

Tuesday – January 24, 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; Councilman Gordon D. Smith; Assistant City Manager Jeffery B. Richardson; City Attorney Robert W. Oast Jr.; and City Clerk Magdalen Burleson

Absent: None

PLEDGE OF ALLEGIANCE

Mayor Bellamy led City Council in the Pledge of Allegiance.

INVOCATION

Vice-Mayor Manheimer gave the invocation.

I. PROCLAMATIONS:

A. PROCLAMATION PROCLAIMING FEBRUARY 2012 AS “BLACK HISTORY MONTH”

Mayor Bellamy read the proclamation proclaiming February, 2012, as "Black History Month" in the City of Asheville. She presented the proclamation to Mr. Al Whitesides, 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 JANUARY 10, 2012

B. RESOLUTION NO. 12-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICE AGREEMENT WITH BROWN AND CALDWELL FOR THE WATER RESOURCES MAIN TRANSMISSION LINE EVALUATION PROJECT

ORDINANCE NO. 4044 - BUDGET AMENDMENT FOR WATER RESOURCES MAIN TRANSMISSION LINE EVALUATION PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into a professional service agreement for the Main Water Transmission Line Evaluation with Brown and Caldwell in the not-to-exceed amount of \$319,018.00; and a budget amendment in the amount of \$219,018 from savings in the Viewmont Acres Waterline Project that was completed under budget.

The City of Asheville Water Resources Department is seeking the services of a qualified engineering firm to work with staff to develop an assessment of some of the City's main water transmission lines with an overall goal to develop long term planning solutions for the replacement of its most critical water infrastructure. This contract represents part one of a two part project. The successful completion of this first project will result in the delivery of an inventory and condition evaluation of the selected transmission lines and system appurtenances; specifically 61,000 linear feet of 50 year-old 36-inch steel transmission main and 35,000 linear feet of 85 year-old 24-inch cast iron transmission main.

The Water Resources Department issued a Request for Qualifications (RFQ) for Engineering Services related to the project. In response to that RFQ, the department received eight (8) proposals. Companies responding were:

1. Arcadis G&M of North Carolina, INC. – Greensboro, NC
2. Brown and Caldwell – Charlotte, NC
3. Hazen and Sawyer, P.C. – Charlotte, NC
4. Michael Baker Engineering, Inc. – Asheville, NC
5. Stantec – Charlotte, NC
6. The Wooton Company – Raleigh, NC
7. Vaughn & Melton Consulting Engineers – Asheville, NC
8. Willis Engineers – Charlotte, NC

A review team, comprised of staff from the City of Asheville Water Resources Department reviewed these proposals and selected the firm Brown and Caldwell. Subsequent to this selection, Water Resources met with Brown and Caldwell and negotiated an Engineering Services Contract in the amount of \$319,018.

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

Pros:

- Brown and Caldwell has provided Engineering Services on numerous water system projects for the City of Asheville. Their experience and knowledge of our water system will minimize staff support and input during the process.
- This project will provide the City of Asheville with the first set tools necessary to complete the entire proposed project and ultimately make sound decisions for planning and replacement of its most critical water infrastructure.

Con:

- Failure to award an engineering services contract would prevent the Water Resources Department from completing the necessary planning and replacement of critical water infrastructure in a timely manner.

The Water Resources Department currently has \$100,000.00 budgeted for this project. The remaining funds of \$219,018 needed for the contract with Brown and Caldwell will be transferred from the Viewmont Acres Waterline Project that was completed under budget.

| | |
|--|---------------------|
| Amount in Viewmont Acres Construction | \$269,140.72 |
| <u>Amount Needed for Asset Mgt Plan Update</u> | <u>\$219,018.00</u> |
| Construction Project | \$ 50,122.72 |

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

City staff recommends City Council approval of the City Manager to enter into a professional service agreement for the Main Water Transmission Line Evaluation with Brown and Caldwell in the not-to-exceed amount of \$319,018; and a budget amendment in the amount of \$219,018.00 from savings in the Viewmont Acres Waterline Project that was completed under budget.

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ORDINANCE BOOK NO. 27 - PAGE**

C. RESOLUTION NO. 12-21- - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH T & K UTILITIES INC. FOR THE WATER RESOURCES WATER SERVICE RENEWALS PROJECT

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with T & K Utilities, Inc., in an amount not to exceed \$236,805, for the Water Resources Water Service Renewals Project.

On December 14, 2011, the Water Resources Department issued a Request for Bids for the Water Service Renewals Project. The scope of the project is to renew existing water services that have been identified as sub-standard as part of the department's ongoing Automated Meter Reading (AMR) project. There will be 100 water services renewed as part of this project, including new meter boxes, new meter setters, new connections to the existing house lines, and approximately 2,100 Linear Feet of copper line.

On January 4, 2012, Water Resources received four (4) bids for the project. Companies responding were:

1. T & K Utilities, Inc. – Asheville, NC; \$236,805.00 total bid
2. Patton Construction Group, Inc. – Asheville, NC; \$273,820.00
3. Huntley Construction Co. – Asheville, NC; \$287,331.00
4. Payne, McGinn & Cummins, Inc. – Travelers Rest, SC; \$293,093.66

A review team comprised of City staff reviewed these bids and selected T & K Utilities, Inc., as the lowest responsible bidder in the amount of \$236,805.00.

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

Pros:

- Approval of the project will allow Water Resources to renew existing, sub-standard water services to residential houses.
- The project will provide a local company with work for several months.

Con:

- None.

As part of the Automated Meter Reading (AMR) Project, the Water Resources Department has allocated the funds needed for this construction project in the Capital Projects Fund. The AMR Project will reduce meter reading time by 85%, which will reduce meter reading costs in time and allow most Meter Readers to transition to other priority positions within the department. Remote meter reading is already improving customer service by reducing meter reading errors that lead to duplicate field visits and reducing the unit cost of meter reading devices by purchasing them in bulk.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with T & K Utilities in an amount not to exceed \$236,805.00 for the Water Resources Water Service Renewals Project.

RESOLUTION BOOK NO. 34 – PAGE 247

D. RESOLUTION NO. 12-22 - RESOLUTION AUTHORIZING THE CITY MANAGER AND/OR MAYOR TO APPLY FOR AND, IF AWARDED, ENTER INTO A GRANT AGREEMENT WITH THE STATE OF NORTH CAROLINA FOR

FUNDING OF LAND ACQUISITION FOR REED CREEK GREENWAY, PHASE IV

Summary: The consideration of a resolution authorizing the City Manager and/or Mayor to apply for and, if awarded, enter into a grant agreement with the State of North Carolina for funding of land acquisition for Reed Creek Greenway Phase IV.

Funds are available through the State of North Carolina, Department of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program (RTP) to fund trails and trail-related recreational needs. The City of Asheville wishes to submit a grant application for \$75,000 for land acquisition of the easements necessary for completion of Phase IV of Reed Creek Greenway.

The RTP grant is a reimbursement grant program which requires a minimum local match of 25%. In order to strengthen the chance of receiving the grant, the City will match the state funding dollar for dollar in the amount of \$75,000 which is budgeted in the City's capital improvement budget for greenway development in land acquisition. The City will also provide in-kind services (legal, surveying) in the amount of \$5,000 for a total match of \$80,000.

The Reed Creek Greenway is an urban greenway that links downtown Asheville, the University of North Carolina-Asheville campus, and adjacent Montford and Five Points neighborhoods. Construction is funded by a grant from the State of North Carolina, Department of Transportation and the City of Asheville capital improvement budget.

The Reed Creek Greenway construction is being implemented in four phases. Phase I is complete and Phase II will be finished in early 2012. The City is partnering with UNC-Asheville to complete Phase III with agreement pending. The grant will substantially assist in acquiring the necessary easements to complete land acquisition for Phase IV and other strategic adjacent parcels along the Reed Creek Greenway. Preliminary design drawings are complete for Phase IV, and construction drawings and construction will follow land acquisition. Staff anticipates budgeting for greenway construction in the FY 2015-2016 capital improvement budget.

This action complies with the City Council Strategic Operating Plan Focus Area-Multimodal Transportation in that it will integrate and implement a multi-modal transportation plan including sidewalks, bike paths, signal preemption, transit, greenways, streets, rivers and access to the river, and other system improvements resulting in a funding priority list. This action also complies with the Parks, Recreation, Cultural Arts, and Greenways Master Plan-Increase the Level of Service and Access for Parks, Facilities and Greenways in that it will develop connected greenway corridors and destinations, prioritize a list of needed easements to connect greenways and parks, and complete projects funded from other sources.

Pro:

- If awarded, the grant will provide additional funding for land acquisition which is required to complete Phase IV of Reed Creek Greenway.

Con:

- The grant application process is competitive and a grant award is not guaranteed.

Award of the grant will reimburse the City of Asheville \$75,000. As noted above, the match of \$80,000 will come from the approved capital improvement budget for land acquisition.

City staff recommends City Council to adopt a resolution authorizing the City Manager and/or Mayor to apply for and enter into an agreement for grant funds with the State of North Carolina, Department of Environment and Natural Resources, Division of Parks and Recreation in the Recreation Trails Program for \$75,000 for reimbursement of land acquisition costs for the Reed Creek Greenway Phase IV.

RESOLUTION BOOK NO. 34 – PAGE 249

E. RESOLUTION NO. 12-23 - RESOLUTION TO CONSIDER THE PERMANENT CLOSING OF A PORTION OF SOUTH PACK SQUARE AND SETTING A PUBLIC HEARING FOR FEBRUARY 28, 2012

Summary: The consideration of a resolution of intent to permanently close a portion of S. Pack Square, and setting a public hearing on February 28, 2012.

N. C. Gen. Stat. sec 160A-299 grants cities the authority to permanently close streets and alleys.

Pursuant to this statute, adjacent property owner The City of Asheville has requested the City of Asheville to permanently close a portion of S. Pack Square.

The proposed permanent closure of a portion of S. Pack Square has been placed on the Greenway Commission's agenda at their regular meeting on January 12, 2012, and approved the closure unanimously.

This closure allows maximum land use potential for further development complying with the Asheville City Development Plan, Land Use.

Pros:

- There will be no future compromise of ingress/egress to other property
- The closure would allow for more efficient use of the existing adjacent properties

Con:

- None

There will be no fiscal impact related to this closure.

City staff recommends City Council adopt the resolution of intent to permanently close a portion of S. Pack Square, and setting a public hearing on February 28, 2012.

RESOLUTION BOOK NO. 34 – PAGE 250

F. RESOLUTION NO. 12-24 - RESOLUTION AUTHORIZING THE CITY MANAGER TO AMEND THE CONTRACT WITH AMEC (PREVIOUSLY MACTEC) TO INCREASE SPECIAL INSPECTIONS AND TESTING SERVICES FOR THE PARKING GARAGE LOCATED AT 51 BILTMORE AVENUE

Summary: The consideration of a resolution authorizing the City Manager to execute an amended contract with AMEC (MACTEC) in the amount of \$9,400 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

The City of Asheville contracted with AMEC (formally MACTEC) in the amount of \$46,000 to perform special geotechnical and material inspections as well as testing. The contract was amended in August 2011 in the amount of \$27,500 due to the fact that we encountered some issues on the site that increased the need for additional geotechnical testing and inspections. These issues include additional fill material on the site that required additional excavation. Additional testing had to be performed to make sure the sub-surface was compacted. In the same vein, the soil wall had to be extended. This required additional soil nail installation and inspection. Finally, due to the compressed schedule of the project, more overtime hours are required to perform these inspections. Some of these overtime cost will be reimbursed by the contractor in a change order deduct.

Since the first amendment in August 2011, the consultant has been asked to increase the hours of inspection due to the expedited schedule of the project. The increase in cost is \$9,400 for a total contract amount of \$82,900. We do not expect any additional changes to this contract.

This project complies with the City's Parking Action Plan. Additionally, the action complies with Job Growth and Community Development by supporting a dynamic and robust local economy with balanced and sustainable growth.

Pros:

- Insures that proper oversight, inspection and testing are performed by qualified professionals and in the best interest of the City.
- Reduces liability in releasing the retainage on the project.

Con:

- Additional cost of \$9,400.

The parking garage portion of the project is approximately 73% complete. We have paid \$5.5 million of the \$7.5 million contract amount. To date we have approved \$35,000 in change orders (less than 0.5%). The budget includes a 10% contingency as part of the project cost. The increase in the Kimley-Horn amendment will reduce the amount of contingency to \$563,000. This amendment will decrease the contingency to \$526,100. We do not anticipate any significant change orders on this project. This amendment will not increase the budget for the entire project.

Staff is recommending City Council authorize the City Manager to execute an amended contract with AMEC (MACTEC) in the amount of \$9,400 to provide additional special inspection and construction materials testing for the parking garage at 51 Biltmore Avenue.

RESOLUTION BOOK NO. 34 – PAGE 252

- G. RESOLUTION NO. 12-25 - RESOLUTION AMENDING THE CITY COUNCIL 2012 MEETING SCHEDULE TO ADD A CITY COUNCIL RETREAT ON FRIDAY, FEBRUARY 3, 2012, AT UNC-ASHEVILLE IN THE WILMA M. SHERRILL CENTER**

RESOLUTION BOOK NO. 34 – PAGE 253

- H. RESOLUTION NO. 12-26 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE HOUSING AUTHORITY FOR A PORTION OF REAL PROPERTY KNOWN AS THE W.C. REID CENTER LOCATED AT 144 LIVINGSTON STREET**

Summary: The consideration of a resolution authorizing the City Manager to enter into a Lease Agreement with the Housing Authority of the City of Asheville for a portion of real property known as the W.C. Reid Center, located at 133 Livingston Street.

On January 25, 2011, the Asheville City Council authorized the Mayor to enter into an agreement for the disposition of City-owned property at 133 Livingston Street to the Housing Authority for the purpose of using the property as a community-based education and training center. As a condition of sale, the City required a lease-back of the W.C. Reid Center gymnasium and gym storage, one office, and a shared conference room, so that the Parks Department may continue to provide recreation programming in the gymnasium. The City will pay one-half of the cost of electricity, heat, water and other utility charges for the property during the three year lease period.

At this point, the Housing Authority has completed all necessary due diligence and a closing date is anticipated for January 26th 2012. Pending Council approval, the lease-back to the City of Asheville will commence on the day of closing.

This action complies with the City Council Strategic Operating Plan as follows: (1) *Job Growth & Community Development*: A lease of property allows the City to provide continued gymnasium access to the community, while future phases of the Grant Center are implemented.

Pro:

- Continued recreation programming for the community.

Con:

- None.

The annual cost for one-half of the utilities at the W.C. Reid Center is estimated at \$31,000. This utility expense is already included in the Park, Recreation and Cultural Arts Budget.

City staff recommends City Council adopt a resolution authorizing the City Manager to execute the lease agreement with the Housing Authority of the City of Asheville, for a portion of the WC Reid Center property at 133 Livingston Street.

RESOLUTION BOOK NO. 34- PAGE 254

I. RESOLUTION NO. 12-27 - RESOLUTION AUTHORIZING EXECUTION OF A UTILITY EASEMENT ACROSS CITY PROPERTY AT THE WILLIAM DEBRUHL WATER TREATMENT PLANT AT 1370 BEE TREE ROAD IN SWANNANOA NC TO RELOCATE A POWER LINE

Summary: The consideration of a resolution granting Progress Energy a utility easement over city property at the William DeBruhl Water Treatment Plant.

The City of Asheville owns the property at the William DeBruhl Water Treatment Plant at 1370 Bee Tree Rd in Swannanoa, NC. As part of Progress Energy's utility maintenance, they need to relocate the power line that runs to the water plant. Progress Energy needs an easement to run the power line from the spillway bridge along the creek to where the existing line is now.

The easement that is being requested would be 30 feet in width and approximately 1,150 feet in length. In addition, Progress Energy would be permitted to construct and maintain its line (including poles, cables, wires, guys, anchors, underground conduits, and other pertinent facilities) and to keep the area cleared of trees, undergrowth, or any other obstructions that may endanger or hinder their operation and maintenance.

This project is part of City Council's strategic plan to leverage external partnerships for pursuing infrastructure improvements.

Pro:

- The new utility pole will update aging infrastructure that supplies power to the water plant.

Cons:

- May require periodic trimming / removal of vegetation within the easement area.
- The City cannot use the area in a manner that interferes with the easement.
- The City will have to ensure that future uses of the property are compatible with the easement.

There is no fiscal impact.

Water Resources staff recommends adoption of the resolution authorizing the Mayor to execute the easement, subject to approval by the City Attorney.

RESOLUTION BOOK NO. 34 – PAGE 255

J. RESOLUTION NO. 12-28 - RESOLUTION AMENDING RESOLUTION NO. 12-11 AUTHORIZING THE MAYOR TO AMEND THE CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2010-2011

RESOLUTION NO. 12-29 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH DIXON HUGHES GOODMAN LLP FOR AUDITING SERVICES FOR FISCAL YEAR 2011-2012

Summary: On January 10, 2012, City Council authorized the City Manager to sign an amended contract with Dixon Hughes Goodman LLP for auditing services for Fiscal Year 2010-11. In addition, on January 10, 2012, City Council authorized the City Manager to execute a contract with Dixon Hughes Goodman LLP for auditing services for Fiscal Year 2011-12.

Pursuant to Local Government Commission requirements, the Mayor must execute these agreements on behalf of City Council.

**RESOLUTION NO. 12-28 - RESOLUTION BOOK NO. 34 – PAGE 257
RESOLUTION NO. 12-29 - RESOLUTION BOOK NO. 34 – PAGE 258**

K. ORDINANCE NO. 4045 - ORDINANCE CHANGING THE SPEED LIMIT TO 25 MPH ON SOUTH FRENCH BROAD, SOCO STREET, SHADY OAK DRIVE, BELMONT AVENUE, BROWNWOOD AVENUE, HANOVER STREET, MANILA STREET, STONEBRIDGE DRIVE AND VANDERBILT PARK DRIVE

Summary: The consideration of an ordinance to enact and/or change a speed limit on South French Broad, Soco Street, Shady Oak Drive, Belmont Avenue, Brownwood Avenue, Hanover Street, Manila Street, Stonebridge Drive, and Vanderbilt Park Drive.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on the following streets. The subject streets primarily serve residential areas and established neighborhoods. They are South French Broad Avenue from Choctaw Street to the End of City Maintenance, Soco Street from Cumberland Avenue to Montford Avenue, Shady Oak Drive from London Road to the Dead End, Belmont Avenue from Haywood Road to Sulphur Springs Road, Brownwood Avenue from Waynesville Avenue to Beverly Road, Hanover Street from Haywood Road to Cordova Street, Manila Street from Springside Drive to Sand Hill Road, and Stonebridge Drive in its entirety.

Additionally, City Staff recently completed traffic engineering investigations and determined that a 25 mph speed limit would be reasonable and safe on Vanderbilt Park Drive from Hendersonville Road to End of City Maintenance. This road primarily serves office buildings

and has numerous driveways and entrances. There is also a potential for a large amount of pedestrians due to existing and proposed sidewalks and proposed developments.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the “street experience” for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to citizen’s requests.
- The new speed limit will be consistent with roads of like character and design.
- Based on the 85th percentile speeds, most drivers would adhere to a 25 mph posted speed limits on these roads.

Cons:

- The initial cost to install the appropriate speed limit signs is about \$4,000.00.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about \$4,000.00 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 25 mph speed limit on South French Broad Avenue from Choctaw Street to the End of City Maintenance, Soco Street from Cumberland Avenue to Montford Avenue, Shady Oak Drive from London Road to the Dead End, Belmont Avenue from Haywood Road to Sulphur Springs Road, Brownwood Avenue from Waynesville Avenue to Beverly Road, Hanover Street from Haywood Road to Cordova Street, Manila Street from Springside Drive to Sand Hill Road, Shady Oak Drive from London Road to Dead End, Stonebridge Drive in its entirety, and Vanderbilt Park Drive from Hendersonville Road to End of City Maintenance.

ORDINANCE BOOK NO. 27 – PAGE

- L. ORDINANCE NO. 4046 - ORDINANCE CHANGING THE SPEED LIMIT TO 20 MILES PER HOUR ON SCHENCK PARKWAY, COLUMBINE ROAD, DEARBORN STREET, EAST SCHENCK CRESCENT, STAMFORD STREET, THETFORD STREET, TOWN SQUARE BOULEVARD, AND WALTERSTONE ROAD IN BILTMORE PARK IN SOUTH ASHEVILLE; CROWNINGWAY DRIVE AND CUMMINS ROAD IN EAST ASHEVILLE; AND UNIVERSITY HEIGHTS IN NORTH ASHEVILLE**

Summary: The consideration of an ordinance to enact and/or change a speed limit on Schenck Parkway, Columbine Road, Dearborn Street, East Schenck Crescent, Stamford Street, Thetford Street, Town Square Boulevard, and Walterstone Road in Biltmore Park, South Asheville. Additionally, the ordinance will enact a speed limit on Crowningway Drive and Cummins Road in East Asheville and University Heights in North Asheville.

According to state law (NCGS # 20-141), the statutory speed limit in North Carolina is 35 mph inside municipal corporate limits for all vehicles and 55 mph outside municipal corporate limits for all vehicles except for school buses and school activity buses.

Furthermore, local authorities may authorize by ordinance higher speeds or lower speeds than the statutory 35 mph speed limit on locally-maintained streets provided that the higher speed limit cannot exceed 55 mph. Speed limits authorized by local authorities are effective when the appropriate signs are erected.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on East Schenck Crescent from Thetford

Street to Schenck Parkway, Stamford Street from Thetford Street to Schenck Parkway, Thetford Street from Stamford Street to Schenck Parkway, Town Square Boulevard from Thetford Street to its northern intersection with Schenck Parkway, Walterstone Road from Thetford Street to Stamford Street, Schenck Parkway from Thetford Street to its northern intersection with East Schenck Crescent, Columbine Road from Town Square Boulevard to East Schenck Crescent, and Dearborn Street from Town Square Boulevard to East Schenck Crescent. In addition, since this area of Biltmore Park has the same characteristics of a central business district, it is reasonable to enact a 20 mph speed limit. The subject streets have on street parking and a large amount of pedestrian and bicycle activity.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on University Heights from the northern intersection with Edgewood Road to the southern intersection with Edgewood Road. The subject street primarily serves the University of North Carolina at Asheville and is subject to high levels of pedestrian traffic with numerous crosswalks. Because of this characteristic of the road, City Staff feels that the lower speed limit is warranted and will be effective.

City staff recently completed an engineering and traffic investigation and determined that a 20 mph speed limit would be reasonable and safe on Crowningway Drive from Sunset Summit to Patton Mountain Road (SR 2049). This lower speed limit will be effective due to the topography of the roadway and is consistent with surrounding roads.

This action complies with the City Council Strategic Operating Plan in the Safety focus area by improving the “street experience” for all users including pedestrians, bicycles, and motorists in a primarily residential corridor.

Pros:

- City staff has been able to respond favorably to neighborhood requests.
- City staff has been able to respond favorably to a request from the University of Asheville.
- The 20 mph speed limits are consistent with roads of similar design and character.

Cons:

- The initial cost to install the appropriate speed limit signs is about \$2,000.
- Typically, speed limit signs have a serviceable life of five to seven years.

The initial cost to install the appropriate speed limit signs is about \$2,000 and is included in the current operating budget for the Transportation Department.

City staff recommends that City Council approve an ordinance enacting and/or changing a 20 mph speed limit on East Schenck Crescent from Thetford Street to Schenck Parkway, Stamford Street from Thetford Street to Schenck Parkway, Thetford Street from Stamford Street to Schenck Parkway, Town Square Boulevard from Thetford Street to its northern intersection with Schenck Parkway, Walterstone Road from Thetford Street to Stamford Street, Schenck Parkway from Thetford Street to its northern intersection with East Schenck Crescent, Columbine Road from Town Square Boulevard to East Schenck Crescent, and Dearborn Street from Town Square Boulevard to East Schenck Crescent in the Biltmore Park neighborhood in South Asheville. Additionally, City Staff recommends that City Council approve an ordinance enacting and/or changing a 20 mph speed limit on University Heights from the northern intersection with Edgewood Road to the southern intersection with Edgewood Road and Crowningway Drive from Sunset Summit to Patton Mountain Road (SR 2049).

Director of Transportation Ken Putnam was pleased to recognize Mr. Jeff Moore, the City's new Traffic Engineer.

M. RESOLUTION NO. 12-30 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT WITH BETSCH ASSOCIATES/PBC+L FOR ADDITIONAL DESIGN SERVICES RELATED TO THE CIVIC CENTER RENOVATION PROJECT

Summary: The consideration of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for additional design services related to the Civic Center renovations in the amount of \$22,295 for a total contract amount not to exceed \$848,000 for Phase II of the project.

Betsch Associates/PBC+L has provided design services for project components that were anticipated in the preliminary design as well as design for some components arising from issues not anticipated during the initial design phases and issues detected after the preliminary demolition phases were completed. This amendment covers items including design of replacement office space that was eliminated as a result of elevator placement and other issues as the project has moved to completion of the current phase of construction.

This action complies with the City Council Strategic Operating Plan's Fiscal Responsibility goal of developing strategic partnerships to leverage resources for infrastructure and CIP projects. This action also complies with the Civic Center Commission Master Plan that encourages continuing renovations for the facility, and supports the goal of developing new partnerships. It has been reviewed and recommended by the Civic Center Commission.

Pros:

- Action updates the professional services contract to meet the obligations for the required design necessitated by unforeseen conditions at the beginning of the design.
- Action meets the requirements to facilitate the Southern Conference, and the resulting economic impact.
- Action will support improved facilities in the renovated facility.
- Action leverages significant partnership funding to allow for greater levels of renovation.

Con:

- None. Funding for this has previously been approved in the project budget.

Funding for this professional services contract amendment is already budgeted and approved in the current Capital Budget for the Project, so no additional funding is required. The amount of the amendment will come from the approved project contingency.

Staff recommends approval of a resolution to authorize the City Manager to execute an amendment to the professional services contract with Betsch Associates/PBC+L for additional scope of design services for the Asheville Civic Center Renovations in the amount of \$22,295.

RESOLUTION BOOK NO. 34 – PAGE 259

N. ORDINANCE NO.4047 - BUDGET AMENDMENT IN THE HOUSING TRUST FUND FROM SALE OF LAND AND HOUSING TRUST FUND RESERVES TO FULLY BUDGET PLANNED EXPENDITURES FOR FISCAL YEAR 2011-12

Summary: The consideration of a budget amendment in the Housing Trust Fund, in the amount of \$412,672, from sale of land and Housing Trust Fund reserves to fully budget planned expenditures for Fiscal Year 2011-12.

In FY 2000-01, the City established the Housing Trust Fund to provide financing for affordable housing initiatives in the City. Each year since FY 2000-01 City Council, as a part of

the budget process, has approved an annual transfer from the General Fund to the Housing Trust Fund. This transfer, combined with program income, provides ongoing funding for affordable housing initiatives. The adopted FY 2011-12 budget for the Housing Trust Fund, which totaled \$450,000, was funded by a \$300,000 General Fund transfer as well as \$150,000 in anticipated program income.

The adopted FY 2011-12 expenditure budget included \$62,672 in administrative expenses, which left \$387,328 in budget authorization available for disbursements of loan proceeds. However, based on loan disbursements already approved by Council, the budget for FY 2011-12 needs to be increased by \$412,672. The table below outlines the total expected loan expenditures for FY 2011-12 as well as administrative expenses.

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| Administrative Expenses | \$62,672 |
| K Booth – Shiloh Road (Loan approved March 2011) | \$80,000 |
| MHO - Eagle Market Place (Loan approved March 2011) | \$300,000 |
| Beaucatcher Properties - (loan approved February 2012) | \$200,000 |
| MHO – Glen Rock Hotel (loan approved February 2012) | \$220,000 |
| | |
| Total | \$862,672 |

As noted above, in order to provide budget authorization for these expenditures of \$862,672, the Housing Trust Fund budget needs to be increased by \$412,672. The City expects to receive \$300,000 in unbudgeted revenue from the sale of land to Asheville Area Habitat for Humanity in the current fiscal year, which will provide a portion of the funding for the budget amendment. The remaining \$112,672 in budget authorization will come from available Housing Trust Fund reserves.

The Housing & Community Development Committee has been informed of the budget and fiscal impact.

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

Pro:

- Provides the required budget authorization for expenditures that are expected to occur in the Housing Trust Fund in FY 2011-12.

Con:

- None.

All of the disbursements that have occurred or are planned prior to June 30, 2012 have already been approved by City Council. This budget amendment will simply provide the required budget authorization to execute the disbursements. Upon the sale of land as described above and the receipt of regular loan repayments, the Housing Trust Fund will have sufficient cash to make the authorized disbursements. Our procedure is to disburse funds only when there is a sufficient cash balance, on a first come, first serve basis. Once these disbursements are made, however, available cash for Housing Trust Fund loans will have been fully spent for FY 2011-12.

City staff recommends City Council adopt a budget amendment in the Housing Trust Fund, in the amount of \$412,672, from sale of land and Housing Trust Fund reserves to fully budget planned expenditures for Fiscal Year 2011-12.

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O. ORDINANCE NO. 4048 - BUDGET AMENDMENT AUTHORIZING THE DISPOSITION OF REAL PROPERTY KNOWN AS THE W.C. REID CENTER LOCATED AT 133 LIVINGSTON STREET

Summary: The consideration of a budget amendment, in the amount of \$254,500, authorizing the disposition of real property located at 133 Livingston Street, known as the W.C. Reid Center.

This budget amendment establishes a project budget within the General Capital Projects Fund related to the disposition of the W.C. Reid Center to the Housing Authority of the City of Asheville. The sale of this property was approved by City Council on January 24, 2011 with the sales price of the property based on appraisal at \$254,500. The proceeds from the sale will fund the next phase of development for the Dr. Wesley Grant Senior Southside Center.

This action complies with the City Council Strategic Operating Plan as follows: (1) *Fiscal Responsibility*. The proceeds from the sale would yield funds to support the City in pursuing development of Phase II of the Dr. Wesley Grant Senior Southside Center which would be for the development of the splash ground and/or construction documents for the development of the gymnasium.

Pros:

- Sales price based on fair market value
- Housing Authority plans to preserve and rehabilitate the Reid Center as a community education and training center
- Provides funding for the next phase of development for the Dr. Wesley Grant Senior Southside Center.

Con:

- None

As noted above, the proceeds of the sale are estimated at \$254,500. The funds will be used to increase the project budget in the General Capital Projects Fund for the next phase of development for the Dr. Wesley Grant Senior Southside Center.

City staff requests City Council to adopt a budget amendment of \$254,500 authorizing the disposition of 133 Livingston Street, known as the W.C. Reid Center, to the Housing Authority of the City of Asheville.

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P. ORDINANCE NO. 4049 - BUDGET AMENDMENT FROM LETTER OF CREDIT FROM MOUNTAIN 1ST BANK & TRUST TO COMPLETE THE CONSTRUCTION OF THE MILL CREEK CONDOMINIUM PROJECT

Summary: The consideration of a budget amendment, in the amount of \$38,207, to appropriate funds from a letter of credit from Mountain 1st Bank & Trust to complete the construction of the Mill Creek Condominium project.

On March 25, 2011, a letter to Carolina 1st Bank and Trust was issued from the City's Planning & Development Department requesting that the Letter of Credit that was initially issued on March 26, 2010 be drawn. This was required due to the project being left incomplete, based on financial difficulty from the developer Mill Creek Developers, LLC.

The City received the check for \$38,206.65 on June 30, 2011. This was the requested amount in the aforementioned letter. These funds will be used to hire a consultant to administer

the construction contract, and a construction contract to install sidewalk and landscaping. This work will complete the project.

The project complies with Council's Strategic plan in the Focus Area of Green & Sustainability, as it will include the planting of approximately 87 trees, which will provide shade, natural habitat and aesthetic improvements to the area. The project also addresses the Focus area of Multimodal Transportation, due to the new sidewalk to be installed.

Pros:

- Approval of this action will allow for the completion of the Mill Creek Condominium project, providing a completed residential community within the ETJ.
- Utilize developer funds, thus not requiring any additional funds from the General Fund.
- While the project isn't located within the existing City Limits, it does lie within our ETJ. This action would insure that if the area was to be in the City Limits in the future, it would be compliant with the UDO.

Con:

- The project will require staff time to oversee a project outside of the current City Limits.

As noted above, the funding for these infrastructure improvements will come solely from money received via the letter of credit, thus there is no impact to the City's budget.

City staff recommends City Council adopt a budget amendment in the amount of \$38,207 to complete the Mill Creek Condominium project.

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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 Councilman Bothwell and carried unanimously.

III. PRESENTATIONS & REPORTS:

A. ETHNIC MINORITY BUSINESS CAPITAL ALLIANCE REPORT

Community Development Director Jeff Staudinger said that as a result of a four month deliberative process, the Ethnic Minority Business Capital Alliance offers a final report, including its findings and recommendations.

The concept of the "Ethnic Minority Business Capital Alliance" arose from an analysis presented to the City by the Asheville SCORE chapter late in 2010 that examined the status of business ownership by ethnic minorities in Asheville. Drawn from 2000 and 2007 U.S. Census reports, the data indicated that ethnic minorities participation in business ownership lagged far behind what might be expected from the percentage of population these minorities comprised. That report also reflected upon most recent available city contracting information, which indicated a similar disparity.

Community members including Dee Williams and Al Whitesides proposed to city staff and elected officials that a diverse group of community leaders be assembled to examine the causes and possible strategic responses to this issue. The request was presented to the Housing and

Community Development Committee. In response they endorsed the establishment of the Ethnic Minority Business Capital Alliance in June of 2011, and supported a \$10,000 expenditure from the Office of Economic Development for contracted staff to support this effort. With the endorsement of the HCD Committee, an invitation was issued from the Mayor's office to a diverse group of community members to join in this investigation. The group agreed upon a four month process with a well-defined scope of work that would lead to a set of recommendations for action.

Over 40 persons participated in this process. Participants included African-American entrepreneurs and business people, representatives of business service providers such as the Small Business Technical Development Center and AB Tech, community-based lenders and Community Financial Development Institutions including self-Help and Mountain BizWorks, representatives from grass roots community organizations including Just Folks and Green Opportunities, the Asheville Housing Authority and others. City staff from the Community Development Division and Office of Economic Development also provided support for the process.

The report has been reviewed by the Housing and Community Development Committee, which recommends its presentation to Council. Staff anticipates that applications for Community Development Block Grant funding or Outside Agency funding will be submitted by parties interested in implementing these recommendations.

Mr. Al Whitesides, Chairman of the Alliance, reviewed with Council the report outlining their process, findings and recommendations. Said findings and recommendations are below:

“Alliance Findings and Recommendations

The following specific findings and recommendations were approved by the Alliance members present at the December 14, 2011, meeting.

1. Technical Assistance – Need for improved outreach and coordination of technical assistance services

Solution: The City should work with service providers to help ensure effective outreach to ethnic minorities seeking to start businesses. Service locations should be easily accessible to ethnic minority persons. Organizations and businesses dedicated to serving ethnic minorities should be consulted and employed in outreach.

Solution: Technical assistance for small businesses needs to be complemented by one-on-one case management, collaboration, and coordination with other service providers. Case management can facilitate both in-house and external services.

Client case management functions may include management and technical assistance, financial planning, loan packaging, procurement and contracting assistance, networking and marketing, advocacy, and facilitating mentoring services.

2. Capital Gap – Lack of Collateral and Credit

Solution: Capital funds need to be targeted to assisting ethnic minority businesses, and be available to assist these businesses at varying stages of business development, from start-up to emerging or expanding. The capital should be available both as direct loans and as funds to guarantee or otherwise collateralize loan funds from other sources.

Solution: Local and state MBE officials need to be engaged in developing concrete and effective strategies to increase ethnic minority contracting with public entities.

Solution: A joint payables program should be established for lenders and vendors to assist ethnic MBE firms and other small businesses in contracts/procurement.

Solution: Public entities should facilitate accounts receivable financing available to assist all businesses, as needed. Local and state governments should provide ten (10) day payments of invoices and electronic payments via credit card and check. "Section 3" provisions of HUD contracts should be used to promote hiring/contracting of individuals and firms who meet Section 3 qualifications.

Solution: Establish a local chapter of the Carolinas Minority Supplier Development Council, giving MBE Members access to the Business Consortium Fund.

3. Organizational Support – Need for dedicated leadership and structure to focus on delivery of capital and technical assistance

Solution: Community Development Financial Institutions (CDFIs), either new or existing, that directly address the needs of underserved ethnic minority businesses in Asheville and Buncombe County should be supported. Supported organizations should provide leadership in developing a synergistic infrastructure of funding, excellent technical assistance, meaningful networking and marketing opportunities. Organizations should provide case management for ethnic minority business clients while collaborating and coordinating with outside service providers as necessary.

Any supported entity must be performance-driven and must function with transparency, accountability to the community, and provide customer service which is surveyed on a regular basis.

Solution: Existing service providers should be utilized to the maximum extent possible.

Solution: Establish a Council-appointed Committee to continue to focus on the issues of ethnic-minority business formation and support. The Alliance suggests that the Committee membership be comprised of representatives from each of the following:

- (1) Just Folks
- (2) Green Opportunities
- (3) SCORE
- (4) SBTDC
- (5) AB Technical College
- (6) Mountain Bizworks
- (7) Eagle-Market Streets Development Corp.
- (8) Urban-News
- (9) Mount Zion Development Corp.
- (10) at-large member from low-income community
- (11) Council Liaison

4. Need for greater understanding of challenges faced by ethnic minority entrepreneurs

Solution: The City and its economic development partners should survey existing ethnic minority business owners to understand their needs and engage them as models for new entrepreneurs."

Mr. Whitesides continued to review the Alliance final report. He said the next step is to place an Ethnic Minority Business Resource Center at the YMI Cultural Center. The YMI's mission is to enhance the economic, social and cultural lives of African Americans in Western North Carolina. He provided the Council with a proposal request for interim funding from the City

to the YMI Cultural Center for a period of February 10, 2012 – September 30, 2012, in the amount of \$79,136, along with a line item budget. The funds would be used for operating funds to support an intensive fund-raising plan for the YMI to set up this Minority Business Resource Center, so that the business plan for the Resource Center, and the job training component can be completed, along with the applications to establish loan pool funds and operating funds from the federal government and private foundations.

Councilman Hunt supported the focus of the local Community Development Financial Institutions (CDFI) and other non-profit entities working together in a work group.

Upon inquiry of Mayor Bellamy, City Attorney Oast said that staff's recommendation is that Council receive the report. There are a number of recommendations, many which would require fleshing out the details, including legal details. And, some recommendations may be pursued immediately. He suggested Council receive the report and perhaps refer it to the Housing & Community Development (HCD) Committee for further direction on which of the recommendations can be implemented or which may require further investigation.

Councilman Davis, Chair of the HCD Committee, and Vice-Mayor Manheimer said that the Committee heard the report but did not recall any mention of a funding request.

Mr. Staudinger said that the Alliance report was presented to the HCD Committee, upon their recommendation for the Committee to receive the report. The funding request was not part of the Alliance recommendation. He believed it was a response to the Alliance's recommendations by a group of citizens. It was not received by staff until this meeting. He reiterated that this is an independent request and was not part of the Alliance report.

Assistant City Attorney Martha McGlohon felt it would be appropriate for Council to direct staff which recommendations they would like for staff to further research. She noted there are some legal concerns related to some of the recommendations.

After a brief discussion, it was the consensus of Council to receive the report and to direct Ms. McGlohon meet with Mr. Staudinger and review all four recommendations to see which are legally permissible. Those results will be presented to the HCD Committee. At such time as the report is presented to Council, City Attorney Oast said that a staff report will contain pros and cons, along with a fiscal impact statement regarding the funding request.

IV. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE CONDITIONAL ZONING FOR WHITE OAK GROVE APARTMENTS LOCATED AT 275 AND 281 HAZEL MILL ROAD FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO RM-16 RESIDENTIAL MULTI-FAMILY DENSITY DISTRICT/CONDITIONAL ZONING FOR THE DEVELOPMENT OF 92 APARTMENT UNITS HOUSED IN THREE BUILDINGS

Urban Planner Julia Fields said that this is the consideration of an ordinance to conditionally zone White Oak Grove Apartments located at 275 and 281 Hazel Mill Road from RM-8 Residential Multi-Family Medium Density District to RM-16 Residential Multi-Family High Density District/Conditional Zoning for the development of 92 apartment units housed in three buildings. This public hearing was advertised on January 13 and 20, 2012.

Ms. Fields said that the applicant is requesting conditional zoning for two parcels located off Hazel Mill Road from RM-8 (Residential Multi-Family Medium Density District) to RM-16 (Residential Multi-Family High Density District) in accordance with Section 7-7-8 of the UDO to accommodate the development of a multi-family residential proposal (92 units).

The project site consists of two parcels located off of Hazel Mill Road, just north of Patton Avenue, with frontage along Clayton Avenue, Hazel Mill Road and Nancy Street. The project proposes a recombination which would result in an overall project area of 6.501 acres (according to site plans). The subject parcels and adjacent lots are zoned RM-8 with HB, Institutional, Office, Resort and RS-8 zoning in the general vicinity. The immediate surrounding neighborhood is a mix of single-family homes as well as multiple residences on larger parcels.

There are two dwellings and several associated structures existing on the parcels, which will be removed for this project.

The applicant is proposing to construct a multi-family complex that will consist of three (3) buildings. Building A is proposed to contain 28 dwelling units in a 3/4 split configuration. Buildings B and C are proposed to contain 32 units in each building with a 4/5 and 3/4 split configuration with a maximum height of 40 feet per building code (the tallest feature on the larger buildings is 61' 4 9/16" to the top of the roof peak on the five-story side and 51' 8 5/16" on the four-story side). A mix of two and three-bedroom units is proposed for the 92 units. The buildings will meet the North Carolina Healthy Built Homes program and Energy Star certifications. Additionally, 10% of the units (9) will be available as affordable housing.

Access to the site is proposed in three locations – two driveways off of Clayton Avenue and a single access point from Hazel Mill Road at the southeastern corner of the site, near Nancy Street. Following a traffic impact study done for the proposed development, the access point off of Hazel Mill Road will be right in, right out only. A total of 184 parking spaces are provided to serve the residential units and are located around the 2-way looped interior drive (which is essentially a circular parking area). A five to six-foot sidewalk is proposed around the interior of the looped-drives facing the buildings as well as along the driveway providing access to Hazel Mill Road. Sidewalk is also proposed along Clayton Street; however a fee-in-lieu is requested along Hazel Mill Road due to topographic challenges as well as a desire to preserve existing vegetation. The developer is proposing the construction of a bus shelter at the corner of Hazel Mill and Clayton.

Street trees will be required along all street frontages. The project will also include building impact and parking lot landscaping, a required street buffer and the preservation of some existing vegetation along Hazel Mill Road. The applicant is proposing 2.15 acres (33%) of the site as tree save area and 1.24 acres as designated open space (more than the required 500 square feet per unit).

Under the current RM-8 zoning, the combined site would be permitted a total of approximately 56.6 units. The development proposes 92 units, under the 113 units allowable under RM-16 zoning.

The Technical Review Committee (TRC) evaluated this request on August 1, 2011, and it was approved with conditions. At initial review the project was proposed for 108 units.

At their meeting on September 7th, the Planning & Zoning Commission reviewed the initial proposal (108 units) and due to substantial public comment regarding potential negative traffic impact, requested that the applicant provide a traffic impact study for the development. Additionally, comments were received regarding the project being out of scale with the surrounding neighborhood and concerns that the applicant does not necessarily intend to be the developer.

While the project did not trigger the City's thresholds to require a Traffic Impact Study, the Commission recommended (by a 3-0 vote) that the project be continued to the November 2nd meeting so that a Traffic Impact Study (TIS) could be undertaken by the applicant. The project was continued again to the meeting on December 7th so that the TIS could be completed and reviewed by the City's Transportation Department.

At the meeting on December 7th, the Commission heard reports from the City's Traffic Engineer and the traffic engineer for the project. These reports indicated that even considering the "worst case" scenarios for traffic that might be generated from this project, it was felt that it the project would not cause undue traffic congestion along the existing street infrastructure. The right in, right out only configuration for the access point on Hazel Mill Road was accepted.

At this same meeting, the Commission continued to express concerns over the scale of the buildings and the density. The developer agreed to a continuance to look at reducing the size of the project.

The project was reviewed for a third time by the Planning and Zoning Commission on January 4, 2012. At this meeting the developer presented the current project proposal. The dwelling unit count was reduced from 108 to 92 (with the requisite parking reductions) and one floor from each of the ends of Buildings B and C has been removed creating a 3/4 split on the ends of the buildings. Following deliberation, the Planning and Zoning Commission voted 6-0 to recommend this development to the City Council.

Section 7-7-8(d)(2) of the Unified Development Ordinance (UDO) states that planning staff shall evaluate conditional zoning applications on the basis of the criteria for conditional use permits set out in Section 7-16-2. Reviewing boards may consider these criteria; however, they are not bound to act based on whether a request meets all seven standards.

1. That the proposed use or development of the land will not materially endanger the public health or safety.
The proposed project has been reviewed by City staff and appears to meet all public health and safety related requirements. The project must meet the technical standards set forth in the *UDO*, the *Standards and Specifications Manual*, the *North Carolina Building Code* and other applicable laws and standards that protect the public health and safety.
2. That the proposed use or development of the land is reasonably compatible with significant natural or topographic features on the site and within the immediate vicinity of the site given the proposed site design and any mitigation techniques or measures proposed by the applicant.
The proposed use and development of the land is compatible with the natural features and topography of the site as well as the surrounding area. Appropriate landscaping and open space will be provided to that is fitting and compatible with the residential neighborhoods surrounding this location, with special attention given to screening this use from the adjacent neighbors. The physical development is focused towards the interior of the site. Additionally, the northern portion of the lot, where the site slopes, is proposed to remain largely undeveloped as tree save and open space area.
3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property.
The development is not expected to injure the value of adjoining or abutting properties. The use proposed is similar to adjacent parcels (residential) although at a higher density. Given the proximity to the commercial / mixed-use Patton Avenue corridor, higher-density residential uses can be considered to be appropriate in this location. Additional (supplementary) landscaping proposed around the perimeter of the site will provide a visual buffer to mitigate impact to abutting lower-density uses.
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 proposed use as multi-family is in harmony with the area in which it is located. This site is along a transit route and within less than half a mile from the Patton Avenue

commercial corridor, making it an appropriate location for higher-density residential development. Additionally, there are a number of other parcels in the vicinity with multiple residential units, including condo units on adjacent Nancy Street and Townview Drive. None of these other developments include buildings as large as the three apartment structures proposed in this development; however, the buildings are sited in the center of a 6.5 acre parcel and supplementary landscaping has been integrated into the design as a perimeter buffer and should mitigate any potential visual disharmony. The number of units proposed exceeds the underlying (existing) density; however, staff feels that the site layout and proximity to Patton Avenue and transit (as mentioned above) makes this an appropriate location for this proposal.

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.
The *Asheville City Development Plan 2025* encourages a Smart Growth development pattern by recognizing the need for higher density residential infill projects (pg. 31) located along transit lines (Asheville Transit Route 16). With 92 units, this project is not only meeting that goal but also seeks to assist with what the *Plan* calls “the number one economic development problem for this community” (pg. 45): lack of affordable housing. The project includes 10% of the units as affordable.

City Council’s goal of *sustainability* is supported by these projects that encourage high-density growth in an area with existing infrastructure as well as ideally located along a transit route. The development proposes for 10% of the units as affordable and for all 92 rental units to meet the North Carolina Healthy Built Homes program and Energy Star rated, aligning with Council’s priority areas on providing *affordable* and *sustainable* housing opportunities for citizens.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities.
This proposed development is located near major road facilities (Patton Avenue and major highways) and along a City bus route (#16). In addition, basic infrastructure appears adequate and preliminary review by other service providers has not revealed any problems for future service to the development.
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.
The proposed project has been reviewed by the City Traffic Engineer and it should not cause undue traffic congestion along the existing street infrastructure. The anticipated traffic at full build-out conditions is expected to be less than one hundred (100) vehicles per hour during the morning and afternoon peak hours during a typical weekday.

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

Pros:

- The project offers 10% affordable housing units, aligning with City Council’s goals.
- Higher density development furthers the goals and objectives of the comprehensive plan.
- The proposed development provides housing in a transit-served area.
- Supplementary landscaping provides a visual buffer from adjacent uses.
- The project will be designed to qualify for Healthy Built Homes and Energy Star certification.

Cons:

- The project exceeds the density allowance under the current RM-8 zoning district unless the Conditional Zoning is approved.
- Opposition has been stated from surrounding neighbors regarding increased traffic and scale.

Staff recommended approval of this project to the Asheville Planning and Zoning Commission. At their meeting on January 4, 2012, the Commission voted 6-0 to recommend the revised (reduction in units and scale) development proposal to the Asheville City Council.

Mayor Bellamy opened the public hearing at 5:48 p.m.

Mr. Bob Grasso, one of the partners in the development, said that he originally received approval for a duplex development (42 2-story duplex townhouses) but because of the economy conditions he met with staff requesting in their request for a conditional zoning for an apartment complex. After trying to address concerns by the Planning & Zoning Commission and adjacent property owners, they have reduced the scale and size of the project to be more in keeping with the surrounding neighborhood and conducted a Traffic Impact Analysis (TIA). He showed how the buildings are set into the interior of the property. The closest point is 45 feet from the property line. He said the distance from the Building B to the townhouse is 142 feet. The distance from the townhouse to the dumpster area is 118 feet. They tried to meet or exceed all the Unified Development Ordinance standards and all of the goals of the 2025 Plan by infill development, close to downtown core, on a transit corridor, etc.

The following individuals spoke in opposition to the conditional use rezoning for various reasons, some being, but are not limited to: 24 adjoining property owners signed a petition opposed to the rezoning; existing area roads are not equipped to handle increased traffic; bottleneck traffic light at intersection of N. Louisiana Avenue and Hazel Mill Road; project is not in scale with the rest of the neighborhood; no other buildings in the area exceed 2 stories; property owners of other vacant parcels in the area will request conditional use rezoning for higher density; developer bought the property as RM-8 and should build the number of units allowed under that zoning designation; rezoning is not what is best for the community; the development is out of character with the rest of the neighborhood; the development will decrease property values; can the petition submitted be considered a valid protest petition; the width of Hazel Mill Road is too small and can't handle two buses passing; have requested traffic calming on Hazel Mill Road in the past; provided petition with 38 names of area residents opposed to the project to the Planning & Zoning Commission; and concern that the property owner does not plan to build on the property, but to sell the property with pre-approval:

Mr. Jay Marlow, realtor and appraiser

Mr. Mike Newman, adjoining property owner on Nancy Street (submitted copy of a petition from 24 adjoining property owners opposing rezoning)

Brother Christopher Chiaromonte

Mr. Steve Rasmussen

Mr. Nathan Merchant, resident on Hazel Mill Road

Ms. Valerie Martin, resident on Townview Drive

Mr. Mark Teague, Traffic Engineer with TM Teague Engineering, spoke about the Traffic Impact Analysis, noting that they did a worse-case scenario study, which noted that the road could handle the traffic, even if the dealership closes their access on Hawkins Lane. In addition, the study did not take into account any bus riders from the bus stop the developer is installing. Regarding the increased traffic from the development onto Hazel Mill Road, Mr. Teague said that the video shown by Mr. Marlow at the Planning & Zoning Commission meeting showed most of the afternoon congestion in the westbound direction at the intersection of Hazel Mill Road and N. Louisiana Avenue. He felt that most likely, the people coming home to the complex will be going in the opposite way of the video, and will not contribute to the westbound movement. Others would be turning into the development before they reach the intersection of Hazel Mill Road and North Louisiana Avenue. He also noted that revised site plan actually decreased the impervious surface.

Mayor Bellamy closed the public hearing at 6:10 p.m.

In response to questions raised, City Attorney Oast said that (1) the petition submitted by Mr. Newman did not qualify as a valid protest petition; and (2) even if the project is sold, the property can only be developed in accordance with the approved site plan and that approval follows the land.

In response to Councilman Bothwell, Ms. Fields said that the development does not qualify for development incentives as the entire site must be within 1/8 mile of a transit line.

In response to Councilman Smith, Ms. Fields, after consulting with the City's Traffic Engineer, said that there are no plans for widening Hazel Mill Road.

In response to Councilman Hunt, Mr. Jeff Moore, the City's Traffic Engineer, said that he reviewed the Traffic Impact Study and also did his own traffic generation study, which is a nationally recognized methodology. For the AM peak hour (7-9 am), the site should generate 49 trips. For the PM peak hour (4-6 pm), the site should generate 68 trips. He looked at the TIA for the efficiency of the signal at Hazel Mill Road and N. Louisiana Avenue because that is really where the traffic crunch will be. According to that TIA, the level of service will still be a Level B, which is acceptable. Level E is the capacity of the signal. The signal should be operating below capacity. It is projected that the number of cars waiting to go through that intersection signal should not exceed approximately 11 vehicles during the PM peak. He agreed with Mr. Teague in that most traffic will be coming in the eastbound direction from Patton Avenue. Other traffic going westbound will go into the development before they reach the intersection.

In response to Councilman Pelly, Mr. Grasso said that he and his partners are the owners of the property. The current RM-8 zoning would allow 56.6 units on the site, however, the duplex market is gone and there is a need for apartments in the City. If the conditional rezoning is not approved by Council, he has no back-up plan. Regarding rental rates, Mr. Grasso said that they are having a pro forma done now and was unable to state possible rental rates, however, they would be in line with the current rental rates.

Councilman Bothwell and Councilman Pelly both agreed that this project has many good qualities; however, they were uncomfortable in changing the zoning when the surrounding property owners bought their homes with the existing zoning.

Councilman Hunt said due to the severe lack of rental and affordable housing, the project being close (but not close enough) for a density bonus, the project meeting smart growth principles, and the wish not to push development out to rural areas, he made a motion to approve the conditional zoning request for the property to be rezoned from RM-8 to RM-16/Conditional Zoning. This motion was seconded by Councilman Smith.

Councilman Smith understood the neighbors concerns; however, Council has made a commitment to smart growth principles and this project meets those principles.

Councilman Davis felt Mr. Grasso is a good developer and conscious of his surroundings; however, he felt the traffic on Hazel Mill Road is a concern along with the project being out of scale with the surrounding neighborhood. He could not support the motion.

City Attorney Oast reminded the Council not to make any decisions on the basis of who you think may develop the property because the property could be sold tomorrow or next year.

When Mayor Bellamy questioned if the motion included the additional landscape buffering, City Attorney Oast said that when he prepares the ordinance, he includes a list of written conditions and among those conditions is that the project be developed in accordance with the approved site plan.

Mayor Bellamy said that she travels Hazel Mill Road and the right-in and right-out from the project may help with traffic, but the project does not fit in with the surrounding neighborhood which are mainly single-family homes. She agreed we need more affordable housing, but we also need neighbors who want it, and in this case, there is no neighborhood support.

Mr. Grasso withdrew his application and said that he would see if they can reduce the number of units even more. He did note that they are trying to keep the units as affordable as possible but reducing the number of units may require rents to go up.

Vice-Mayor Manheimer was conflicted about this project as it does meet our strategic goals and recalled that we compromised with our density credit and reduced it from ¼ of a mile to 1/8 of a mile from a major corridor. Had the policy been ¼ mile from the City, this project would have fallen into that area. She understands not wanting to change the zoning for the neighbors, but was disappointed to see the effect of the limits of our policy. She felt we may need to revisit our density policy.

Upon inquiry of Councilman Hunt, City Attorney Oast said that initial rental rates can be included as a condition on the conditional zoning.

Councilman Hunt said that if the project comes back, he would be interested in understanding more about the rental rates. Vice-Mayor Manheimer responded that in some cases when the developer is trying to put together a financing package, their financing package is contingent upon rezoning.

Mayor Bellamy said that when we rezoned Appledoorn and Shiloh the City committed to traffic calming, and we did have some neighborhood buy-in. She felt the City needs to come up to the table with some of the things that make these projects work. If we are going to look at our policies, then we need to look at some case studies and see what worked and why. She felt it would be good for us to review our parking requirements, since we are pushing other forms of transportation, such as bicycles and transit.

It was the consensus of Council to hold a worksession to look at issues related to density bonuses, parking requirements, etc.

ORDINANCE BOOK NO. 27 – PAGE

B. PUBLIC HEARING TO CONSIDER REZONING 12 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT

ORDINANCE NO. 4050 - ORDINANCE REZONING 12 SCHENCK PARKWAY FROM CENTRAL BUSINESS DISTRICT TO HIGHWAY BUSINESS DISTRICT

Urban Planner Blake Esselstyn said that this is the consideration of an ordinance to rezone 12 Schenck Parkway from Central Business District to Highway Business District. This public hearing was advertised on January 13 and 20, 2012.

Mr. Esselstyn said that the subject properties are prominently located at the first part of Schenck Parkway (the entrance to Biltmore Park Town Square), and they flank the first developed site one encounters on the north side of Long Shoals Road when heading east from the I-26 interchange. The relevant history of construction and zoning around the site goes back more than ten years.

The flanked area was developed with a gas station, convenience store, and restaurant in 2000. At that time, the operator of these businesses owned a leasehold for the site of this development, but the land was owned by Biltmore Commercial Properties, LLC. None of the site

was then in the City of Asheville's zoning jurisdiction; a portion was in the Buncombe County Limestone Township zoning area—zoned Commercial Services, and a part was not zoned.

In 2001, the City of Asheville expanded its ETJ, and the unzoned portion of the land came into the City's zoning jurisdiction. CBD zoning was applied to the area west of Schenck Parkway as this classification most closely fit the urban design of the Biltmore Park Town Center area already in progress under the County's jurisdiction. (The City's Urban Village zoning district did not yet exist.)

In February 2006, the Master Plan and related zoning change (to Urban Village) for the Biltmore Park Town Square west of Schenck Parkway was approved. The subject properties were not included, as the plans did not effect any changes thereon.

In 2007, the subject properties were part of an annexation by the City of Asheville. The annexation became effective in late 2007, and discussions ensued about assigning a zoning district for the portion of the site which had been in the Buncombe County zoning area. City staff proposed zoning the entire 10+ acre area, including all of the subject site, to Highway Business, to be consistent with the other three corners at the intersection. The landowner (Biltmore Commercial Properties, LLC), however, preferred to maintain the pre-existing CBD zoning, as it provided more options (e.g. building height, residential density) for a future extension of higher impact uses consistent with the nearby urban village, without having to submit a master plan. The CBD zoning became effective for the bulk of the site in early 2009. A "clean-up" annexation and zoning subsequently applied the CBD zoning to a sliver that had been outside the city's jurisdiction.

In late 2010, the adjacent site developed with the gas station, convenience store and restaurant was sold to another party. In spring of 2011, the new owner requested rezoning to Highway Business, so that his businesses and site design would no longer be non-conforming with the zoning district. (CBD zoning not only doesn't ordinarily allow retail gasoline sales, but has building design and setback requirements not met by the existing development.)

As is mentioned above, staff feels that Highway Business would be the most appropriate zoning for the subject area, now mostly wrapped around the back of other properties zoned Highway Business. The current placement of a district promoting urban, multi-story, high-density, pedestrian friendly design tucked behind an area (at the corner of a major intersection) with a suburban corridor zoning district and developed with suburban, single-story automobile-oriented businesses presents a problematic situation in need of a remedy.

The stream area at the rear of the site serves as a pre-existing and protected buffer between the area proposed for rezoning to Highway Business and the Urban Village to the north. The heavily vegetated stream area is under a conservation easement, so future development would be limited to the "pads" at the same horizontal level as the development on the corner.

The zoning of the 0.03-acre parcel (reserved for signage) is in fact fairly inconsequential, since the standards for that signage are dictated by the larger Biltmore Park sign package approved by City Council. However, it is good practice to make the zoning of such a parcel consistent with abutting zoning, and to eliminate the existing tiny zoning district.

When the gas station parcels were being considered for rezoning earlier this year, staff's only significant reservation was that these two parcels would remain zoned, awkwardly, CBD. This petition has the potential to resolve that concern, and create a more orderly situation in the area.

At their January 4 meeting, the Planning and Zoning Commission voted unanimously to recommend approval of the rezoning.

Prior to the Planning and Zoning Commission meeting, staff received communication from Biltmore Park property owners expressing concern about traffic issues near the entrance to the site off Schenck Parkway. Planning staff has relayed this concern to the transportation department, while noting that the proposed zoning would be a shift from one high-impact commercial zoning district to another (a multi-story hotel could be built on the site under the current zoning, for example), and should not be viewed as necessarily increasing traffic potential over the existing situation. Staff has received no other communication from the public regarding this petition.

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

Pros:

- HB zoning is highly compatible with the surrounding development and road system.
- Would supplant zoning which is both less appropriate for the site and awkwardly configured.

Con: None noted.

Staff feels that the proposed rezoning would unquestionably be an improvement over the existing situation for the subject properties, and recommends approval of the request.

Mayor Bellamy opened the public hearing at 6:45 p.m. and when no one wished to speak, she closed it at 6:45 p.m.

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. 4050. This motion was seconded by Councilman Davis and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

C. PUBLIC HEARING TO CONSIDER REZONING 2 GERBER ROAD FROM URBAN VILLAGE DISTRICT TO COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 4051 - ORDINANCE REZONING 2 GERBER ROAD FROM URBAN VILLAGE DISTRICT TO COMMUNITY BUSINESS II DISTRICT

Urban Planner Alan Glines said that this is the consideration of an ordinance to rezone 2 Gerber Road from Urban Village District to Community II Business District. This public hearing was advertised on January 13 and 20, 2012.

Mr. Glines said that in 2000 and 2001 a new zoning district called Urban Village was created in response to broad community interest in allowing more sustainable mixed-use developments that provided a sense of place similar to successful areas in the city such as downtown and Biltmore Village. In response to this interest, the Urban Village District was adopted by City Council in 2001 and the former Gerber Plant site was one of the first to use it. The property was rezoned and a schematic master plan was approved. This was generally accepted to be an improvement over an earlier failed Walmart that had been proposed at the same site.

Despite the initial enthusiasm for the zoning option, only the front portion of the urban village (which had been portrayed as '*phase one*' of the entire development) was completed and the remainder of the site across Gerber Road (totaling about two acres) and the large area east

of the internal road known as Fall Pippin Lane remained vacant. Later when the economy began to slow down and economic growth faltered, the developers fell behind with the mortgage and the entire site was foreclosed on by JP Morgan Chase Bank. Recently that bank sold the front commercial area of the site (*phase one*) to private owners who do not own or intend to develop the rear portion of the urban village area.

Over the past few years as the situation with the foreclosure process became clearer, staff has spoken with a number of potential developers who were interested in the undeveloped portion of the site. Through these informal conversations it has become apparent that the preferred form of development for the remaining undeveloped area will likely not be in accord with the original master plan or Urban Village standards and the staff anticipates that eventually a rezoning request will be presented for this property for a more traditional multi-family residential project.

Rezoning to Community Business II (CB II) is only proposed for the 7 acre portion of the existing Urban Village site that contains a shopping center, office space and some upper floor residences. The shopping center has a number of retail and restaurant uses with well articulated buildings and a series of parking areas along the internal street with smaller parking areas surrounded by buildings. At least one of eight residential units is occupied. The new owners of the site have requested this zoning change to be better aligned with their long term management plans, the actual use and activity on the site and for rebalancing parking needs. As a stand-alone site the development meets the letter but does not fully meet the intent of the Urban Village ordinance because it is almost exclusively commercial in nature and contains minimal residential units. The goal of the Urban Village District is to encourage a true mix of uses throughout a single site. The 'phase-one' site has a good network of sidewalks and ample landscaping for streets and parking areas that meet and in places exceed UDO standards but are in keeping with the original direction of the development. Street access to the site is from both Hendersonville Road and Gerber Road. One of these locations is expected to provide future access to the vacant upper area when it is developed.

The upper site (which totals about 17 acres including 2 acres that are across Gerber Road from the primary parcel) remains under separate ownership and is not proposed for a zoning change at this time. It will remain under the Urban Village zoning designation and under separate ownership. The schematic master plan for this portion included locations for buildings and streets and was approved with a mix of residential units and limited commercial development. It takes access from Gerber Road and can stand alone without the section fronting on Hendersonville Road.

The proposed CB II zone is intended to provide areas for medium to high density commercial uses serving several residential neighborhoods. The district requires parking to be placed to the side or rear of the building which is a pedestrian oriented building standard in place to encourage pedestrian access and movement through the district. The location for CB II zoned areas is appropriately located on major thoroughfare streets to ensure adequate access. The list of allowed uses is quite extensive since a district goal is to encourage intensive commercial uses meeting the needs of the wider community. Individual buildings cannot exceed 45,000 square feet.

Based on the above findings and the analysis provided in the report, staff finds this request to be reasonable because the proposed zoning is compatible with the surrounding area and with the development already on the site.

Pros:

- The proposed rezoning is responsive to changing market conditions and economic realities
- The proposed zoning will be compatible with the surrounding area and the existing development on the parcel

- The site can be maintained and improved to preserve its economic viability

Con:

- Reduces the likelihood for high density mixed-use development (Urban Village-style development) on this or adjacent properties.

The Planning and Zoning Commission at their meeting on January 4, 2012, voted 7-0 to recommend approval of the zoning change. Their discussion focused on the intent of the Urban Village District zoning, the applicability of the CB II proposal and the portion of Gerber Village to remain Urban Village zone. Staff supports the request to rezone the property to CB II because the surrounding area and the existing development on the site supports this zoning pattern.

Mayor Bellamy opened the public hearing at 6:53 p.m.

Mr. Matt Sprouse, representing the owners, said that this zoning change will give the owners of the property greater flexibility. They will not change the buildings, but there are some site issues when it comes to parking and leasing spaces. They are focused in getting businesses back in the shopping center.

Mayor Bellamy closed the public hearing at 6:55 p.m.

Mayor Bellamy noted that the City doesn't maintain the streets inside the Urban Village.

City Attorney Oast cautioned the Council that if the property is rezoned, it can be used for any use allowed in that district.

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

Councilman Davis moved for the adoption of Ordinance No. 4051. This motion was seconded by Councilman Hunt and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

Closed Session

At 6:57 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 litigation involving the following parties: J. Jerome Jensen, et al (Biltmore Lake Annexation); Holly P. Oxner, Jr., et al. vs. City of Asheville et al. The statutory authorization is N.C. Gen. Stat. sec. 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 authorization is contained in N.C.G.S. 143-318.11 (a) (4); and (3); and To prevent disclosure of information that is privileged and confidential, pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that makes the information privileged and confidential is N.C.G.S. 143-318.10(e). The statutory authorization is contained in N.C.G.S. 143-318.11 (a) (1). This motion was seconded by Councilman Bothwell and carried unanimously.

At 7:20 p.m., Councilman Bothwell moved to come out of closed session. This motion was seconded by Councilman Davis and carried unanimously.

V. UNFINISHED BUSINESS:

A. REGULATING THE USE OF CITY PROPERTY

ORDINANCE REGULATING CERTAIN USES ON CITY PROPERTY

RESOLUTION DESIGNATING PACK SQUARE AND CITY-COUNTY PLAZA AS CITY PARKS, AND DESIGNATING CERTAIN AREAS FOR CAMPING AND PUBLIC FORUM PURPOSES

ORDINANCE AMENDING THE FEES & CHARGES MANUAL CREATING A PERMIT FEE FOR CAMPING ASSOCIATED WITH FREE SPEECH

Building Safety Director Robert Griffin said that the purpose of this report is to consider 1) a camping process in the area adjacent to City Hall that is not within the Pack Square Park boundaries; and 2) associated ordinances necessary to establish the process.

City Council has reviewed the free speech activity associated with Occupy Asheville and referred three ordinances proposed by staff addressing the activity to the Public Safety Committee. The Public Safety Committee did not recommend the proposed ordinances. However, the Public Safety Committee did recommended establishing a permitting process for camping associated with free speech activities in an area adjacent to the City Building and the necessary ordinances to achieve the permitting process.

The Public Safety Committee recommendations and staff response were:

Achieve/sustain a few goals:

- Zero violence
- Protection of free speech and civil liberties
- Minimize risk of legal liability
- Ensure that public space is available to all
- Minimize cost to taxpayers
- Maintain strategic priorities in regards to 10 Year Plan to End Chronic Homelessness & Public Safety

| | |
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| Can this type of use be permitted? | Yes, at the Development Service Center |
| Permitted activity is for purposes of "speech"; Register individual campers | DSC staff can perform this function. This will require an Ordinance. |
| Maintain cleanliness standards (garbage removal, store items in tents) | Public Works will pick up closed trash bags if placed on Marjorie Street by 3:00 AM. This will require an Ordinance for the storage of personal belongings. |
| Move tents with regularity (every 48 hours?) to maintain grounds | Currently, no open space exists. Parks believes the area will need to be reseeded or new turf installed when no longer in use. |
| True cost pricing for camping permits – by the person, not the tent. | The estimate for taking the application, generating the permit, generating the tag to be attached to the tent, keeping a spreadsheet of names, direct and indirect costs is \$18.00 for 30 minutes using clerical staff and not a permit facilitator. This will require an Ordinance change to the Fees and Charges. |
| One tent or less per person, with storage allowed only inside tents. | More than one person can be associated with one tent, but one person may not be associated with more than one tent. |

| | |
|---|---|
| No open fires/flame | Yes, written on permit |
| Reapply every 7 days | Staff recommends every 14 days. Federal forest uses a maximum of 14 days for "camping". The Building Code requires a 40-foot buffer around the City Building. |
| Port-a-johns permitted using standards for other outdoor event permits. Port-a-johns available to the public. Port-a-johns not subsidized by city taxpayers | Staff has indentified 6 locations where port-a-johns are utilized by other events, where the surface slope is low to allow use, where the provider can maintain without driving on Park property, and where placement would cause minimal disruption to scheduled events. Note that if one of the locations where tents are now located are selected this will impact tents currently in this location. |
| Permitted only in specific area(s) - utilize current property only - add other properties as appropriate - does not include parks pending further review by Parks Board & Parks, Rec, Cultural Arts Dept. | Only area that is not part of the Park or restricted by the Building Code for life safety and egress is the slope below the metal steps where one tent is currently located. |
| Consequences of violation could be: - - rescinding permit for individuals in violation - - fines (up to \$25) for safety violations (fire, sanitation, other) - - fines (up to \$100 or eviction and referral to Homeless Service Provider) for camping without permit | - Rescinding permits is possible; - Current Council approved fine structure within the Fire Code currently begin at \$50.00 with opportunity for warnings. Recommend keeping existing fine structure. |
| Notify homeless service providers if violator requests it | To ensure a timely and accurate response, any city staff who encounters an Occupy Asheville camper requesting information on homeless resources should directly contact homeless outreach workers at the A-Hope Day Center (828.252.8883). The referring staff member should then e-mail the City of Asheville coordinator, Amy Sawyer, alerting her that a referral has been made (asawyer@ashevillenc.gov). |

Due to the 40-foot setback from the City Hall building, the area will be sectioned into eighteen 10-foot-by-10-foot spaces to determine the maximum number of permits that can be issued. If Council directs the area to expand into the area below the steps, that will add an additional four spaces. Each 14-day renewal period the number of spaces will be allocated to the first applicants in-line at the DSC. If Council direction includes the cost of port-a-johns in the cost of the permit, staff will add \$3.30 per port-a-john to each permit, making the total cost for the permit with two port-a-johns \$24.60 every fourteen days. An ordinance amending the Fees & Charges Manual is available for Council consideration.

Pros:

- The City develops a process for permitting camping associated with free speech.
- Creates a process for any person or group wanting to establish camping associated with free speech.

Cons:

- Establishes a camping area adjacent to Pack Square Park that is used for events, festivals, weddings, splash-Asheville, and others.
- May impact events and festivals that historically have used this area as part of their function.
- Creates a process for any person or group wanting to establish camping associated with free speech.

The fees for permitting are set to recover 100% of actual cost. If not all the allocated spaces are permitted and the cost of the port-a-johns are included a portion of the monthly port-a-john cost will be absorbed by the City.

City Attorney Oast said that this will supplement information provided to Council by Mr. Griffin and in other staff reports and memoranda previously provided to Council.

Pursuant to Council direction at the January 10 Council meeting, on recommendation of the Public Safety Committee from its special meeting on January 3, an ordinance and resolution have been prepared to effectuate the following:

1. Provide for designated areas on City property within or near public forum areas, where overnight camping may occur, subject to certain regulations.
2. Clarify that camping is not otherwise permitted on City property.
3. Clarify that tents or shelters are not permitted on City property, except when used for camping.
4. Provide that equipment or personal belongings may not be left unattended or stored on City property.
5. Designate Pack Square and City-County Plaza as park property, and designate certain areas within the park as public forums.

The three ordinances presented to Council on December 13, 2011, have been collapsed into one, and rearranged so as to be more internally integrated, and are presented as a new and separate article within Chapter 12 of the City Code. Chapter 12 is entitled, "Parks, Recreation, and Public Places," so this is an appropriate placement.

The ordinance provisions contain general prohibitions on certain activities on City property, primarily camping and related activities. These activities have historically not been permitted on City property, but there was no ordinance that clearly addressed them.

Sec. 12-50 of the draft ordinance now contains some definitions of terms used throughout the article.

- The definition of "camping" has been revised to bring it closer to the regulations that were upheld by the U.S. Supreme Court in its 1984 opinion in the Clark v. Community for Creative Nonviolence case, and the more recent U.S. District Court decision involving "Occupy Columbia," and its activities on the South Carolina State House grounds.
- The definitions of "tent" or "shelter" have been revised to incorporate language from the North Carolina State Building Code.

Section 12-51 sets out the general prohibition of camping on City property, but notes that camping is allowed pursuant to another section of the article.

Section 12-52 sets out the general prohibition of tents or other shelters on City property, but contains certain limited exceptions for activities that commonly occur in parks (pop-up tents and umbrellas), as well as permitted camping.

Section 12-53 sets out the general prohibition of storage of gear or equipment on City property, with an exception for bicycles and other forms of personal transportation.

Section 12-54 contains the regulations for permitted camping, and is based on regulations suggested by the Building Safety Department, in response to direction from the Public Safety Committee. Camping is permitted in designated campsites whether or not in connection with First Amendment activities. The regulations have been drafted so as to ensure regular turnover of space within the campsite, and to limit use of the campsite by any one permittee.

The ordinance recognizes that the campsites may not be available if other activities are programmed for the area, or because of demonstrable sanitary or public safety concerns.

Violations of the ordinances are punishable as civil or criminal offenses, and the ordinance contains a provision for revocation of camping permits in appropriate situations.

The resolution designates all of the reconfigured Pack Square and City-County Plaza area as a City park. He used a map to illustrate the areas. The resolution also designates two areas within the park - - the western extremity of the Vance Monument oval and the area in front of the City Building - - as public forums. This designation recognizes custom and practice that have developed over time.

The resolution also designates an area to be set aside for camping. Neither the designated public forum nor the designated campsite are subject to the closing time otherwise applicable to City parks.

This ordinance and resolution in combination allow for First Amendment activity to occur within designated public forum areas on a round-the-clock basis, and allow for camping to occur on round-the-clock basis, but pursuant to certain regulations. As indicated in the Staff Report, City staff are prepared to administer the camping regulations through the Development Services Center. Staff will monitor the administration of these ordinances, and suggest revisions as the need arises.

The proposed ordinance and resolution are intended to facilitate the use of public forum space on round-the-clock basis, and to allow for overnight camping in connection with that use. The regulations are content-neutral in that they do not require or permit City officials to evaluate the legitimacy of any claim that overnight camping is an essential element of a particular First Amendment activity. The regulations support the governmental interest of maintaining parks and City property on an equal basis for use by all citizens, and are drafted so as to be the least intrusive means of supporting that interest. The regulations do not provide for unlimited use of City property, but they leave open ample alternative means of expression, excluding expressive conduct such as overnight camping.

The proposed ordinance and resolution have been drafted to address concerns raised by Council and the public over the last several weeks, but may be further adjusted prior to adoption. As with any ordinance of this nature, it may be fairly anticipated that questions as to interpretation and field application will arise. Litigation over these issues including, enforcement, is a possibility. Council may wish to consider a delay in the effective date to enable the permitting system to be set-up, and to allow campers and users of the public forum areas to make appropriate arrangements for their activities.

Pros:

- Implements Council direction based on recommendation from Public Safety Committee.
- Formal clarification of park boundary, and public forum areas.

Cons:

- Requires additional staff time/resources to monitor activity.
- Potential for damage to property from overuse.

If Council wishes to allow permitted camping in the designated areas, adoption of the ordinance is recommended. Regardless of any action on the ordinance, it is recommended that the resolution designating park property, and designating public forum areas within it, be adopted.

Councilman Bothwell said that Sec. 12-52 regarding no storage on City property is prohibiting City employees leaving their personal belongings in their offices in City Hall over the weekend. City Attorney Oast responded that there is a significant difference between someone's office and park property. He would be happy to clarify that section to apply to City property exclusive of interior buildings; however, the definition of "City property" in the ordinance does not refer to the interior of buildings.

In response to Councilman Bothwell, City Attorney Oast said that the definition of "City property" is internal to this ordinance.

Regarding Councilman Hunt's question regarding the number of port-a-johns, Mr. Griffin said that under the Building Code, under which we use to determine the number of port-a-johns that may be necessary at festivals and events, would only require one unisex port-a-john.

In response to Councilman Bothwell, Mr. Griffin explained that if two people were in one tent, only one would need to pay the port-a-john fee.

Councilman Hunt said this has been an interesting and challenging issue for him. At the end of the day the right to public speech is important to preserve and protect. The unique thing about the Occupy movement is the 24/7 presence with the existence of tents being part of the speech. Therefore, he moved to adopt the ordinance regulating certain uses of City property. It is his own personal view, as someone who believes in the principles that Occupy stands for, he is concerned that this particular encampment and the way it has evolved with the focus on tension with the City over whether or not to camp may not be as advanced as well as the movement might hope. If this ordinance is adopted and there is a way the encampment can continue in an orderly way, it is his hope that the people who participate are truly about speech and expression.

Councilman Smith asked for a friendly amendment to Section 12-54 (e) regarding no person may be issued more than four permits in any one year period. He felt that rather than limit the permits to four, it seems the intent is to make sure the people who are using the space are doing so for purposes of speech. So, in order to prevent abuse of the intent, while not prohibiting the activity, he asked for a friendly amendment for a two-on and one-off permit process. Rather than limiting the permits to four a year, one could renew the permit, but then you would have to take one 14 day period off before applying for another one. This could serve the purpose of not limiting the associated activity of the speech, but at the same time no one is abusing the intent of the ordinance.

Councilman Hunt accepted Councilman Smith's friendly amendment, with staff's input on how that might fit into the ordinance before a final vote. As a result, Councilman Smith seconded the amended motion.

Mayor Bellamy opened up public comment and advised the public that comments would be taken on all three actions before Council (1) Ordinance regulating certain uses of City

property; (2) Resolution designating Pack Square and City-County Plaza as City Parks, and designating areas for camping and public forum purposes; and (3) Ordinance amending the Fees & Charges Manual creating a permit fee for camping associated with free speech.

Twenty individuals spoke in opposition of the three actions before Council.

Mr. Fred English supported adoption of the three actions before Council and felt it was time for Occupy Asheville to leave from their campsite in front of City Hall.

In response to questions raised:

- Regarding potable water, Mr. Griffin said that staff did not use the standards for campgrounds since this is not a campground where motor vehicles and other types of appliances are met. Once the pavilion out front is completed in approximately two month, there will be potable water.
- Regarding the expansion of the Park property, City Attorney Oast said that the area beside City Hall has been traditionally a part of the City Park. It is not programmed as a park because of various building safety concerns.
- Regarding the definition of “camping”, City Attorney Oast said the definition was drawn from the ordinances and regulations upheld in the Clark vs. Community for Creative Nonviolence case in 1984. That definition was pretty much the same definition that was in the case involving the South Carolina State House grounds in Columbia, South Carolina. He did do some modification to try to address Asheville’s particular situation.
- Mayor Bellamy said she supported the concept of looking at how more people in our community can have more wealth.
- Mayor Bellamy did not support Citizens United.
- Regarding tents, City Attorney Oast said that the most difficulty he had in crafting the ordinance was trying to define camping and distinguishing that from sleeping. Among the things our proposed ordinance provides is that except as permitted in Sec. 12-54, or other City ordinance (which he believes includes Sec. 11-16 which prohibits sleeping on public property in such a manner as to interfere with pedestrian and vehicular traffic or permitted activities), this would not prohibit sleeping on the sidewalk. To illustrate, you could sleep on the sidewalk as long as you did not block pedestrian passage, but to the extent, it would prohibit the erection of tents or other shelters on the sidewalks.

When Vice-Mayor Manheimer asked if there are any other North Carolina cities that have designated campsite areas, Assistant City Manager Richardson said that there are none in North Carolina; however, there are several cities across the United States that have tied the protest movement to a 24/7 presence with camping.

Vice-Mayor Manheimer clarified that the three proposals before Council now would allow a campsite in front of City Hall where you can get a two week long permit to camp. City Attorney Oast agreed and said that if we clarify that the Park boundaries to include the area in front of City Hall, that entire area is subject to the 10:00 p.m. closing time. He felt that area in front of City Hall is part of the property that was deeded to the City by Mr. Pack years ago.

Mayor Bellamy could not support the three actions before Council. She does not support camping nor does she support charging people to camp. She doesn’t object to picketing 24/7, but doesn’t think the tents should be there. She felt we are sending a dual message – Occupy can have tents/camp and homeless people cannot. We have allowed no camping in the City of Asheville for years for the homeless. In fact, we have removed homeless camps from other parts

of the City. She also did not support designating free speech zones, as all of Asheville is a free speech zone. She felt we need to deal with the real issue of tents/camping.

Councilman Davis could not support the motion. He read the following e-mail from Mr. Tom Israel which he felt a lot of people in Asheville feel right now: "I was prepared to speak at the City Council meeting two weeks ago to address the proposed ordinances addressing camping on city property. Unfortunately I will be out of town and won't be able to attend this evening's City Council meeting. I would be grateful for your time to review my comments. My family has a significant interest in this issue as owners of Pack's Tavern, contributors to the Park, and as third and fourth generation natives of Asheville. In my opinion this isn't an issue about first amendment rights and it's not about the homeless, it's about camping. It's about camping on city property in or adjacent to a public park. And not any public park, a beautiful new park that took years and millions of dollars from private contributions to create. Allowing camping in or adjacent to probably the most important section of the park with Splashville and the amphitheater is unacceptable for several reasons. This would be a campsite without the facilities required by a campsite, potable water and restroom facilities. Please do not put port-a-johns in our park just outside our City Building and right next to Pack's Tavern's outside seating. It has already become a public safety issue demanding the time and effort of our police force. It is already a sanitary issue. It is already an eyesore, resembling a shanty town in our park and adjacent to the City building. Quiet enjoyment is no longer available in this section of our new park. Campsites require potable water and restroom facilities, so where will they get them? The campers have already come into the alley of Pack's Tavern at night and taken water from the outside faucets. Strangers in that alley at night are not what the staff needs to be subject to. They have come in through an exit and used the restrooms at Pack's quickly leaving before they are noticed. They have constructed a compost on Pack's property for Pack's guests to admire. But soon we will have our new pavilion that will provide restroom facilities for park visitors. Or will it become the facilities for the campers? How will the children and the parents of children feel about campers, and the campers going back and forth to the pavilion? Will the parents bring their children to play Frisbee and will they let their children play in Splashville with campers coming and going in and out of their tents? You want to make it a permitted use, who will not be given a permit? How will we know that the campers and the campsite are safe? It already makes city employees, park users, and Pack's Tavern guests uncomfortable. The general public does not feel safe with campers here. For very significant reasons camping is not allowed on city property, or ordinances tell us this. We can protest all we want to, no one is stopping that, but we cannot camp here. Because then anyone can camp here and then it becomes a public safety issue, a sanitary issue, and a quiet enjoyment issue. I respectfully request that you approve the three ordinances confirming that these uses are not allowed on city property." He agreed with Mr. Israel. The reality is that the area is a beautiful park that should be respected. There was consideration about camping in the City before the Occupy movement began.

Vice-Mayor Manheimer's main concern is that we are designating a campsite next to City Hall.

Councilman Smith, member of the Public Safety Committee, said that this has been an emerging situation. First Occupy was under the Lexington Avenue Bridge, then in the middle of the Park by Vance Monument, then staff identified the area in front of City Hall as an undesignated place that falls in a gray area that until Council provides further direction, they can camp there. It was embraced by the Occupy movement. An alternative presented at the Public Safety Committee meeting was to move it to other parks; however, this siting was an acknowledgement of where this protest was taking place. He is well aware of a lot of the difficulties experienced in the campsite – a number of Occupiers saying they need to discontinue the camp, violence, complaints about people who are there only to take advantage of a camp, and other issues. He explained that a lot of the permitting process was intended to respond to the needs of Occupy campers as they were stated to him and others. The idea that any of Council is against free speech is absurd. This is seven people trying to respond to an emerging situation and be sensitive not only to what he has heard and seen from Occupy, but also

recognizing some of the other issues that other members of the City bring to this as well. He believed there is a lot of good faith effort being made by Council. This is not about the Occupy movement, but about an enduring public policy piece that we have to wrestle with. He felt this was the compromise position that was landed on in the effort to err on the side of constitutional and protected free speech while recognizing that camping costs money.

Councilman Bothwell said that he has been outspoken in support of the goals of Occupy. They reflect many basic tenants that he has held for a long time in terms of holding Wall Street accountable, ending corporate personhood, not equating money with speech, etc. It's sad that Council, staff and those associated with the Occupy movement have spent hours on this dance around whether there should be tents on a spot of land. Those are not the real problems we are trying to address. We could have been spending the same amount of Council time talking about how to extend the living wage to more of our employees and contracts, or move moving more of the City's money into local banks instead of fretting about an issue that comes down to a question of sanitation. What we have out front can be described as a "Motley Crew" and he described the history of that term. He feels the tent have been that association. He hoped that Occupy would move on to something besides the question of can we place ourselves in a place where it's hard to live because it's taking away the energy from the things we really need to change. The work needs to be done to change this country and simply confronting City Council with hard decisions isn't moving anything anywhere. He was uncomfortable with the cost of the permit, but agreed with Councilman Smith that the permitting process was discussed to help weed out the people who weren't there for the Occupy purpose. And once a permitting process is set up, there has to be a cost because it does cost the City money. We don't always have 100% consensus on everything, and yet we do have people like the owner of Pack's Tavern whose business his family has put money into is being affected. There are effects beyond making a presence known. He felt it would be stronger as a movement to move on from that. He could not support the motion because of the cost associated with the free speech nor designating a permanent camping space in front of City Hall.

Councilman Hunt withdrew his motion.

Vice-Mayor Manheimer agreed with Councilman Bothwell that we do have some very pressing issues the City is trying to grapple with, i.e., water system, entering the budget cycle. She felt this has been on Council's agenda a number of times and felt we need to re-group as there are many struggles ahead of Council in other arenas as well.

Vice-Mayor Manheimer moved to recognize the Park as outlined in red on Exhibit "A" which is attached to the resolution before Council (which includes the area in front of City Hall being subject to the 10:00 p.m. closing time). This motion was seconded by Councilman Davis.

Ten individuals spoke against the motion recognizing the area in front of City Hall as a Park suggesting postponing the issue until a different compromise can be reached; but asked if the motion passes to allow Occupy Asheville time to disassemble.

Vice-Mayor Manheimer amended her motion to put an effective date of February 2, 2012. Councilman Davis moved to accept the amendment.

Councilman Hunt said a lot has been said about the engagement with the City of Asheville and Occupy and how that has become some of the focus of the Occupy effort here. He could not support the motion and felt that postponing this issue to the next Council meeting would ensure more thorough thought about this particular motion. He encouraged Occupy Asheville consider where their focus should be.

Councilman Smith appreciated suddenly people were interested about compromise once the compromise was off the table. He explained that the motion under consideration would ban

the campsite. He could not support the motion and felt there should be a third way to address the situation.

The amended motion made by Vice-Mayor Manheimer and seconded by Councilman Davis failed on a 3-4 vote, with Councilman Bothwell, Councilman Hunt, Councilman Pelly and Councilman Smith voting "no".

Councilman Hunt acknowledged there seems to be a limited number of options and felt the Occupy moving has an opportunity to help resolve this. He was not eager for staff to research another set of options, but suggested extending this item to the next Council meeting and all Council time to think through the motion made by Vice-Mayor Manheimer. What is important to him is the space and opportunity to protest. After hearing this discussion, he has become uncomfortable with the notion of a policy that simply allows camping. At that point we are inviting all kinds of people to camp, without it being qualified as speech. It is clear that our ability to come up with creative options is limited.

Mayor Bellamy noted that since there is no direction to staff, they will not have prepared anything for Council for their next meeting, which will be February 14 (3 weeks from now). Staff needs policy direction from Council. Staff needs the leadership from Council on this issue.

In trying to find another compromise, Councilman Smith said that a motion could be to allow free camping in front of City Hall for anyone. Vice-Mayor Manheimer noted that what is happening now. Councilman Pelly said that motion could be permitted for a limited amount of time.

Councilman Hunt suggested between now and the next Council meeting he would like to think hard about the motion made by Vice-Mayor Manheimer.

Vice-Mayor Manheimer said that Council hasn't discussed the designation of public forum areas. She understands that there are legal reasons why some areas are designated and some are not. City Attorney Oast responded that he included the areas in front of the City building and the western extremity of Vance Monument as public forums because he thinks that's how they have traditionally been used and he felt that was what the courts might recognize. Other cities have designated public forums in that way.

Vice-Mayor Manheimer clarified that the western extremity of the Vance Monument would be included in the Park and be subject to the 10:00 p.m. curfew hours; however, the space directly in front of City Hall is not included in the Park and not subject to the curfew hours. Those two areas could be designated as public forum areas and you could stay there 24/7. She felt that would be a compromise.

In response to Mayor Bellamy, City Attorney Oast said that it is possible to adjust the park closing hours and make that adjustment specific to this park.

Councilman Bothwell was going to bring this up at Council's retreat, but wondered if the majority of Council would be supportive to amend the US Constitution to decide that corporations are not people – that only natural people are people. If Council supported that, he wondered if Occupy Asheville might deem that a victory in achieving one of the things they are trying to bring to the attention of the City and de-camp. He felt that would be compromise.

Councilman Smith was going to submit that request to be brought before the full Council.

Councilman Hunt clarified that Councilman Bothwell's compromise would be the expansion of the Park to include the area by City Hall, including the designation of public forum areas by Vance Monument and directly in front of City Hall, along with the resolution abolishing corporate personhood.

Councilman Bothwell hoped Occupy Asheville would discuss his compromise and feel that they had started to advance the cause. The truth of the matter is the City of Asheville can do nothing to end corporate personhood outside of endorsing the idea. We can't do anything to change the money structure in this country. We are doing our best by having a living wage for our employees. We can't change the federal system or the influence of corporations on politics. The best we can do is when we individually run for office is not take corporate donations. It's possible for us to change our own behavior but as a City we don't have control over the major issues Occupy Asheville is seeking to address. The problem is not Asheville but Wall Street.

Councilman Pelly suggested a three-week permit to allow the installation of a port-a-john for that period of time.

Vice-Mayor Manheimer felt the compromise by Councilman Bothwell was excellent and the only thing that would be contingent upon is the wording of the resolution to abolish corporate personhood. She supported taking action at this meeting.

Councilman Bothwell moved to join the many other cities across this country who have endorsed the move to amend the US Constitution to exclude corporations from personhood and to create a condition where only natural human beings are considered people under our laws. This motion was seconded by Councilman Smith.

Councilman Smith said that there is a group called "Move to Amend" that came to him with a proposed resolution to eliminate corporate personhood. Councilman Hunt provided Council and the public with a copy of the proposed resolution entitled "Resolution to Support the Abolition of Corporate Personhood." Councilman Smith said that the resolution language is off the Move to Amend website and word-smithed by the Move to Amend group in Asheville.

Five individuals spoke as follows: one felt this was not a compromise, two felt the issue should be postponed with continued discussion, one felt the compromise was good, and one asked for time to allow the Occupy Asheville Coordinating Council discuss the compromise at their Monday meeting.

Councilman Smith withdrew his second as he just contacted the "Move to Amend" group and they wanted to have public notice of their resolution request to Council and have the opportunity to speak to Council on that issue.

Councilman Bothwell agreed that having the resolution go through the normal process is better and withdrew his motion. He suggested Occupy Asheville take this discussion back to the Coordinating Council and determine how they want to take their movement forward.

Councilman Pelly felt that in three weeks Council could revisit Vice-Mayor Manheimer's motion to add the existing campsite into the Park, but Occupy's fear is they would be subject to removal unless we voted on this tonight and effective in 3-weeks.

Vice-Mayor Manheimer moved to (1) recognize as a Park the area outlined in red on Exhibit "A" on the map entitled Pack Square Park (which includes the area by City Hall which is being used as a campsite); and (2) identify the area on the western extremity of Vance Monument and directly in front of City Hall outlined in green on Exhibit "A" on the map entitled Pack Square Park as the public forum areas effective February 14, 2012. This motion was seconded by Councilman Pelly.

Five individuals spoke against the motion asking for Council to give the Occupy Asheville Coordinating Council an opportunity to discuss the motion and work through their process, but in the meantime allow the placement of a port-a-john.

When Councilman Hunt questioned the effective date of February 14, Councilman Pelly said that if adopted, the motion would go into effect on the same night as the resolution to eliminate corporate personhood would be considered by Council.

Councilman Hunt supported the motion, along with the resolution to eliminate corporate personhood.

Councilman Davis read the resolution regarding corporate personhood and could support it.

Councilman Bothwell said that the motion does not allow time for a response from Occupy Asheville. He would support revisiting the motion on February 14. Councilman Hunt agreed with Councilman Bothwell and noted he was fundamentally supportive of the motion.

Councilman Pelly felt that as long as the resolution to eliminate corporate personhood is on the agenda on February 14, and it appears the resolution will pass, this is one way to break out of the impasse we seem to be in.

Brother Christopher Chiaromonte raised a point of order that he was denied access to speak because public comment was limited to five people. Mayor Bellamy said that Section 7.5 of the Rules of Procedure for City Council states "The time limit applicable to public hearings or public comment periods on any agenda item shall be one hour. This time limit may be exclusive of staff presentations and any structured Council debate. This time limit may be shortened or extended by the Mayor with the concurrence of Council."

Prior to voting on the motion, Councilman Pelly withdrew his second. He would be willing to wait until February 14 to consider the motion, noting that he would be very much inclined to support the motion made by Vice-Mayor Manheimer.

Councilman Bothwell moved to permit Occupy Asheville to avail themselves of the port-a-john offered to them by the Western Labor Council and locate it on one of the locations identified by Robert Griffin, until Council's decision on February 14, 2012. This motion was seconded by Councilman Pelly.

Five individuals spoke thanked Council for the time extension until their Coordinating Council has an opportunity to meet on this issue.

When Councilman Smith suggested the port-a-john location be between the City Hall and County Courthouse, Mayor Bellamy said that staff has identified some locations.

Assistant City Manager Richardson said that staff has identified several locations for a port-a-john. The Parks & Recreation Director will work with the Building Safety Director on the appropriate location. If Council adopts the motion on the floor, from an operational standpoint, he that Council ask Occupy Asheville to make arrangements to meet with City staff tomorrow. In addition, if arrangements are not made, because the existing campsite is clearly saturated, he asked that the meeting be a condition of their continuing to remain on that site for the next three weeks.

When Mayor Bellamy asked for a spokesperson to meet with Mr. Griffin about a port-a-john, Kayvon Kazemini was chosen by those representing Occupy Asheville in the Council Chamber to be their spokesperson.

Mayor Bellamy said that after Occupy Asheville's meeting on Monday, she would expect Mr. Kazemini to deliver a report in writing to her office regarding the outcome/decision of Occupy Asheville's Coordinating Council meeting. City Clerk Burleson was directed to make copies available of the report to Council at their annual retreat on February 3.

The motion made by Councilman Bothwell and seconded by Councilman Pelly carried on a 5-2 vote, with Vice-Mayor Manheimer and Councilman Smith voting “no.”

It was the consensus of Council to bring back Vice-Mayor Manheimer’s motion on February 14, 2012, along with the resolution to eliminate corporate personhood.

VI. NEW BUSINESS:

A. RESOLUTION NO. 12-31 - RESOLUTION OF CONSIDERATION IDENTIFYING AREAS WITH POTENTIAL FOR FUTURE ANNEXATION AND REDUCING CURRENT MAP OF CONSIDERATION

Urban Planner Blake Esselstyn started out by stating this Resolution of Consideration does not indicate the beginning of an annexation process and it does not identify areas that the City of Asheville intends to annex. The resolution that does those things is called a Resolution of Intent and no Resolutions of Intent have been prepared or scheduled for 2012. He said that this is the consideration of a Resolution of Consideration identifying areas with potential for future annexation and reducing current map of consideration. Resolutions of Consideration expire after two years and the City has renewed them every two years for the last 10 years.

State statutes now require that a Resolution of Consideration, formerly an optional action, must be adopted by cities as a preliminary step for any city-initiated annexation process. The Resolution of Consideration serves the purpose of providing citizens with advance notice that certain areas in proximity to the City may, in the future, be subject to annexation. Each Resolution of Consideration is effective for two (2) years. The initial City of Asheville Resolution of Consideration was adopted on April 9, 2002 and revised maps were adopted by Council on March 9, 2004, March 7, 2006, February 26, 2008, and February 23, 2010. Since the time of adoption of the last resolution/map in 2010, North Carolina law has changed significantly regarding city-initiated annexations, adding a petition requirement before such annexations can take effect. As a result, the map staff has prepared to accompany this resolution has changed significantly compared to previous versions.

The accompanying map drastically reduces the area compared to what was previously included. The total area of consideration has been reduced from 33.1 square miles to less than one square mile. The areas that remain are predominantly road rights-of-way, government property, and a few privately owned properties in donut holes or other gaps identified by staff for future “clean-up” and for improving the provision of city services. This map does not preclude incorporation of municipalities in these areas nor does it preclude annexation by another municipality. All of the areas still would require more staff analysis before any annexation could be undertaken.

The revised North Carolina statutes now also require that property owners in the identified areas be notified by mail, and that the adoption of the resolution be recognized in two published newspaper advertisements. The twelve non-right-of-way properties included in the mapped area are owned by a total of seven property owners, two of which are government entities. The description of the area in the legal advertisement will be substantially shorter than would have been required for previously adopted areas.

Pros:

- Required by state law before any city-initiated annexation other than voluntary requests.
- Gives residents and property owners within the area advance notice of possible annexation.

Con:

- Newly required small cost of advertising and notification.

The cost of ads and mailings, which will be minimal, will be paid from the Planning Department's current operating budget.

City staff recommends that the Resolution of Consideration be adopted.

At the request of Vice-Mayor Manheimer, Mr. Esselstyn said the concept of annexing the I-26 corridor in Asheville was included in early versions of proposed annexations going back to 2004. There was some discussion done about whether this should be done at the legislative level in Raleigh from a petition from the N.C. Dept. of Transportation. In conversations with the Asheville Police Department they feel that the State Highway Patrol would welcome the annexation of this area into the City's jurisdiction. This would also fit into the category of closing gaps. In the case of I-40, the City limit line is drawn down the middle of the right-of-way. The Asheville Police Department has agreements with the other responding agencies that they will respond in this area, but the current alignment of the City limit does not correspond exactly with how people are actually providing services in those areas. That would also be a clean-up to include the entire right-of-way from the Blue Ridge Parkway basically west until the area where the entirety of the I-40 right-of-way is included.

In response to Councilman Hunt, Mr. Esselstyn briefly explained his discussions with the non-profits and individual property owners.

When Mayor Bellamy asked for public comments, no one spoke.

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. 12-31. This motion was seconded by Councilman Pelly and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 260

B. ORDINANCE NO. 4052 - ORDINANCE AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES CONCERNING CHANGES TO THE STANDARDS REGULATING PUSHCARTS AND ENCROACHMENTS ON PUBLIC SIDEWALKS

Urban Planner Alan Glines said that this is the consideration of amending Chapter 16 of the Code of Ordinances concerning changes to the standards regulating push carts and encroachments on public sidewalks.

Over the past few years there has been growing interest in uses in the public right of way in the downtown area. This seems to be a product of greater pedestrian activity on the sidewalks and growth in the number of visitors in the downtown area. Applications for permits for outside merchandise and dining areas and pushcarts are a way to expand private enterprise with minimal upfront costs. Staff has responded to the growth in interest in pushcarts by adding several additional push cart sites in the downtown area where there is pedestrian activity and space along the sidewalk for placement. In 2011, nine additional spaces were added around the perimeter of Pack Square Park and other central locations. As staff has worked with the ordinance and responded to questions from the public, several opportunities have been identified to facilitate the push cart program and to clarify the regulations for other encroachments:

Section 16-143 Exceptions:

- Currently the ordinance states that community events (which may interfere with the regular operation of the pushcart) be posted in the Rankin Street Arcade. When the City Development office operated at 29 Haywood Street special events were posted in a display case inside the Rankin Street Arcade but, with the closure of that office, posting there is no longer practical. The proposal is to remove 'Rankin Street Arcade' posting requirement but to still post the community events on the City's website.

Section 16-144 Pushcarts:

- Currently pushcarts must stop work and remove their cart from the sidewalk at 10:00 PM each day. The proposal is to allow pushcarts operators to remain open until 11:00 PM each day if desired. Pushcart operators have requested this to expand their hours since downtown streets often have active pedestrian traffic after 10 PM.
- An additional proposal for this section is to add a new number 17 to state that applications for a pushcart are required to comply with Section 16-156(b)- *Encroachments*. This will clarify the requirement that pushcarts must apply for a sidewalk encroachment.

Section 16-146/147 Outdoor dining & Outdoor merchandise areas:

- Currently dining or merchandise areas less than 30 square feet are not required to have an encroachment agreement. The proposal is to change this so that all outdoor dining or merchandise areas are required to have an encroachment agreement. The encroachment agreement is a contract with the business owner and the City over the use of public right of way and protects the City from liability.

Section 16-158 Term; fees; transferability; display:

- Item (a) currently states that permits expire on June 30 of each year. The proposal is to allow permits to expire on a day determined by the Planning and Development Department Director after consulting with the Downtown Commission and other applicable boards. This change would allow the pushcart permits to follow more closely the actual operating season which begins in April instead of following the fiscal year date of July 1, which is 'halfway' through the season.
- Item (e) currently states that permits will be approved on a first come first served basis and application to be accepted at the start of business on the first Monday in June. The proposal would alter the wording to approve permits by a process determined by the Planning and Development Department Director after consulting with the Downtown Commission and other applicable stakeholders. Staff has received complaints about the current approval process because operators feel that premium sites never become available to new operators. Staff does not expect any changes to the approval process at this time but may look at other options for approving permits with the assistance of the Downtown Commission and pushcart operators in the future.

Section 16-160 Revocation:

- Item (6): During the months of active operation, the pushcart permit may be revoked if the operator fails to operate for a period of **15** consecutive days. The proposed change would require the pushcart to be in operation at least once in **7** days. The existing wording permits a pushcart operator to be at the location essentially 2 times per month and maintain their permit. The permits for specific locations are in high demand so it will be better to keep the pushcart locations more active. Staff expects to enforce this portion of the ordinance in a reasonable and practical way so that during times of inclement weather or other excused absences (vacations, illness, etc.), the seven day requirement can be waived or negotiated with the operator.
- Item (6) Currently pushcarts must operate starting in April through September or their permits can be terminated. The proposed change is to require the period of operation to extend until the end of October since the weather is still good and October is a popular tourist time for Asheville.

The Downtown Commission reviewed this ordinance changes at their December 13, 2011, meeting and voted unanimously 9-0 to support the amendments. Comments provided by the Commission were incorporated into the proposed amendment and centered around including the Downtown Commission and other applicable stakeholders along with the Planning Department in future changes to the way permits are issued.

This proposal does not directly relate to the goals outlined in the Strategic Operating Plan but is most closely aligned with the goal for “job growth and community development” by providing opportunities for business expansion in an area that can support the growth.

Pros:

- Provides consistent treatment of encroachments in the public right-of-way and protects the City from liability
- Improves permitting policies to adapt to downtown needs
- Expands the time and duration of the operation of pushcarts consistent with the increased popularity of downtown Asheville

Con:

- Requires operators to expand the operation of pushcart sites (a potential plus)

The changes are not expected to have a fiscal impact over what is already expended under the existing review process. In addition, costs associated with enforcement are expected to neither increase nor decrease.

City staff recommends approval of this wording amendment.

When Mayor Bellamy asked for public comment, no one spoke.

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

Councilman Davis moved for the adoption of Ordinance No. 4052. This motion was seconded by Councilman Bothwell and carried unanimously.

ORDINANCE BOOK NO. 27 – PAGE

C. RESOLUTION NO. 12-32 - RESOLUTION APPOINTING A MEMBER TO THE AFFORDABLE HOUSING ADVISORY COMMITTEE

Vice-Mayor Manheimer said that Mr. Anthony Goodson, representing the Housing Authority, has resigned as a member of the Affordable Housing Advisory Committee, thus leaving an unexpired term until September 1, 2014.

On November 22, 2012, it was the consensus of Council to interview Jayden Gurney, as the representative from the Housing Authority.

Councilman Smith moved appoint Jayden Gurney to fill the unexpired term of Mr. Goodson, term to expire September 1, 2014, or until his successor has been appointed. This motion was seconded by Councilman Davis and carried unanimously.

RESOLUTION BOOK NO. 34 – PAGE 263

D. RESOLUTION NO. 12-33 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE GREENWAY COMMISSION

Vice-Mayor Manheimer said that the term of Stephanie Pankiewicz, as a member on the Greenway Commission expired on December 31, 2011.

On January 10, 2012, it was the consensus of Council to interview Mary Weber and Tony Hauser.

After Council spoke highly of both candidates, Mary Weber received 6 votes and Tony Hauser received 1 vote. Therefore, Mary Weber was appointed as a member to the Greenway Commission to serve a three-year term, term to expire December 31, 2014, or until her success has been appointed.

RESOLUTION BOOK NO. 34 – PAGE 264

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Mr. Alan Ditmore talked about smart growth.

VIII. ADJOURNMENT:

Mayor Bellamy adjourned the meeting at 11:07 p.m.

CITY CLERK

MAYOR