MINUTES
BREVARD CITY COUNCIL
Regular Meeting
February 21, 2011 – 7:00 PM

The City Council of the City of Brevard met in regular session on Monday, February 21, 2011 at 7:00 PM in the Council Chambers of City Hall with Mayor Jimmy Harris presiding.

The following were present: Mayor Jimmy Harris, Council Members Larry Canady, Rodney Locks, Mack McKeller, and Mayor Pro Tem Mac Morrow; City Manager Joe Moore, City Attorney Mike Pratt, and City Clerk Desiree Perry.

Absent: Council Member Dee Dee Perkins.

Staff: Fire Chief Craig Budzinski, Firefighter Bradley Elmore, Planning Dir. Josh Freeman, Deputy Police Chief Dean Galloway, Public Service Dir. David Lutz, HR Dir. LeAnn McCraw, Executive Assistant Jeanette Owen, and Finance Dir. Terry Scruggs.

Press: Derek McKissock, Transylvania Times

Welcome - Mayor Harris called the meeting to order, welcomed those present and introduced council members and staff.

Invocation and Pledge – Reverend Karen Easter, St. Timothy United Methodist Church, offered the Invocation. Mayor Harris led in the Pledge of Allegiance.

Certification of Quorum – The City Clerk certified a quorum present.

Agenda – Mr. Locks moved, seconded by Mr. McKeller, the Agenda be approved as presented. Motion carried unanimously.

Approval of Minutes - None

Oath of Office – Mayor Harris shared Craig Budzinski started with the Brevard Fire Department in 1974, promoted to Lieutenant in 1990, promoted to Captain in 1991, promoted to Assistant Fire Chief in 1992, and for the past 13 months has served as Interim Fire Chief. Under his leadership the Fire Department achieved lowering of the fire rating, and we are most fortunate to have him lead and serve as Brevard Fire Chief.

Fire Chief Craig Budzinski, accompanied by his wife, Nancy, was administered the oath of office by the City Clerk. Family members and members of the Brevard Fire Department were also in attendance.

Public Participation – Prior to the meeting the following person(s) signed-up to speak:

Mr. Art Margraf, 127 N Caldwell Street. He desires to obtain a ABC permit from Raleigh to sell beer only at his business; however, under the current City's ABC permit laws, he cannot do so. Asked that Council consider approving a ballot for citizens to vote on the issue.

Council members questioned if a petition by a certain number of voters is required prior to a ballot being placed.

Mr. Pratt will call Mr. Margraf after he has had opportunity to check into the situation and ballot requirements.

Ms. Carolyn Winchester, 102 Grandview Drive. Ms. Winchester shared she's been a resident of Brevard since 1949, and has lived on Grandview since 1952. The water situation from the creek being impeded by trash, debris, bamboo, etc., and the overflow pipes inability to handle the water has caused significant damage onto her property. The situation that has become worse down through the years, especially with the housing development on Elm Bend Road later followed by the Laurel Village Development. She

asked if the City would help address the situation, and invited Mayor and Council to come visit her property so they could see for themselves the damage that has and continues to happen to her property. (A copy her letter describing concerns, and photos presented during the meeting are on file.)

Mayor Harris stated to Ms. Winchester the matter will be referred to the City Manager.

Ms. Diana Zerby, 82 Jordan Road. Ms. Zerby stated that frequently in her neighborhood large items like TV's, computers, appliances, furniture, toilets, etc., are placed in the front yards or at the street but are not picked up by the City because the $30 special pick-up fee has not been paid. Also concerned over the number of unlicensed junk cars that are in her neighborhood. Proposed that Council waive the $30 large-item trash pick-up fee for all residents, and that $.07 to $.10 per month be added to each household utility bill which would pay for large-item pick-up.

Ms. Zerby stated her concerns with barking and aggressive dogs, and cats within the City. Suggested City require all dogs and cats be registered yearly at a nominal fee so that problem animals can be readily located. Several towns in NC have and enforce strict dog laws, she believes Brevard should too. Suggested City Police Officer patrol the streets by bicycle, as they would see (trash/debris) and hear (dogs/cats) better than in a patrol car. (A copy of her February 11, 2011 letter and speaking notes are on file.)

Mr. Jack Zerby, 82 Jordan Road. Mr. Zerby stated since submitting his February 11, 2011 letter on wrong-way parking that takes place on East Main Street and Maple Street, he has spoke with Police Chief Harris who is looking into the situation. (A copy of his February 11, 2011 letter is on file.)

Ms. Nancy Iha, 69 Greenville Highway. Opposed to the City allowing kennels in town and asked Council to consider include in the new Dog Ordinance, limiting the number of dogs allowed per household. Neighbors moved in with two dogs, they now have nine dogs which are turned out into a fenced area at her property line and about 8' from her bedroom window. The dogs charging the fence, feces odor, barking and growling prevent her and her family from using their screened porch and rear yard. As a Master Gardner, working in the yard is no longer a pleasure. Asked where the fairness is for those who want the peaceful use of their own property and space. (A copy of her speaking notes was provided and is on file.)

Mayor Harris stated her concerns will be referred to the appropriate staff.

Consent Agenda – Mayor Harris explained Consent Agenda items are considered routine and are enacted by one motion. He read aloud the four (4) items listed and asked if Council desired to remove a listed item for discussion.

Mr. Morrow moved, seconded by Mr. Canady, the Consent Agenda items as presented be approved. Motion carried unanimously. The following four items were approved:

Consent Item #1 – Reappointment of Ms. Reid Wood to the Community Appearance Commission, term to expire February 2014.

Consent Item #2 – **Resolution No. 03-2011** Revising and Updating Signatories of the City Officials and Employees Authorized to use the United Community Bank Credit Cards.

RESOLUTION NO. 03-2011

A RESOLUTION REVISING AND UPDATING THE SIGNATORIES OF THE CITY OFFICIALS AND EMPLOYEES AUTHORIZED TO USE THE UNITED COMMUNITY BANK CREDIT CARDS AND SETTING FORTH GUIDELINES FOR THE USE OF THE CREDIT CARDS BY CITY OFFICIALS AND EMPLOYEES
(Amendment No. 3 to Resolution No. 35-07)

WHEREAS, upon the request of the Finance Director and, as recommended by the City Manager, the City Council of the City of Brevard authorized by Resolution No. 35 -07, dated May 21, 2007, the obtaining and use of a credit card from United Community Bank to be used only for travel expenses incurred by City Officials and City employees who are on City business; and

WHEREAS, the following rules and guidelines for restricted use of the credit card were set forth as follows:

1) The Credit Card may not be used for purchases that can be made on an account or where the City has a standing purchase order on file with the store/business.

2) Any purchases not related to travel must have prior approval by the City Manager or Finance Director. No alcohol or gift related purchases are permitted. Only purchases directly related to budgeted items are allowed.

3) The Department Head shall be responsible for credit card used in their department.

4) A receipt(s) must be kept for all credit card purchases. Employee will be personally liable for purchases not having a receipt.

5) All receipts will be reviewed and approved by the department head and remitted to the Finance Director within three (3) days of completing travel. Departments that do not have receipts to the Finance Department in time for payment may be responsible for absorbing any late fee charges; and,

WHEREAS, it is now necessary, for a variety of reasons and just cause, to revise and update the names and signatories of the City Officials and employees who have been designated to use the United Community Bank credit card.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA THAT:

Section 1. The following named persons, whose signatures are shown below, are approved for making purchases utilizing a City credit card issued by United Community Bank. Three (3) cards were issued: one (1) to be used exclusively by the City Manager and two (2) cards which will be kept by the Finance Director and checked out to department heads on an as needed basis:

1) Joseph M. Moore, II, PE, City Manager _____
2) Desiree D. Perry, City Clerk _____
3) Terry Scruggs, Finance Director _____
4) LeAnn McCraw, Human Resource Director _____
5) J. Phil Harris, Chief of Police _____
6) Lynn Goldsmith, Building/Grounds Director _____
7) David Lutz, Public Services Director _____
8) Joshua Freeman, Planning Director _____
9) Utilities Shared by: Emory Owen & _____
Clinton Egerton _____
10) Craig F. Budzinski, Fire Chief _____

Section 2. This Resolution shall become effective upon its adoption and approval.

Adopted and approved the 21st day of February, 2011.

Consent Item #3 – **Resolution No. 04-2011** Approving Rules of Procedure for the Brevard City Council.

RESOLUTION NO. 04-2011

A RESOLUTION ADOPTING RULES OF PROCEDURE
FOR THE BREVARD CITY COUNCIL
OF THE CITY OF BREVARD, NORTH CAROLINA

WHEREAS, the Brevard City Council of the City of Brevard desires to adopt for themselves Rules of Procedure to incorporate general principles of parliamentary procedure to provide efficient and equitable procedures to follow in and out of public meetings. Many of the rules reflect North Carolina city council meeting procedures statutes, G.S. 160A-68 to G.S. 160A-81, and the North Carolina open meetings laws, G.S. 143-318.9 to G.S. 143-318.18.

WHEREAS, these Rules of Procedure are adopted with the following principles in mind:

1. The council must act as a body.
2. The council should proceed in the most efficient manner possible.
3. The council must act by at least a majority.
4. Every member must have an equal opportunity to participate in decision making.
5. The council's rules of procedure must be followed consistently.
6. The council's actions should be the result of a decision on the merits and not a manipulation of the procedural rules.

WHEREAS, the City Clerk, using the UNC School of Government publication, Suggested Rules of Procedure for a City Council, third edition, as a guide, has prepared the Rules of Procedure for consideration by the City Council; and

WHEREAS, the Brevard City Council has reviewed and discussed the Rules of Procedure and finds it advisable to adopt for the City Council of the City of Brevard, North Carolina;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD, NORTH CAROLINA, THAT:

Section 1. That the Brevard City Council hereby adopts the Rules of Procedure which is hereby made a part of this Resolution for the City Council of the City of Brevard, North Carolina.

Section 2. The failure of council or any other person to adhere to the Rules of Procedures shall not affect the validity of any meeting or action taken by council.

Section 3. To the extent there is conflict or any discrepancy between the Rules of Procedure and the NC General Statutes, case law, or local ordinances (collectively "law"), the law shall prevail.

Section 4. That the Rules of Procedure for the City Council of the City of Brevard shall be in full force and effect from and after the date of its adoption.

Adopted and approved this 21st day of February, 2011.

Included: **EXHIBIT A – Rules of Procedure for the Brevard City Council**

Consent Item #4 – **Resolution No. 05-2011** Authorizing and Awarding Contract for the Purchase of One (1) Rear Load Residential Refuse Truck Using the "Piggyback" Method.

RESOLUTION NO. 05-2011

A RESOLUTION AUTHORIZING AND AWARDING CONTRACT
FOR THE PURCHASE OF ONE REAR LOAD RESIDENTIAL
REFUSE TRUCK USING THE "PIGGYBACK" METHOD

WHEREAS, the City of Brevard has investigated previous purchases by other governmental entities and has found that purchases of equipment identical to that being requested have been made by other governmental entities; and

WHEREAS, proper advertisement of the City's consideration of these purchases has been made; and

WHEREAS, after due consideration, the Brevard City Council now desires to authorize and award contract for the purchase of one 2012 New Way 20 Cubic Yard Viper Rear Loader mounted on a 2012 International 7400 in the amount of $111,354.00 from Nu-Life Environmental, Easley, South Carolina, using the "Piggyback" method of purchase, in compliance with General Statutes 143-129(g).

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BREVARD THAT:

Section 1. The requirements of the General Statues relating to "piggyback" purchases have been complied with authorizing the purchase via the "piggyback" method, as outlined in General Statutes 143-129(g).

Section 2. The Town of Waynesville, North Carolina, the public agency originally contracting for purchase of a 20 cubic yard rear load refuse truck, closely matches our specifications and appropriately bid for the acquisition of a 20 cubic yard rear load refuse truck, receiving a bid of $111,354.00. Upon this determination, it was decided that the City of Brevard should seek to make this purchase using the "Piggyback" method, as outlined in the General Statutes.

Section 3. A contract is hereby awarded to Nu-Life Environmental, Easley, South Carolina, for the purchase of one (1) 2012 New Way 20 Cubic Yard Viper Rear Loader mounted on a 2012 International 7400 in the amount of $111,354.00.

Section 4. The City Manager is hereby authorized and directed to execute all documents necessary for the purchase of this equipment.

Section 5. This Resolution shall become effective upon its adoption and approval.

Adopted and approved the 21st day of February, 2011.

Unfinished Business – None

New Business - None

Remarks by Officials

Mayor Harris shared a "Council vs County Commissioners" bowling event is scheduled for March 26th at the Strykes Again bowling alley. Proceeds go to the American Red Cross to purchase defibrillator for public places and schools.

City Manager sought Council's direction for the five items mentioned during public participation by asking if it is Council's desire for staff to move forward.

1. (Mayor) Bring back information on the ballot and what the State requirements are with respect to Mr. Margraf's request.

2. (Mr. Canady) Desires staff to follow-up on the consideration of limiting the number of dogs.
3. (Mr. Locks and Mr. McKeller) Interesting concept to cover special pickup as we're going into the budget season.

Consensus: All items are to be reviewed by City staff and report back to Council.

Adjourn - There being no further business before Council, Mr. Morrow moved, seconded by Mr. Canady, the meeting be adjourned. Motion carried unanimously. Meeting adjourned at 8:02 PM.

Desiree D. Perry
City Clerk

Jimmy Harris
Mayor

Minutes Approved:
April 4, 2011

EXHIBIT A

Rules of Procedure for the Brevard City Council

Adopted and Effective Date: 02/21/2011

Rule 1. Regular Meetings

Council shall hold regular meetings according to a schedule adopted by the council in December of each year. Meetings are held at City Hall Council Chambers and shall begin at 7:00 PM. A copy of the council regular meeting schedule shall be filed with the city clerk.

Rule 2. Special, Emergency, and Recessed or Adjourned Meetings

A. Special Meetings

1. The mayor, mayor pro tempore, or any two members of the council may at any time call a special meeting of the council by signing a written notice that is maintained in the city clerk's office. This written notice shall include the date, time and place of the meeting and the subject(s) to be considered, and shall be provided to the city clerk to allow public notice to be posted at least forty-eight (48) hours prior to the special meeting called in this manner, excluding weekends and city recognized holidays. Written notice of the meeting stating its time, place, and subject(s) to be considered shall be:

    a. Provided to the mayor and each council member or left at his or her usual dwelling place;
    b. Posted on council's principal bulletin board, or if none, at the door of council's usual meeting room;
    c. Provided to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the city clerk.

d. Posted upon city website.

Only those items of business specified in the notice may be discussed or transacted at a special meeting.

2. A special meeting may also be called or scheduled by vote of the council in open session during another duly called meeting. The motion calling or scheduling the special meeting shall specify its time, place, and purpose. At least forty-eight (48) hours before a special meeting called in this manner, excluding weekends and city recognized holidays, the city clerk shall provide notice of the time, place and purpose of the meeting and shall be:

a. Provided to each council member not present at the meeting when the special meeting was called, and it shall be provided to these council members at least 48 hours before the meeting;
b. Posted on council's principal bulletin board, or if none, at the door of the council's usual meeting room;
c. Provided to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the city clerk.
d. Posted upon city website.
e. Only those items of business specified in the notice may be discussed or transacted at a special meeting.

B. Emergency Meetings

Emergency meetings of the council may be called only because of generally unexpected circumstances that require immediate consideration by the council. Only business connected with the emergency may be considered at an emergency meeting. One of the following two procedures must be followed to call an emergency meeting of the council:

1. The mayor, mayor pro tempore, or any two members of the council may at any time call an emergency council meeting by signing a written notice that is maintained in the city clerk's office. This written notice shall state the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the mayor and each council member or left at his or her usual dwelling place a least six (6) hours before the meeting.

2. An emergency meeting may be held at any time when the mayor and all members of the council are present and consent thereto, or when those not present have signed a written waiver of notice.

In either method above, notice shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request, which includes their telephone number, with the city clerk. This notice shall be given either by telephone or by the same method used to notify council and shall be given at the expense of the part notified.

C. Recessed (or Adjourned or Continued) Meetings

A properly called regular, special, or emergency meeting may be recessed (or adjourned or continued) to a date, time, and place certain as specified by motion made in open session at the regular, special, or emergency meeting. No further notice is necessary for a recessed session of a properly called regular, special, or emergency meeting.

Rule 3. Organizational Meeting

On the date and at the time of the first regular meeting in December following a general election in which council members are elected, or at an earlier date, if any, set by the

incumbent council, the newly elected members shall take and subscribe the oath of office as the first order of business. As the second order of business, the council shall elect a mayor pro tempore from its membership. This organizational meeting shall not be held before the municipal election results are officially determined, certified, and published in accordance with State law.

Rule 4. Agenda

A. Proposed Agenda. The city manager shall prepare a proposed agenda for each regular, workshop, and special meeting.

B. Agenda Request Deadline. A request to have an item of business placed on the agenda must be received by the office of the city manager at least six (6) working days prior to the date of the scheduled meeting, and:
   a. Shall be submitted in writing and be specific to provide sufficient information which will reasonably allow the council to consider the matter;
   b. Copies of any relevant supporting material shall be included with the agenda request;
   c. Supporting materials not easily reproduced shall be provided in sufficient numbers with the agenda request;
   d. Person(s) making agenda request shall state the approximate time they will need to present information to the council. A maximum of fifteen (15) minutes will be granted to make a presentation unless additional time is granted by agreement from a majority of the council; and
   e. Shall clearly state the action requested to be taken by the council, as well as, justification for the request.

C. Citizen Request Agenda Item
   Options for citizens to bring items forward for discussion in the public forum offered at Council meetings. Agenda placement protocol for: (1) Citizen Request Through a Council Member; (2) Citizen Request Through Staff; and, (3) Citizen Request Through Public Participation.

   Citizen request items before Council shall be provided to the City Manager for placement upon an agenda in the following ways:

   1. Citizen Request Through a Council Member.
      a. A Council member requesting an item be placed on the Agenda in response to a citizen request shall first obtain the support of another Council member.
      b. The Council member making the request will provide to the City Manager, by the Monday (week) prior to Council meeting, a copy of an e-mail showing support of a second Council member.
      c. The City Manager will place the item at the "Remarks by Officials" portion of a meeting.
      d. Council member introducing the item will describe the request for Council discussion at the next meeting. No action.

   2. Citizen Request Through Staff.
      a. Citizen meets with City staff member to fully describe the needs/issues of their request.
      b. Staff member, if in support of the request, proceeds to prepare staff report. Staff may choose to meet to discuss with City Manager prior to proceeding with citizens request in order to determine if a Petition is needed from the citizen making the request.

   3. Citizen Request Through Public Participation. When, after hearing comments offered by a citizen or group during the public participation portion of a regular Council meeting, a Council member desires the item to be placed upon a future agenda, he or she shall:

a. During the "Remarks by Officials" portion of the meeting a Council member may propose the item be considered.
b. By motion, the Council at the meeting when the request was first mentioned during public participation, may take one of the following three actions:
    i. Direct staff to place the item on the next regular business agenda as New Business for discussion only (no action), or
    ii. Refer the request to the appropriate committee, at which time a staff report with staff recommendation will be prepared, or
    iii. Refer the request to a future Council meeting, at which time a staff report with staff recommendation will be prepared, or
    iv. Decide *not* to pursue the public participation initiated request.

D. Agenda Package Contents. An agenda package shall be prepared by the office of the city manager that includes, for each item of business placed on the proposed agenda, as much background information on the subject as is available and reasonable to reproduce. A copy of all proposed ordinances shall be included.

E. Agenda Distribution. Each council member shall receive a copy of the proposed agenda and the agenda package on or before the Friday prior to the scheduled Monday meeting. When the agenda and agenda package is complete for distribution to council, it shall then be available for public inspection and distribution or copying.

F. Adoption of the Agenda. As its first order of business at each meeting, the council shall discuss and revise the proposed agenda and adopt an agenda for the meeting. If items are proposed to be added to the agenda of a meeting, the council may, by majority vote, require that written copies of particular documents connected with the items be made available at the meeting to all council members.

The Council may by majority vote add items to or subtract items from the proposed agenda, except that (a) the council may not subtract items from the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, unless those calling the meeting consent to the deletion, (b) the council may not add items to the proposed agenda stated in the notice of a special meeting called by the mayor, mayor pro tempore, or two council members, unless all members are present, or those who are absent sign a written waiver of notice, and (c) only business connected with the emergency may be considered at an emergency meeting.

The council may designate certain agenda items "for discussion and possible action." Such designation means that the council intends to discuss the general subject area of that agenda item before making any motion concerning that item.

G. Consent Agenda. The council may designate a part of the agenda as the "consent agenda." Items shall be placed on the consent agenda by those preparing the proposed agenda if they are judged to be noncontroversial and routine. Any council member may remove an item from the consent agenda and place it on the regular agenda for discussion. All items on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion, second and vote on each item.

H. Open Meetings Requirement. The council shall not deliberate, vote, or otherwise take action on any matter by reference to a letter, number, or other designation, or other secret device or method, with the intention of making it impossible for persons attending a meeting of the council to understand what is being deliberated, voted, or acted on. The council may, however, deliberate, vote, or otherwise take action by reference to an agenda, if copies of the agenda—sufficiently worded to enable the public to understand what is being deliberated, voted, or acted on—are available for public inspection at the meeting.

Rule 5. Public Participation (or Comment)

A public participation period shall be reserved as an item of business on the agenda at each regular council meeting. There will be no public participation periods held during council special or workshop meetings. All comments to the council during public participation period shall be subject to the following:

a. Speakers may speak on any topic, unless it is a topic of public hearing item on the same meeting agenda.
b. Prior to the start of the meeting, persons wishing to address the council will register on a sign-up sheet stationed at the meeting room main entrance door area.
c. Speakers will be acknowledged to speak in the order in which their names appear on the sign-in sheet. Speakers will address from the podium the full council, not an individual council member, and begin their remarks by stating clearly their name and address.
d. Speakers are to limit their comments to three (3) minutes or less, be concise and avoid repetition.
e. No time will be yielded to a speaker by another speaker.
f. An individual may only speak one time during the public participation (comment) portion of each regular council meeting.
g. Groups are encouraged to elect a spokesperson to speak on their behalf.
h. Public participation period is not intended to require the council to answer any impromptu questions. The council will not take action on an item presented during public participation. When appropriate, the council may refer inquiries and items brought up during public participation to the city manager for follow up.
i. Speakers will be courteous in their language and presentation. Personal attacks will not be tolerated.
j. The total time limit for public participation portion of the agenda is one hour.

Rule 6. Order of Business

Items shall be placed on the agenda according to the order of business. The order of business for each regular meeting follows. By majority vote of the council, agenda items may be considered out of order.

A. Welcome and Call to Order
B. Invocation
C. Pledge of Allegiance
D. Certification of Quorum
E. Approval of Agenda
F. Approval of Minutes
G. Certificates and Awards
H. Special Presentations
I. Public Hearings
J. Public Participation
K. Consent Agenda
L. Unfinished Business
M. New Business
N. Remarks by Officials
O. Closed Session
P. Adjourn

Rule 7. Office of Mayor

The mayor shall preside at all meetings of the council but shall have the right to vote only when there is a tie. In order to address the council, a member must be recognized by the mayor.

The mayor or other presiding officer shall have the following authority:

(a) To rule motions in or out of order;
(b) To determine whether a speaker has gone beyond reasonable standards of

courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;

(c) To entertain and answer questions of procedure;
(d) To preserve order and decorum;
(e) To call a brief recess at any time;
(f) To adjourn in an emergency;
(g) To execute documents as approved by council on behalf of the City.

*The mayor or council members may request guidance from the city attorney on the above issues. If an issue arises not addressed in these rules of procedure, the city attorney may utilize Robert's Rules of Order or Suggested Rules of Procedure for a City Council (by A. Fleming Bell, II, UNC School of Government) to provide guidance to the council.

Rule 8. Office of Mayor Pro Tempore

At the organizational meeting, the council shall elect from among its members a mayor pro tempore to serve at the council's pleasure. The mayor pro tempore shall be entitled to vote on all matters and shall be considered a council member for all purposes, including the determination of whether a quorum is present. The mayor pro tempore shall perform the duties of the mayor in the event of absence of the mayor, or in the case of sickness of the mayor or other causes which would prevent the mayor from attending to the duties of the office.

If both the mayor and mayor pro tempore are absent from a meeting, the council may elect from among its members a temporary chairman to preside at the meeting.

Rule 9. When the Presiding Officer Is in Active Debate

If the mayor or other presiding officer becomes actively engaged in debate on a particular proposal, he or she may designate another council member to preside over the debate. The mayor or other presiding officer shall resume presiding as soon as action on the matter is concluded.

Rule 10. Action by the Council

The council shall proceed by motion. Any member may make a motion. Seconds are required to all motions.

Rule 11. Council Direction to Staff

If during a meeting an individual member of the council gives direction to staff, the mayor or presiding officer will immediately ascertain if that direction is approved by the council (by a majority vote). This will ensure that council as a group is clearly articulating direction to staff.

Rule 12. One Motion at a Time

A member may make only one motion at a time.

Rule 13. Substantive Motions

A substantive motion is out of order while another substantive motion is pending.

Rule 14. Adoption by Majority Vote

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by these rules or the laws of North Carolina. A majority is defined as more than half.

Rule 15. Voting by Written Ballot

The council may choose by majority vote to use written ballots in voting on a motion. Such ballots shall be signed, and the minutes of the council shall show the vote of each member voting. The ballots shall be available for public inspection in the office of the city clerk

immediately following the meeting at which the vote took place and until the minutes of that meeting are approved, at which time the ballots may be destroyed.

Rule 16. Debate

The mayor shall state the motion and then open the floor to debate on it. The mayor shall preside over the debate according to the following general principles:

(a) The maker of the motion is entitled to speak first;
(b) A member who has not spoken on the issue shall be recognized before someone who has already spoken;
(c) To the extent possible, the debate shall alternate between proponents and opponents of the measure.

Rule 17. Ratification of Actions

To the extent permitted by law, the council may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

Rule 18. Procedural Motions

A. Certain Motions Allowed. In addition to substantive proposals, the following procedural motions, and no others, are in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority of the votes cast, a quorum being present, for adoption. Procedural motions are in order while a substantive motion is pending and at other times, except as otherwise noted.

B. Order of Priority of Motions. In order of priority (if applicable), the procedural motions are:

Motion 1. To Appeal a Procedural Ruling of the Presiding Officer.
A decision of the presiding officer ruling a motion in or out of order, determining whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks, or entertaining and answering a question of parliamentary law or procedure may be appealed to the council, as specified in Rule 7. This appeal is in order immediately after such a decision is announced and at no other time. The member making the motion need not be recognized by the presiding officer and the motion, if timely made, may not be ruled out of order.

Motion 2. To Adjourn.
This motion may be made only at the conclusion of council consideration of a pending substantive matter; it may not interrupt deliberation of a pending matter. A motion to recess [or adjourn] to a time and place certain shall also comply with the requirements of Rule 2(c).

Motion 3. T o Take a Brief Recess.

Motion 4. Call to Follow the Agenda.
The motion must be made at the first reasonable opportunity, or the right to make it is waived for the out-of-order item in question.

Motion 5. To Suspend the Rules.
The council may not suspend provisions of the rules that state requirements imposed by law on the council. For adoption, the motion requires a vote equal to two-thirds of the actual membership of the council, excluding the mayor, unless he or she may vote in all cases, and vacant seats.

Motion 6. To Go into Closed Session.
The council may go into closed session only for one or more of the permissible purposes listed in G.S. 143-318.11(a). The motion to go into closed session shall cite one or more of these purposes and shall be adopted at an open meeting. A motion

based on G.S. 143-318.11(a)(1) shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on G.S. 143-318(a)(3) shall identify the parties in each existing lawsuit concerning which the council expects to receive advice during the closed session, if in fact such advice is to be received.

Motion 7. To Leave Closed Session.

Motion 8. To Divide a Complex Motion and Consider It by Paragraph.
The motion is in order whenever a member wishes to consider and vote on subparts of a complex motion separately.

Motion 9. To Defer Consideration.
The council may defer a substantive motion for later consideration at an unspecified time. A substantive motion the consideration of which has been deferred expires [100] days thereafter unless a motion to revive consideration is adopted. If consideration of a motion has been deferred, a new motion with the same effect cannot be introduced while the deferred motion remains pending (has not expired). A member who wishes to revisit the matter during that time must take action to revive consideration of the original motion [Rule 18(b), Motion 14], or else move to suspend the rules [Rule 18(b), Motion 5].

Motion 10. Motion for the Previous Question.
The motion is not in order until there have been at least [20] minutes of debate, and every member has had an opportunity to speak once.

Motion 11. To Postpone to a Certain Time or Day.
If consideration of a motion has been postponed, a new motion with the same effect cannot be introduced while the postponed motion remains pending. A member who wishes to revisit the matter must either wait until the specified time, or move to suspend the rules [Rule 18(b), Motion 5].

Motion 12. To Refer a Motion to a Committee.
The council may vote to refer a substantive motion to a committee for its study and recommendations. Sixty (60) days or more after a substantive motion has been referred to a committee, the introducer of the substantive motion may compel consideration of the measure by the entire council, whether or not the committee has reported the matter to the council.

Motion 13. To Amend.

A. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the motion with that amendment added would have the same effect as rejection of the original motion. A proposal to substitute completely different wording for a motion or an amendment shall be treated as a motion to amend.

B. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote.

C. Any amendment to a proposed ordinance , order, policy, or resolution shall be reduced to writing before the vote on the amendment.

Motion 14. To Revive Consideration.
The council may vote to revive consideration of any substantive motion earlier deferred by adoption of Motion 9 of Rule 18(b). The motion is in order at any time within [100] days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires one hundred (100) days

after the deferral unless a motion to revive consideration is adopted.

Motion 15. To Reconsider.
The council may vote to reconsider its action on a matter. The motion to do so must be made by a member who voted with the prevailing side (the majority side except in the case of a tie; in that case the "nos" prevail) and at the meeting during which the original vote was taken, including any continuation of that meeting through recess [or adjournment] to a time and place certain. The motion cannot interrupt deliberation on a pending matter, but is in order at any time before final adjournment of the meeting.

Motion 16. To Rescind or Repeal.
The council may vote to rescind actions it has previously taken or to repeal items that it has previously adopted. The motion is not in order if rescission or repeal of an action is forbidden by law.

Motion 17. To Prevent Reintroduction for [Six] Months.
The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption a vote equal to two-thirds of the actual membership of the council excluding the mayor, unless he or she may vote in all cases, and vacant seats. If adopted, the restriction imposed by the motion remains in effect for [six] months or until the next organizational meeting of the council, whichever occurs first.

Rule 19. Renewal of Motion

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reintroduction has been adopted.

Rule 20. Withdrawal of Motion

A motion may be withdrawn by the introducer at any time before it is amended or before the presiding officer puts the motion to a vote, whichever occurs first.

Rule 21. Duty to Vote

Every member must vote unless excused by the remaining members according to law. A member who wishes to be excused from voting shall so inform the presiding officer, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his or her own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote.

Rule 22. Introduction of Ordinances

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by the Council.

Rule 23. Adoption of Ordinances and Approval of Contracts

A. Generally. An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue (including the mayor's vote in case of an equal division) shall be required to adopt an ordinance, to take any action that has the effect of an ordinance, or to make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance or action that has the effect of an ordinance may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats, and not including the mayor unless he or she has the right to vote on all questions before the council. No ordinance shall be adopted unless it has been reduced to writing before a vote on adoption is taken.

B. Zoning Protest Petitions**.** An affirmative vote equal to three-fourths of all the members of the council shall be required for an ordinance making a change in a zoning regulation, restriction, or boundary to become effective, if a valid protest petition is received in accordance with the requirements set out in G.S. 160A-385(a) and G.S. 160A-386. This rule shall not apply in those cases excepted by G.S. 160A-385(a).

Rule 24. Adoption of the Budget Ordinance

Notwithstanding the provisions of any city charter, general law, or local act:

(1) Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meeting of the council by a simple majority of those present and voting, a quorum being present;

(2) No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by the council; and
(3) The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any city charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to the council and ending with the adoption of the budget ordinance, the council may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the open meetings law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (a) each member of the board has actual notice of each special meeting called for the purpose of considering the budget, and (b) no business other than consideration of the budget is taken up. This rule does not allow, and may not be construed to allow, the holding of closed meetings or executive sessions by the council if it is otherwise prohibited by law from holding such a meeting or session.

Rule 25. Special Rules of Procedure

Council may adopt its own special rules of procedure, to be specified here.

Rule 26. Closed Sessions

The council may hold closed sessions as provided by law. The council shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the purpose of the closed session. If the motion is based on G.S. 143-318.11(a)(1) (closed session to prevent the disclosure of privileged or confidential information or information that is not considered a public record), it must also state the name or citation of the law that renders the information to be discussed privileged or confidential. If the motion is based on G.S. 143-318.11(a)(3) (consultation with attorney; handling or settlement of claims, judicial actions, or administrative procedures), it must identify the parties in any existing lawsuits concerning which the public body expects to receive advice during the closed session. The motion to go into closed session must be approved by the vote of a majority of those present and voting. The Council shall terminate the closed session by a majority vote.

Only those actions authorized by statute may be taken in closed session. A motion to adjourn or recess shall not be in order during a closed session.

Rule 27. Quorum

A majority of the actual membership of the council plus the mayor, excluding vacant seats, shall constitute a quorum. A majority is more than half. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present shall be counted as present for purposes of determining whether or not a quorum is present.

Rule 28. Public Hearings

Public hearings required by law or deemed advisable by the council shall be organized by a special order (adopted by a majority vote) that sets forth the subject, date, place, and time of the hearing as well as any rules regarding the length of time allotted for each speaker, and other pertinent matters.

The rules may include, but are not limited to, rules:

(a) fixing the maximum time allotted to each speaker;
(b) providing for the designation of spokespersons for groups of persons supporting or opposing the same positions;
(c) providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the hall (so long as arrangements are made, in the case of hearings subject to the open meetings law, for those excluded from the hall to listen to the hearing); and
(d) providing for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the open meetings law applicable to council meetings shall also apply to public hearings at which a majority of the council is present; such a hearing is considered to be part of a regular or special meeting of the council. These requirements also apply to hearings conducted by appointed or elected committees of the council, if a majority of the committee is present. A public hearing for which any notices required by the open meetings law or other provisions of law have been given may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the council is present.

The council may vote to delegate to city staff members, as appropriate, the authority to schedule, call, and give notice of public hearings required by law or the council. The council shall provide adequate guidelines to assist staff members in fulfilling this responsibility, and it shall not delegate the responsibility in cases where the council itself is required by law to call, schedule, or give notice of the hearing.
At the time appointed for the hearing, the mayor or his or her designee shall call the hearing to order and then preside over it. When the allotted time expires or when no one wishes to speak who has not done so, the presiding officer shall declare the hearing ended.

Rule 29. Quorum at Public Hearings

A quorum of the council shall be required at all public hearings required by state law. If a quorum is not present at such a hearing, the hearing shall be continued until the next regular council meeting without further advertisement.

Rule 30. Minutes

Full and accurate minutes of the council proceedings, including closed sessions, shall be kept. The council shall also keep a general account of any closed session so that a person not in attendance would have a reasonable understanding of what transpired. These minutes and general accounts shall be open to inspection of the public, except as otherwise provided in this rule. The exact wording of each motion and the results of each vote shall be recorded in the minutes, and on the request of any member of the council, the “ayes” and “nos” upon any question shall be taken. Members’ and other persons’ comments may be included in the minutes if the Council approves.

Minutes and general accounts of closed sessions may be sealed by action of the council. Such sealed minutes and general accounts may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

Rule 31. Appointments

All appointments made by council shall be made in open session. The council may not consider or fill a vacancy among its own membership except in an open meeting.

The council shall use the following procedure to make appointments to various boards and committees. The Applications submitted by citizens and received by the city clerk for the particular board shall be presented to the council for appointment consideration. The mayor shall open the floor for nominations, whereupon the council members may put forth the names of possible nominees from among those individuals who submitted an Application, unless permitted to be nominated by majority vote of the Council. The names submitted shall be debated. When the debate ends, the mayor shall call the roll of the members, and each member shall cast his or her vote.

The nominee(s) receiving he highest number of votes shall be appointed. If more than one appointee is to be selected, then each member shall have as many votes as there are slots to be filled. A member must cast all of his or her votes and cast them for different nominees.

Rule 32. Committees and Boards

A. Establishment and Appointment. The council or the mayor, if the mayor is delegated that power by the council, may establish and appoint members for such temporary and standing city committees and boards as are needed to help carry on the work of city government. Any specific provisions of law relating to particular committees and boards shall be followed.

B. Open Meetings Law. The requirements of the open meetings law shall apply to all elected or appointed authorities, boards, commissions, councils, or other bodies of the city that are composed of two or more members and that exercise or are authorized to exercise legislative, policy-making, quasi judicial, administrative, or advisory functions. However, the law's requirements shall not apply to a meeting solely among the city's professional staff.

Rule 33. Amendment of the Rules

These rules may be amended at any regular meeting or at any properly called special meeting that includes amendment of the rules as one of the stated purposes of the meeting, so long as the amendment is consistent with the City Charter, general law, and generally accepted principles of parliamentary procedure. Adoption of an amendment shall require an affirmative vote equal to or greater than two-thirds of all the actual membership of the council, excluding vacant seats, and not including the mayor unless he or she has the right to vote on all questions before the council.

Rule 34. Reference to *Robert's Rules of Order Newly Revised*

To the extent not provided for in these rules, and to the extent it does not conflict with North Carolina law or with the spirit of these rules, the council shall refer to *Robert's Rules of Order Newly Revised*, to answer unresolved procedural questions.

Brevard City Council Rules of Procedure
Adopted & Effective Date: 02/21/2011
Revision Date(s):