ridge Parkway, said they were asked by the Buncombe County Commissioners to consider adding an overlook on the Blue Ridge Parkway. Once they received the request, Mr. J. David Anderson, Resident Landscape Architect/GIS & GPS Coordinator for the National Park Service Blue Ridge Parkway, looked to see if there was a place where an overlook might be constructed.

Mr. Anderson explained that they looked at the height of the buildings in downtown Asheville and projected where you could see the Parkway if you were on the top of those buildings. Because of vegetation, there are only a few places that were appropriate. Using a location map, he explained why the location selected was at Mile Post 394.5 – south 8.2 miles from the center of downtown. He also used a map to show Council the existing site.

Mr. Francis stressed that this is not a project in their system yet. They will have to describe the project and put it into their National Park Service System and it will have to compete with other projects for funding for planning/design work, need to compliance work, and construction work. They are willing to move forward, especially since in the near future they will begin doing a planning effort in the Asheville area looking at parking, overlooks, trail connections, greenways, etc. He felt it was a good time to consider this project.

Mayor Bellamy thanked Mr. Francis for their consideration of this overlook and also for their new and expanded Center on the Parkway in Asheville. She asked Mr. Francis to keep City Council updated on their efforts.

B. REPORT ON LEAF COLLECTION

Public Works Director Cathy Ball updated City Council on the status of the city's leaf collection program following changes implemented this fiscal year that included the elimination of loose leaf collection.

She said changes to the leaf and brush collection program were submitted as part of the budget that was adopted by City Council in May 2011.

She said that as part of the budget, which was adopted in May 2011, the frequency of brush collection was increased from once per month to twice per month. Loose leaf collection by vacuum trucks was replaced with bagged leaf collection twice per month.

Challenges in vacuuming include (1) maintenance of equipment (a) annual cost - $55,000; (b) average age of vehicles – 18 years old; and (c) impacts on schedule; (2) weather impacts ability to provide service; (3) roadway/pedestrian hazards; (4) impacts of leaves in storm drain system (a) flooding; and (b) water quality; and (5) servicing 30 to 50% of priorities.

It was changed for (1) increase in collection frequency; (2) more reliable collection schedule; (3) safer roads; (4) safer sidewalks and bicycle lanes; (5) improve water quality and flood control; and (6) financial benefits.

Our planned/budgeted service delivery methods are (1) brush and leaves are collected every two weeks; (2) large, durable bags are available at fire stations free of charge; (3) crews empty leaves from bags and the bags are left on-site to be reused; and (4) leaves are taken to a facility for mulching.

If people are physically unable to bag leaves; (1) when leaves are mowed, leaves can be mowed; (2) neighbors can help neighbors – City staff is working with church groups and other organizations to encourage a network for assistance; and (3) community resources may be available, 2-1-1 is a resource people can use to see if they meet the criteria for available resources.

Regarding public outreach, the goals of the communication plan are (1) communicate the change in service; (2) share information about the benefits; (3) encourage community participation in a network to assist people with physical limitations.

Communication tools include website, press release, videos, Facebook, twitter, mailers, reminder postcards, letter to contractors/residents, messages to community and neighborhood groups, and reminder letters to residents (education not punitive).

Option are (1) continue with planned/budgeted level of service; (2) restore basic level of service; (3) establish a preferred level of service; or (4) establish an “on-call” loose leaf service.

The basic level of service would include (1) leaf collection twice a season through March; (2) 8 trucks – 4 from other departments – 4 new trucks; (3) $110,000 – annual seasonal employees; (4) $320,000 – capital (7 year replacement); and (5) budget amendments for operating and Capital Improvement Plan (CIP) budgets.

The preferred level of service would include (1) leaf collection once a month through January or February; (2) 12 trucks – 4 from other departments – 8 new trucks; (3) $150,000 – annual seasonal employees; (4) $640,000 – capital (7 year replacement); and (5) budget amendments for operating and CIP budgets.

“On-call” service would require (1) RFP for competitive bids; (2) three to five year contract with one or multiple vendors; (3) user-fee based on full-cost recovery; and (4) budget amendment for operating budget and fee schedule change.

Cities that do not collect loose leaves are Denver, Seattle, Boston and Austin. They have more stringent environmental regulations. Best practices for sustainability are to mulch or compost leaves.

Council direction requested is (1) continue with planned/budgeted level of service; (2) pursue one of the described levels of service, including appropriate budget amendments; (3) establish an “on-call” fee-for-service program; or (4) timeline for bringing preferred options back to Council.

In response to Councilman Bothwell, Ms. Ball said that it is possible to do an “on call” service with existing trucks with a service fee, but she would have to look at what that cost would be.

In response to Vice-Mayor Newman, Solid Waste Manager Wendy Simmons said that the costs outlined by Ms. Ball are additional costs beyond what we are using for brush/leaf collection now.

When Mayor Bellamy asked if we had any locations for residents to bring their leaves for composting, Ms. Simmons said that there are no City-operated sites; however, there are private facilities in town that do accept leaves.

Mayor Bellamy felt there was no opportunity for transition from picking up loose leaves to having to bag leaves. She suggested the Finance Committee review this issue to see if they can locate some funds for a hybrid system (with no additional fee for service) because some residents physically cannot bag their leaves. She does not support the bagged leaves option only. She felt that collection of leaves is a city function covered by property taxes and residents should not have to pay an additional fee for that service now.

Councilman Bothwell noted that we currently have an “on call” service for large objects for a minimal fee of $5.

Councilwoman Manheimer supported sending this to the Finance Committee to explore a blend of bagged leaves and some capital investment for new trucks. Another idea is whether we want to contract out the entire brush and leaf collection program, and then the City wouldn’t have to make the capital investment for the equipment.

Councilman Smith said there is at least one business ramping up composting of yard waste in the City and there may well be others. He felt it would be a good idea to research to see if there is a company that wants the leaves.

Vice-Mayor Newman supported the issue being sent to the Finance Committee. He felt that there are other types of basic cleanliness and sanitation services in the City that Council would like to see more investments in, e.g., sidewalk restoration. We need to clearly have more things like that happening in the City as a whole and that will take some money too, in addition to volunteer efforts. Those things benefit everyone. Regarding the leaf collection service is that it is a City service and if we fully pay for that service ourselves (opposed to having some part of it on-call) is that it does very disproportionately benefit different property owners. He felt this would be a case for some role of basic service, but then if some people are requiring more service than others, then maybe there is some way to partially pay for that so that we can make sure that we are spending enough of funding on the types of City cleanliness initiatives that really benefit the community broadly.

Councilman Davis felt that by the time this issue goes to the Finance Committee and then back to Council, we will be a good way through leaf season. He felt we should try to move forward with the present bagged leaf collection system, and let the community know that the Finance Committee is reviewing the matter and there may be some fees that might be levied. Another concern about loose leaves is when people sweep their leaves to the curb, it takes sometimes 2-3 weeks for the vacuum truck to collect them, and if it rains they are very slick and stop up storm drains.

At this time (5:59 p.m.), Councilman Russell arrived at the meeting.

In response to Councilman Davis, Ms. Ball said that it would take 6-9 months from the time we order a new vehicle to receive it. She said we would miss this leaf season if any change is made if it included new vehicles.

It was the consensus of Council to refer this matter to the Finance Committee.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER AN AMENDMENT TO THE CONDITIONAL USE PERMIT FOR FOUR SEASONS PLAZA, LOCATED AT 1011 TUNNEL ROAD

ORDINANCE NO. 4029 - ORDINANCE AMENDING THE CONDITIONAL USE PERMIT FOR FOUR SEASONS PLAZA, LOCATED AT 1011 TUNNEL ROAD

City Clerk Burleson 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. Mayor Bellamy said that she was on City Council when this project went through the conditional use permit process. She stated that she would consider this issue with an open mind on all the matters before her without pre-judgment and she they will make her decision based solely on what is before Council at the hearing.

Regarding a potential conflict of interest, Councilwoman Manheimer stated that HomeTrust Bank is a client in her law firm; however, the applicant is not the bank. It was the opinion of City Attorney Oast that Councilwoman Manheimer did not have a conflict of interest.

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 6:04 p.m.

Urban Planner Blake Esselstyn 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. Esselstyn said that this is the consideration an amendment to a conditional use permit for Four Seasons Plaza, located at 1011 Tunnel Road, to include additional property to support a new configuration for the bank drive through.

The Four Seasons Plaza project was originally approved as a Conditional Use Permit in 2005. The applicant is now seeking to reconfigure the bank drive-through, extending the vehicular use area to the east, onto a parcel that was not originally part of the Conditional Use Permit (CUP) (Location and Aerial Maps – Attachments to City Exhibit 3). This change requires an amendment to the CUP, necessitating the technical review and Council hearing.

After the initial approval in early 2005, the project was required to have an amendment of the CUP in the summer of 2005 to alter the access on the west side, extending the vehicular use area onto the adjacent parcel, and creating an access easement. This 2011 amendment is somewhat similar, altering the access on the east side, and adding new property to the area subject to the conditional overlay.

Subsequent to the approval of the CUP in summer of 2005, the property owner sought to add the drive-through use, not shown in the earlier submittals. This modification simply underwent staff review, as it was not seen as significant enough to warrant re-review by City Council and did not extend the boundary of the project or involve other properties.

The property to the east has two existing curb cuts, and the proposed new entrance for the drive-through would use the one closer to the existing plaza. The adjacent property is also owned by the owner of the plaza, but consideration should be given to the possible scenario in which the parcel to the east changes ownership.

Though the curb cut is existing, the driveway it serves has not received significant use since the construction of the plaza. The applicant points out that directing the drive-through traffic into this entrance would alleviate the (occasionally dangerous) interference of drive-through stacking with traffic entering the plaza from Tunnel Road. Further, relocation of the ATM would allow for fewer conflicts with other parking lot traffic flow (Site Plan – Attachment to City Exhibit 3).

City staff's chief uncertainty about the proposed redesign was related to potential conflict with the driveway across the street and the number of entrances serving the same development in such proximity. However, given that US-70 is a highway, assessment of such conditions is the purview of N.C. Dept. of Transportation (DOT). On October 6, the applicant informed staff that DOT had approved the driveway permit.

The area proposed for modification which would need to be added to the conditional use overlay is only a portion of a parcel. In order to prevent the overlay from bisecting a parcel, the applicant has agreed to relocate the property boundary to include the affected area.

This project was approved with conditions by the Technical Review Committee on October 2, 2011. As an amendment to a previously approved Conditional Use Permit, review by the Planning & Zoning Commission is not required.

As of this writing, staff has not received any communication from citizens regarding this matter.

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 project will meet State building code requirements and will be reviewed in detail by the Technical Review Committee (as well as NCDOT staff) to ensure compliance with safety requirements.

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 proposed site modifications will involve minimal earth work and disturbance. For what grading is undertaken, measures will be required to prevent adverse impact to nearby water quality.

3. **That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.**
   There is only one property adjoining the affected area which is not owned by the applicant. Staff feels this proposed change will have no discernible effect on that property, nor any other nearby property.

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 amendment essentially involves the reconfiguration of a vehicular use area, whose characteristics staff feels will have negligible consequences for the character of the neighborhood.

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.**
   Other than possibly promoting safety by lessening conflicts related to traffic interaction, staff feels the proposal would neither hinder nor promote the goals of such plans, policies, and strategies.

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 proposed changes are not anticipated to generate additional traffic, demand water, or increase any need for other services, and as such, the location is equally suitable as the current situation.

7. **That the proposed use will not cause undue traffic congestion or create a traffic hazard.**
   Staff from both the City's Transportation department and the North Carolina Department of Transportation have reviewed the proposed alterations for safety and traffic flow implications and deemed them appropriate for approval.

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

Pro:
- May improve safety of traffic movement.

Con:
- None noted.

Staff recommends approval of this amendment to the previously approved Conditional Use Permit.

Mr. Marty Kocot, Civil Engineer on the project, urged Council to approve the amendment to the conditional use permit for safety reasons.

After rebuttal, Mayor Bellamy closed the public hearing at 6:09 p.m.

Councilman Russell moved for the adoption of Ordinance No. 4029, granting an amendment to the conditional use permit for Four Seasons Plaza, located at 1011 Tunnel Road, by adding the area denoted on the site plan to the conditional overlay for the Four Seasons Plaza, subject to the conditions recommended by City staff and subject to the following conditions: (1) The project shall comply with all conditions outlined in the TRC staff report; (2) All new site lighting must comply with the City's Lighting Ordinance and be equipped with full cut-off fixtures and directed away from adjoining properties and streets. If lighting is to be added, a detailed lighting plan will be required upon submittal of detailed plans to be reviewed by the Technical Review Committee; (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; and (5) This project will undergo final review by the TRC prior to issuance of any required permits. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 27 - PAGE

V. UNFINISHED BUSINESS:

A. SECOND & FINAL READING OF ORDINANCE NO. 4025 - ORDINANCE TO CONDITIONALLY ZONE PROPERTY LOCATED AT 3 EAST WANETA STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY HIGH DENSITY DISTRICT/ CONDITIONAL ZONING TO ALLOW FOR CONVERSION OF THE DUPLEX TO A SINGLE FAMILY HOME; THE CREATION OF A SECOND PARCEL FOR FUTURE DEVELOPMENT OF A SINGLE-FAMILY DWELLING; AND A REQUEST FOR MODIFICATIONS TO STANDARDS FOR SETBACKS AND LOT SIZE

Mayor Bellamy said that the public hearing and adoption on first reading of this ordinance was held on October 11, 2011, but because the ordinance was not adopted by a 2/3 vote of Council, it was necessary to bring the ordinance back for a second and final reading.

Ms. Patsy Brison, attorney representing the applicants, provided Council with a letter dated October 25, 2011, along with a copy of a Certificate of Appropriateness issued by the Historic Resources Commission of Asheville and Buncombe County on February 26, 2008, for new construction of a 2,324 sq. ft., two-story single-family dwelling with basement. The Permit Extension Act of 2009, as amended, has the effect of extending the time period for this approval beyond the expiration date, meaning that it is still in effect.

City Attorney Oast explained that the Certificate of Appropriateness describes how the property can be developed – two-story single-family dwelling with basement. In order for anything else to be built would require an amendment to the Certificate of Appropriateness.

Councilman Russell moved for the second and final reading of Ordinance No. 4025. This motion was seconded by Councilman Smith and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilwoman Manheimer voting "no."

ORDINANCE BOOK NO. 27 – PAGE

B. REPORT ON REQUEST FOR TEMPORARY WAIVERS TO THE BANNER POLICY AND SIGNAGE POLICY FOR MOOGFEST

Assistant Director of Planning & Development Shannon Tuch said that at the October 11, 2011 City Council meeting the Council directed city staff to work with ACS entertainment on identification needs for the upcoming Moogfest music festival. Specifically, temporary signage and light pole banners were discussed.

City staff has met with the event organizer and have cooperatively detailed and mapped all of the proposed temporary signage – all square footage limitations and off-premise restrictions have been waived. Only those standards related to public safety have been upheld with very limited effect on the event. Light pole banners were also discussed and offered; however, the event organizers ultimately decided not to pursue these at this time.

As part of a wording amendment currently in process, new signage allowances for large temporary events is being considered. It is anticipated that these allowances will be in place prior to the Southern Conference Basketball Tournament and other large events expected in the spring.

Councilman Smith moved to waive the proposed temporary signage. This motion was seconded by Councilman Davis and carried unanimously.

At 6:15 p.m., Mayor Bellamy announced a 5-minute recess.

C. REPORT ON A PERMANENT OVERNIGHT CAMPING LOCATION FOR OCCUPY ASHEVILLE

Assistant City Manager Jeff Richardson said that at the direction of City Council in the October 11 formal meeting, staff reviewed City-owned public spaces in an effort to provide potential public space options for Occupy Asheville to be permitted to occupy on a continuous 24 hour basis for an indefinite period of time. On Thursday, October 13, city staff met with representatives from Occupy Asheville and covered in detail three public space options that City staff had analyzed and were prepared to work with the group on the normal permitting process. Those parcels were:

- Bottom of Lexington Avenue under the I-240 Overpass (specifically the public metered parking area) in that area. This area can be offered on a **24-7 basis** and there are no permitted events there for the remainder of the calendar year.
- City employee lot adjacent to Marjorie Street and the corner of Valley Street. (Gated currently). This lot can be permitted for the group's use from **7pm - 7am daily.**
- City street level public parking lot on Rankin Street (two options), across and beside the Rankin Avenue Parking garage. **7pm to 7am daily**.

These locations would serve as a staging area for and would be ancillary to the group's primary activity of conducting a protest in the City's downtown parks during daytime hours. City staff answered questions regarding each of these options, and explained the required permitting process for any of these locations, at their request.

The group indicated that their primary interest is to occupy a public park in downtown on a continuous 24-hour basis, within eye sight and sound proximity to government buildings and banks. Staff explained that they do not have administrative authority to allow occupying of the parks past 10:00 p.m. daily, and such consideration would require City Council approval.

The group requested one additional day to consider each of the options as presented and a follow up meeting with City staff on Friday, October 14 for further discussion. On Friday, October 14, City staff met again with representatives from Occupy Asheville. That meeting resulted in the following:

1. Occupy Asheville completed a permit application for the fifteen (15) publically metered parking spaces at the bottom of Lexington Avenue under the I-240 overpass. Note: This property is under the control of the City of Asheville through an Encroachment Agreement with the N.C. Department of Transportation.
2. The event organizer stated their intent to attend the October 25 City Council meeting and request waivers for all fees associated with the permitting of the space.
3. On Tuesday, October 18, City staff was contacted by Occupy Asheville and a new permit application was submitted with an expanded list of requested uses for the public space and an extended timeframe of twelve months. Staff continues the review the new application permit at the time of submittal of this memorandum.

Fiscal Impact:

- City policy outlines a $15 per meter per day charge to the event organizer for the permitted use of the parking spaces in the requested area. These charges total $225 per day. Parking Services Division has provided periodic analysis of public usage of metered areas in the CBD and reports that average daily revenue generated from these spaces average $16.09 per day, representing an overall low public usage.
- Inspection Fees: $260
- Liability Insurance: TBD
- The city does not have the resources to fulfill the barricade order for the defined period of time as it would negatively impact the city's ability to meet day-to-day operational needs.

Concerns noted:

- Department of Transportation: The City of Asheville has permitted temporary use special events on occasion, however, none for the expressed use as outlined herein, and none for the potential duration of time as indicated by the event organizer. As result, the local office of the Department of Transportation has contacted the City and expressed concern that the permitted use of this public space does not keep in the spirit and intent of the agreement as outlined. Further, DOT staff indicated that if the City permits this space for long term use in this manner, DOT will review this issue with DOT in Raleigh and ask for guidance accordingly.

- Insurance Liability Requirement: As standard practice, the event organizer is responsible for providing certificate of insurance prior to release of the permit. The City's Risk Manager has reviewed the permit and requested use and does not recommend waiver due to the city's liability associated with this waiver.

- Constitutional Law: There are significant First Amendment considerations (i.e. consideration of future permit applications for all other groups to continuously occupy City property if they meet the permit requirements).

- District Attorney's Office: The District Attorney has concerns of successfully prosecuting defendants for violations of law on City property if exceptions are allowed for a particular group.

- Public Safety: The Asheville Police and Fire Department has indicated public safety/traffic concerns and continues to monitor accordingly. As event participation levels

grow, staffing redeployment considerations may need to be made. To date, Police has charged one person with assault at the event site.

- Environmental Health: City ordinance requires portable restrooms and the event organizer has complied with this requirement. There are no other health related requirements specific to this permit application.

Review of North Carolina cities:

- City of Charlotte: Occupy event organizers are allowed to have "pop up" tents in a green space in front of City Hall designated Public Forum space. The space is not a city park, but is owned by the City and can be utilized by any group. The city does not program the space and there are not any time constraints accordingly.
- City of Greensboro: Occupy demonstrators are leasing a YWCA lot for overnight camping, nine blocks from downtown plaza. The YWCA lease runs out in two weeks and the city has placed the burden on finding additional space on the event organizers.
- City of Durham: Occupy event organizers have been congregating at CCB Plaza during the day-time hours, but because it is considered a part of the Durham Parks System, overnight camping is prohibited. No permits have been issued.
- City of Raleigh: 19 Occupy event participants were arrested on October 15 after refusing to leave the NC Capital grounds, after their permit expired at 3:00 p.m. on that day. Event organizers are not allowed to pitch tents as Raleigh does not allow camping in public parks, except for Olmsted Park, where there is a $14 fee. In addition, event participants are allowed to set up lawn chairs as long as they do not impede the use of the sidewalk.

At this time, City staff is withholding the final permit action in an attempt to determine viable options regarding the event organizer's required insurance certificate. City staff will continue to review this event in concert with its current staging location, and will be prepared to report on any additional issues that may arise up until the October 25 meeting.

Mayor Bellamy said that normally Council would have a motion on the floor before public comment. There has been a request to hear from the community before a motion is made. Councilman Bothwell then moved to hear from the community before a motion is made. This motion is seconded by Councilman Smith and carried on a 4-3 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no." Councilman Russell wondered what the public would be commenting on. Mayor Bellamy agreed with Councilman Russell; however, the motion passed. She said that public comment is limited to one hour and explained the time limits for speakers.

In terms of process, Vice-Mayor Newman moved to allow 30 minutes for public comment now with the understanding that if a specific motion is made by Council, then an additional 30 minutes for public comment be allowed on that specific motion. This motion was seconded by Councilman Bothwell and carried on a 6-1 vote, with Mayor Bellamy voting "no." Mayor Bellamy could not support the motion as the rules are continually changing and we are setting a bad precedence.

The following individuals expressed concern over Council setting precedence in allowing special privileges and fee waivers for one group:

Mr. Rod Hudgins, representing the Council of Independent Business Owners
Mr. Chris Peterson
Ms. Heather Dillashaw, with Homeward Bound, but representing herself (requested consistency because it's problematic for one particular group to be given special consideration for an approved and permitted camp site when any given night we have over 500 homeless that do not have places to sleep, noting that many are

arrested for camping in public places)

The following individuals urged Council to waive the 10:00 p.m. park curfew that would permit Occupy Asheville (an assembly of people) a permanent place to camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire, claiming that this falls under the rights of free speech and public assembly:

Dr. Milton Byrd
Ms. Rosetta Star, owner of Rosetta's Kitchen on Lexington Avenue (also noted that their current location under the Lexington Avenue bridge is toxic due to issues with air quality, and already occupied by a huge amount of the mentally ill, sick and homeless population)
Mr. Scott Owen
Chaplain Robert Zachary
Rev. Christopher Chiaronmonte

Councilman Smith praised the social movement and how everyone has handled the situation to date. He said that Occupy Asheville is referred to as a leaderless organization, making it difficult to negotiate with local government, especially when different parts of Occupy Asheville want different things. He outlined the following issues facing Council when considering their role regarding Occupy Asheville: (1) what is the precedent we are setting; (2) public safety for Occupy Asheville and everyone else; (3) responding appropriately to non-violent actions; (4) recognition that there are a variety of political views in the City; and (5) respect for free speech and civil liberties. Based on his conversations with Occupy Asheville, he did not believe the presence or absence of an enduring permitted partnership with the City will either make or break this movement. He knows that people who want to camp, do it currently and legally as evidenced by the Federal Building campers. The temporary solution under the I-240 overpass on Lexington Avenue was designed to give the City a chance to consider all these issues, noting this is not the end. Our ongoing patience and understanding and dialogue will help all of us move the City forward.

Councilman Smith then moved that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.; that the Asheville Police Department fully train all responding officers in non-violent responses to non-violent direct action and are very clear regarding protecting free speech and civil liberties; and that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance.

Because Councilman Smith's motion is complicated dealing with procedures, operations and finances, Mayor Bellamy requested each part of the one motion be divided and voted on separately.

Councilman Smith then moved that temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m. This motion was seconded by Vice-Mayor Newman.

Due to previous discussion about the amount of public comment allotted for each specific motion, Vice-Mayor Newman confirmed with City Attorney Oast that it is a Council member's option to include multiple parts into one motion if they choose.

Councilman Russell, Chair of the Public Safety Committee, felt that the second part of Councilman Smith's motion regarding the Asheville Police Department can be handled without Council direction. City Manager Jackson agreed in that that we have experienced the training identified in the motion and felt that the intent of the motion was to use it to it's fullest extent in the event of the closure of the temporary accommodations.

Councilman Smith also noted that the movement will likely continue and will have a series of non-violent direct actions quite possibly, and that the Asheville Police Department

should respond appropriately to each of those and ideally work closely with the organizers to ensure that everything remains non-violent. City Manager Jackson said that is our intent and approach and with the City Attorney's Office and the Police Department there has been extensive training. We will continue to be current to track movement and track the best techniques in responding and working with Occupy Asheville cooperatively.

From City Manager Jackson's response, Councilman Smith understood that it's not necessary to make a motion to that point in that the policy and procedures are already in place. City Manager Jackson said that Council is asking them to operate with the best training techniques and communication skills we have available.

Councilman Smith agreed to have his motion divided and voted on separately if 15 minutes of public comment is allowed on each of the two motions.

Mayor Bellamy reiterated Councilman Smith's motions as follows: (1) that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.; and (2) that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance. Mayor Bellamy said that there will be a total of 30 minutes public comment on both motions and the motions will be considered concurrently so people can speak to both issues when they address Council.

The following individuals spoke to Council on both issues, with various comments being made, such as, but not limited to: ceasing the temporary accommodation is not applicable since they only have an application for a permit; request to waive the $224 for the public spaces parking; waive the 10:00 p.m. park curfew so Occupy Asheville can camp to assemble 24 hours indefinitely within Pack Square Park/Roger McGuire; Occupy Asheville has been a benefit to the City and not a burden as they have helped feed people and are keeping people safe at night; Occupy Asheville has done random acts of kindness; Occupy Asheville does not want hand-outs but to educate the public;

Mr. Matthew Burd
Ms. Leslie Boyd
Ms. Lindsey McGillis
Rev. Lisa Landis
Mr. Scott Owen
Mr. Chad Ekre
Mr. Michael Pinnager
Mr. Victor Ochoa
Mr. Anthony Benton
Mr. Luca Resani
Ms. Judith Hoy
Ms. Catherine Davis Zommer

Mr. Mike Fryar spoke against waiving the fees incurred by Occupy Asheville.

Mayor Bellamy reiterated Councilman Smith's motion which was seconded by Vice-Mayor Newman that the temporary accommodations cease on Friday, October 28, 2011, at 6:00 p.m.

Councilman Bothwell agreed that credit was due for all parties. He was hoping to hear some ideas about locations in the public comment period before Council discussion. Most public comment was about the spirit of Occupy Asheville more than specific plans. He understood that their goal is a park. He supported the Occupy movement. He was pleased that the AFL CIO followed through on his suggestion to provide port-a-johns. He is working with the ACLU to create a legal defense team. He is also talking with a Physician's Assistant and a doctor to provide a free health care clinic two days a week for Occupy Asheville. Regardless of what

Council does, Occupy Asheville will go on and he wants this to move forward. Maybe the motion to cease the temporary accommodation is necessary to force the next step. He didn't know if the City will be able to come up with a place, but he felt it is important that Asheville supports this movement.

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

Councilman Smith then moved that Council waive fees incurred in the course of this Council-initiated response to an extraordinary circumstance. This motion was seconded by Councilman Bothwell.

Councilwoman Manheimer asked for a clarification on the parking meter fees. Mr. Richardson said the approximate amount of waiver would be $150 for the entire time Occupy Asheville has occupied the lot.

Vice-Mayor Newman outlined the many has many shared goals that City Council has with Occupy Asheville, e.g., Council is a diverse group and have different views, they have adopted a living wage policy for City employees and those who do business with the City, we have adopted a policy and provided resources to end homelessness in Asheville, we are reducing our own carbon footprint, and we believe in equal rights for everyone in Asheville.. But, he said we have a long way to go on many issues. Although we may disagree on the specific issue brought before Council does not mean we disagree with the changes you want brought to the community and this country.

Councilman Bothwell felt that waiving the parking meter fees is the minimum we can do. He noted that we block off parking meters for different reasons all the time. He did not recall the 51 Biltmore Avenue project or the Pack Square Conservancy project paying for the meters that they closed during their construction phases.

Mayor Bellamy cannot support the motion and asked Occupy Asheville to really look at our community. Asheville is a very inclusive community and we make sure people are involved in our decision-making processes. We have over 30 boards & commissions that volunteer members make up all facets of life and the decisions that govern our community are not just made by City Council. Our Planning & Zoning Commission, Recreation Board, Historic Resources Commission, Greenway Commission, Public Art & Cultural Commission (to just name a few) are made up of residents who advise City Council. We made a commitment to dialogue with our residents. When we think about parking taken off line, it's normal that someone pays a permit fee or it's a group that is bring economic development into our community. While the amount requested to be waived for parking is low, that does not take into other costs incurred by the City by the movement's presence, e.g., Police Department's time (which could be devoted to other areas of the City). She didn't think it was fair for Occupy Asheville to make the working class and low-income residents, they purport to help through their movement, to pay for these services. There is a financial impact of this movement on people who are not part of this movement. She could not support waiving the fees because she believed this is a cost incurred by collectively a group and they should pay the fees.

The motion made by Councilman Smith and seconded by Councilman Bothwell carried on a 4-2 vote, with Mayor Bellamy, Councilman Davis and Councilman Russell voting "no."

Councilman Bothwell moved to find a park and remove the curfew to allow permanent camping. This motion died for a lack of a second.

D. RESOLUTION NO. 11-222- RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CHANGE ORDER WITH MOORE & SONS SITE

CONTRACTORS INC. TO COVER THE COST OF REVISIONS TO THE CLINGMAN AVENUE/HAYWOOD ROAD STREETSCAPE PROJECT

Engineering Services Manager Greg Shuler said that this is the consideration of a resolution authorizing the City Manager to execute a change order with Moore & Sons Site Contractors Inc., in the amount of $175,000, to cover the cost of revisions to the Clingman Avenue/Haywood Road Streetscape Project.

City Council authorized the City Manager to enter into a contract with Moore and Sons Site Contractors Inc., a local company, for the Clingman Avenue/Haywood Road Streetscape Project for a total of $503,827, not to exceed the project budget. On December 14, 2010, a change order was executed for the amount of $100,000 to increase the contract to cover unforeseen construction costs. This exhausted the 20% maximum that City Council had authorized the City Manager to execute. Subsequent thereto, members of the community voiced a desire to add a bike lane on the climbing side of Clingman to connect to Hilliard Avenue. To accommodate the community's request, the project had to be re-designed, significantly increasing the project cost due to among other things, the relocation of numerous utility poles. City Council then approved the transfer of funds from the completed Patton Avenue Sidewalk project and the completed Kimberly Avenue Resurfacing project to cover the cost of the re-design and subsequent additional construction. Staff is now seeking Council approval of a change order to the contract with Moore and Sons Site Contractors Inc. in the amount of $175,000 to pay for these additional construction costs per City contracting procedures.

This action complies with the City Council Strategic Operating Plan in fully leveraging funding from the State and other sources for regional transportation improvements. This action also complies with the City of Asheville Comprehensive Bicycle Plan in that it provides a climbing lane on a street identified in the plan as a need.

Pros:

- Implements a project in the City's adopted bicycle plan.
- Improves bicyclist safety.
- Encourages biking, thereby reducing carbon emissions.

Con:

- The City's contribution to the project had to be increased to cover the additional design and construction costs.

Funding already exists within the Clingman Streetscape project to accommodate this $175,000 change order. The original budget for this project was $907,251. In May of this year, Council approved a $250,000 budget amendment in this project to fund the additional design and construction costs mentioned above, which brought the total project budget to $1,157,251. Of this amount, $750,000 is City General Fund money, with the remaining $407,251 being provided by grant funding from the N.C. Dept. of Transportation.

City staff recommends City Council adopt the change order to appropriate fund accounts.

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. 11-222. This motion was seconded by Councilman Davis and carried on a 6-1 vote, with Mayor Bellamy voting "no."

RESOLUTION BOOK NO. 34 - PAGE

VI. NEW BUSINESS:

A. METROPOLITAN SEWERAGE DISTRICT

Mr. Steven T. Aceto, Chairman of the Metropolitan Sewerage District of Buncombe County (MSD), is requesting the City of Asheville join with him in the following letter to Mr. Tim Moore, Chairman of the Legislative Research Commission regarding the Legislative Research Commission Water & Sewer Consolidation Study. "We are writing to you in your capacity as the Chair of the Legislative Research Commission. We understand that you have been authorized to appoint subcommittees to study certain matters, including *Metropolitan Sewerage / Water System (HB 925 Moffit),* and that Representatives Moffit, McGrady, Brawley, Murry and Brisson have been appointed to the subcommittee researching this issue with Representative Moffit serving as chair. As the ratepayers and users of the Metropolitan Sewerage District of Buncombe County and the ratepayers and users of the City of Asheville water system could be affected substantially by the work of this subcommittee and staff, we request the opportunity to provide input to the subcommittee and staff as they go about their work. Your cooperation and assistance in this matter are most appreciated." The MSD Board approved this letter.

Regarding the Task Force (which the MSD Board approved), Mr. Aceto said the role of the Task Force is to address the specific items mentioned by Mr. Moffitt and, the three models of providing service. The MSD Planning Committee recommended to the full MSD Board and the City Council that a Task Force be created to assemble the information delineated in HB 925 along with other pertinent information in order to provide input to the Legislative Research Committee (LRC) Study Subcommittee. The Task Force shall report all findings to the MSD Board and City Council. In addition, the Task Force shall consider the three models of providing service: (1) No change in service providers; (2) City of Asheville Water system merge with MSD, and (3) Separate independent Authority like MSD. This local Task Force shall be comprised of two members from the MSD Board and two members of City Council, with Gary McGill as consultant and facilitator. The MSD Committee voted to have Al Root and Bob Watts represent the MSD Board on the local Task Force.

Vice-Mayor Newman said that the Boards & Commissions Committee discussed this and recommended appointing Councilwoman Manheimer as one of our representatives to the Task Force. He also said that if no one else on Council would like to serve, he would be willing. He has served on the MSD Board in the past, but noted that his term on City Council ends on December 6; however, he would be willing to continue on the Task Force if that is the wish of Council.

Councilman Bothwell moved to appoint Councilwoman Manheimer and Vice-Mayor Newman as our two representatives to the Task Force.

Regarding Councilman Davis' question on the Task Force's role when they attend the meetings in Raleigh, Mr. Aceto understood the LGC will appoint five members of the Study Committee; Representative Moffit as Chair, Chuck McGrady from Henderson County, Bill Brawley from Mecklenburg County, Tom Murry from Wake County and William Brisson from Bladen County. Mr. Moffit reported that the LRC Committee is limited to four meetings between now and the end of April of next year. As Chairman of the Committee, Mr. Moffit is trying to get a lot of what needs to be done ahead of the first meeting and felt the best way to effectively have a very local transparent involvement of interested parties in the entire process would be an informal committee; probably advisory. Mr. Aceto said the function of the Task Force would not necessarily to participate in the meetings, but provide a coordinated way to provide factual input and study into this process, whatever form it takes.

Mayor Bellamy was not opposed to Vice-Mayor Newman serving, but only until his term on Council ends. She felt the intent of the MSD Planning Committee was to have two members of City Council on the Task Force.

Vice-Mayor Newman understood Mayor Bellamy's statement and withdrew his name because he would not be a member of Council through the process.

Councilman Smith suggested Councilman Davis as the other City representative because of his history and depth of the matter. He would be willing to serve; however; he may not be the City's best representative.

Mayor Bellamy was not interested in serving on the Task Force as she admitted she was very biased about what should happen to our water system. She did feel it was necessary to have a seated City Council member who can start and finish the process.

Councilman Davis appreciated the confidence of Councilman Smith, noting he did have a good institutional history of the matter, but he also acknowledged that he is biased in his opinion. He felt Asheville is being treated uniquely in this instance. The City has worked a long time on making a good water system and they have been good stewards. He would be advocating for the City to keep its assets. That said, he is running for re-election in November and if not re-elected, he would not be eligible to serve on the Task Force.

In response to Councilman Smith, Councilwoman Manheimer said that the legislature had decided that certain studies would basically be formed as subcommittees of the LRC and in the case of the House, the LRC creates these subcommittees and appoints the members. The point is it is very discretionary and all we know is that the Chair has been designated to be Representative Moffit and there are four other members of the House. Because it is a subcommittee of the LRC, no one else can be on the subcommittee other than a House member. We also know that they are charged with studying the items that were included in the original proposed study bill. We have been told by Mr. Moffit that the Speaker of the House has directed that the LRC subcommittees can meet only four times during the interim (the time period where the legislature is not in session). They go back into session in May for their Short Session. All we know is that at the pleasure of Mr. Moffit, they shall meet four times in Raleigh at a time designated by the Chair.

Councilwoman Manheimer said the Task Force will not make a recommendation but provide information back to Council and MSD. They are only more of a vehicle of compiling the information. Rather than sit by and have no participation on the part of local government in Asheville, the MSD Planning Board decided to come together and gather data to provide to the Study Committee. The purpose of the Task Force is not to make a recommendation one way or another.

Councilman Smith said that he would be willing to serve, with the understanding that he could not guarantee that he could attend the meetings in Raleigh.

In response to Councilman Bothwell, Councilwoman Manheimer said that the meeting schedule may not be known until one week ahead of the meeting.

Councilman Davis said that if it is acceptable to Council, if he is re-elected, he would be willing to serve.

Councilman Bothwell withdrew his motion.

Rev. Christopher Chiaronmonte predicted the City would lose the water system.

Dr. Milton Byrd recognized that the wheels of government move slowly and the bureaucracy around the water and sewer issue has been a quagmire for years. He said there is no balance and at some point Council needs to look forward to see what is the best way to let go and move forward.

Councilman Russell moved to (1) authorize the Mayor to sign the joint letter with MSD regarding the Water & Sewer Consolidation Study; and (2) appoint Councilwoman Manheimer and Councilman Davis, with Councilman Smith as a back-up should Councilman Davis not be re-elected, as our two representatives to the Task Force. This motion was seconded by Vice-Mayor Newman and carried unanimously.

B. CONSIDERATION OF A CHARITABLE CONTRIBUTION COMBINED CAMPAIGN FOR CITY OF ASHEVILLE EMPLOYEES

Director of Finance and Management Services Lauren Bradley provided Council with the following background information for a proposal to implement a charitable contribution combined campaign for City of Asheville employees.

The City of Asheville participates in an annual campaign where City employees can make charitable contributions through voluntary payroll deductions or one-time gifts. The United Way is currently the only organization authorized to participate in the City's campaign and to solicit charitable contributions in our workplace.

At the September 13, 2011, Finance Committee meeting, a representative from EarthShare North Carolina (ESNC) requested that the City consider expanding its campaign to be a "combined campaign," or one that includes additional federations, which are "umbrella" organizations that have multiple independent, charitable agencies who all work on a specific area of focus as members.

The Finance Committee directed staff to gather further background information about a combined campaign with a focus on its impact on staff workload and potential costs. The Committee asked for that information to be shared City Council. The following document provides additional information about the proposed combined campaign.

This report is being provided for informational purposes only and there is no associated staff recommendation. Information on the combined campaign is below:

How does a combined campaign work? Based on best practices in North Carolina, the local government first develops a standard procedure for the combined campaign that defines criteria for accepting charitable organizations. The criteria used by other local governments typically requires an eligible organization to be a federation, which is a group of a minimum number of non-profit charitable organizations that have voluntarily joined together for purposes of raising and distributing money for and among themselves. Once the criteria and application process is adopted, the city would accept applications from organizations for inclusion in the campaign.

In most cases, the local government selects a participating federation to administer the campaign. The campaign administrator serves as the liaison between the city and the participating federations, prepares a combined pledge card, and coordinates with representatives from all of the included federations to participate in employee campaign meetings and activities. The city considers management proposals and selects the administrator. The city can also establish the maximum fee for administering the campaign. The fee is typically a percentage of pledges in the campaign but could be a set cost as well.

Representatives from EarthShare NC have suggested that the United Way of Asheville and Buncombe County has experience administering the combined federal campaign covering Western North Carolina and would be familiar with what is involved to administrate a combined campaign for Asheville, and may be a natural choice since it has an established local presence. EarthShare NC also serves as the administrator for the Raleigh and Cary campaigns, and has suggested that it could provide that support if needed.

The city decides to what extent staff is used to communicate the campaign. In most cases, the city utilizes staff to serve as campaign coordinators, as Asheville does now for the United Way campaign, to distribute and collect pledge cards and serve as the ambassadors for the campaign. The campaign administrator compiles all of the pledge cards to provide the city with a payroll deduction file, receives the payroll deduction check from the city, and distributes the pledges and receipts from the campaign to the participating federations for distribution to their members.

Would a combined campaign result in additional staff workload? From a payroll administration perspective, the process is identical to Asheville's current procedures with the United Way campaign and would not necessarily result in additional staff workload. Asheville would deduct contributions from paychecks and send a single payment to the campaign administrator. The campaign administrator is then responsible for distributing the funds to the designated federations.

What federations typically participate in combined campaigns in North Carolina? Examples of federations in North Carolina include EarthShare North Carolina, which is a federation of 66 member non-profits that share a mission of preserving and enhancing the natural environment. Community Health Charities is an umbrella organization for health-related charities. North Carolina Community Shares is a federation of organizations that focus on social justice. There are a number of other federations in North Carolina.

What other local governments have a combined campaign? The Towns of Carrboro, Chapel Hill, Cary and Hillsborough; the Cities of Durham, Raleigh and Greensboro; and the counties of Guilford, Mecklenburg, Orange and Wake currently offer a combined campaign. The State of North Carolina also offers a State Employees Combined Campaign.

What would be the timeline for launching a combined campaign? If the combined campaign proposal is approved by City Council, staff would develop a standard operating procedure, including criteria for charitable organizations and an application process, for City Council consideration in winter 2012. Designating the campaign coordinator and implementing the application process would take place in spring/summer 2012. The combined campaign would be launched in late 2012 for payroll deductions in calendar year 2013.

Vice-Mayor Newman said that he and Councilman Bothwell and Councilwoman Manheimer met informally with representatives from the United Way and EarthShare to discuss some of the concerns for providing a public health environmental component to the workplace giving at the City. It was the consensus amongst the Council that it would be beneficial to provide some additional time for staff, United Way and EarthShare to continue this discussion and see if there is an approach which both groups could be supportive of going forward. He recommended that Council continue this matter until November 22.

Mayor Bellamy was under the impression that the groups wanted 60 days to allow them ample time for all issues to be addressed.

When Councilman Bothwell asked if there was a consensus of Council for this to move forward so as to avoid unnecessary City, United Way and EarthShare staff time if this idea is not something Council would be interested in, Councilman Russell said that the Finance Committee, made up of three members of Council, were supportive.

Councilman Russell moved to continue this matter until December 13, 2011. This motion was seconded by Councilman Bothwell and carried unanimously.

B. PACK PLACE BOARD OF TRUSTEES

Vice-Mayor Newman said that the Boards & Commissions Committee discussed appointing Councilwoman Manheimer to replace Councilman Russell on the Pack Place Board of Trustees. Councilwoman Manheimer is interested in serving; however, wanted additional time to do some research on whether there would be a conflict of interest since her law firm has done some work with the Art Museum. He asked that this matter be continued until November 22.

Mayor Bellamy said that all boards that have Council assignments will be discussed when the new Council takes office in December. She felt that would be the appropriate time to make the replacement.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Rev. Christopher Chiaronmonte felt the City has chased of f the homeless by harassment.

Mr. H.L. Carlyle spoke about the need for integrity and felt that Ms. Samatha Bowers, an employee of the Housing Authority, has integrity.

Dr. Milton Byrd said that Council has to stand their ground as representatives of due process and democracy. And, at the same time, they must have the willingness to stand up as leaders and say what needs to be said as leaders.

Mayor Bellamy reminded the public that City Council has cancelled their November 8, 2011, meeting and encouraged the public to vote. In addition, she said that the City of Asheville will not be holding an independent Veterans Day event, but encouraged the public to participate with the VA Hospital's event.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 8:59 p.m.

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CITY CLERK MAYOR